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EITI Strategy Review
Strategy Options and Trade-offs

Draft, for discussion

Strategy Working Group December 2011

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EITI STRATEGY REVIEW, STRATEGY OPTIONS AND TRADE-OFFS

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1. Why might change be needed?

The EITI was first proposed as a general idea nearly a decade ago following the growing belief that transparency could help increase the public benefits from resource wealth.

In this relatively short period, the EITI has gained broad support. Thirty-five countries implement the EITI, including one OECD country (Norway) with another (the United States) to join soon. The EITI's tripartite approach, based on shared decision-making between governments, the private sector and civil society, is widely seen as a success and has inspired calls for emulation in other sectors (such as construction, pharmaceuticals, avoided deforestation and the allocation of land rights). The EITI has also inspired actions on extractive sector transparency on an international scale, like the Section 1504 of the U.S. Dodd Frank Act and proposals for similar rules in the European Union.

Despite its success, stakeholders have called for an assessment of its future direction for several reasons, three of which we identify here.

First, questions have arisen about whether EITI implementation helps in practise to improve natural resource governance. The 2011 independent evaluation concluded that the EITI had limited impact and noted that the initiative has no "theory of change", meaning that the EITI cannot say with any clarity in what way its' efforts are intended to bring about change so that its' effectiveness can be measured. It is clear that some Compliant or nearly-Compliant countries still exhibit profound problems of natural resource governance with serious problems of corruption and limited public accountability. The EITI process does not currently appear able to demonstrate that it contributes significantly towards redressing many of these problems. This has raised questions of whether the EITI reporting and reconciliation process needs to be strengthened so as to produce more reliable data, whether the EITI's scope should include issues, such as the allocation of extractive licences and contracts and the management of extractive revenues. And whether reports should summarise taxation arrangements and production volumes so that they provide the public with more intelligible information. Questions have also been raised on whether the EITI should stand alone with its' answerability to an international Board or be more effectively linked to national financial management and governance reform efforts.The credibility of the EITI may be threatened over time if EITI Compliant countries are seen to exhibit severe resource governance problems despite having fulfilled all EITI requirements particularly as more countries pass successfully through Validation.

Second, there is an interest in promoting higher-order goals in Compliant countries. In these countries, simply updating the same reports each year may cause stakeholders to disengage while the process itself may produce declining returns. With only 50-odd resource-rich countries in the world, and 35 countries now participating in the EITI, it is possible for the first time to imagine an EITI in which most if not all implementing countries are Compliant. So what happens next?

Third, the global context of the EITI has changed significantly—a point made cogently at the Board's strategy discussion in Pulau Bangka, Indonesia, in October 2010. In the early 2000s, transparency and civil society participation in the reporting of extractive revenues were groundbreaking ideas. That situation has changed to partly, due to the growing traction of the EITI, and of notions of transparency and public participation more broadly. Various international institutions now routinely cite their association with the EITI as evidence of their own commitment to good governance. The EITI's tenets are reflected and exceeded in US, Nigerian and Liberian legislation, the new legislative proposal from the European Commission, the World Bank's International Finance Corporation's standards for extractive projects, and an increasing store of country-level policies such as the publication of contracts. Ten years ago it would have been difficult to predict this kind of change, but standards of extractive sector transparency have undoubtedly risen.

Alongside these developments, the petroleum and mineral industries have also changed. International competition for natural resources has become more vigorous, with the entry of major investors from China and other major economies outside the West, and geographically more diverse as high commodity prices have prompted resource exploration in new sites worldwide. Natural resource rights are increasingly granted in return for pledges to invest in the infrastructure of resource-rich countries and it has become common for states to apply "local content" laws which require international companies to take on local firms, not just as subcontractors or suppliers but as joint venture partners. These developments offer potential benefits to resource-rich countries which can successfully manage them, but they raise questions about governance and the need for an evolving transparency standard.

2. How should the EITI respond?

Over the coming months, EITI stakeholders will discuss whether the concerns identified above—about impact, the prospects for EITI countries post-Compliance and the new global context in which the EITI exists —necessitate changes in the Initiative's design. A few high-level questions will drive this conversation.

Should the EITI continue to exist? It seems safe to assume that given the high international visibility and strong support base of the EITI, few stakeholders would want to abandon it at this point on the grounds of irrelevance and replace it with something else.

Assuming this is the case, then is the current system the most effective one for advancing the EITI Principles and the long-term interests of resource rich countries? This raises fundamental questions about the EITI's aims and responsibilities.

If not, then what kind of changes would help EITI to become more effective? In practise the EITI already changes all the time because of country-level innovations, but to what extent should such innovations be required or encouraged across all EITI-implementing countries? If the spectrum of possibilities runs from leaving the EITI more or less as it is to rethinking the standard from the Principles downwards, then where on this spectrum should the standard aim to be in the next 3-5 years? The range of possible changes is identified in the next section. Any chosen path should:

- Meet the need for the EITI to respond to a changing global context while preserving the tripartite basis of the initiative (governments, the private sector and civil society).
- Provide EITI-implementing countries with an incentive to continue improving and deepening their EITI processes.
- Increase the EITI's chances of positively affecting outcomes in resource rich countries.

3. Options for the future

Against this backdrop, this section summarizes the various options that have been suggested by EITI stakeholders for the future of the initiative. More detailed arguments for and against each option are tabulated in the referenced Annexes.

This paper groups the options into three broad categories:

3.1 Improving the quality of EITI implementation within the current rules.
3.2 Adding more types of information to EITI reports.
3.3 Strengthening the linkages between the EITI and its broader context.

Each option would need to be tested against three general questions:

Should a particular idea be considered at all? Some EITI stakeholders feel that the EITI has to expand and deepen in order to retain its credibility. Others feel that the initiative has gained traction because of its narrow focus and should retain it, and that EITI cannot possibly meet all the expectations placed on it, so any changes should be small and incremental. Another concern is the capacity of some EITI-implementing countries to absorb more new rules and procedures. (More views on this issue are presented in Annex 1.)

Should a particular addition be voluntary or required? Some stakeholders, particularly in civil society, are concerned that additions to the EITI will not be adopted by the countries that could most benefit from them unless they are made into requirements. Other stakeholders note that some EITI countries are already adding to the scope of their EITI reports and favour a system that encourages country ownership and rewards such innovations. (More views on this issue are presented in Annex 3). It is possible that additions could include both changes to the core rules and optional extras which countries can adopt.

If an idea is adopted, then how would it be Validated and what would be the resource implications? Since independent assessments are central to the credibility of the EITI, it follows that changes to the standard would affect the how country performance is assessed. The Validation Committee of the Board is currently considering how to improve the existing Validation system. The recently concluded evaluation of the EITI recommended replacing Validation with a "flexible rating scheme that would grade actual performance rather than giving a Yes/No value". The EITI Secretariat has suggested a scoring system that would include elements of appraisal by the EITI itself, plus possibly peer review, on the basis that such a system could be used to both validate the meeting of the minimum requirements and incentivise countries to innovate beyond these minimum requirements. It seems logical that a discussion about evaluating EITI implementation would move in lockstep with the debate about the initiative's future scope and content, since it makes little sense to design scoring systems without agreeing what is going to be scored.

A fourth question might be: would a particular addition to the EITI require revision of the EITI Principles and Criteria? An answer of "yes" from EITI stakeholders would not mean that the addition should be rejected: it would, in itself, merely be demonstrating that if the EITI evolves, then its basic public statements of intent might need to evolve as well. But clearly a change that requires a rewrite of the Principles and/or Criteria may need more preparation than one which does not.

3.1 Improving the quality of EITI implementation within the current rules.

The following options suggested by stakeholders might fall under this heading:

- Improving the working of multi-stakeholder groups by providing guidance on, or facilitation of, better-functioning MSGs and encouraging peer-to-peer learning between MSGs.
- Significantly strengthening the audit of EITI reported data in a way that improves data reliability
- Improving the quality and consistency of reporting on aspects of extractive industry payments/revenues that to date have been poorly covered by many reports. These include state-owned entities, resources-for-infrastructure deals, and payments in kind and sales of production shares, payments to subnational levels of government, and social/voluntary payments by companies.
- Requiring disaggregation of revenue data by company, commodity and/or project
- Promoting the use of automated/web-tagged EITI Reports and designing consistent formats and protocols for web-reported data and analytical tools.
- Verify whether reported payments are what they should be, relative to applicable production volumes, agreements and contracts and – and applicable laws). A suggestion from the World Bank is that the national EITI processes (engaging if necessary with state audit agencies, to work with EITI MSGs), should require audit verification and disclosure of the revenue and payment figures to ensure that the correct levels of revenue have been paid. This approach would go some way towards meeting the concern of many that the EITI

only records how much revenue is paid by extractive companies, not whether this amount is what it should be.

3.2 Adding more types of information to EITI reports.

The options suggested by stakeholders include adding:

- Including information on the budget allocation and spending of EI revenues, including front line and extra-budgetary allocations specific to extractives (i.e. State-owned entities, natural resource / sovereign wealth funds, sub-national transfers, etc.)
  The disclosure of contracts, or of key fiscal terms in line with the IFC standard.
- Including details of the allocation of natural resource rights and assets by states to companies (such as exploration or production licences, or shares in joint ventures) including lists of licence-holders, disclosure of their beneficial owners and the terms on which they obtained these rights.
- Information on midstream payments such as pipeline transit fees and other sectors of the economy such as forestry, fisheries and downstream processing of natural resources

3.3 Strengthening the linkages between the EITI and its broader context.

One way of enhancing the contribution the EITI can make is to better link its implementation to other governance efforts. Its mainstreaming and integration into national processes and systems is an important goal, so that EITI does not remain a "stand-alone" process, unconnected to other institutions, strategies, polices and actions for extractive sectors and its public finances. Ideas proposed in this area can be clustered into a couple of categories:

- Linkages with domestic governance and public financial management processes - in order to leverage the gains of EITI, and increase the potential for systemic improvements and strengthened institutions that EITI could help catalyze. Such linkages could extend, for example, to existing or planned programs to improve public financial management; improve tax collection and administration; initiatives which strengthen legislative oversight of public finances; accountability initiatives which promote a voice for communities affected by oil, gas and mining etc.

- Collaboration with other international and regional standards and codes - as a way to make the most of implementation, recognizing that EITI cannot do everything alone. This may mean actively seeking ways to collaborate with other international standards and codes which also operate broadly in the sphere of greater transparency and better governance – for example on codes and principles for sound management of oil gas and mineral sectors; national budget transparency; stronger domestic civil society promoting accountability; sustainability reporting to stakeholders by industry etc.

These goals are a recognition that, ultimately, the optimal way for EITI to make a positive and lasting impact is to influence national public policy and actions for the better (recognizing that even an EITI which has progressively "deeper and deeper" data reporting, and has an exceptionally strong multi-stakeholder processes, will still have a limit on the impact it can achieve).

The question then is (i) whether such mainstreaming and EITI follow-on should be encouraged and incentivized or for such mainstreaming and follow-on steps to be required by EITI rules. If the latter, what might the enforcement and adjudication mechanisms look like (e.g. in EITI validations)? The role of the multi-stakeholder group needs to be considered. They could for example be encouraged to use the EITI process and the multi-stakeholder group to consider progress along the value chain.

4. The practicalities of changing the EITI

The 2011 EITI Rules have only recently come into force and may need time to "settle" before new changes are made. At the same time, EITI stakeholders cannot take too long to come to decisions about the future of the EITI (especially in the wake of the independent evaluation) because this could create a perception that the EITI is unwilling or unable to respond to new realities, which could damage its credibility. Any change would require a high degree of consultation and consensus amongst EITI stakeholders and full consideration of the funding and operational implications.

Once decisions have been made, then the options would have to be translated into practice, either by amendments to the EITI Rules or via Guidance Notes. There would need to be adequate planning and transition time and an effort to communicate any changes clearly to EITI implementing countries and their MSGs. The Board would probably need to revisit the resources and staffing of the International Secretariat so that it can manage any increases in its workload (on top of the growing number of EITI-implementing countries.)

5. Conclusion

The EITI has succeeded in attracting a broad base of international support and is generating an ever-growing flow of information about revenue flows from extractive companies to governments. However, the EITI is currently unable to demonstrate that its efforts contribute to significant improvements in natural resource governance; and at the same time, the initiative is operating in a much-changed world.

This paper has set out options for the future of the EITI which have been proposed by stakeholders, which range from improving the existing model, to rethinking the kinds of information provided to the public via the EITI, to setting out to strengthen the initiative's connections to government policy in resource-rich countries and international efforts on resource governance. The task for EITI stakeholders is to decide how to respond to these possibilities in a way that maintains the tripartite consensus and ensures that the EITI remains relevant and credible.

Annex I: Should the EITI grow broader and deeper or stay essentially the same?

Some EITI stakeholders consider that the EITI should be broader and deeper, while others consider that it should remain essentially the same as at the moment, with only small and incremental changes to its scope and requirements. This Annex sets out the views on both sides (in no particular order).

Why the EITI should grow broader and deeper	**Why the EITI should remain essentially the same**
There is a risk that interest in the EITI will fade in some Compliant countries if they have no goals to aim for beyond continuing to produce reports.	Incentivizing measures for Compliant countries have not been fully explored.
The EITI is not achieving its ultimate aim of improving natural resource governance.	The EITI is only part of the picture and cannot meet all expectations.
Countries can become EITI Compliant but remain systemically corrupt, undermining the EITI's credibility and the efforts of other countries.	
In some countries, the EITI is functioning according to the rules but does not appear to be leading to any broader debate within society.	The EITI cannot be seen to be interfering in the domestic affairs of resource-rich countries. And such debate may emerge in the longer term without interventions from the outside.
The EITI does not cover major problem areas where corruption is known to be rife in some countries (e.g. licencing, the marketing of oil or minerals, public spending).	Companies are wary of measures which might undermine their competitiveness or be seen to interfere with governmental decisions (e.g. on spending of extractive revenues). Some governments have sovereignty concerns. EITI's strength lies in its narrow scope.
As disclosure of revenue flows becomes more common, citizens want more from the EITI.	The existing scope of the EITI has broad support and the initiative has no mandate to go beyond it.
The EITI's established track record, national ownership and tripartite structure make it a suitable instrument for addressing broader concerns about natural resource governance than are addressed in its current scope.	Other efforts, such as transparency regulations or international accounting standards, or initiatives like the Natural Resource Charter, are better-suited to addressing broader issues.

There is no systematic way (yet) to embed EITI in national systems of public financial management.	Other entities, such as multilateral institutions or the Natural Resource Charter, can better address broad issues of public financial management

Annex II: the pros and cons of different options

This Annex looks at the options proposed by EITI stakeholders and lists some of the pros and cons for each, as raised by stakeholders in submissions or in Board debates. It does not attempt to weight these views but presents them as a starting point for discussion

Option	Pro	Con
Improving the working of MSGs via guidance, facilitation, peer learning.	Problems within MSGs are a major cause of delays and tension within national EITI processes.	Could be seen as international interference in the workings of a country-owned initiative.
Significantly strengthening the audit of EITI reported data.	Concerns about data quality are undermining the credibility of the EITI in some countries.	Added cost and possible clashes between an enhanced EITI audit requirement and countries' own audit procedures
Improving clarity and consistency of reporting on state-owned entities, resources-for-infrastructure deals, payments in kind and sales of production shares, payments to subnational levels of government, social/voluntary payments by companies.	Would address existing gaps or ambiguities in EITI reporting and provide a much more complete picture of revenue flows. EITI credibility may be at risk in countries where these entities and relationships are material but not clearly captured in EITI reports.	Cost implications, complexities of designing consistent reporting criteria for widely varying situations. Some of these disclosures would require reporting of related information (e.g. on sales prices of state production shares, valuations of infrastructure commitments)

Mandating company-by-company (disaggregated) reporting	Gives citizens a much clearer picture of revenue flows. Disaggregated data for most international companies will become public anyway because of Dodd Frank Section 1504 and EU regulations.	Countries should be able to choose their preferred form of reporting. Some stakeholders consider that EITI is about government accountability, not corporate accountability.
Promoting the use of automated/web-tagged EITI Reports and designing consistent formats and protocols for web-reported data and analytical tools.	Would greatly improve the usefulness of EITI reports by making them more consistent and comparable	Cost implications and limitations on technical capacity in poorer countries.
Including information on government management and spending of extractive revenues.	Addresses citizens' concerns that revenues, even if transparently reported, are not managed and spent transparently. This is the main concern for many citizens. EITI's success in ensuring reporting of revenue inflows could be undermined by large-scale corruption in spending. Consistent with, and supportive of, broader global trend towards "open government" and budget transparency.	Goes beyond the existing focus on inflows of revenue to states. Companies may be reluctant to be seen to "interfere" in government spending processes. Governments may have sovereignty concerns. There may be challenges in distinguishing a state's extractive revenues from its general revenues.

Disclosure of contracts or of key fiscal terms.	Would enable citizens to better determine whether the terms of extractive investments are more or less fair. Would help with understanding and evaluating the revenue figures contained in EITI reports. Already required by the International Finance Corporation as a financing condition for extractive projects, and adopted or pledged by several governments (e.g. Timor Leste, the DRC).	Companies tend to regard contract terms as commercially confidential. Governments may have sovereignty concerns.
Reporting on allocation of natural resource rights and assets (e.g. licencing) and the beneficial ownership of companies that win rights.	High corruption risks with major fiscal implications for countries (e.g. that companies obtain unfair contracts via bribery, or that licences or other assets are sold to companies whose beneficiaries include corrupt public officials). Would help to satisfy citizens that their country got the best available deal for its resources. Deep international concern, shared by many in industry, about the transparency of global competition for access to natural resources.	Companies feel that at least some elements of bidding should remain confidential, to protect their negotiating strategies. Reporting would need to reflect differences between licencing regimes in oil and gas (bidding rounds) and mining (first-come-first-served). Governments may resist measures which are seen to limit their discretion in the award of natural resource rights.
Reporting on revenue payments from mid- and downstream activities, e.g. pipeline transit fees	May be material to the public finances of some countries. Would improve overall understanding of revenue flows from the extractive sectors.	Demand from resource-rich countries may be variable (e.g. the EITI's efforts to engage with Ukraine and Bulgaria over transit fees not fruitful so far). Could be seen as going beyond the EITI's global mandate which is for upstream activities.

Reporting on other economic sectors such as forestry, fisheries, agricultural commodities (e.g. cocoa)	Would apply the successful EITI model of multi-stakeholder collaboration to a wider range of countries and industries. Extra effort and cost is small in countries already implementing the EITI for extractive industries (e.g. Liberia).	Could be seen as going beyond EITI's global mandate and its core stakeholder base in oil and mineral extraction. Uncertain implications for Validation and questions about comparability.

Annex III. Should any changes to the EITI be optional or required?

Some stakeholders hold the view that the EITI should remain essentially the same, perhaps making small and incremental changes at the margin, while others believe that the initiative needs to expand and deepen its scope. Amongst the latter, there is debate about whether additions (or which additions) should be incorporated into the EITI requirements or left as optional extras for countries to adopt if they choose, probably with a scoring system designed to encourage the take-up of these options by more countries over time. This annex sets out some of the pros and cons for these positions.

1. Keeping the EITI essentially unchanged

Pros:

No need to revise the current mandate of the EITI.

Avoids additions to the EITI which some countries might find burdensome, or intrusive into sovereignty, or difficult to implement given capacity constraints.

Maintains clarity of focus and relatively streamlined operations.

Cons:

Independent evaluation finds little evidence so far that the current focus is having significant wider effects in resource-rich countries.

Few incentives at the moment for Compliant countries to deepen EITI implementation, risking loss of motivation amongst stakeholders.

Civil society stakeholders in particular feel the current focus is too narrow to address major problems in the extractive sector and may become frustrated with the EITI.

Credibility risks posed by countries which are able to become Compliant, despite evidence of severe corruption in their public finances (but in areas outside the EITI's scope).

2. Adding to the EITI requirements for all countries:

Pros:

Ensures that all countries meet a comparable standard.

Reduces the risk of "free-riding" by particular countries.

Would maintain global momentum of the EITI by setting out a clear path for its future.

Cons:

Countries may lack capacity to take on new requirements.

Countries may be willing to consider new elements to the EITI if they are voluntary and can be adopted at a time of the country's choosing, but may object to these same elements if they are a time-bound requirement imposed by the Board.

New requirements would add to the complexity of scoring countries' performance and increase the burden on the Board and International Secretariat.

3. Adding new elements as options for countries to implement voluntarily

Pros:

Countries can adopt new elements as and when they choose, increasing the sense of "country ownership" of EITI implementation.

Allows for more diverse EITI implementation to reflect countries' differing needs and priorities, without necessarily requiring absolute consensus amongst stakeholders (because countries may consent to other countries being incentivised by the EITI to add new elements which they do not intend to adopt themselves).

May lead to gradual expansion of EITI scope via power of example (a "pull factor") rather than pressure to comply with EITI rules (a "push factor").

Cons:

Some countries may simply decline to adopt new elements, even if they are badly needed in that country.

Increasingly diverse nature of EITI implementation could undermine comparability between countries and thus the usefulness of the EITI as a global benchmark (e.g. for investors) as well as making the initiative harder to explain.

Would mean giving up the relative simplicity of the current Validation system in favour of a complex scoring system in which some elements are "met" or "unmet" but others are marked by degrees of achievement: complex scoring systems are harder to explain and more vulnerable to "gaming" by parties seeking a particular outcome.