

Candidature assessment of Ethiopia (4 February 2014)

EITI Requirement 1.1

The government is required to issue an unequivocal public statement of its intention to implement the EITI.

The statement must be made by the head of state or government, or an appropriately delegated government representative.

Secretariat assessment

- The government of Ethiopia has made several unequivocal statements of the government's intention to implement the EITI since 2009. The application was attached to a letter from the then Minister of Mines and Energy, Sinknesh Ejigu, in which she reconfirms the government's commitment to all aspects of EITI implementation.
- A letter with an unequivocal public statement signed by the then Minister of Mines and Energy, Hon Alemayahu Tegenu, was sent to the EITI Chairman on 6 August 2009. This followed a public statement on Ethiopian Radio and Television in February 2009 and read out at the Doha EITI Global Conference, and a launching conference in Adama in July 2009 with over 80 participants from the government, companies, civil society and the World Bank.
- A fully staffed secretariat has been in place in the Ministry of Mines since February 2009. There are presently five full time staff.
- A memorandum of understanding amongst the multi-stakeholder group was designed and signed, and is available on the website: <http://www.mom.gov.et/Extractivindustry.aspx>.
- Commitment to EITI implementation was reiterated by senior government officials during all three EITI Board assessment missions in 2010, 2011, and 2013.

The Secretariat's assessment is that this sign up step has been completed.

EITI Requirement 1.2

The government is required to appoint a senior individual to lead on the implementation of the EITI.

- a) The appointee should have the confidence of all stakeholders
- b) The appointee should have the authority and freedom to coordinate action on the EITI across relevant ministries and agencies
- c) The appointee should be able to mobilize resources for EITI implementation.

Secretariat assessment

The Minister of Mines and Energy has led the process and acted as Chair of the National Steering Committee (the multi-stakeholder group). The Deputy Minister has been the Deputy Chair of the Committee. The Minister at the time of the application, Sinknesh Ejigu, has been replaced by the former chief of the Ethiopian Geological Survey, Tolossa Shagi Moti, who has taken on the role of EITI Champion. His letter of commitment to the process of 24 February 2014 is attached.

- a. Jean-Claude Katende and Jonas Moberg attended an MSG meeting on 19 September and met with Minister Ejigu, who was committed and appeared to have the confidence of all stakeholders.
- b. The process and procedures of EITI implementation over the past four years demonstrate that the government appointee has the sufficient freedom and authority to coordinate the EITI activities throughout the relevant ministries

and agencies, and has been ably backed up by a national secretariat of five full time staff led by Merga Kenea.

c. The World Bank has provided technical support to the process, and the process has been funded by the government. The workplan foresees a cost of US \$604,000 of which the Government will provide 51%. Funding is foreseen from the World Bank administered MDTF.

The Secretariat's assessment is that this sign up step has been completed.

EITI REQUIREMENT 1.3

The government is required to commit to work with civil society and companies, and establish a multi-stakeholder group to oversee the implementation of the EITI.

- a) The government, companies and civil society must be fully, actively and effectively engaged in the EITI process.
- b) The government must ensure that there is an enabling environment for company and civil society participation with regard to relevant laws, regulations, and administrative rules as well as actual practice in implementation of the EITI. The fundamental rights of civil society and company representatives substantively engaged in the EITI, including but not restricted to members of the multi-stakeholder group, must be respected.
- c) The government must ensure that there are no obstacles to civil society or company participation in the EITI process.
- d) The government must refrain from actions which result in narrowing or restricting public debate in relation to implementation of the EITI.
- e) Stakeholders, including but not limited to members of the multi-stakeholder group:
 - i. must be able to speak freely on transparency and natural resource governance issues;
 - ii. must be substantially engaged in the design, implementation, monitoring and evaluation of the EITI process, and ensure that it contributes to public debate;
 - iii. must have the right to communicate and cooperate with each other; and
 - iv. must be able to operate freely and express opinions about the EITI without restraint, coercion or reprisal.
- f) In establishing the multi-stakeholder group, the government must:
 - i. ensure that the invitation to participate in the group is open and transparent;
 - ii. ensure that stakeholders are adequately represented. This does not mean that they need to be equally represented numerically. The multi-stakeholder group must comprise appropriate stakeholders, including but not necessarily limited to: the private sector; civil society, including independent civil society groups and other civil society such as the media and unions; and relevant government entities which can also include parliamentarians. Each stakeholder group must have the right to appoint its own representatives, bearing in mind the desirability of pluralistic and diverse representation. The nomination process must be independent and free from any suggestion of coercion. Civil society groups involved in the EITI as members of the multi-stakeholder group must be operationally, and in policy terms, independent of government and/or companies;
 - iii. ensure that senior government officials are represented on the multi-stakeholder group; and
 - iv. consider establishing the legal basis of the group.
- g) The multi-stakeholder group is required to agree clear public Terms of Reference (ToRs) for its work. The ToRs should at a minimum include provisions on:

The role, responsibilities and rights of the multi-stakeholder group:

- i. Members of the multi-stakeholder group should have the capacity to carry out their duties.
- ii. The multi-stakeholder group should undertake effective outreach activities with civil society groups and companies, including through communication such as media, website and

letters, informing stakeholders of the government's commitment to implement the EITI, the central role of companies and civil society, as well as widely disseminating the public information that results from the EITI process such as the EITI Report.

- iii. Members of the multi-stakeholder group should liaise with their constituency groups.

Approval of workplans, EITI Reports and annual activity reports:

- iv. The multi-stakeholder group is required to approve annual workplans, the appointment of the Independent Administrator, the Terms of Reference for the Independent Administrator, EITI Reports and annual activity reports.
- v. The multi-stakeholder group should oversee the EITI reporting process and engage in Validation in accordance with chapter 3.

Internal governance rules and procedures:

- vi. The EITI requires an inclusive decision-making process throughout implementation, with each constituency being treated as a partner. Any member of the multi-stakeholder group has the right to table an issue for discussion. The multi-stakeholder group should agree procedures for nominating and changing multi-stakeholder group representatives, decision-making, the duration of the mandate and the frequency of meetings. This should include ensuring that there is a process for changing group members that respects the principles set out in Requirement 1.3(f).
- vii. There should be sufficient advance notice of meetings and timely circulation of documents prior to their debate and proposed adoption.
- viii. The multi-stakeholder group must keep written records of its discussions and decisions.

Secretariat assessment

a) 32 mining companies have agreed to 'join the initiative' through a formal letter and have agreed to disclose their payments. In the 2009/10 reconciliation report, the 16 largest companies selected by the NSC participated in the reporting process.

Around 400 civil society and company representatives have participated in various workshops and forums on the EITI.

The application demonstrates that government, companies and civil society have been actively engaged in the EITI process for several years. NSC members have taken part in EITI activities in the wider region, including visits to Liberia, Tanzania and Azerbaijan. Representatives from Ethiopia's NSC are also expected to attend the EITI training seminar for Anglophone and Lusophone Africa in March.

b) There is considerable evidence of companies and civil society participation. Minutes from NSC meetings demonstrate active participation in discussions, and that issues raised are taken into account and followed up. Actions to overcome capacity constraints among civil society representatives have been included in the workplan. The website <http://www.mom.gov.et/Extractivindustry.aspx> has a whole section dedicated to explaining civil society participation in the EITI including a section on civil society being a necessary ingredient of the EITI process; shaping governance, supporting dialogue and reform; and strengthening civil society engagement.

As noted above, various international and national organisations have expressed concerns regarding the full, independent, active and effective participation of civil society in Ethiopia related to the NGO proclamation. When the Board considered Ethiopia's application in 2009-2010, it appeared that the Board could not conclude that this commitment was evident.

The Secretariat's approach to this issue is to consider both the law and its application. The Standard does not weigh the balance between the laws and the practices. Given that the requirement simply states "as well as", it is reasonable to assume that both aspects should be considered. An assessment of how the laws are being implemented is a difficult area, as any self-restraint or censorship due to harassment, by definition, may be difficult to detect.

The Secretariat's assessment is that the Proclamation is an indication that the government is not committed to an enabling framework for civil society. However, the implementation so far of the EITI demonstrates that in practice there is a commitment to allowing civil society to play its role sufficiently for EITI implementation. The teleconference with Ethiopian civil society representatives on 16 January and the letter from Minister Tolesa Shagi appear to support

this statement.

c) The EITI Standard does not address the **degree to which there should be “no obstacles to civil society**... participation in the process” (Requirement 1.3c). The use of phrases like “no obstacles” seems to indicate that there is an absolute requirement, that indeed absolutely no obstacles may exist. However, the Secretariat questions whether that was the intention of the provision. Considering practices in the 41 implementing countries, where there are many obstacles and often a lack of an enabling environment, the Secretariat concludes that judgment is needed in determining whether these requirements are being met. It cannot be that **any** obstacle on its own is enough to fail a Candidature application or a reason for suspending or delisting an implementing country.

The Secretariat’s view is that it cannot be established that the commitment is significantly different from implementation in several other implementing countries. Again, the practice suggests that obstacles have been sufficiently, though not completely, overcome. Minister Tolesa Shagi’s letter states that the law “will not at all be an impediment to the implementation of EEITI program as much as it hasn’t been an obstacle to the rest of the domestic initiative program like Construction Sector Transparency Initiative (CoST) and we are convinced to allow a space for civil society to play its full, free and independent role in the process”.

d) There is no evidence to suggest that the government has attempted to restrict or narrow public debate in relation to implementation of the EITI to date. CSO members highlighted that they are free to engage in public debate on the EITI.

e) The Board needs to establish a **consistent understanding** of whether stakeholders are “able to speak freely on transparency and natural resource governance issues” and “operate freely and express opinions about the EITI without restraint, coercion or reprisal” (EITI Requirement 1.3e). While the government maintains that the Proclamation is in place to provide transparency, it would appear potentially to provide a barrier rather than an enabling framework for civil society organisations. Another motivation for the Proclamation appears to be concern that allowing unlimited foreign funding to advocacy NGOs active in the country is a route to foreign interference; they are not unique in having such perspectives. In the view of the Secretariat, it is important that EITI Rules are applied evenly to all countries implementing the EITI. The Standard requires that “the EITI Board will give priority to the need for comparable treatment between countries”. Whether a country applied in 2005 or 2013 should therefore not matter. All implementing countries have to apply the EITI Standard. If there are concerns that the Standard is not being adhered to by an implementing country, Validation should be called and all sign-up requirements as they stand considered. Thus, given the Proclamation, the government of Ethiopia’s commitment to work with civil society needs to be considered alongside practices so far by the Board relating to the 41 implementing countries. While it cannot be reasonably expected that the Secretariat keeps track of the legislation in all of these countries, the Secretariat notes that Azerbaijan has a law regulating and limiting the space for civil society, as does Zambia and many others. The International Centre for Not-for-Profit Law (ICNL) states that the “Proclamation is ...one of the most controversial NGO laws in the world”. Controversy has to be taken seriously, but it is important to recognise that there may be many reasons for why a law generates controversy, not just its potential limitation to the freedoms for civil society. For example, self-censorship can sometimes contribute to campaigners in some countries refraining from creating controversy.

i. Evidence suggests that to date all stakeholders can speak freely on topics related to the EITI Implementation at the NSC meetings and outside. All CSOs sitting in the National Steering Committee of the EEITI have confirmed their satisfaction with how the committee is operating. Despite the current restrictions and challenges imposed on CSOs by the Proclamation, according to their own statements and accounts, they can and indeed do fully and freely participate in EEITI.

The letter to Clare Short from the Consortium of Christian Relief and Development Association, who serve on the NSC, states that “the legislation does not put a restriction on CSOs to work for and support any initiative intended to realise transparency and accountability. In fact, this holds true for the EEITI initiative as well ... “. This sentiment was echoed at the 16 January teleconference.

ii. The application suggests that stakeholders are engaged in the design and implementation of the EITI process. The application notes in particular civil society involvement in the development of the workplan, and in disseminating information to the broader public about EITI implementation. Minutes from NSC meetings suggest that all stakeholders have the rights and possibilities of raising their voice in influencing the EITI process. See also point (a)

above.

iii. To date there do not appear to be any specific obstacles to communication and cooperation between the stakeholders.

iv. While civil society has expressed discontent regarding the Proclamation, no concerns about restraint, coercion or reprisal in relation to the EITI process were raised throughout the consultations held by the Board missions. Representatives of civil society have expressed their satisfaction with the EITI process. As noted above, this will need to be monitored closely. See a) above.

f) The NSC is the governing body of the EEITI. According to the application, the NSC is represented from each constituency equally through clear and open discussion made among each group during the launching of the EEITI. The application emphasises the rigour of the process to select the government representatives. The NSC has 17 members representing the three constituencies – government, companies and civil society. It includes the Minister and State Minister of Mines who are the Chair and Deputy Chair respectively. There are also representatives from the Ministry of Finance and Economic Development, Officer of the Auditor General, Revenue and Customs Authority, the Minerals Licensing and Administration, and the Petroleum Licensing and Administration. On the civil society side, there are representatives from Transparency Ethiopia, the Ethiopian National Journalists Union, the Ethiopia Youth Federation, the Consortium of Christian Relief and Development Association, and the Ethiopia Federation of National Associations of People with Disabilities. Industry representatives come from the National Mining Corporation, the Afdera Salt Producers Mutual Support Association, the Eastern Industry Zone PLC, and the Debre Birhan Natural Spring Water PLC.

The government has begun work on a law to underpin the implementation of the EITI.

g) The NSC has enacted and signed a memorandum of understanding and established a detailed Terms of Reference.

i. Based on the information provided, the Secretariat's assessment is that members of the multi-stakeholder group have the capacity to carry out their duties and have been doing so for several years. They have benefitted from several workshops, usually funded by the World Bank. Further capacity building on the EITI Standard will be needed.

ii. Outreach to civil society and companies has been through at least four workshops which have been informed by various publications and materials. The International Secretariat has been provided with details of the various workshops (attached to the application).

iii. The Secretariat's assessment is that members of the multi-stakeholder group are liaising with their constituency groups.

iv. The ToR and regulations clearly state that the multi-stakeholder group is responsible for approving and revising the workplan annually (ToR, §III), appointing the Independent Administrator (ToR, §III), establishing the mechanism for annual EITI Reports (ToR, §III), and reviewing the work plan on a quarterly basis to assess and adjust (ToR, §III). The minutes of a meeting of the subcommittee of the NSC assigned to select the reconciliation company were attached to the application.

v. According to the ToR, the multi-stakeholder group is responsible for establishing the mechanism for the EITI reporting process and the Validation (ToR, §III).

vi. The NSC ToRs include clear principles for engagement (ToR, §II) and procedures for decision making (ToR, §VII). Decisions are taken by consensus in 'good faith', and the ToRs establish the quorum as 50% with at least one representative from each sector. NSC meetings are convened quarterly or as often as necessary, with at least a week's notice. The NSC serves for terms of two years and members can be re-elected once. Members can be replaced at any time through each constituency's own independent process. Each member should have an alternate.

vii. NSC meetings are convened by the Chair no later than a week prior to the meeting. The minutes and all supporting documents will be circulated within one week of the meeting, after which members have a week to send in comments. No comments will be considered approved. In case of urgent matter, necessary information can be circulated electronically.

viii. The NSC regulations clearly set out the process for circulating and agreeing meeting minutes. The International Secretariat has been provided with the meeting minutes of many of the NSC meetings (attached to the application).

The Secretariat recognises that stakeholders may take different views in weighing the above considerations. Recognising the need for consistency, taking into account the practices in other implementing countries, and considering the experience in EITI implementation to date, the Secretariat concludes that Ethiopia has demonstrated a sufficient commitment to CSO engagement, while recognising that the situation needs to be carefully monitored. The Secretariat's assessment is that this sign-up step has been completed.

EITI REQUIREMENT 1.4

The multi-stakeholder group is required to maintain a current workplan, fully costed and aligned with the reporting and Validation deadlines established by the EITI Board.

The workplan must:

- a) set EITI implementation objectives that are linked to the EITI Principles and reflect national priorities for the extractive industries. Multi-stakeholder groups are encouraged to explore innovative approaches to extending EITI implementation to increase the comprehensiveness of EITI reporting and public understanding of revenues and encourage high standards of transparency and accountability in public life, government operations and in business;
- b) reflect the results of consultations with key stakeholders, and be endorsed by the multi-stakeholder group;
- c) include measurable and time bound activities to achieve the agreed objectives. The scope of EITI implementation should be tailored to contribute to the desired objectives that have been identified during the consultation process. The workplan must:
 - i. assess and outline plans to address any potential capacity constraints in government agencies, companies and civil society that may be an obstacle to effective EITI implementation;
 - ii. address the scope of EITI reporting, including plans for addressing technical aspects of reporting, such as comprehensiveness and data reliability (Requirements 4 and 5); and
 - iii. identify and outline plans to address any potential legal or regulatory obstacles to EITI implementation, including, if applicable, any plans to incorporate the EITI Requirements within national legislation or regulation.
- d) identify domestic and external sources of funding and technical assistance where appropriate in order to ensure timely implementation of the agreed workplan;
- e) be made widely available to the public, for example published on the national EITI website and/or other relevant ministry and agency websites, in print media or in places that are easily accessible to the public;
- f) be reviewed and updated annually. In reviewing the workplan, the multi-stakeholder group should consider extending the detail and scope of EITI reporting including addressing issues such as revenue management and expenditure (3.7-3.8), transportation payments (4.1.f), discretionary social expenditures (4.1.e), ad-hoc subnational transfers (4.2.e), beneficial ownership (3.11) and contracts (3.12). In accordance with requirement 1.3 (g)(viii), the multi-stakeholder group is required to document its discussion and decisions; and
- g) include a timetable for implementation that is aligned with the reporting and Validation deadlines established by the EITI Board (see 1.6, below) and that takes into account administrative requirements such as procurement processes and funding.

Secretariat assessment

- a) The NSC has developed an EITI workplan covering 2013-2015 which is available at <http://www.mom.gov.et/Extractivindustry.aspx>. The MSG has committed to update the plan on an annual basis, and it sets out targets, timetables and costings. The workplan sets out several objectives for the EEITI:
 - to establish a system through which companies and government disclose the payments and revenues generated from the extractive sector in Ethiopia

- To carry out reconciliation and/audit of the disclosed statement of companies and government by independent administrator
- To develop a mechanism through which the citizens of Ethiopia access all the information regarding the extractive industry
- To establish a forum under which all the concerned parties; the government, the civil society and extractive companies work together for the development of the mineral industry of the country and bring sustainable development,
- To establish transparency and accountability in the management of mineral resources including oil and gas and to foresee the minerals development of Ethiopia play a major role on the socio economic development of the country for the benefit of Ethiopians.

b) The NSC has developed several workplans since 2009. The application is clear that this workplan was endorsed by the NSC.

c) The workplan includes measurable and time-bound activities.

i) The workplan includes training and capacity building activities aimed at addressing capacity constraints, including training and addressing barriers to implementation.

ii) The workplan objective 4 about the “preparation in implementing and monitoring the Eth-EITI” is about scoping, templates and mechanisms for reconciliation, including issues of comprehensiveness and disaggregation. There are clear plans for a scoping study to establish materiality.

iii) Workplan objective 3.4 is about the legal underpinning of the EEITI including hiring a consultant (already on-going) to review the legal and administrative barriers to implementation. This is likely to lead to an EEITI Law.

d) The workplan is fully costed, but funding sources have not yet been confirmed. The government has confirmed that it will provide 51% financing. The World Bank has been supporting the process and has indicated financial support for the workplan of US \$250,000, plus they have allocated a direct grant of US \$100,000.

e) The workplan is publically available at the official EEITI website www.mom.gov.et/ExtractiveIndustry.aspx.

f) The ToRs of NSC is clear that the workplan – although it has a three year coverage – will be reviewed annually and monitored quarterly by the NSC. It is not clear that how or when it will take on the encouraged elements of the EITI Standard.

g) The workplan includes the timetable for implementation that is aligned with the 2011 Rules and not the validation and reporting deadlines of the new EITI Standard.

The Secretariat’s assessment is that this sign-up step has been completed.