Consultation questions for implementing countries

The EITI Board will conduct a strategy discussion in Oslo as part of its Board retreat on 12 February 2020. The inputs of implementing countries to this process are important to ensure that varying country contexts are considered in these discussions.

At the last Board meeting in Addis, the EITI Board agreed to focus on the following themes for its strategy discussion:

a. The EITI’s role in addressing corruption
b. The role that the EITI could potentially play in the global discussions on energy transition
c. Evaluating EITI impact

The Board is also currently reviewing Validation procedures to consider lessons learned from previous Validations, with objective of revising the current Validation model to make it more fit for purpose.

All EITI countries are encouraged to respond to the following questions as part of the Board’s consultation process with implementing countries.

We request all national coordinators to circulate these questions to MSG members and other relevant stakeholders, and submit your country’s consolidated responses to your respective country managers, copying Gay Ordenes (GOrdenes@eiti.org), Alex Gordy (AGordy@eiti.org) and Lyydia Kilpi (LKilpi@eiti.org) for all countries; Bady Balde (BBalde@eiti.org) and Gisela Granado (GGranado@eiti.org) for Africa; Francisco Paris (Fparis@eiti.org) for Latin America; Oliana Valigura (OValigura@eiti.org) for Central Asia; and Annie Magnus (AMagnus@eiti.org) for Southeast Asia by 14 January 2020.
The EITI’s role in addressing corruption

1. Is corruption mitigation in the extractive sector among the objectives of your country’s MSG for EITI implementation? If yes, explain how the MSG is using the EITI to mitigate corruption. If no, what are the reasons why the MSG is not using the EITI for corruption mitigation in the extractive sector?

**GOVERNMENT**

- Yes. The annual reporting of what the government receives and the private sector pays is a useful tool in ensuring transparency and accountability in the extractive sector. Likewise, the regular MSG meetings serve as a transparent platform wherein all stakeholders can freely discuss or have dialogue on relevant issues pertaining to the extractive sectors.

- The discussion paper commissioned by the EITI about the role of EITI in fighting corruption (June 2019), including its contribution and limitations, is interesting and acceptable.

- Transparency should lead to less corruption.

**INDUSTRY**

- Yes. One of the primary objectives of PH-EITI is to strengthen government systems for natural resource governance, with an eye towards addressing perceived corruption risks in the granting and maintenance of mineral agreements, as well as in the payment of subnational fees and impositions.

**CSO**

- There are two major ways of mitigating corruption that is being done by PH-EITI. First is by checking the consistency of revenue and payments data. Variances are reconciled by requesting for more data and details to explain discrepancies. Second is by pursuing transparency in beneficial ownership (BO) and politically exposed persons (PEPs). PH-EITI has been seriously following the research on BO and testing BO declaration forms among reporting companies. However, this is not yet fully operational because there are still barriers to public disclosure of BO.

*Secretariat*

- Although corruption mitigation is not expressly stated in PH-EITI’s objectives, it is subsumed and assumed under the objectives in line with strengthening systems of natural resource governance/management. The MSG has used EITI to help address corruption mainly through transparency (disclosure of information) and multisectoral discussion of relevant information and issues towards reform.

2. What corruption risks in your country do you want the EITI to address, e.g. in licensing, contract negotiations, tax evasion, etc?

**GOVERNMENT**

- Tax evasion and tax avoidance are among the corruption risks that can be addressed by the EITI annual reporting.

**INDUSTRY**

- Tax evasion and tax avoidance are among the corruption risks that can be addressed by the EITI annual reporting.
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- The granting, maintenance, and renewal of mineral agreements/licenses
- The creation, imposition, and enforcement of local fees, taxes, and charges specific to mining
- Beneficial ownership restrictions (foreign ownership) and involvement of politically exposed persons.

CSO
- The poor civic space given to CSOs by the government. Although there is recognition of civic space to some extent, it is limited to attendance in meetings and participation in conferences. CSOs should have a significant presence in the entire value chain of extractive industry operations and the government’s interaction with the industry.

3. Considering your country’s context, which of the following recommendations on how the EITI could fight corruption do you think would be feasible and would the MSG in your country be interested to implement? You may refer to this discussion paper for further explanation on what these recommendations would entail.

- Clearly articulating EITI’s role in fighting corruption through EITI’s communication strategy and sensitisation of stakeholders on the EITI Code of Conduct Yes
- Exposing corrupt practices that are vulnerable to abuse by developing practical guidance on how EITI reporting could inform discussions on anti-corruption at the country level
- Together with partners, facilitate transparency and multi-stakeholder engagement around known areas of risk and share good disclosure practices related to subcontracting Yes
- Continue work with supporting companies to showcase good company approaches in fighting corruption Yes
- Engaging with anti-corruption actors as users of EITI data
- Engaging with anti-corruption actors on shared issues of concern related to the extractives
- Doing post mortem analysis of anti-corruption cases

Do you have any specific comments on any of these recommendations?

GOVERNMENT
- Institutionalization of PH-EITI through legislation

INDUSTRY
- A global standard and process for beneficial ownership disclosure must be developed. There is currently no workable or practicable template or guidance from EITI international secretariat on how to make BO disclosure efficient, accurate, and useable by stakeholders.
- The reporting template and procedure must be re-examined to truly surface
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corruption/irregularities in the payment of taxes, fees, royalties, and other government impositions. Variance (or the lack thereof) between what governments and companies declare does not necessarily equate to corruption (or the lack thereof). Disclosures must relate tax payments to declared production volume and value to determine whether the correct taxes were paid.

CSO

• CSOs have very little significance in ensuring the presence of transparency, accountability, and responsibility. It would be excellent if CSOs are consulted with at the national level.

4. Does the MSG foresee any risks in taking a more proactive stance in using the EITI process in fighting corruption? If yes, what are these risks and how can they be mitigated?

GOVERNMENT

• No.

INDUSTRY

• Yes. The reporting template/process is not really designed to expose corruption. We must re-examine our reporting template and procedure to truly surface corruption/irregularities in the payment of taxes, fees, royalties and other government impositions. Variance (or the lack thereof) between what governments and companies declare does not necessarily equate to corruption (or the lack thereof). Disclosures must relate tax payments to declared production volume and value to determine whether the correct taxes were paid.

CSO

• No. Not really. It is one of the things that the MSG and CSOs should do to be able to ensure absence of corruption.

5. What are the opportunities in your country (e.g. broader national reforms, strong anti-corruption policies) that the MSG could leverage in its work against corruption in the extractive sector?

GOVERNMENT

• Propose the institutionalization of PH-EITI through legislation. This would ensure government support and continuity of PH-EITI initiatives.

INDUSTRY

• The MSG could take advantage of the current administration’s strong anti-corruption stance to include or take on corruption in the extractives sector.

CSO

• So far, there are a lot of anti-corruption policies, but they fall short of real implementation. Perhaps the MSG should review the anti-corruption policies of the
government and international organizations so that they can design local-specific anti-corruption policies.

6. What support would the MSG need to enable it to use the EITI process in fighting corruption? Example: capacity building for use of EITI data to identify red flags, technical assistance to define the MSG’s mandate in addressing corruption

**GOVERNMENT**

- Capacitate the MSG through trainings and workshops, and maintain open communication regarding extractive sector governance.

**INDUSTRY**

- The MSG must go beyond ensuring that the data being generated and reported in the country report is accurate; it must go into an analysis of the data. **We must re-examine our reporting template and procedure to truly surface corruption/irregularities in the payment of taxes, fees, royalties and other government impositions.** Variance (or the lack thereof) between what governments and companies declare does not necessarily equate to corruption (or the lack thereof). Disclosures must relate tax payments to declared production volume and value to determine whether the correct taxes were paid.

**CSO**

- Aside from capacity building, multiple anti-corruption projects should be implemented at the sub-national level. The projects should be carried out together with NGOs.

### Energy transition

1. Do you think the EITI should be involved in the current global discussion on energy transition? If yes, what role do you think the EITI could play in this discussion? If no, why?

**GOVERNMENT**

- No. EITI has no role in this discussion/matter.

**INDUSTRY**

- No. EITI should focus on sharpening (skills in) data disclosure and analysis before taking on additional issues such as energy transition.

**CSO**

- Yes. This is an issue which involves everyone. Specifically, the EITI should be proactive in awareness building at the ground level (subnational).
2. Are there opportunities in your country to link your EITI process with your government’s reforms/policies on energy transition?

**CSO**

- Aside from creating law that focuses on energy transition, it should be emphasized that EITI be a strong partner in data generation for policy formulation.

3. What steps should be taken by the MSG if it wants to link the EITI process with the implementation of national policies on energy transition?

**CSO**

- Link with the right government agencies.

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**Evaluating EITI Impact**

1. How does the MSG define EITI impact in your country? What are your impact indicators?

**INDUSTRY**

- Government action on PH-EITI MSG recommendations
- Outreach to communities; public awareness of PH-EITI, its work, and its objectives

**CSO**

- Awareness level of the people on EITI concerns and issues, particularly among the people who were part of EITI implementation at the subnational level

2. How is the MSG measuring the impact of EITI implementation in your country? Please mention tools that you are using, e.g. impact studies, annual progress reports, stakeholder surveys, etc. How often do you measure/discuss impact?

**INDUSTRY**

- Annual progress reports. In 2018, the MSG also commissioned an impact study.

**CSO**

- Research and scoping study. However, the research results have not yet been thoroughly discussed.

3. How effective are these tools in accurately documenting and measuring impact in your country?

**INDUSTRY**
• The impact study needs to be widened.
CSO
• Effective enough to generate recommendations that work.

4. Do you think it is advisable to have a single impact evaluation framework for all EITI countries? Why or why not?

INDUSTRY
• Yes, so we can better measure direction and speed of each country’s progress.
CSO
• Yes, given the same EITI standards. However, the evaluation should consider the uniqueness of each country as part of additional parameters that support (measuring) the impact of EITI in a specific country.
Consultation: The future of Validation

Validation assesses how EITI implementing countries are progressing towards meeting EITI requirements. In October 2019, the EITI Board decided to launch a review of the Validation process. As an initial step, the views of EITI stakeholders are being sought through this consultation.

Who can comment?

The consultation is open to all stakeholders. We are actively seeking a range of responses, across regions and stakeholder groups.

How should I comment?

Step 1: Download the consultation questions.

Step 2: Consult your immediate stakeholders if you are submitting a joint response.

Step 3: Include your responses in the space provided below each consultation question, explaining your answers and justifying them as fully as possible. Indicate proposals for concrete reforms where applicable.

Step 4: Submit your responses to the EITI International Secretariat by email to Lyydia Kilpi (lkilpi@eiti.org) and Alex Gordy (agordy@eiti.org) by Tuesday 14 January 2020.

What areas are covered by the consultation?

The consultation seeks views on the following areas of Validation:

- Measuring compliance and impact
- Resourcing and roles
- Structure, timing and consequences of Validation
- Assessing stakeholder engagement

See detailed questions and explanation below.

Thank you for your input.

1. Measuring compliance and impact

Findings from Validations show that countries have made progress in implementing the EITI Standard. However, as of November 2019 only eight out of the 44 EITI countries that have been Validated against the EITI Standard have reached “satisfactory progress” overall, i.e. successfully implemented all EITI Requirements. Some stakeholders have expressed views that Validation should better reflect the diversity of implementing countries’ circumstances and the impact of

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1 https://eiti.org/overview-of-validation
2 See EITI blog “Crunching the numbers on EITI Validation”: https://eiti.org/blog/crunching-numbers-on-eiti-validation
EITI implementation to date. On the other hand, the need to maintain consistent, objective treatment across countries has also been raised.

- Should Validation continue to focus on assessing compliance with all EITI Requirements, applying the same expectations consistently across countries? If not, what should be the focus of Validation?

**GOVERNMENT**
- Yes

**INDUSTRY**
- An impartial third-party validation using a globally-recognised standard is a core strength of EITI and is the feature most sought after by the private sector. It is a major factor for mining companies’ involvement in EITI in the Philippines.

- Should implementation priorities determined by the MSG be reflected in Validation? If yes, how?

**GOVERNMENT**
- No. EITI implementation is based on the Standard. Validation is assessing this implementation against the Standard.

**INDUSTRY**
- Yes. Validators must check what priorities the MSG has identified in its annual work plan, check the actions taken to implement the identified priorities, and measure the effectiveness/non-effectiveness of the actions vis-à-vis the attainment of the priorities.

- Currently, Validation seeks to describe the impact of EITI implementation, but it is not reflected in the assessment of progress in implementing the EITI Standard outcome. How should Validation assess impact? Should this assessment affect the outcome of Validation?

**GOVERNMENT**
- Validation is an exercise for assessing compliance with certain standards. Its results should be presented in a manner by which the validated country understands its compliance status for it to work on areas that need improvement.

**INDUSTRY**
- Validation should focus on assessing the MSG’s efforts to achieve its identified objectives. MSG recommendations do not necessarily translate into concrete government action/policy, but if the MSG’s efforts are aimed in the right direction and the steps being taken are correct, these should be assessed favorably.

- How could Validation encourage countries that are performing well against the EITI
Standard to continue making progress beyond EITI Requirements?

**GOVERNMENT**
- Through international recognition so that countries will be motivated to further their EITI implementation

**INDUSTRY**
- Cite clear best practice examples/innovations that can be emulated by MSGs. Arrange/facilitate country visits for MSG members to learn how other (developed) countries have made transparency reporting more systematic.
- International recognition by EITI is also a good incentive for implementing governments.

- Should the EITI Validation process take into account the outcomes of country assessments conducted by other organisations, such as Financial Action Task Force? If yes, how?

**GOVERNMENT**
- No. EITI Validation should be an independent tool; its results should not be influenced by outside factors.

**INDUSTRY**
- Yes. There should be space for the validation process to recognize country efforts in other transparency/anti-corruption fronts.

2. Resourcing and roles

The review of Validation will consider who undertakes Validation and how it is resourced, with a view to ensuring financial sustainability, the timely execution of Validations and sufficient resources for support to EITI implementation.

Under the current Validation procedure\(^3\), Validation is led by the International Secretariat. Each year, one company is selected as the Independent Validator to provide quality assurance. The current annual financial cost of Validation for the International Secretariat is approximately USD 1m in total for around 15 Validations. In addition, Validation requires significant time resources from national secretariats, MSGs and the EITI Board. On average, completing first Validations has taken 41 weeks and second Validations 20 weeks.

- How would you improve the cost effectiveness of Validation, in terms of both financial cost and time?

**GOVERNMENT**
- Do desk review of the submitted self-assessment of a country undergoing...
Consultation questions for implementing countries

**INDUSTRY**

- Go local. Identify and accredit local parties that can do Validation. The MSG can select from a list of accredited validators, with an eye towards least cost.

- Should self-assessment by implementing countries play a greater role in Validation? If yes, how should the consistency of assessments be ensured?

**GOVERNMENT**

- Yes. Countries should be responsible for the integrity of the results of its self-assessment.

**INDUSTRY**

- No. MSGs, when self-assessing, always tend to grade themselves higher. If self-assessments must be made, it must be limited only to quantitative, Yes/No questions, where there is no room for discretion.

- Which entity should have the primary role in undertaking Validation, including conducting stakeholder consultations and preparing assessments (e.g. one Independent Validator across all countries, consultants specialised in certain regions or topics, the International Secretariat, the MSG or EITI stakeholders from other countries?)

**GOVERNMENT**

- For cost and time effectiveness purposes, the Independent Auditor could serve as validator.

**INDUSTRY**

- One Independent Validator

- The International Secretariat provides implementation support to countries and leads Validation. What are the benefits and challenges of this dual role? What should be the role of the International Secretariat in Validation?

**GOVERNMENT**

- International Secretariat and Validator should be independent from each other. The International Secretariat may be biased in performing its validation function and may influence the result of the validation process.

**INDUSTRY**

- The international secretariat is more familiar with the Standard and how each country is progressing with regard to compliance. They have already identified problem areas and have even recommended steps to address these issues.
3. Structure, timing and consequences of Validation

The review of Validation will consider the structure and timing of Validation, including the assessment of individual requirements, the overall assessment of progress and consequences of Validation. The visual below explains the outcomes and consequences of Validation under the current model.4

• Currently, countries are revalidated in 3 years, if they meet all EITI Requirements. If all requirements are not met, a subsequent Validation takes place in 3 to 18 months. Should Validation take place more or less frequently than currently? In what kind of situations particularly?

**GOVERNMENT**

• If cost and time effectiveness will be taken into account, desk review should be considered by the International Secretariat for initial and subsequent validation.

**INDUSTRY**

• The current schedule is satisfactory.

• The EITI Standard stipulates that lack of progress in Validation leads to temporary suspension (see image above). Should countries be allowed more or less time to make progress and meet the EITI Standard? If yes, in which cases?

**GOVERNMENT**

• Yes, up to meaningful progress only. Inadequate or no progress at all should be temporarily suspended.

**INDUSTRY**

• Where the problem involves (lack of) legislation or policy, governments may need

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4 Available on the EITI website: [https://eiti.org/overview-of-validation#validation-consequences](https://eiti.org/overview-of-validation#validation-consequences).
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• Currently Validation assesses progress in meeting all EITI Requirements in one country at a time. A different approach could be to assess the implementation of a set of requirements in several countries at once, for example related to state participation or licensing. Should Validation continue to look at one country at a time or rather focus on assessing progress on a certain topic across several countries at the same time?

GOVERNMENT

• When the International Secretariat formulated the standards, it is on the assumption that it is applicable across all countries.

INDUSTRY

• Yes, one country at a time.

• Currently Validation results in an overall assessment of progress that reflects the assessment of individual requirements (‘no progress’ to ‘outstanding progress’). Are the levels of progress and the basis for determining them appropriate? If not, how would you improve them?

4. Assessing stakeholder engagement

Assessing progress in meeting EITI Requirements on stakeholder engagement (Requirements 1.1-1.3) has proven to be more challenging and resource-intensive than assessing disclosures. In particular, the EITI Board has discussed whether the current approach to assessing civil society engagement is appropriate for safeguarding civic space in the EITI and encouraging progress.

• How would you improve the efficiency and effectiveness of validating stakeholder engagement in the EITI?

INDUSTRY

• Conduct pre-work meetings before the actual Validation exercise takes place. MSGs must convene a technical working group for the sole purpose of assessing stakeholder engagement (preferably with a uniform international template) that can be submitted to the Validator for his review/verification.

• Currently stakeholder engagement and disclosures are assessed in the same Validation process. Should these two assessments be separated?

INDUSTRY

• Yes.

• The Validation of the civil society protocol assesses whether actors substantively engaged
in the EITI can freely express themselves, operate, associate and participate in decision-making in relation to the EITI process. Should the Validation of the civil society protocol cover issues, activities and actors related to natural resource governance beyond the EITI process?

**INDUSTRY**

- No, it would be unfair. EITI and the MSGs have no control (or even inputs) on natural resource governance beyond the EITI process.

- Currently the outcome of validating stakeholder engagement follows the same levels of progress as the assessment of disclosures (‘no progress’ to ‘outstanding progress’). Does this adequately encourage and capture progress? If not, how would you improve the progress markers on stakeholder engagement?

**Please add any other comments or reflections on the current Validation model and areas for improvement not covered above.**

**Other comments**

**CSO**

- Inclusion of the following in the themes of the Board strategic discussion:
  - the role of EITI in the promotion and protection of human rights, especially in mining affected communities
  - EITI’s response to climate change and to the SDGs.