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THE ROLE OF THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE IN DELIVERING SUSTAINABLE DEVELOPMENT IN THE EXTRACTIVE SECTOR



Transparency in the extractive industries is no longer an exception. It is becoming the norm. This is a relatively recent development and the Extractive Industries Transparency Initiative (EITI)¹ has played a leading role in assisting governments, industry and civil society in making this happen. The EITI has evolved from a reconciliation exercise to contributing to the improvement of governance and management of the extractive industries along the entire value chain from the award of licences, to production, to where the money goes. This is of particular relevance in a time of relatively low commodity prices.



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As of December 2015, 49 countries around the world implement the EITI. These countries commit to follow the EITI Standard, a 30-page document with seven requirements. At the core of this global transparency standard is the disclosure of payments made by oil, gas and mining companies and the corresponding disclosure of government receipts. The revision to the Standard in 2013 increased the scope of EITI reporting to include further information about contracts and licences, the roles of state-owned enterprises and contextual information about how the sector is governed including any applicable laws. Over 250 national EITI reports have been published, making more than US\$ 1.7 trillion of tax and royalty payments available to the public. In each of the EITI countries, there is a national commission, or multi-stakeholder group, overseeing implementation and turning the global minimum standard into a nationally owned process. Some 1,200 persons from governments, companies and civil society serve on these 49 national bodies.

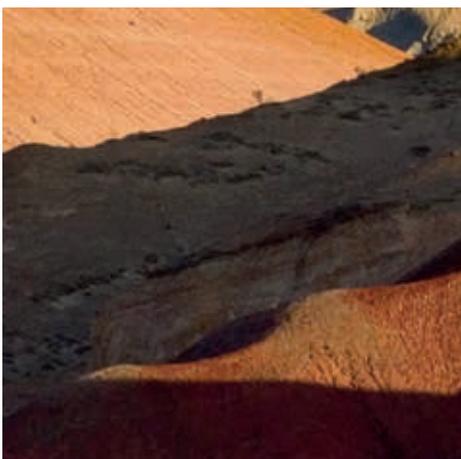
THE DEVELOPMENT OF THE EITI

In the late 1990s and early 2000s, the “resource curse” captured international attention. Academics,

journalists and civil society campaigners highlighted that the potential wealth of natural resources was not being realised and paradoxically was routinely associated with increased poverty, conflict and corruption. This led to a campaign aimed at extractive companies to make the contracts they had signed with governments of resource-rich countries publicly available. British Petroleum responded to the campaign by releasing the information and in turn received a backlash from governments displeased with this unilateral move.

The fledgling movement towards greater transparency in the extractive sector could have ground to a halt at this point. Companies wanted a united effort to level the playing field that would require all companies operating in a country to disclose, so that companies that embraced transparency would not be at a competitive disadvantage.

A coalition of governments, companies and civil society organisations started to take shape around the notion of equal transparency from both governments and companies. There was an agreement that it would benefit all parties if some kind of standard of



LEGAL REFORMS AND THE EITI IN EBRD COUNTRIES

Albania joined the EITI in 2009 as a way to grow its relatively underdeveloped extractive sector. The EITI has been used for wider reforms in the sector, by developing a revenue management plan to address informality in the mining sector, reviewing the existing policy on royalty transfers to local governments, and including hydropower in future EITI reports. The laws on mining (2010) and hydrocarbons (2015) both mandate EITI implementation. Albania's EITI report for 2013-14 was the first EITI report from any country to include hydropower, which together with other extractive resources sectors, formed 7 per cent of the country's GDP.

Azerbaijan was one of the first countries to commit to implementing the EITI, back in 2003. The EITI is managed by the State Oil Fund of Azerbaijan and has been a core part of the Fund's effort to adhere to high governance standards and provide information that was not available previously.

Kazakhstan became compliant with the EITI in 2013 and is now taking steps to address new issues such as integrating transparency in government agencies and reporting on environmental aspects. EITI implementation has been included in the 2010 subsoil use law. The social investment obligation for companies operating in the country has also been amended as a result of EITI reporting, ensuring that these revenues are now centralised.

The Kyrgyz Republic joined the EITI in 2007 as a way of incentivising the development of their underutilised, but substantial, coal and gold deposits. As part of its EITI implementation, the Kyrgyz Republic is piloting disclosure of the beneficial owners of the mining companies operating in the country, giving effect to the legal obligation of mining licence holders to declare their beneficial owners (2014 subsoil use law).

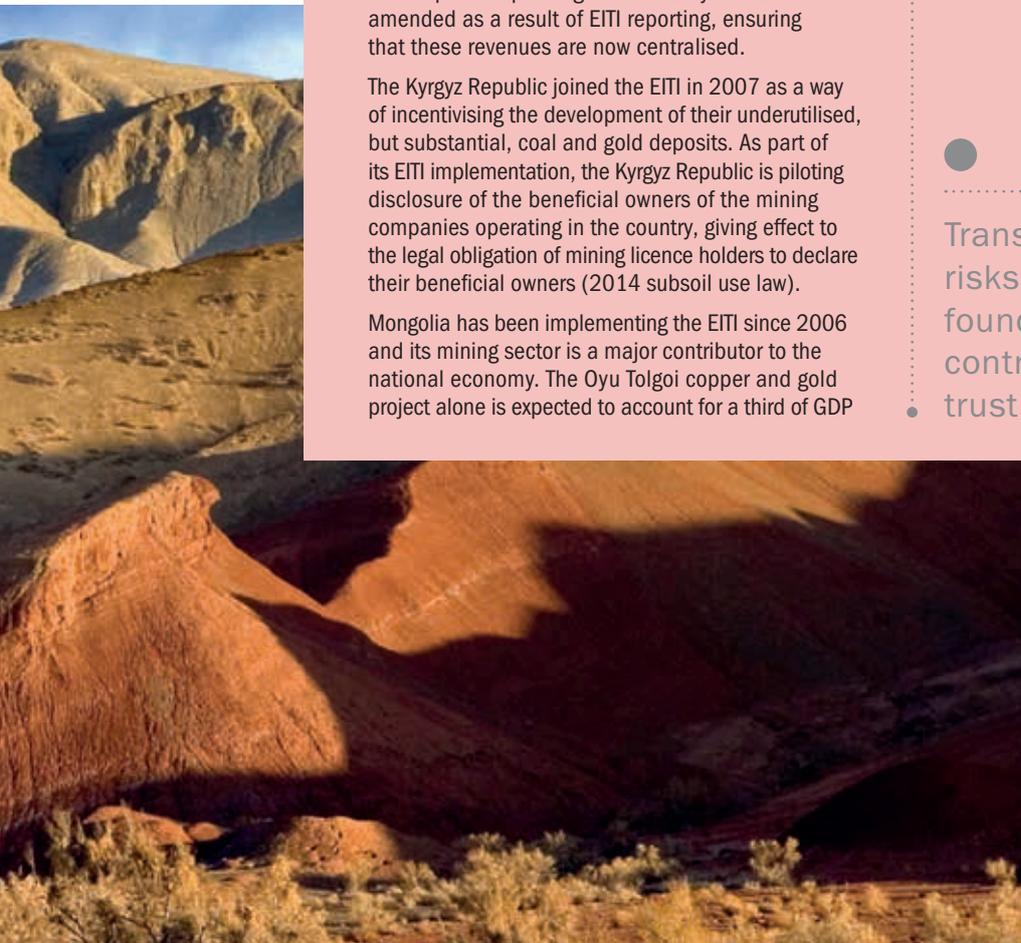
Mongolia has been implementing the EITI since 2006 and its mining sector is a major contributor to the national economy. The Oyu Tolgoi copper and gold project alone is expected to account for a third of GDP

by 2020. Mongolia has established subnational EITI councils in all of its provinces and some of its districts, which draw on data made accessible through the Mongolia EITI eReporting system to discuss local governance of extractive industries.

Although Tajikistan has significant natural resources, the sector remains underdeveloped and attracting investment was a key reason for committing to the EITI in 2013. In 2015 Tajikistan produced its first EITI report, which resulted in administrative reform, with the establishment of a directory of mining companies. Tajikistan also took part in the EITI's beneficial ownership pilot project.

Ukraine joined the EITI in 2012 as a way to tackle corruption in the extractive sector and create trust among citizens. Despite instability caused by the military conflict in the east of the country, Ukraine has continued to prioritise the EITI process and produced its first EITI report in 2015. As part of the anti-corruption agenda a law was passed in early 2015, compelling companies to publish their "beneficial owners", that is, the persons who own the companies.

Transparency reduces business risks. Companies have also found that EITI implementation contributes towards building trust with citizens.



reporting were jointly developed. At a conference in June 2003 a Statement of Principles to increase the transparency of payments and revenues in the extractive sector was agreed and the EITI was born.

The EITI is voluntary in that it is sovereign nations that commit to implementing the EITI Standard. Public international law does not mandate the EITI. Once a country decides to implement the EITI, it must meet a set of requirements to become EITI compliant. Most of the 49 implementing countries have either passed legislation ensuring implementation or adopted government regulations to the same effect.

The EITI is not unique in being a multi-stakeholder initiative; in 2007 in his report to the UN Human Rights Council, John Ruggie documented several cases of “a new multi-stakeholder form of soft law initiatives” which he saw as emerging: “These initiatives may be seen as still largely experimental expressions of an emerging practice of voluntary global administrative rulemaking and implementation, which exist in a number of areas where the intergovernmental system has not kept pace with rapid changes in social expectations... The standard-setting role of soft law remains as important as ever to crystallize emerging norms in the international community.”

It has been recognised from the outset that the EITI will not, on its own, be sufficient to drive the necessary reforms. In recent years, a growing number of countries have passed regulations requiring publicly listed extractive companies to report payments to governments. Most notably, the United States adopted the Dodd Frank Wall Street Reform and Consumer Protection Act which, in its 1,504th amendment, contains provisions requiring companies listed under the rules of the Securities and Exchange Commission to report these payments. The European Union and Canada are among other jurisdictions that have adopted similar rules. Although these provisions complement EITI implementation, reliable information on government revenues from the extractive sector is necessary to give the full picture to the citizens of the producing country. In addition, the EITI offers an in-country oversight process through the national commission. Listings requirements in, for example, London and New York, do not by themselves lead to practically meaningful transparency for citizens in resource-rich countries.

IMPACT

Each of the three EITI stakeholder groups has different views of the EITI's impact and benefits. Countries implement the EITI for a variety of reasons including to fight corruption, attract foreign direct investment, improve taxation collection and build trust with citizens. The EITI has been used in many ways, depending on the specific circumstances of the countries and their level of commitment to reform. In Nigeria for example, the EITI has been used to identify and recover missing payments worth US\$ 4 billion owed to the government. As highlighted above, in a number of countries where the EBRD operates, the EITI has contributed to reforms in the extractive sector and making a traditionally opaque sector open and more accountable.

Extractive companies, of which 90 of the largest oil, gas and mining companies support the EITI, also do so for a variety of reasons. As long-term investors, they are interested in contributing towards an enabling investment climate, characterised by openness. Transparency reduces business risks. Companies have also found that EITI implementation contributes towards building trust with citizens. Banks and institutional investors support the EITI as it helps to promote open markets and economic development. EITI implementation can help uncover financial irregularities and inefficiencies, strengthen public financial management, and promote wider institutional reforms.

Civil society organisations, often brought together by the umbrella organisation Publish What You Pay, demand transparency as a means to hold governments to account. Transparency and participation in the EITI becomes a means to the ultimate goal of ensuring greater societal benefits from natural resources.

Each constituency sits on the EITI board and supports the strategic development and growth of the organisation. The EITI is also supported by major international financial institutions which are key suppliers of technical and financial support in many implementing countries. The EBRD, for example, has for several years provided political, financial and technical support to the EITI. The EBRD has assisted a number of countries with EITI implementation. For example, in Mongolia, the EBRD's technical and financial support helped strengthen EITI Mongolia by

incorporating the EITI into national legislation. The EBRD also supported the development of online reporting, enabling better public access to data and embedding a transparency mechanism in government systems. More broadly, the EBRD has supported Mongolia's extractive industry through direct investments and loans. This is especially significant given the downturn in commodity prices. Mongolia's commitment to the EITI and transparency has helped to attract investment from extractive companies.

CONCLUSION: EITI NECESSARY BUT NOT SUFFICIENT

The EITI has come a long way in just over a decade and governance of the sector has improved. Bringing the diverse stakeholders together around the table was an accomplishment; producing the EITI Standard now implemented by 49 countries is an achievement. Transparency in the sector is increasingly a reality. All stakeholders must now work together to ensure that access to information is put to use, that transparency really leads to accountability. Information about laws, contracts and tax and royalty payments must form the basis for discussions about further reforms and improvements. The EITI must move from reports to results. Embedding the EITI into government legislation and systems is another challenge.

In recent years, within the EITI and elsewhere, there has been growing interest in the actual owners of operating companies. In too many countries this information is not available. A number of EITI-implementing countries, including Ukraine, have piloted ownership reporting. In a landmark decision in 2015, the EITI Board decided that

disclosing the beneficial owners of companies would be mandatory. However, requiring the timely disclosure of beneficial ownership information also brings challenges. In many countries this will require legislative changes and cooperation between multiple government agencies. Some countries are focusing their efforts on the extractive industries, whereas others are considering broader changes to corporation law covering all industries.

With the recent fluctuations in commodity prices, and the uncertain outlook for investment, employment and government revenues, transparency in the extractive industries is more important than ever, so that governments and citizens can make informed choices about the development of these industries.

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