

Terms of Reference: Global study on contract transparency and energy transition

The Extractive Industries Transparency Initiative (EITI) is seeking a consultant to produce a study that aims to strengthen the capacity of governments and citizens to align contractual stipulations with planned or ongoing reforms on energy transition in their country. The EITI International Secretariat has agreed to engage the services of the consultant to undertake the tasks assigned in the Terms of Reference.

1. Background

The [EITI](#) is a global standard that promotes transparency and accountability in the oil, gas and mining sectors. Countries implementing the EITI draw on revenues from oil, gas and minerals to meet the energy and development needs of their citizens.

The shift to a decarbonised economy will reshape the governance of the extractive industries, especially in the oil and gas sector. The energy transition will have profound implications for the kinds of data, disclosures and dialogue that are needed, both to ensure accountability through the transition and to optimise the management of finite resources.

According to a [report by Chatham House](#) on the role of the EITI in the energy transition, there exists an opportunity for implementing countries to utilise contract disclosure requirements in the [2019 EITI Standard](#) – which took effect in January 2021 – to advance analysis related to the energy transition. EITI disclosures could be used to examine project costs and proposed timeframes for production, determine ‘risky’ contractual clauses and the distribution of risk between countries and companies, and review existing legal frameworks and fiscal regimes – all of which have the potential to exacerbate transition risks faced by fossil fuel mineral producing countries.

Recommendations from such analysis could help governments assess how to mitigate risks and build resilience as they pursue energy transition reforms, as well as helping civil society actors to monitor investments and the risks and opportunities they present in the context of the energy transition.

Initial analysis by the Natural Resource Governance Institute¹ notes that radical policy change is required to support countries in their quest to decarbonise. Oil and gas sector contracts tend to contain restrictive clauses that inhibit a country’s ability to re-negotiate once executed.

The EITI Secretariat, with support from USAID, is now commissioning a report that will build upon this early work to strengthen the capacity of governments and citizens to assess contracts so as to ensure they align with planned or ongoing energy transition reforms.

¹ NRG (2021), “Tying Their Hands? How Petroleum Contract Terms May Limit Governments’ Climate Policy Flexibility”, https://resourcegovernance.org/sites/default/files/documents/tying_their_hands_how_petroleum_contract_terms_may_limit_governments_climate_flexibility.pdf.

2. Objectives

The study is expected to:

1. Increase stakeholder understanding of how contract transparency can advance understanding of opportunities and risks related to a country's energy transition policies and exposure to climate-related risks;
2. Strengthen government and civil society capacity to analyse and understand contractual stipulations and the potential economic, energy and climate security, and legal risks they present;
3. Increase the capacity of civil society actors to monitor contracts and contractual amendments and engage government and industry to ensure these align with energy transition policies.

3. Scope of assignment

As part of the assignment, the consultant is expected to:

1. Conduct a high-level review of oil and gas contracts published under the disclosure requirements of the 2019 EITI Standard, as well as model contracts, to determine a typology of contractual provisions that are 'climate relevant';
2. Conduct country-level analysis of the potential impacts of such contractual provisions, in terms of their economic impacts, their impacts on domestic energy and climate policy, and any legal risks they present related to stranded assets or bankruptcies;
3. Set out recommendations for EITI implementing countries, including technical recommendations for how contracts can be drafted and/or amended to reduce risks and enhance resilience, and policy recommendations for how EITI multi-stakeholder groups (MSGs) and civil society actors can monitor contracts and engage government and industry on them.

Specifically, the study should include the following:

- a. An executive summary formulated in clear and concise language, identifying the key findings and recommendations of the research, and highlighting links to wider industry developments that emerged from COP26, and EITI's priorities ahead of COP27.
- b. An introduction on the definition of the energy transition, building upon the definition set out in [Transparency in Transition](#), and making reference to the EITI's approach, role and mandate in respect to the energy transition.
- c. Identification of contractual stipulations that are relevant for energy transition policies, e.g., the overall timeframe for production, schedule of returns (to company and country, respectively), incentives, subsidies, domestic obligations, carbon pricing, upstream emissions targets, decommissioning, renewable contribution parameters, environmental provisions, etc.
- d. Explanation of how contractual stipulations can present economic, energy and climate risks for a country. This should be based on country-level analysis, with the aim of stimulating public debate around why contract transparency is critical to countries in

managing their exposure to climate risk and setting transition pathways that deliver upon national commitments under the Paris Agreement.

- e. Discussion of types of clauses and loopholes in contracts and legal frameworks that could either support or restrict the ability of countries to implement their economic, energy and climate goals, and revisit contracts that present significant risks to these aims. Again, the basis for this should be a review of contracts disclosed under the 2019 EITI Standard, as well as model contracts, to provide examples of contractual stipulations that are aligned with energy transition policies and those which are not.
- f. Potential next steps to be developed and tested with implementing countries. This should include technical recommendations for how contracts can be drafted and/or amended to reduce risks and enhance resilience, and policy recommendations for how MSGs and civil society can monitor contracts and amendments and engage government and industry. Recommendations should be grounded in contract analysis and applied country case studies, be tailored to key stakeholder groups, and be actionable and expressed in clear and concise language that can be integrated into MSG priorities.

The report will be a public-facing document, to be published through EITI International Secretariat channels including its website. The report is therefore expected to conform to the communications design principles of the International Secretariat, see below.



The final report draft to be produced by the consultant will be laid out in a plain word template. Once edited by the EITI International Secretariat communications team, typesetting, design and translation will be commissioned and will most likely be undertaken by an external service provider. The final designed report will be produced on an EITI-branded template. In the first and final draft, the consultant should make suggestions for visual components (e.g., infographics and diagrams) which can be used in design of the final document. The report should be written in a clear and engaging manner and in line with the [style guide](#) of the International Secretariat.

Acknowledgements: The final document will acknowledge the consultant as author but will be a communications product of the International Secretariat. The report is funded by USAID and the

final document will acknowledge this support. The International Secretariat will take responsibility for meeting the branding requirements of USAID in respect of the final report.

4. Deliverables and timetable

The assignment is expected to take up to 30 consultancy days between March-September 2022. The proposed schedule is set out below:

Conduct research and analysis as set out in the scope of assignment section.	March 2022
Conduct consultations with relevant stakeholders.	March-April 2022
Deliver report outline, setting out key points from research, analysis and consultations and identifying how this data will be used in the final report structure.	April 2022
Deliver first draft of the report.	May 2022
Deliver final draft of report and all data gathered from research and interviews.	June 2022
Integrate edits from the International Secretariat, review typeset versions for accuracy.	June 2022
Deliver presentations as may be agreed with the EITI Secretariat.	July-September 2022

5. Consultant's qualifications

The consultant should be a prominent firm, organisation or individual(s) that the EITI International Secretariat considers to be credible, trustworthy and technically competent.

The consultant must demonstrate:

- Experience and knowledge of economic, energy and climate policies;
- Understanding of the transition risks that producer countries face as a result of decarbonisation in key export markets, and risks and opportunities that countries face in implementation of their commitments under the Paris Agreement;

- Familiarity with the EITI Requirements and ability to use EITI disclosures to deliver insight and policy recommendations;
- Familiarity with the analysis of extractive sector contracts and possibly renewable energy contracts is an advantage;
- Excellent written and oral communication skills, including ability to present findings of the study to various types of stakeholders. Proficiency in French, Russian or Spanish is an advantage;
- Prior working experience of EITI and knowledge of the extractive sector.

To ensure quality and independence in the undertaking, the consultant must, in their technical and financial proposals, disclose any potential or actual conflicts of interest, together with a comment about how they may be avoided.

6. Administrative support

The International Secretariat will provide the following support to the project:

- Regular oversight and input to the development of the report, through regular calls and email exchanges;
- Necessary background information and input as needed;
- Document editing, typeset, design and translation as required;
- Any other support required for the project.