

EITI and CONNEX: Lessons, Challenges and Complementarity

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FURTHER INFORMATION

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Executive Summary

Commercial contract negotiations between governments and multinational corporations are complex, nowhere more so than in the extractive sector. Experience from the 51 EITI countries has shown the need for greater expertise on behalf of host governments when negotiating contracts.

The EITI is a Standard implemented by 51 countries and overseen at the national level by EITI National Commissions (also known as multi-stakeholder groups), which bring together government, companies and civil society groups to find common solutions to governance issues in the extractive sector.

The G7 CONNEX Initiative was launched in 2014 and aims to provide developing country partners with enhanced advisory support in relation to how best to negotiate complex commercial contracts, initially in the extractive sector.

This report highlights the points of complementarity between CONNEX and EITI, with case studies that explore the challenges facing four EITI countries on the issue of contract negotiation and how CONNEX can contribute expertise and assistance. It sets out some key recommendations for improving complementarity.

Key recommendations

EITI and CONNEX to:

- Reference and highlight each other as a resource and source of support and information on their websites.
- Look at EITI reports as diagnostic tools to highlight challenges and hidden deals in the contract negotiation and implementation process. For example, look particularly at barter deals and underlying letters of agreement for clarity of procedure and terms.
- Work together on beneficial ownership disclosure, including politically exposed persons, to provide public information on potentially preferential deals.
- Pick entry points for appropriate joint interventions following EITI Reports where upcoming contract negotiations are coming up or where there are reviews of existing deals.
- Work alongside existing actors in the contract negotiation field – the World Bank, African Development Bank, Open Contracting Partnership, the International Bar Association, emerging efforts on Tainted Assets, etc. – to ensure complementarity of interventions.
- Seek to encourage countries to put more contract procedures in law and less in discrete contracts, reducing the space for individual discretion. Some countries might increasingly wish to move from a contract regime to a licence regime.

A longer list, including specific EITI and CONNEX recommendations, can be found below in Section 4: Recommendations.

1. Project Background

The G7 [Initiative on “Strengthening Assistance for Complex Contract Negotiations \(CONNEX\)”](#), launched at the G7 Brussels Summit in 2014, aims to provide developing country partners with multi-disciplinary and concrete expertise for negotiating complex commercial contracts, with an initial focus on the extractive sector. The CONNEX Initiative is designed to ensure that such complex commercial contracts are well conceived and well negotiated for a host country’s successful and inclusive development, while protecting the interests of the host country and investing companies.

The G7 identified the following three pillars that constitute the CONNEX Initiative: information integration and accessibility on existing resources (Pillar 1); enhancing existing negotiation support (Pillar 2); and linking to long-term capacity building and increasing transparency (Pillar 3).

Progress has been made over the past two years, especially on Pillars 1 and 2, with the establishment of a collaborative relationship with the Columbia Center on Sustainable Investment (CCSI) on its [open web portal](#) and the endorsement of the CONNEX Code of Conduct. Furthermore, by generating synergy with global efforts in capacity building and improving transparency in the extractives sector (Pillar 3), the CONNEX Initiative can also contribute significantly to facilitating the mobilisation and effective utilisation of domestic public resources by the resource-rich developing countries for their own sustainable development. The CONNEX Initiative thus can play a part in realising the 2030 Agenda for Sustainable Development, in line with the principles contained in the Addis Ababa Action Agenda.

For this purpose, Japan, as the Chair of the G7 in 2016, has requested a study by the EITI on how CONNEX and the EITI can work together towards an improvement in transparency in deals made in resource-rich developing countries in the oil, gas and mining sectors.

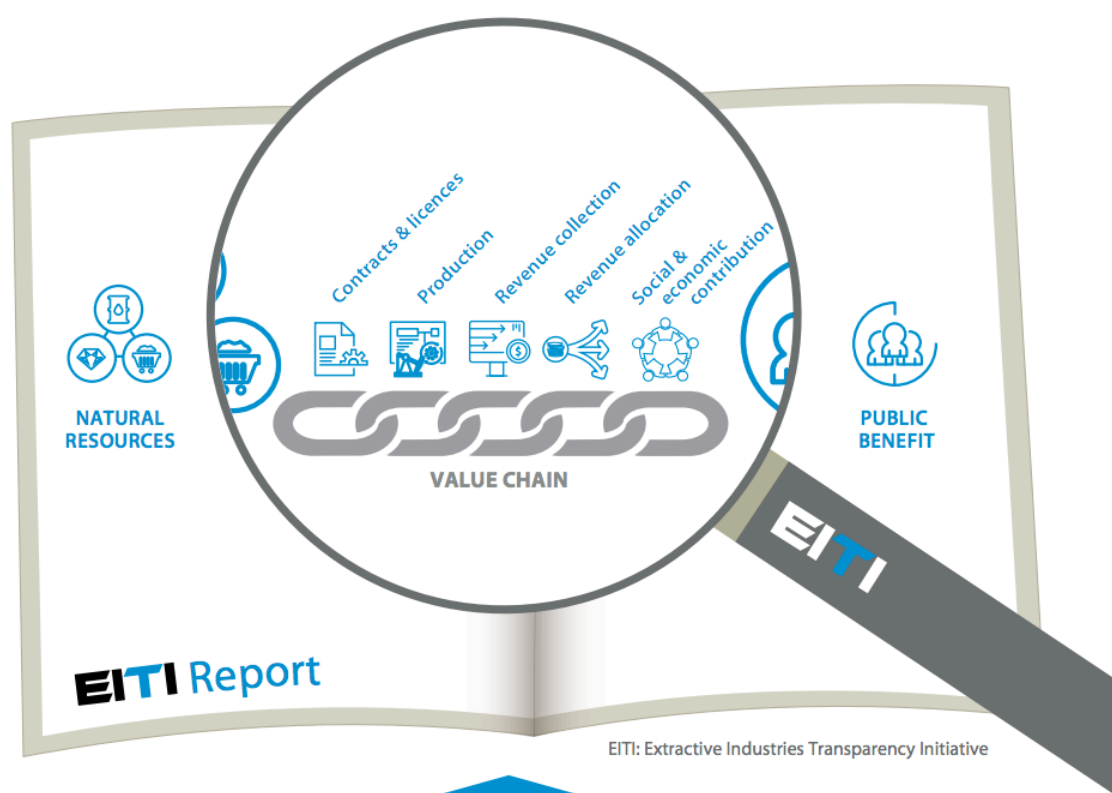
The EITI Standard is an international standard that ensures transparency around countries' oil, gas and mineral resources. When implemented, the EITI ensures more transparency in relation to how the country's natural resources are governed. At the EITI Global Conference in Lima in February 2016, the G7 CONNEX Consultative Group held its first meeting under the Japanese Presidency alongside a number of other related organisations and initiatives, including the World Bank, the Columbia Center on Sustainable Investment, the OECD, the International Institute for Sustainable Development, the Open Society Foundation, the Natural Resource Governance Institute and, of course, the EITI.

The importance of these efforts was then reinforced by both release of the Panama Papers and the Anti-Corruption Summit held by the UK government on 12 May 2016, during which a number of EITI members and resource-rich countries with weak governance made further commitments to improved contracting practices. A communiqué noted the continuing development of the EITI and the need to disclose beneficial owners was also clearly identified. In February 2016, new ground-breaking EITI requirements on disclosure of beneficial ownership in the extractives industry made at the EITI Global Conference gave further impetus for CONNEX as a way for G7 to support good contract negotiations.

This report aims to present the way that the EITI can help inform and strengthen contract negotiations and an increased awareness and use of CONNEX to promote governance and economic growth in resource-rich developing countries. It is written in collaboration with the EITI and the CONNEX initiative.

The EITI process

Seeing **results** from natural resources



2. Overview - Complementarity between EITI and CONNEX

Commercial contract negotiations between governments and multinational corporations are complex, nowhere more so than in the extractive sector. Experience from the fifty-one EITI countries has shown the need for greater expertise of host governments when negotiating contracts.

The G7's CONNEX initiative (Strengthening Assistance for Complex Contract Negotiations) aims to provide resource-rich countries with the necessary tools to negotiate well-conceived contracts that benefit host countries and investing companies.

An effective and smooth negotiation is one where both parties are on an equal footing in terms of access to information, technical expertise and an understanding of the available options. EITI countries produce a wealth of data that can be used to inform contract negotiations. A contract which is well drafted, responsive to changing circumstances and fair to both parties is most likely to be sustainable and mutually beneficial to both parties.

Although contract negotiation falls outside of the EITI Standard, it has been a subject of discussion by EITI multi-stakeholder groups in the past. This is not surprising, for resource-rich countries' new large-scale mining projects, with their promise of wealth and jobs, are often discussed at all levels of society. This shows that the demand for well-negotiated contracts is strong, but there is a risk that expectations of governments and civil society are raised whilst remaining unmet.

The EITI and CONNEX working together can help address some of these fundamental issues by clarifying ambiguities and providing a platform for discussions and the communication of expert knowledge. See Annex 1: Connex Pillars and Roadmap complementarity with the EITI Standard.

3. Responses to EITI - CONNEX questionnaire

CONNEX and the EITI jointly drafted a questionnaire to assess the need for CONNEX's technical support on contract negotiation. This questionnaire was sent via a monthly communication to all EITI national secretariats. Responses to the questionnaire indicate that a broad range of support from CONNEX on contract (re)negotiation and litigation would be welcomed.

Questionnaire

The CONNEX Initiative on Supporting Contract Negotiations

The G7's CONNEX initiative (Strengthening Assistance for Complex Contract Negotiations) recognises that commercial contract negotiations between governments and multinational governments are complex, nowhere more so than the extractive sector. It aims to provide resource rich countries with the necessary tools to negotiate contracts that benefit host countries and investing companies.

The EITI MSGs provide a platform for these discussions to take place. Japan, as the presidency holder of the G7 Ise-Shima Summit this year, is now working with the EITI International Secretariat to seek a possibility of the collaboration between CONNEX and the EITI Initiative. The CONNEX Initiative is expected to provide EITI countries that want to /currently are engaged in the issue of contract negotiation with multi-disciplinary and concrete expertise for negotiating complex commercial contracts. To see the broader perceptions of the CONNEX in the implementing countries, Japan has asked us to reach out to you. To assess whether this process might be useful for your country and the relationship between contract negotiations and EITI, it would be good to consider the prominence of contract negotiation in MSG workloads:

- Are there any challenges or needs for assistance in terms of contract negotiations in the extractives sector discussed by the MSG?
- Does EITI data get shared with your country's chief negotiator and department of trade? Is s/he involved in the MSG?
- To what extent does EITI data inform the discussion around contract (re)negotiations?
- Do you think MSG meetings with representatives from companies, government and civil society provides a potential platform for discussions about negotiations (e.g. lack of legal knowledge/ negotiation capacity, problems of uneven contract, needs for a renegotiation, etc.)?
- Can you think of instances where CONNEX technical advice could or might have helped the MSG?
- Should the CONNEX technical advice be extended not only for the contract negotiations but also for litigation and other areas in the value chain or package of the extractive sector to help improve transparency?

4. Short Case Studies

EITI Reports include legal, administrative and regulatory recommendations for reforming the governance of the sector, in addition to the reconciliation of payments. A number of country reports have included recommendations on contracts and licences where the EITI has identified weaknesses and oversights in administration.

Below are case study examples from Burkina Faso, Ghana, the Philippines and Sierra Leone where input and expertise from the CONNEX initiative can play a role in identifying problems, shaping solutions and assisting with the implementation of necessary reforms.



Case Study 1: Ghana

Ghana's 2010-11 EITI Oil and Gas Report identified gaps in the existing legal and fiscal regime, leading to lack of payments of capital gains tax by oil companies.

Background: In 2011, one of the international oil companies operating in Ghana, Tullow Oil Plc, acquired EO Group Limited, one of the partners in the Jubilee Oil Field. The EITI Report documented that there was no capital gains tax paid in the transaction, although the Ghana Revenue Authority had issued a ruling that the transaction was liable to such a tax. According to the Petroleum Revenue Management Act, the sale of exploration, development and production rights is subject to capital gains tax and should be collected by the petroleum holding fund.

Recommendation: The 2013 EITI Report recommended to follow up on the EO Group acquisition, including harmonising the relevant legislation.

Follow up: The Government of Ghana and the Ghana Revenue Authority have taken several actions to ensure that the legal framework covers such capital gains tax payments from the oil sector in the future, including:

- Passing Act 871 (Internal Revenue Amendment) in 2013, which amended the provisions of the Internal Revenue Act to cover such capital gains tax payments from the oil sector in the future.
- Ensuring that capital gains tax was paid in other acquisitions, such as Sabre Oil's sale of its interest in the Jubilee Fields to Petro SA.
- Continuing to monitor, through EITI reporting, whether these types of sales are made in accordance with the legal framework. The 2012-13 EITI Oil and Gas Report noted the cases in which capital gains tax was applicable but not paid.

Complementarity

CONNEX could provide technical assistance to Ghana and other EITI countries on tax optimisation, options for licence transfer arrangements and how to engage with corporations seeking exemptions.

Information generated through the GHEITI process can help inform ongoing and future contract negotiations. However, in Ghana and other countries, often the challenge is not just to collect the data but then also to have capacity to analyse it as part of contract negotiations."

Bash Abdul-Razak, National Coordinator Ghana



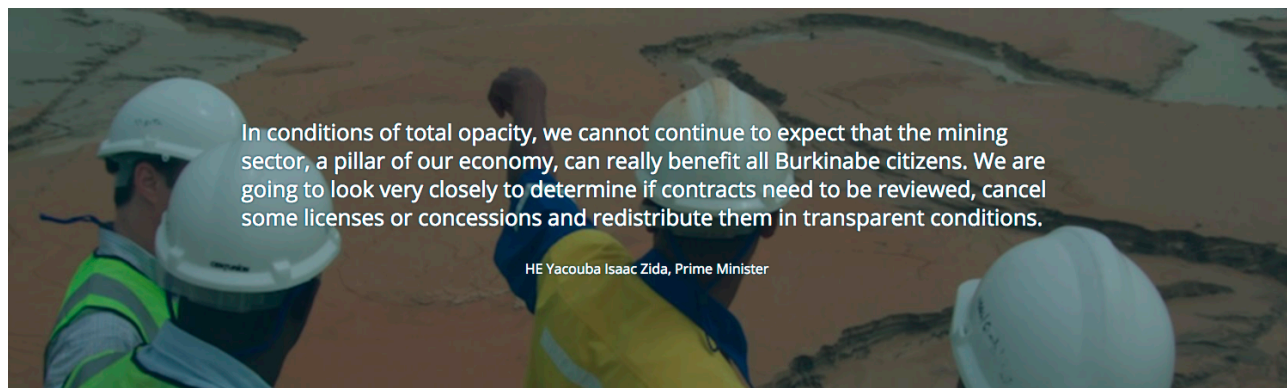
Case Study 2: Burkina Faso

Burkina Faso's 2012 EITI Report identified an agreement between the government and a mining company which was not entered into in accordance with the laws and regulations governing the sector.

Background: According to the 2012 EITI Report, the Government of Burkina Faso and the company Pan African Limited entered into a public-private partnership on 11 August 2012, related to the Tambao deposit. The Tambao deposit is one of the largest manganese deposits in the region. Despite the absence of any legal framework enabling such agreements to be signed at the time, the agreement was concluded by the Minister of Mines and Energy on behalf of the State, and approved by the Minister of Economy and Finance. It was only on 23 May 2013 that a decree stipulating the legal arrangements for public-private partnerships was issued. In addition, the EITI Report revealed that a signature bonus of USD 10 million was paid related to the agreement, yet the legal framework does not provide for payment of such bonuses.

Recommendation: The 2012 EITI Report recommended that mineral agreements and contracts should be entered into in accordance with the applicable laws in order to guarantee and safeguard the interests of the state and the company. The report also recommended that laws and regulations governing signature payments should be put in place.

Complementarity: CONNEX could support the government and the multi-stakeholder group by providing technical assistance and options for meeting this recommendation strengthening the legal system and stabilising the investment environment.





Case Study 3: Sierra Leone

Sierra Leone: Assessing the impact of Sierra Leone's Online Repository on negotiations.

Background: Sierra Leone was one of the first EITI countries to create an online mining cadastre with data on concessions' coordinates, start and completion dates and details of owners. This data is pulled through to the SL Online Repository, which publishes the information (data on contracts, payments and production figures) that comes from the SL Open Contract dataset. This information on the SL Online Repository includes data from two other sectors:

- Industrial mining, with almost 300 companies holding over 700 licences
- Artisanal mining, with 5200 licences
- Exporters and dealers, with 1700 records
- Forestry, with 350 licences

The system has had multiple benefits, with an increase in government revenues and a corresponding decrease in outstanding payments.

Complementarity

CONNEX could provide an assessment on the extent to which the cadastre's data has impacted positively or negatively on investment decisions and negotiations between government and companies. Such an evaluation could ask the following questions: Has the data helped clarify the investment environment? If so, how? Has access to the cadastre data contributed to investment decisions?





Case study 4: The Philippines

Using the PH-EITI online contract portal for contract negotiations.

Background: Like Sierra Leone, the Philippines EITI (PH-EITI) has an online contract portal with details on contracts, annexes, the basis for computation of payments and related documents published in searchable PDF format. Violation of contract obligations can be monitored using the data on the platform to ensure that revenue sharing agreements and environmental obligations are adhered to.

However, the data on the PH-EITI remains unconnected to other data sets, including licence data, as on the Sierra Leone Online Repository (see above) providing an interesting comparative case study for how effective and useful contract data is when it remains siloed

Complementarity:

1. Connex could facilitate the sharing of information across government agencies, so that data on the contract portal can be seen side by side with agency data. For example, the ministries of environment and local governments would all be interested in seeing whether stipulations in social development programs, environmental protection programs and decommissioning plans are being complied with, and ultimately, whether government is getting a fair deal.
2. Connex could also help build the capacity of government officials in negotiating contract terms taking into account considerations for environmental, social and health impact, as well as agreeing on a sound decommissioning plan.

Follow up and feedback from the National Coordinator

Karla Espinosa, National Coordinator for the Philippines, believes that while facilitating information sharing across government agencies could be helpful pending discussion of the details and contents of this possible support.

On point two, the National Coordinator plans to follow up with government representatives at the Mines and Geosciences Bureau (MGB), at the Department of Environment and Natural Resources (DENR) to discuss their interest in capacity-building on negotiating contract terms.

5. Recommendations

The EITI and CONNEX share similar goals: facilitating the mobilisation of domestic resources for sustainable development, building in-country capacity and increasing transparency with the overall aim of improving governance of the sector. The EITI provides information on each step of the value chain, from contracts to extraction and revenues. Well-negotiated contracts need reliable data and a government versed in extractive sector policy discussions.

CONNEX's focus on the first step of the EITI value chain - contracts and licences - complements the EITI because reaching the overall goals listed above can often hinge on how suitable and durable a contract is for host countries' citizens and extractive companies. Instability does not benefit either party and building in resilience to the cyclical nature of the extractive sector in contracts is key, as is managing the expectations of citizens through trusted communication channels such as the EITI.

The challenge for CONNEX and the EITI is not so much finding points of complementarity as identifying, as in the list below, some easily achievable objectives with potential impact:

CONNEX and EITI to:

- Reference and highlight each other as a resource and source of support and information on their websites;
- Look at EITI reports as diagnostic tools to highlight challenges and hidden deals in the contract-negotiation-and-implementation process. For example, look in particular at barter deals and underlying letters of agreement for clarity of procedure and terms;
- Work together on beneficial ownership disclosure, including politically exposed persons, to provide public information on potentially preferential deals;
- Pick entry points for appropriate joint interventions following EITI reports where contract negotiations are coming up or where there are reviews of existing deals;
- Work alongside existing actors in the contract negotiation field – the World Bank, African Development Bank, Open Contracting Partnership, the International Bar Association, emerging efforts on Tainted Assets, etc. – to ensure complementarity of interventions;
- Seek to encourage countries to put more contract procedures in law and less in discrete contracts, reducing the space for individual discretion. Some countries might increasingly wish to move from a contract regime to a licence regime.

CONNEX to:

- Build capacity in EITI multi-stakeholder groups in countries interested in contract negotiation;
- Work with interested EITI National Secretariats to help facilitate communication on contracts at multiple levels between governments, companies, civil society and the wider public.

EITI multi-stakeholder groups to:

- Encourage chief contract negotiators to attend multi-stakeholder meetings to explain the contract process and upcoming contract/licence agreements, where relevant;
- Encourage contract transparency and procedures to be disclosed.

Annex :1 Complementarity matrix

CONNEX pillars and roadmap complementarity with the EITI Standard.

This annex highlights points of complementarity between the EITI and CONNEX. The CONNEX roadmap for contract negotiations provides a framework for how countries can negotiate contracts. Many of the steps in the roadmap mirror requirements in the EITI Standard or require data disclosed in EITI Reports. This section also identifies overlapping areas of complementarity between CONNEX'S 3 pillars and the EITI Standard.

Connex Pillars and EITI Requirements complementarity

Connex	EITI	Complementarity
<p>CONNEX pillar 1</p> <p>Overview: CONNEX's online portal integrates information from partner organizations, hosts relevant tools and resources and makes them accessible to host countries. Connex's portal also provides details on those who can provide expert support when negotiating large-scale investment contracts.</p>	<p>EITI Open data policy</p> <p>Overview: The EITI Data Portal includes information on the legal and fiscal regime, production amounts and revenue figures for the 51 countries. All this data can be downloaded in an excel format for analysis.</p>	<p>CONNEX could add links to EITI data and details of the multi-stakeholder group, secretariat staff and the EITI National Coordinator to the CONNEX portal. A link to the EITI Standard could also be included along with links to each of the 25 guidance notes that explain how the standard should be implemented in more detail. The EITI is supporting and encouraging countries that are mainstreaming EITI Reporting into government and company systems.</p> <p>The EITI has published two guidance notes of particular relevance to CONNEX's work, one on contract transparency and the other on publishing data. Contact details of the International Secretariat staff who support countries in implementation could also be included.</p>
<p>Connex pillar 3</p> <p>Overview: Capacity-building of stakeholders before and after negotiations. Focus on long-term capacity building linking contract negotiations to sector monitoring, policies and laws to ensure sustainability.</p>	<p>EITI Requirement 1: Oversight of the multi-stakeholder group</p> <p>Overview: The EITI requires multi-stakeholder oversight, including a functioning multi-stakeholder group that involves the government, companies, and the full, independent, active and effective participation of civil society.</p>	<p>The EITI MSG group performs an important monitoring and oversight function of the sector by checking and approving the information in EITI Reports. As part of CONNEX's commitment to build capacity in country they could reach out to the EITI MSG's and providing training and expertise on monitoring contracts in the extractive sector.</p>

Connex Roadmap and EITI Requirements Complementarity

Connex Roadmap Step 1 Setting the Legal and Policy Framework and EITI complementarity

Connex	EITI		Complementarity
<p>CONNEX Roadmap step 1</p> <p>As a first step, policymakers need to assess whether they have the right types of government policies, strategies, and a legal and regulatory framework in place to both attract foreign direct investment (FDI) and ensure that any such investments are sustainable and beneficial to the country.</p>	<p>EITI requirement 2</p> <p>The EITI requires disclosures of information related to the rules for how the extractive sector is managed, enabling stakeholders to understand the laws and procedures for the award of exploration and production rights, the legal, regulatory and contractual framework that apply to the extractive sector, and the institutional responsibilities of the State in managing the sector.</p>		<p>The EITI discloses information related to the rules (policies, strategies, regulations, etc.) that govern the sector. This information is useful for step 1 of CONNEX's roadmap.</p>
<p>Connex Roadmap step 1.1 Government policies and strategies</p> <p>To attract foreign direct investment and maximize its contribution to the sustainable development objectives of a country, clear government policies are needed to guide and inform the planning, preparation, negotiation, monitoring, and implementation of an investment.</p>	<p>EITI requirement 2.4 (b) Contracts</p> <p>It is a requirement that the EITI Report documents the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals. This should include relevant legal provisions, actual disclosure practices and any reforms that are planned or underway. Where applicable, the EITI Report should provide an overview of the contracts and licenses that are publicly available, and include a</p>	<p>EITI requirement 7.3 Discrepancies and recommendations from EITI Reports.</p> <p>With a view to strengthen the impact of EITI implementation on natural resource governance, as per Requirement 7.4, the multi-stakeholder group is required to take steps to act upon lessons learnt; to identify, investigate and address the causes of any discrepancies; and to consider the</p>	<p>2.4 (b) EITI countries report their policy on contract disclosure, including actual disclosure practices and any reforms underway.</p> <p>7.3 EITI Reports include recommendations for addressing weaknesses in the regulation of the sector. Tax optimization recommendations based on expert advice from CONNEX could be adopted if the MSG approves.</p> <p>2.5 EITI countries are mandated to disclose beneficial ownership information from 2020. This means that companies and host governments can enter negotiations in good faith, knowing who exactly they are</p>

	<p>reference or link to the location where these are published.</p>	<p>recommendations resulting from EITI reporting.</p>	<p>negotiating with.</p> <p>6.1 EITI requires the disclosure of information on social payments. Some countries have national laws requiring extractive companies to make social expenditures, others decide this on a per project basis. This information is useful to both host governments and companies considering investing.</p> <p>1.5 Workplan The EITI MSG is required to publish a workplan aligned with national priorities, objectives in the workplan could include for instance attracting FDI to the extractive sector and maximise the countries sustainable development as per Connex step 1.</p>
	<p>EITI Requirement 1.5 Workplan</p> <p>The multi-stakeholder group is required to maintain a current workplan linked to the EITI Principles and reflect national priorities for the extractive industries.</p>		

	<p>EITI requirement 2.5 Beneficial ownership It is recommended that implementing countries maintain a publicly available register of the beneficial owners of the corporate entity(ies) that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted.</p> <p>Where possible, beneficial ownership information should be incorporated in existing filings by companies to corporate regulators, stock exchanges or agencies regulating extractive industry licensing. Where this information is already publicly available, the EITI Report should include guidance on how to access this information.</p>	<p>EITI requirement 6.1 Social expenditures by extractive companies.</p> <p>The EITI requires disclosures of information related to social expenditures and the impact of the extractive sector on the economy, helping stakeholders to assess whether the extractive sector is leading to the desirable social and economic impacts and outcomes.</p>	
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<p>Connex Roadmap step 1.2 Reform and Revise the Legislative and Regulatory Frameworks</p> <p>A comprehensive and clearly drafted legal and regulatory framework improves the investment climate for investors, promotes transparency and government accountability, facilitates better contract negotiations, and makes it easier to implement and regulate investment projects. Governments should formulate or revise their laws according to their democratic processes, as a part of which relevant stakeholders, including communities which stand to be affected, should be consulted.</p> <p>A government's national policies and policy objectives, as well as international and regional best practices should also be taken into account in the formulation or revision of such laws. Some governance frameworks and initiatives are available to assist with this process.</p>	<p>EITI requirement 2.1 Legal framework and fiscal regime.</p> <p>Implementing countries must disclose a description of the legal framework and fiscal regime governing the extractive industries. This information must include a summary description of the fiscal regime, including the level of fiscal devolution, an overview of the relevant laws and regulations, and information on the roles and responsibilities of the relevant government agencies.</p>	<p>As part of requirement 2 EITI reports disclose details on the sector and provide recommendations for addressing weaknesses in the legal, fiscal and regulatory regime. (see above for more detail)</p>
<p>Connex Roadmap step 1.3 Sector-Wide Analyses</p> <p>A host government also needs to ensure that it has sufficient information on the sector and resources in respect of which it is seeking to attract investment. The availability of reliable and up-to-date information will improve the prospects of a successful and equitable outcome of a tender process or a contract negotiation. Depending on the type of the investment, such information could include:</p>	<p>EITI requirement 2.3 Register of licenses</p> <p>Implementing countries are required to maintain a publicly available register or cadastre system(s) with the following timely and comprehensive information regarding each of the licenses pertaining to companies covered in the EITI Report:</p> <ol style="list-style-type: none"> i. License holder(s). ii. Where collated, coordinates of the license area. <p>Where coordinates are not collated, the government is required to ensure that the size and location of the</p>	<p>EITI countries are required to maintain a publicly available register or cadastre system with the following details useful to both host governments and prospective extractive companies:</p> <ul style="list-style-type: none"> ● License holder(s) ● Coordinates (where collated) ● Commodities being mined (in the case of production licenses)

<ul style="list-style-type: none"> • Geological information regarding the location, estimated quantity and quality of mineral resources; • Hydrological information regarding water sources and availability, seasonal fluctuations, and current users of water; or • Information regarding the suitability and availability of land for a particular use. 	<p>license area are disclosed in the license register and that the coordinates are publicly available from the relevant government agency without unreasonable fees and restrictions. The EITI Report should include guidance on how to access the coordinates and the cost, if any, of accessing the data. The EITI Report should also document plans and timelines for making this information freely and electronically available through the license register.</p> <p>iii. Date of application, date of award and duration of the license. iv. In the case of production licenses, the commodity being produced.</p> <p>It is expected that the license register or cadastre includes information about licenses held by all entities, including companies and individuals or groups that are not included in the EITI Report, i.e. where their payments fall below the agreed materiality threshold.</p> <p>Any significant legal or practical barriers preventing such comprehensive disclosure should be documented and explained in the EITI Report, including an account of government plans for seeking to overcome such barriers and the anticipated timescale for achieving them.</p>	<p>Further, countries are required to fill in missing gaps and explain why relevant license information is not available.</p>
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Connex Roadmap step 2 Pre-negotiation stage and EITI Requirements

Connex	EITI	Complementarity
<p>Connex Roadmap step 2.3 Prepare and Manage the Tender Process</p> <p>The objective of awarding a concession or license through a competitive bidding or tender process is to identify the best contracting party through a sound, competitive, inclusive, and transparent process.</p> <p>Competitive bids are commonly used for the development of infrastructure projects to promote value for money.</p> <p>Competitive bidding is also becoming more widespread in the extractive industries, especially where there is already geological information available on a particular mineral or petroleum reserve. The alternative to a competitive bidding process is to award mineral or petroleum rights on a first come, first served basis.</p>	<p>EITI requirement 2.2 Licence allocations</p> <p>Implementing countries are required to disclose the following information related to the award or transfer of licenses pertaining to the companies covered in the EITI Report during the accounting period covered by the EITI Report:</p> <ul style="list-style-type: none"> i. a description of the process for transferring or awarding the license; ii. the technical and financial criteria used; iii. information about the recipient(s) of the license that has been transferred or awarded, including consortium members where applicable; and iv. any non-trivial deviations from the applicable legal and regulatory framework governing license transfers and awards. 	<p>EITI countries are required to disclose their policy on awarding contracts. This information is important to prospective companies considering investment in a country.</p>

Connex Roadmap step 3 Contract negotiation stage and EITI Requirements

Connex	EITI	Complementarity
<p>Connex Roadmap step 3 Contract Negotiation Stage Where an investor is engaged on a first come, first served basis, or has made an unsolicited bid, a contract negotiation over the terms of the investment contract is usually required. It is at this stage that such important contractual terms as profit sharing, the level of taxes, and the breadth of stabilization clauses may be negotiated and the rights and obligations of each of the contracting parties agreed.</p>	<p>EITI requirement 4.1 Sale of the state's share of production or other revenues collected in kind.</p> <p>Where the sale of the state's share of production or other revenues collected in kind is material, the government, including state-owned enterprises, are required to disclose the volumes sold and revenues received. The published data must be disaggregated by individual buying company and to levels commensurate with the reporting of other payments and revenue streams.</p>	<p>Requirements</p> <p>4.1 Substantial amounts of revenue can be made and lost when a country receives payment in-kind from extractive companies which it then sells on to commodity traders. In many cases governments have a total figure but might not have information on the price and volumes traded. EITI requires the disclosure of this information which can be useful to governments and companies when negotiating contracts.</p> <p>4.3 Countries can choose to make infrastructure provisions at the national and contract level. General: In order to make informed decisions government officials and company negotiators should have access to the information listed in ALL requirements above when negotiating contracts.</p>
	<p>EITI requirement 4.3 Infrastructure provisions and barter arrangements.</p> <p>The multi-stakeholder group and the Independent Administrator are required to consider whether there are any agreements, or sets of agreements involving the provision of goods and services (including loans, grants and infrastructure works), in full or partial exchange for oil, gas or mining exploration or production concessions or physical delivery of such commodities. Reporting could also break down disclosures by the type of product, price, market and sale volume.</p>	


Connex Roadmap step 4 Implementation and Monitoring of the Investment Stage

Connex	EITI	Complementarity
<p>Connex Roadmap step 4 Implementation and Monitoring of the Investment Stage</p> <p>Once the contract has been signed and ratified, the project development and operations will begin. It is crucial to the sustainability and success of the project that governments have the capacity and resources to oversee the compliance of the contracting parties with the laws of the land and the terms of the contract, as well as to monitor the impact of the operations and related activities on the environment and affected communities.</p> <p>Contracts should also be made publicly available and easily accessible. Contract transparency helps to hold both the host government and the investor to account and to facilitate the monitoring of contract obligations by government representatives and civil society alike.</p>	<p>EITI requirement 2.4 (a) Contracts</p> <p>Implementing countries are encouraged to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals.</p>	<p>Many government departments beyond the ministry directly responsible for the extractive sector are involved in the monitoring of a contract once agreed. The EITI encourages the public disclosure of all contracts so that civil society and government representatives can monitor contracts.</p>

Annex 2: Presentation by EITI Head of Secretariat Jonas Moberg at G7 CONNEX Initiative International Conference on Capacity Building and Transparency

Jonas Moberg, Head of the EITI Secretariat, was invited to give a presentation and take part in a panel discussion in Tokyo on 15 September at the G7 CONNEX Initiative International Conference on Capacity Building and Transparency. Jonas led a special session on ‘Linkages between the CONNEX Initiative and other international efforts’. Presentations from other stakeholders were given by Deloitte, Rio Tinto, the World Bank, GIZ, the British Embassy, the US State Department and Kyaw Thet, Director from the Department of Mines, Ministry of Natural Resources and Environmental Conservation, Myanmar. This followed a meeting of key CONNEX stakeholders at the EITI Global Conference in Lima in February 2016.

12/21/16



**The EITI and CONNEX: Lessons,
Challenges and Complementarity.**

*G7 CONNEX Initiative International Conference on
Capacity Building and Transparency
Tokyo, Japan
15 September 2016*

Jonas Moberg, head of the EITI International Secretariat

CONTRACTING

TRANSPARENCY

G7 CONNEX Initiative International Conference on
Capacity Building and Transparency
Tokyo, Japan
15 September 2016



12/21/16

CONTRACTING

AND

TRANSPARENCY

G7 CONNEX Initiative International Conference on
Capacity Building and Transparency
Tokyo, Japan
25 September 2016



Coming from - EITI Origins –  Extractive
Industries
Transparency
Initiative

**Breaking the Resource Trap – paradox of
plenty**



THE OTTOMAN LION
Poorest Countries are Failing
What Can Be Done About It

PAUL COLLIER

12/21/16

OUR COLLECTIVE ACHIEVEMENTS SO FAR

Greater societal benefits?
Improved contracts?
Improved government take?
Improved awareness?
Transparency?
Predictability, security and contract sanctity?
Greater trust?
Trust in operating companies?
Government reforms?
Less transfer pricing?
Less corruption?
Less state capture?

G7 CONNEX Initiative International Conference on
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Tokyo, Japan
11 September 2016

EITI

WHY?

Political leadership?
Outside political leadership?
Commodity prices?
New entries? (eg China in Africa)
Regulators? (eg DF 1504 and EU)
Law enforcement? (eg FCPA)
Campaigning?
Improved practices?
Standards? (eg EITI and the IFC safeguards)
Technical assistance?

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11 September 2016

EITI

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One Standard *51 ways*

Conference on transparency in commodity trading
20th October 2015, Gurtenpark, Bern, Switzerland

EITI

51 implementing countries

- 51** Countries implement the EITI
- 32** Are compliant with the EITI Requirements
- 248** Years covered in EITI Reports
- USD 2 TR** Worth of government revenues from oil, gas and minerals disclosed

eiti.org/countries

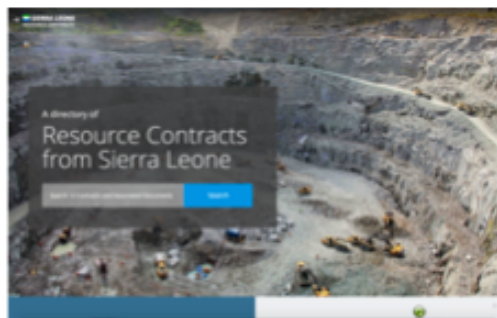
Jonas Andersson, Head, EITI International Secretariat, Presentation at Vale
Wednesday 30 September 2015

EITI

12/21/16

Sierra Leone: making information available for investors

All relevant data on line, timely, reliable, and in one place.



G7 CONNEX Initiative International Conference on
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Tokyo, Japan
15 September 2016



Beneficial ownership



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Tokyo, Japan
15 September 2016



12/21/16


EITI Recommendations

In addition to the statistics and data, EITI Reports also include legal, regulatory and administrative recommendations aimed at improving sector governance.

- Contract transparency: Mongolia

Recommendation	Country	Year	Category	Impact/Status
1. Review the Energy Transparency, Mongolia, Report No. 104, 2009	Mongolia	2009	Legal	Introduction of Public Bidding System
2. Enhance Open Tendering, Mongolia 2010 Assessment Update, Open Tender Tendering Update No. 105, 106, 107 and 108 (Mongolia) Mongolia 2010 Report No. 105, 106, 107 and 108, Underground Mine Development and Planning Plan, 2010	Mongolia	2010	Legal, Administrative, Policy	Introduction of Open Tendering and Tendering Plan
3. Review Mining Mongolia Inc. (M.M.) Assets, Mongolia 2011, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000	Mongolia	2010	Legal, Administrative, Policy	Introduction of Public Bidding System
4. 2010 Handbook on Tenders for M.M. Inc., 2010	Mongolia	2010	Administrative	Introduction of Public Bidding System

Capacity Building and Transparency
 Tokyo, Japan
 25 September 2016



“ Mongolia’s entire 1.5 million adult population is able to analyse any developments in the mining sector with a fine comb.”

HE Chimed Saikhanbileg, Prime Minister of Mongolia




12/21/16

From transparency to accountability?

From reports to reform

RECOMMENDATIONS

Highlighting the potential of recommendations from EITI Reports

progrep.eiti.org/2016/from-reports-to-reforms

The diagram features a central lightbulb labeled 'RECOMMENDATIONS'. Five colored arrows point towards the lightbulb, each with an icon and a label: a red arrow with a drop icon labeled 'Production', an orange arrow with a dollar sign icon labeled 'Revenue collection', a green arrow with a gear icon labeled 'Revenue management', a blue arrow with a group of people icon labeled 'Social and economic wellbeing', and a green arrow with a handshake icon labeled 'Contracts and Revenue'. The background is a blue gradient.

The flowchart illustrates the EITI process in five stages: 'Contracts & licenses', 'Monitoring production', 'Revenue collection', 'Revenue allocation', and 'Social and economic contribution'. Below these stages, it details the flow of information and data: 'Licensing information' (State ownership) and 'Production data' (Production contracts, Beneficial ownership) lead to 'Companies publish payments' and 'Government publishes receipts'. 'Transit payments' (State Owned Enterprises) and 'Transfers to local government' lead to 'Company social and infrastructure investments'. The process culminates in an 'EITI Report' where government revenues and other data are disclosed and independently assessed. The findings are then communicated to create public awareness and debate.

A national **multi-stakeholder group** (government, companies and civil society) decides how their EITI process should work.

This group publishes an **EITI Report** where government revenues and other data are disclosed and independently assessed.

The findings are communicated to create **public awareness and debate** about how the country should better manage their resources.

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12/21/16

Reforms and renegotiation

CONNEX could provide EITI countries with technical advice on when to begin renegotiating contracts if reforms, prices or other circumstances have changed the legal and or fiscal regime.



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15 September 2016*

EITI

CONNEX and EITI

Successfully negotiating complex contracts in the extractive sector requires at a minimum four ingredients:

- Information & data
- Expertise
- Capacity
- Trust




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EITI – CONNEX complementarity

EITI Requirement 2




The EITI requires disclosures of information related to the rules for how the extractive sector is managed, enabling stakeholders to understand the laws and procedures for the award of exploration and production rights, the legal, regulatory and contractual framework that apply to the extractive sector, and the institutional responsibilities of the State in managing the sector.

CONNEX pillar 1



Information integration and accessibility → maintaining an online resource portal that brings together relevant tools and resources.

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EITI – CONNEX complementarity


EITI Requirement 2.4

Implementing countries are encouraged to publicly disclose any contracts and licences that provide the terms attached to the exploitation of oil, gas and minerals.

Further: It is a requirement that the EITI Report documents the government's policy on disclosure of contracts and licences that govern the exploitation of oil, gas and minerals....This should include relevant legal provisions, actual disclosure practices and any reforms that are planned or underway.






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EITI – CONNEX complementarity


<p>EITI Requirement 1</p>  <p>The EITI requires multi-stakeholder oversight, including a functioning multi-stakeholder group that involves the government, companies, and the full, independent, active and effective participation of civil society.</p>	<p>CONNEX pillar 2 & 3</p>  <p>Ensuring support is more comprehensive and more responsive to government's needs in order to ultimately contribute to fairer, more sustainable investment deals as drivers of development.</p> <p>→ Sharing of knowledge among existing support providers.</p> <p>Capacity-building of stakeholders before and after negotiations. Focus on long-term capacity building linking contract negotiations to sector monitoring, policies and laws to ensure sustainability.</p>
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The EITI and CONNEX: Complementarity

EITI provides information and the platform for a well informed discussion on the quality of existing contracts and the arrangements for upcoming ones, including whether support is needed from eg CONNEX.



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The EITI has done relatively well in...

Successes

- Making data accessible
- Diagnostic tool for identifying weaknesses
- Recovering lost revenue – \$2.4 bn in Nigeria alone.



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EITI

The EITI has particular challenges in...

- Integrating the EITI into government systems
- Use EITI information to further reform the sector
- Identify who owns companies and who benefits

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EITI

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Next steps EITI/Connex

- Assess results of the consultation with implementing countries
- Use the EITI as a platform for discussing and making recommendations on negotiations.
- Draw on case examples of complex contract negotiation and develop joint guidance.
- Encourage chief contract negotiators to the EITI MSG to explain process and each upcoming contract/license.

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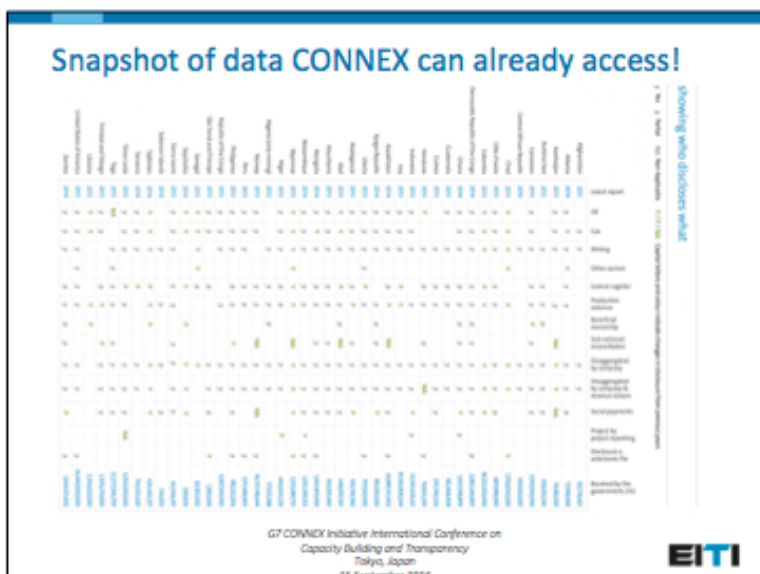


G7 and 8 support for EITI and transparency in the past

- Evian 2003
- Sea Island 2004
- Gleneagles 2005
- St Petersburg 2006
- Heiligendamm 2007
- March 2011 Paris
- Hokkaido Toyako 2008
- L'Aquila 2009
- Muskoka 2010
- Deauville 2011
- Brussels 2014

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Support reformers

- declarations/clear messaging matter
- bilaterally

Complementarity

- regulatory
- policy

Sustained technical assistance

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EITI

'In an era of low commodity prices, the need for increased trust, better information and good policies is stronger than ever.'

Fredrik Reinfeldt, EITI Chair

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EITI