

LEADERS SEMINAR SESSION NOTES

Wednesday 12th February 2020

1. Changes of the 2019 EITI Standard

Participants questioned whether there should be a difference in the evaluation between *encouraged* and *required* elements of the Standard, such as the evaluation of Requirement 1.4 on MSG Governance in Burkina Faso. The facilitator also clarified the gender requirements and encouragements in the 2019 EITI Standard. It was noted that countries should not be penalised for encouraged requirements /sub-requirements. Participants noted that the focus should not be on the creation of EITI portals, but rather the creation of information platforms that is of use for a broader use of stakeholders, such as Supreme Audit Institutions.

2. Beneficial Ownership (BO)

The facilitator and speakers shared innovative solutions on beneficial ownership. They provided clarification on the EITI requirements on publicly listed companies; on the payment of fees for beneficial ownership data; the difference between direct and indirect ownership; sanctions for non-submission of beneficial ownership data; and thresholds for Politically Exposed Persons (PEP).

The International Secretariat noted that there was no difference between the French terms “propriété réelle” (2016) et “propriété effective” (2019). We noted that the 2019 EITI Standard reflected language used in regional legal texts.

On materiality thresholds, Armenia noted that it had progressively managed to eliminate the threshold for BO in mining companies. The threshold had been set at 10% initially. The International Secretariat noted that it does not recommend a threshold for PEPs. This information should be disclosed regardless of their level of ownership in a company. The representative added that companies should not be overloaded with lengthy disclosures. On the other hand, the initial phase of setting up BO registry requires a lot of data. Armenia included an exception for listed companies which were already required to disclose BO data through other formats. -With respect to sanctions, Armenia noted that there were three stages: a warning; suspension (90 days after the warning) and cancellation of the license. For large companies, financial fines are often less effective.

It's important to consider the access of the data not only in terms of cost, but in terms of access. Germany noted that a name and an address in the country is required to access the data, which could be of a hindrance greater than the mere cost. The International Secretariat noted indirect ownership is often defined by non-financial means of control (voting rights for instance). The UK highlighted that all listed companies are included in their BO register, not only the extractives.

3. Contract disclosure:

The facilitator noted that Contract transparency was becoming a norm both in terms of country and company policies. Chad noted that a decree was voted by a “Conseil des ministres”, which recognizes the publication of contracts through the EITI cadastre, following recommendations for from its EITI Reports. This was a temporary solution to publish oil and gas contracts in 2019, while government systems were being put in place. It implemented simple technological solutions to contract disclosure, using Excel EITI Chad implemented a mini-cadastre. The annexes and exploration contracts were included in this cadastre.

Ukraine noted that the EITI currently helps drafting a law that will require full contract disclosure. A representative from the German MSG highlighted the difference in legal regimes, noting that the country does not have any contracts. Most of the legal terms are uniform and included in the laws and regulatory texts. Equatorial Guinea's highlighted the government's efforts to disclose contracts. A representative from the Dominican Republic noted that it is important for companies to be included in contract disclosures and for their concerns to be heard. This helped build trust among stakeholders. The facilitator noted that most confidentiality clauses do not cover the whole contract, rather only small parts of the contract that need to be identified.

4. Communicating the EITI

Trinidad and Tobago emphasized the importance of targeted messages across stakeholder groups and tailoring these messages to the local context. Participants noted the role of the EITI as a diagnostic tool, a catalyst for reforms and for engaging stakeholders through the multi-stakeholder forum, especially in affected communities.

The civil society representative from the Republic of the Congo civil society noted that access to extractives data for the public had been the primary incentive to join the EITI. He added that the EITI created a forum and space for discussion and dialogue. It was also the source of sector reform in the country. The government representative noted that the EITI helps align the objectives of the stakeholders (development of the country, poverty reduction), even if the means can differ.

Senegal noted that the letters of the EITI in French (ITIE) stood for Inclusion, Transparency, Information and Engagement. Their slogan was 'transparency, everyone wins'. It was noted that there were reputational risks for the EITI when it operates in environments where trust towards public institutions is weak. It was noted that mainstreaming may be difficult in such environments. The EITI should also be careful to not appear as an advocacy organisation for one of the stakeholder groups.

The representative from the Dominican Republic noted that the EITI represents opportunity and progress. The organisation drives progress, through increased mandatory disclosures and through the diversity of its country members.

5. State-Owned Enterprises

Participants asked for commensurate disclosures by international oil companies (IOCs) and state-owned enterprises (SOEs). The representative of the Republic of Congo noted that 80% of the country's production is commercialised by IOCs, and only 20% by the SOE. However, states were currently being asked to disclose more than the IOCs.

The SOE representative from Ghana noted that a lack of timely data remained a challenge for disclosures. The revenues collected and transferred by GNPC are disclosed on their website for each citizen to consult, without waiting for the EITI Report to be published two years after. She highlighted the pilot project in the commodity trading working group in which Ghana and Indonesia participated. She noted the utility of exchanges with other countries such as Ukraine.

There was debate on the definition of a quasi-fiscal expenditures. It was noted that the difference between a social expenditure could be tricky. Participants requested a webinar on the topic.

6. Systematic disclosure

Systematic disclosure is a financially sound alternative to the current reporting status-quo. Notwithstanding the appetite and interest in moving forward with systematic disclosure, EITI leaders recognise that challenges including limited stakeholder (e.g. MSG and citizens) capacity will need to be addressed.

The German MSG representative noted that EITI Reporting should be well understood in order to communicate to different audiences and capture complex issues for comprehensively and comprehensibly. This will help in meeting user needs and thus, awareness creation. The government representative from the Republic of Congo noted that a move towards systematic disclosure will require new training and new tasks. He questioned who will have the mandate and provide resources for these activities. He noted that EITI had limited capacity.

The representative from Senegal noted that the simplification of EITI data remains in key moving forward. Engaging academic actors will be crucial in data analysis and usage. This is currently not done in a systematic way. The Ghanaian SOE representative noted that reporting entities spend too much time producing reports as opposed to the more interesting data analysis and modelling. It was emphasised that the challenge lay within the limited capacity in the MSG. A strong national secretariat will be crucial moving the systematic disclosure agenda forward

The facilitator noted that conventional EITI Reporting is costly and not financially sustainable. Systematic disclosure is therefore a financially sound alternative to the current reporting status-quo.

7. EITI role in corruption

Several requirements of EITI Reporting has helped to shed light on important corruption risk areas. Working with relevant government and anti-corruption agencies will be key moving forward

The representative from the Republic of Congo noted that debt financing and crude sale disclosures were required, given its status as a heavily indebted and poor country. Disclosures have continuously improved since then, covering hitherto difficult-to-know and opaque areas of our extractive industry. The legal arrangements in the country allows for a comparison between budget and expenditures, allowing the space and tool for questioning expenditures around revenues from EI. While there has been challenging engagement with stakeholders, including the state, there is adequate space from the State for the EITI to operate. Congo EITI stakeholders are pushing for follow up by anti-corruption agencies to investigate discrepancies.

8. Impact

The facilitators noted the use of monitoring and evaluation (M&E) frameworks in identifying the impact of the initiative. Ukraine had adopted the GIZ based M&E framework based on 25 indicators along 6 broader indicator themes. It was noted that M&E is continuous, which impact assessment are punctual assessment. M&E feeds into broader impact assessment. GIZ noted that they had copies of the M&E framework.

The German national secretariat noted that the process of identifying impact, was useful in and of itself. Armenia noted that impact is long term and difficult to measure, especially for new EITI countries. While countries link activities to outputs, it should be useful in linking outcomes to impacts. There was a need for better documentation of country success stories.