



PARLIAMENTARIANS AND THE MANAGEMENT OF THE EXTRACTIVE INDUSTRIES

THE EITI STANDARD AS A TOOL FOR PARLIAMENTARIANS
IN RESOURCE-RICH COUNTRIES



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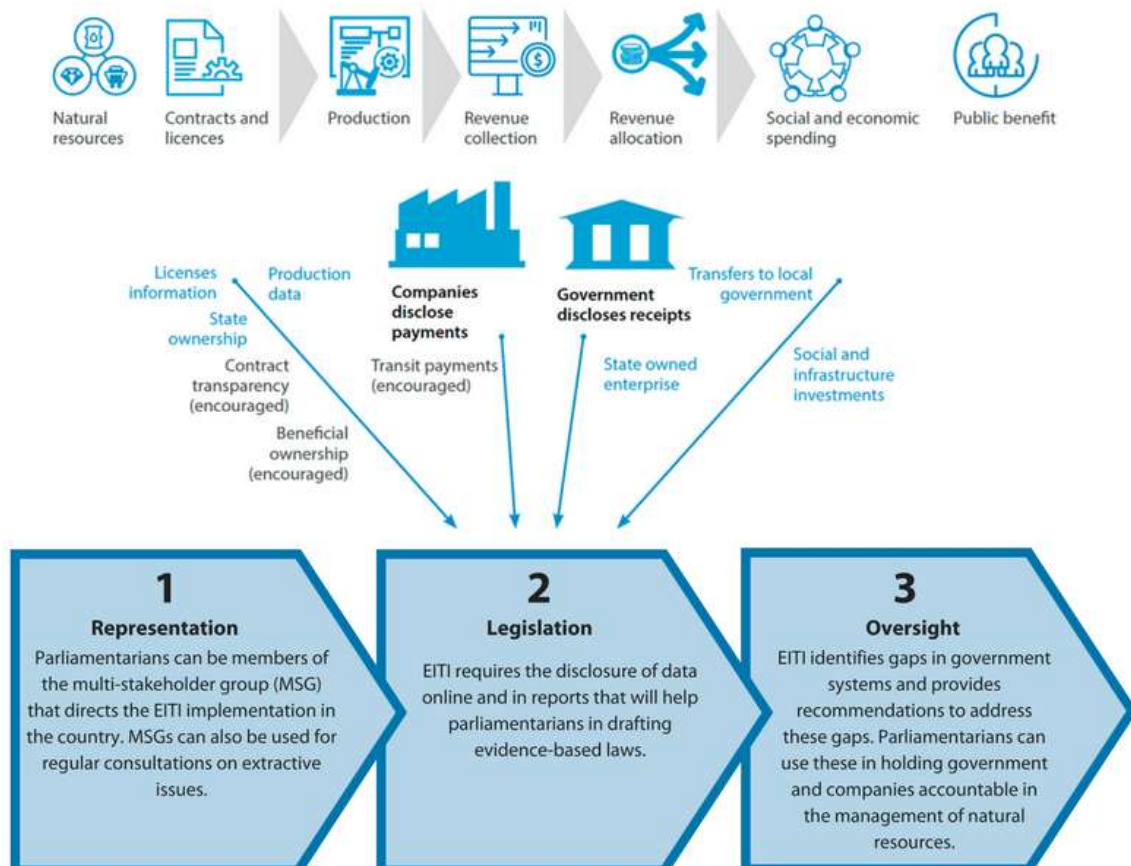
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WHAT IS EITI AND HOW CAN PARLIAMENTARIANS USE IT?

The Extractive Industries Transparency Initiative (EITI) is a global standard to promote the open and accountable management of oil, gas and mineral resources. Currently, there are 51 countries implementing the EITI Standard through a national multi-stakeholder group (MSG) composed of government, industry and civil society. The EITI Standard seeks to address the key governance issues of the oil, gas and mining sectors by requiring countries and companies to disclose information on the key steps in the governance of oil, gas and mining revenues.

Disclosures through the EITI are useful in providing information on the extractive sector and highlighting gaps in government systems and regulatory frameworks. All of this information form the basis for recommendations for reforms that the national multi-stakeholder group collectively formulates and should ideally propose to policy makers including parliamentarians.

Parliaments are traditionally ascribed three core functions: to represent, to legislate and to oversee. One way to picture how parliaments interact with the extractive industries (EI) is to place these parliamentary core functions against the EI value chain.



The EI value chain is a conceptual tool that helps illustrate how minerals and hydrocarbons in the grounds result in changes in the lives of citizens. Along each stage of this value chain, parliamentarians and other stakeholders can play different roles to ensure maximum societal benefits.

With countries now publishing a wide range of information under the EITI Standard, the EITI has become a venue for the disclosure of information about the legal and fiscal provisions relevant to extraction, organisation of state-owned enterprises, production, license allocations and registers. If companies make mandatory social payments or payments to subnational levels of government, these should also be reported. Some countries are also making progress on beneficial ownership disclosure and contract transparency. Thus, the EITI Standard is an instrument that parliamentarians can draw on to better understand the extractive sector, its impact on the national economy and the need for further reforms. EITI multi-stakeholder groups could also serve as an informal network that parliamentarians could tap for consultations on issues concerning the extractive sector.

The EITI requires that implementing governments and oil, gas and mining companies operating in their countries disclose key information about the sector. As illustrated above, this should include licenses, production, revenues, including those paid by and through state-owned enterprises, **revenue allocation and the industry's contribution to the economy.** This information makes it possible for citizens to understand how they benefit from the extraction of minerals and hydrocarbons in their countries. It also helps parliamentarians in performing the following functions:

- Representation: The EITI requires the disclosure of mandatory and voluntary social expenditures that companies spend in their areas of operation. It also requires the disclosure of subnational payments and subnational transfers, as well as information on budget allocation of EI revenues. All of this information could illustrate how extractive industries benefit local communities and help parliamentarians evaluate and take action in cases where their constituents are not getting a good deal from the extraction of resources in their localities. In Nigeria, EITI stakeholders have often called on the House of Representatives to use the EITI Report in reforming the petroleum industry, noting that these reports contain recommendations that have been approved through broad consultations with stakeholders.
- Legislation and budget preparation: The EITI is a useful way of identifying gaps in government systems that often require legislation. For example, EITI processes in some countries highlight the need to amend laws to improve revenue collection, ensure proper revenue allocation at subnational levels, streamline regulatory functions, prevent conflicts of interest in **state-owned enterprises' exercise of regulatory and commercial roles,** and ensure more competitive bidding processes in license applications. EITI Reports typically include legal amendments in their recommendations. These recommendations are based on disclosures of information along the EI value chain, such as information on licenses, revenue collection, revenue allocation, state participation and legal framework. In the

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Philippines, EITI data is informing the legislative debate on possible reforms to the mining law. The Parliament is considering increasing the royalty rates that mining companies pay, and both industry and local civil society are using EITI data to explain their positions to the legislators. In the Republic of Congo, EITI Reports are published by 30 September with data from the previous fiscal year at the request of both Chambers of Parliament. This allows parliamentarians to use the EITI as a control and planning tool to check government figures of the previous fiscal year before adopting the state budget for the following year.

- Oversight: EITI helps provide reliable and timely data that parliamentarians could use in overseeing the management of the extractive sector. In Nigeria, legislative powers of oversight of government expenditures are exercised through the Public Accounts Committee (PAC) of the Senate of the Federal Republic of Nigeria. During public hearings conducted by the Senate Public Accounts Committee, officials from Nigerian EITI serve as technical experts and contribute to discussions on how to better manage government spending of EI revenues. In Honduras, EITI reporting helped the Honduran Institute for Geology and Mines identify areas for improvement in their systems. As a consequence, their new system produces clearer, categorised and complete data on the extractive sector. In Kazakhstan companies file EITI-related information as part of other mandatory reporting through an online platform in the Ministry of Energy. This ensures that information is immediately available to stakeholders, including parliament.

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The implementation of the EITI results in recommendations to improve the management of the extractive sector. Gaps in government systems are often highlighted in EITI Reports.

Examples of information disclosed through EITI Reports and recommendations from the EITI processes in countries are as follows:

- Legal and fiscal framework: **Ghana's** EITI Report has identified gaps in the existing legal and fiscal regime, leading to lack of payments of capital gains tax by oil companies. The 2013 EITI Report recommended putting in place legislation on capital gains tax as early as possible, including harmonizing the relevant legal regimes.
- License allocations: Burkina Faso's EITI Report identified an agreement between the government and a mining company which was not in accordance with the laws and regulations governing the sector. Given this finding, the EITI stakeholders recommended that mineral agreements and contracts should be entered into in accordance with the applicable laws to guarantee and safeguard the interests of the state and the company. The EITI recommended that there should be laws and regulation governing signature payments.
- Audits of national oil companies (NOCs): Iraq's implementation of the EITI revealed that although NOCs were audited according to national audit standards, these had not been updated since the 1980s. The involved stakeholders recommended that NOCs be audited in accordance with international standards.

- Sub-national transfers: In Ghana, EITI Reports covering the years 2004-2011 revealed that extractive sector revenues earmarked for sharing between various national regulatory and oversight bodies, local government authorities, traditional land-owning authorities and communities affected by mining activities did not reach the intended beneficiaries. This was due to a misapplication of these funds, lack of proper accounting for and reporting of **the use of these resources, and irregular transfers. Implementing EITI's recommendations** on timely, regular and full transfers of the funds has resulted in increased accountability at subnational levels, dedicated accounts set up for local governments and guidelines developed by the Minerals Commission for the use of mineral revenues at subnational levels. Similarly, in **the Philippines' 2012 EITI Report, it was found that local governments** were not able to quantify how much they receive from the extractive companies. Given this finding, the 2012 EITI report recommended that the concerned government agencies and the Department of Budget and Management should monitor and report on such transfers, disaggregated by local government and by revenue streams.
- Social expenditures: EITI data includes mandatory and voluntary company expenditures on social projects. This information is useful for parliamentarians in ensuring that extractive revenues contribute to economic and social development. In the Philippines, the implementation of the EITI has been instrumental in tracking social expenditures and in assessing whether companies are fulfilling their contractual obligations. A systematic way of monitoring these social projects is being proposed by the Philippine EITI MSG.
- Revenue management: Parliamentarians require reliable data to underpin their budget forecasts and ensure that resources are in fact allocated in accordance with the law. EITI Reports in many countries have highlighted the need for mechanisms to track revenue flows from the extractive sector. **Myanmar's implementation of the EITI sparked** discussions on how natural resource revenues should be recorded in the national budget instead of being lodged in so-called other accounts maintained by state-owned enterprises. The EITI multi-stakeholder group in Myanmar is pushing for further scrutiny of these other accounts.
- Cadaster/license register: The EITI Standard requires that implementing countries maintain a publicly available register or cadaster system with timely and comprehensive information regarding each of the licenses pertaining to companies covered in the EITI Report. This includes information about the license holder, the date of application, date of the award, duration of the license and, in the case of production licenses, the commodity being produced. In Afghanistan, EITI reporting serves as a stress test of the current cadaster and a diagnostics tool that the government can use to identify gaps. The 2012-2013 EITI Report included specific recommendations for improvement.
- Beneficial ownership: The beneficial owners – who really owns the companies – are often unknown, hidden behind a chain of corporate entities. This opacity can contribute to corruption, money laundering and tax evasion in the extractive sector. The EITI has been instrumental in initiating national dialogues on beneficial ownership in EITI implementing countries. All companies operating in EITI countries are now required to disclose the name and identity of the real owners of companies, including their nationality and country of residence. These disclosures could help parliamentarians in exercising their oversight

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functions on the extractive sector, particularly in knowing the real identities of companies that the government is dealing with, and whether there are corruption risks in the approval of licenses and extractive contracts.

- Data quality assurance: The EITI builds on existing audit and assurance systems in government and industry and promotes adherence to international standards. Indeed, the EITI Standard emphasizes the importance of ensuring that financial data is subject to a credible, independent audit applying international standards.
- In many cases, the EITI identifies weakness in audit and assurance standards and compliance. The EITI can help identify areas of risks where further investigation is needed. In **Afghanistan, Albania, Azerbaijan, Côte d'Ivoire, DRC, Iraq, Ghana, Mali, Mauritania**, Mongolia, Nigeria and the Philippines EITI reports identified weaknesses in the quality assurance of government data and made recommendations how these weaknesses can be addressed.

HOW PARLIAMENTARIANS CAN BE INVOLVED IN THE IMPLEMENTATION OF THE EITI

Parliamentarians can be involved in the implementation of the EITI by:

- Engaging with the national EITI multi-stakeholder group (MSG). The MSG is a representative body of stakeholders from the extractive sector convened and led by relevant regulatory government agencies. This body provides inputs on mining or petroleum legislation, approval of extractive contracts, budgetary issues, and oversight of the sector. Parliamentarians could take advantage of this group as a venue for engaging and consulting with constituents. In Afghanistan, Burkina Faso, Cameroon, Chad, DRC, Kazakhstan, Mali, Senegal and Togo, parliamentarians are part of the MSG and take the lead in providing directions to EITI implementation in the country.
- Ensuring comprehensiveness and timeliness of data from the extractive sector. Parliamentarians could help ensure that data from the extractive sector are timely and comprehensive by mandating regular disclosure by companies and government agencies. This could be done through the EITI reporting process or through routine disclosures in company and government websites. The parliament can mandate this by including transparency provisions in sectoral laws. Several countries like Liberia, Nigeria and Tanzania have enacted laws making EITI implementation mandatory to ensure that all companies participate in EITI reporting.
- Reviewing EITI Reports: **Parliamentarians can hold public hearings to discuss the report's findings and agree on ways to address the weaknesses in government systems that are highlighted in these reports.** As part of its oversight functions, parliamentarians could regularly review the annual EITI Reports and use its data, findings and recommendations to formulate policies and assess the need to amend or draft new laws.

- Engaging in Validation: Each EITI country periodically undergoes Validation where the **EITI International Board evaluates the country's progress in implementing the EITI Standard. The Validation process involves an assessment of a country's level of disclosure** of information along the EI value chain, Parliamentarians can be involved in this process by overseeing whether the corrective actions issued by the EITI International Board are being acted on by the government. The Parliamentary Commission on Energy in Iraq participates in the working group that oversees how government is addressing the corrective actions from Validation. In cases where there are findings on civic space, government engagement or company participation, the parliament can play a role in addressing the legal obstacles that hinder these constituencies from fully and actively participating in the EITI.
- Using EITI data as basis for legislation. As discussed above, the EITI Reports published by countries contain a wide range of information about the natural resource extraction in the country. Parliamentarians and the EITI MSGs can work together in analysing data and in demanding more data that is needed to inform legislation. They can mutually benefit from **each other's technical expertise**.
- Using EITI findings to support investigations in aid of legislation. EITI Reports sometimes contain information on deviations from licensing procedures, dubious beneficial owners of extractive companies, underpayment of taxes, and other information that could point to corruption or anomalous transactions. Parliamentarians can draw on these reports to highlight these irregularities during parliamentary debates.
- Using EITI data in budget preparations. EITI Reports contain consolidated information on all payments made by extractive companies to the government. This could be used in forecasting extractive industries revenues that could assist in finalizing the national budget. EITI reports can also assist in detecting where natural resource revenues are not properly recorded in the national budget.
- **Using EITI's principles of transparency in other legislations.** Several countries implementing the EITI are working on legislations requiring public access to information affecting public interest. Since extractive activities are generally considered to fall within this category of information, parliamentarians can draw from transparency principles and requirements in the EITI Standard to influence their policies on what information should be publicly disclosed, and what are the most efficient means of disclosing them.

SUMMARY AND NEXT STEPS

"There is not a direct relationship between the number of tools and accountability outcomes; rather it is the way in which Parliaments use these tools in order to promote political accountability that matters. Parliamentarians should think about the tools available to them in their jurisdictions and how they can be deployed effectively to enhance accountability of the extractives sector. Furthermore, Parliaments need to be able to collaborate with external accountability actors, such as Supreme Audit Institutions, Corruption Commissions, Civil Society Organizations, and National EITI secretariats, in order to provide analysis and feedback as an input when using accountability tools."

- Key messages and lessons learned from the Global seminar on the role of parliaments and extractive industries, Commonwealth Parliamentary Association, Kigali, Rwanda. January 2015.

Extractive industry transparency should become an integral feature of how governments manage the sector. Countries are increasingly using EITI disclosure requirements to test their systems against a global standard and identify shortcomings. For parliamentarians strengthening government systems through the EITI can be of **particular importance, as this “hardwires” a minimum of transparency into the management of the sector.**

No two countries are alike, and parliamentarians face very different challenges across the world. At the same time, many of the challenges faced by resource-rich countries are comparable, and there are lessons to be learned between countries.

The EITI Standard is meant to be implemented differently in each of the countries that implement it, depending on their national priorities. In each implementing country, multi-stakeholder groups are required to develop a work plan that links the requirements in the standard to their national priorities in the sector. Parliamentarians can both enrich the quality of implementation and make active use of the EITI by engaging actively in the work of the multi-stakeholder group.

Parliamentarians can use the information provided by the EITI as one of a number of tools available to them to exert oversight over each stage along the extractive industry value chain.

The EITI is not the only tool available to parliamentarians to improve the governance of the sector, but it can be a powerful one.

Help the EITI help you

- *Get involved* in EITI to enhance expertise and leadership on extractive industry transparency and good governance.
- *Engage yourself* in ensuring a well-functioning EITI in your country.
- *Coordinate efforts* with other stakeholders such as civil society organisations and other control organisms
- *Use the data* that the EITI provides and transmit it through your regular contact with your constituents.

The EITI (Extractive Industries Transparency Initiative) is a global standard that improves transparency and accountable governance of oil, gas and mineral resources. The standard is implemented by governments, in collaboration with companies and civil society.

Countries implementing the EITI disclose information on issues such as tax payments, licenses, contracts, production and national oil companies.

