

ICMM Workshop on Next Steps for the Extractive Industries Transparency Initiative

1. Background

The International Council on Mining and Metals held a workshop at its biannual meeting in London on October 6th to update participants on developments in the Extractive Industries Transparency Initiative and to seek input on the EITI Strategy Review. The workshop commenced with short contributions from the four mining sector EITI Board representatives and alternates and then included a session on the experiences of companies involved in national level implementation. Case studies were presented on Peru, Liberia, Mongolia, Ghana and the Democratic Republic of Congo. Strong support was expressed for EITI and most participants felt that it had had a positive impact upon the climate in which the mining sector operates. The benefits were felt to derive from increased transparency about the fiscal and socio-economic contribution made by mining; decreased opportunities for grand-scale corruption or embezzlement by elites; increased dialogue between government, civil society and industry – and especially between companies and NGOs. Thus, EITI has the potential to contribute in implementing countries to a range of positive attributes in implementing countries including: a better and more stable investment environment; improved systems for governance and accountability; and a more harmonious and better informed political discourse about the role and contribution of the industry.

However, there was also an appreciation of the narrowness of governmental capacity to implement EITI on a consistent basis and the fact that in many countries implementation is very dependent upon key individuals and upon consistent focus and political will. Thus, EITI can be vulnerable to changes of personnel in government departments, to loss of attention and priority once compliance has been achieved and to perceived lack of reward from external stakeholders. It was noted that the recent rule changes would create significant additional challenges for implementing countries and that the EITI as a whole would be moving in to a new phase as the preponderance of activity moves from candidate countries becoming compliant to ensuring continuing commitment and innovation by compliant countries. The impact of the passage of section 1504 of the Dodd-Frank Act in the US was discussed. Participants were unanimous in the view that it in no way detracts from the case for the EITI which, since it enables both sides of the company payments and government receipts ledger to be compared and is underpinned by a national multi-stakeholder process, provides a significantly more effective framework for accountability.

The announcement by the Government of the United States that it intends to implement EITI – as well as progress in the same direction in Australia, in large part at the instigation of the industry – was welcomed and hope expressed that this would help to end the ambivalence towards EITI by some emerging powers.

2. Next Steps for EITI

a) Consolidation

It was noted that EITI had consistently proved more difficult to implement than anticipated and that the rules had had to be implemented with a degree of flexibility in order to create an inclusive approach. Both capacity and financial constraints were noted. In addition the new

rules had raised the bar in a number of key areas and these were likely to trigger a number of potential non-conformances around the end of 2012. The introduction of a mandatory regime for capturing the value of transfers of mineral rights in exchange for infrastructure investment, the encouragement of the tracking of the transfer of resources to a sub-national level; and the need for more stringent follow-up of identified discrepancies were particularly welcomed as was the introduction of an annual reporting requirement for compliant countries so as to ensure continuing visibility of implementation activity. The importance of improving communication to the general public and of ensuring the security of civil society representatives engaged in the process was also recognised as fundamental in ensuring the effectiveness of EITI in-country.

The wide range of innovations being undertaken by national MSGs was viewed as encouraging. These included: the inclusion of revenues from other natural resource based industries such as forestry, fisheries and agriculture; innovative communication programmes; entrenching EITI in national laws; ensuring the involvement of relevant National Assembly committees – since this was seen as making it more likely that EITI-based reforms will be extended in to other areas of government; the reporting of social payments; and initiatives to encourage greater visibility of how resource revenues are spent. Many attending the workshop saw the attraction in an EITI model which rewards such innovations as strengthening national implementation and encourages peer learning; although this was not thought to justify a fundamental move away from the current validation model.

The development of a guide to good practice in the implementation of sub-national reporting by the World Bank was warmly welcomed. For many companies this dimension of the EITI was seen as of critical importance in building greater trust between mines and communities. Specifically where the legal framework for mining envisages the return of a proportion of mining revenues to the producing areas, there is seemingly often a lack of transparency about whether the revenues are indeed returned or how they are then spent – generating conflict and suspicion. Supporting sub-national implementation was seen as a priority over the coming years.

Thus, many companies felt that there is a significant ‘consolidation’ agenda to be pursued consisting of: improving the quality of implementation; encouraging and rewarding national innovations which command wide support within MSGs; ensuring that the additional requirements introduced through the 2011 version of the rules are implemented; increasing balanced communication of the information revealed through national EITI processes; and ensuring a strong emphasis on sub-national revenue flows and accountability for them.

b) Additional Options

Despite the importance of consolidation, support was expressed for the strategy review process as a means of ensuring continuing momentum. From experience to date, however, participants made a more optimistic assessment of the EITI’s impact and potential than that put forward in the ScanTeam evaluation. No one had claimed that the objectives outlined in the EITI Principles would be realised by the EITI alone – it is one amongst a number of initiatives designed to improve governance and to improve the use made of resource revenues. It is a brick not the wall; a contribution to a larger effort. It is changing behaviours on the ground and leading to greater accountability; improved accounting and administrative practices and to a much more

informed debate; it has the potential to have a viral impact in bringing greater transparency to other areas of governance and to strengthen the ability of institutions to exercise oversight.

i) How revenues are spent

The biggest single challenge for the next phase of the EITI's development was felt to be the need for greater understanding and awareness of how resource revenues are spent – given that their time limited nature raises questions of sustainability. In recent years there have been frequent debates about the right level of revenues to be levied from the extractive industries; whereas just as important is how efficiently the monies are spent and how priorities are selected. The political sensitivity of such issues was, however, recognised; companies should not aspire to have a voice in determining host government expenditure priorities. However, the desirability of having greater transparency about what those priorities are and why they have been chosen was thought to represent a significant potential advance for trust and accountability to national stakeholders. One model suggested, which would not involve the Multi-Stakeholder Group over-reaching its mandate, might be for the government to be asked to table annually an information paper outlining how resource revenues are to be allocated. This might, in turn, be used in the national Parliament and for more general public debate.

ii) Disaggregated Reporting

Many participants felt that experience to date and the fact that most ICMM companies readily co-operate with disaggregated reporting in those countries where this is the preference of stakeholders, justified a move from neutrality to favouring disaggregated reporting on a company by company basis. Others felt that this should remain a matter to be decided by national MSGs in the light of local circumstances and that disaggregated reporting should not be mandatory. EITI rules might, therefore, establish disaggregated reporting as a norm subject to a 'comply or explain' caveat allowing for MSGs to opt for aggregated reporting with good reasons.

iii) Validation

Mining constituency supporters continue to be supportive of a clear process for evaluating whether candidate countries have complied with the minimum EITI standards with sufficient rigour as to be recognised as 'compliant'. They are open to discussion of various ideas for recognising efforts which go beyond basic compliance. Some cautionary notes were, however, mentioned and would need to be resolved if this idea were to be adopted, namely: reaching agreement on identifying what might be regarded as 'desirable' innovations worthy of recognition; preserving the underlying consensus between different stakeholder groups; designing a model which is readily comprehensible to external stakeholders and does not blur the key 'compliance' threshold; and ensuring that any compliance + recognition is objective.

There was some discussion of problems with the existing model – such as the variable quality of the validation reports; and tensions between validators and national MSGs; and between national MSGs and the EITI Board in reaching conclusions on compliance. Whilst some have suggested that the model should be fundamentally changed and that EITI should pay for validation as the owner of the 'brand', this was felt to raise insurmountable financial problems. Furthermore, many feel that paying for validation is an important demonstration of a country's

commitment to the EITI. Some of the difficulties between validators and MSGs might be addressed by each country paying a standard validation fee in to a central fund and choosing a validator to carry out the work but for the final bill then to be paid by the EITI Secretariat from the fund.

The growing use of Secretariat Reviews for determining whether countries determined to be 'close to compliant' have completed the actions necessary to achieve compliance was recognised as a pragmatic development but it was questioned whether this is sustainable given the limited resources available in the Secretariat and the danger of excessive delays in reaching determinations. Questions were also raised about whether it was appropriate for the Secretariat to take on such a front-line role rather than acting as the guardian of the EITI rules and providing support and advice at some distance to national MSGs. Others saw a potential conflict of interest between the Secretariat's role in mentoring and supporting national implementation and then having to advise the Board on the extent to which a report or process, which they may have influenced or helped to design is compliant.

iv) Contract Transparency

There was a discussion about increased contract transparency. None of the companies represented were opposed to the recent increase in the number of countries choosing to publish their contracts with mining, oil and gas companies. Many believed that it could help to create greater public confidence in the integrity of licensing processes etc. Some argued that it was in the interests of extractive companies to share the key terms of their contracts so as to defuse perceptions of unfairness or irregularities and reduce the chances of a successor government finding excuses for over-turning a contract in the public domain. Many were, however, uneasy about the unilateral and retrospective imposition of contract transparency; seeing this as running contrary to the spirit of contract making and others believed that it would involve the disclosure of commercially confidential information and reduce the breadth of issues on which companies might compete. Overall, there was no consensus on the issue except perhaps that there are a number of parallel initiatives in this area and that the issue should be pursued through these channels rather than through EITI.

v) Strengthening Anti-Corruption

Many companies have given their support to EITI in large part because they see it as an anti-corruption movement. It may, indeed, play a role in preventing large-scale embezzlement of resource revenues and in encouraging greater public awareness of the sums that have been paid and which should be available for disbursement. There was widespread support for the idea of strengthening EITI's role in combating corruption and it may be that this is an area worth further exploration by a specific working group on the subject. One idea floated at the meeting was that as part of their annual returns to the reconciler, companies should be required to identify their major shareholders as a step to revealing where licences or concessions are being let to relatives or cronies of ministers, senior officials or other politically connected individuals.

3. Conclusion

In conclusion, the mining constituency believes that many significant advances have been achieved in the transparency and accountability associated with the payment and receipt of resource revenues. They are strongly supportive of EITI and foresee an ambitious work programme to be necessary merely to deliver on currently agreed, largely incremental, improvements, especially in areas such as sub-national reporting. They believe that the vibrancy of the EITI is illustrated by the range of initiatives being pursued by national MSGs. It may be that this trend can be underpinned by some form of recognition. Otherwise, it was felt that the most important potential innovation to be considered is to bring greater transparency to how resource revenues are used so as to spur debate around the sustainability and effectiveness of expenditure programmes.