Despite calls from civil society groups, global transparency organization fails to develop sanctions for non-compliant companies at its latest Board meeting

By Aubrey Menard, Senior Policy Advisor Extractive Industries Transparency, Oxfam America

Last week, the board of the Extractive Industries Transparency Initiative (EITI), a global organization promoting good governance in oil, gas, and mining, met in part to consider sanctions for companies that are failing to meet the organization’s standards. Unfortunately, no such discussion took place.

American oil supermajors ExxonMobil, Chevron, and ConocoPhillips are failing to meet Expectation 2 of the EITI’s Company Expectations, which requires that extractive companies be transparent about the payments they make to foreign governments in all countries around the world. These project-level disclosures—which 77 percent of EITI-supporting companies make—allow citizens to provide oversight for their government’s use of natural-resource revenues. Transparency helps prevent funds being siphoned away by corruption or misuse, and instead encourages their use to fuel a country’s development.

This core expectation—that, as a company, you should #PublishWhatYouPay—has been central to the EITI since its earliest days, and it has been complemented by mandatory project-level payments-to-governments disclosure requirements for companies headquartered or listed in the European Union, the United Kingdom, Canada, and Norway. In 2010, the US passed its own law, Dodd-Frank 1504, but has thus far failed to implement it due to the lobbying efforts of Big Oil.

Earlier this year, ExxonMobil’s representative to the EITI Board of Directors was caught lobbying to undermine progress on this specific issue. As a result, in June the EITI held an extraordinary board meeting to discuss a complaint made by Publish What You Pay-US about Exxon’s activities and a request for the Exxon Board member’s termination. When the Board was unable to reach consensus on this, Board Chair Helen Clark sent members away with a clear directive: to “undertake promptly” the business of “clarify[ing] and strengthen[ing] the Expectations for EITI-supporting companies, including consideration of consequences for companies not meeting the Expectations.” Companies “committed to participate fully in these efforts” and EITI-implementing countries also expressed their strong support for urgent action and “sanctions in cases of non-compliance.” Civil society Board members outlined key elements for accountability measures.

Instead of fulfilling this promise, yesterday, the Board confirmed and discussed a process to regularly evaluate companies against EITI expectations, but with no meaningful consequence
for those who continuously and flagrantly violate the EITI Standard. This is in part because companies on the Board refused to recommend any sanctions for delinquent companies. Board member companies include Exxon and Chevron, which refuse to comply with EITI's transparency rules, but also a range of more transparent mining and petroleum companies like AngloAmerican, BHP, BP, Equinor, Rio Tinto, Shell, Southern Peru Copper, and Total Energies. These companies are compliant with Expectation 2, but their representatives appear comfortable with the EITI's lack of corporate accountability and willing to allow their least transparent colleagues to continue their opaque practices. Without meaningful consequences for non-compliance, it is unlikely that delinquent companies like Exxon and Chevron will change their ways.

The EITI has had years to act on this issue, but today postponed discussion of company sanctions until its February 2022 Board Meeting. Codifying and implementing meaningful sanctions takes time, but the stakes here are high, and the Board needs to act swiftly and decisively. The EITI has received complaints on related subjects from civil society dating back to 2018; in other words, these are not new concerns. With the climate crisis and energy transition upon us, advancing transparency in the oil, gas, and mining sector cannot wait.

EITI is at risk of becoming a marketing tool for companies that want to appear transparent but have no intention of fulfilling the Expectations. To prevent this, it must adopt the following changes:
Improve and Clarify the Company Expectations

Company expectations must be clearly articulated, in line with the Standard, and measurable. Notably this must include, but should not be limited to, improvements to certain expectations:

1. **Expectation 1 must mandate meaningful support from supporting companies**

   EITI must hold companies accountable for their actual support of the organization. The proposed changes to Expectation 1 of the Company Expectations confuse symbolic support of EITI with meaningful support. The Board documents reference superficial concerns such as updating EITI logos on company websites as a proxy for company support of the organization. Specifically, the expectations should state that all Supporting Companies will voice their support for laws, regulations, and policies that promote transparency efforts aligned with the EITI Standard in the jurisdictions they operate in and globally. Further, they should specify that companies will not conduct activities (such as lobbying) to undermine any aspect of the EITI Standard, as this has been a recurring problem with American companies.

2. **The “comply or explain” loophole in Expectation 2 must be closed**

   As the proposed text is currently worded, it allows companies to decline to report their project-level payments to governments by simply offering an explanation of why they did not. In practice, there is no reason for this loophole to exist. Companies bound by laws across Canada, the European Union, the United Kingdom, and Norway have all managed to report their payments without exception. Unfortunately, this loophole can be used by some recalcitrant American oil companies to shirk their reporting responsibilities: they can simply explain that they are not bound by American law to disclose their payments, while all the while working to undermine the adoption and implementation of such a law.

3. **Expectations 2 and 3 must maintain equal disclosure expectations for EITI-implementing countries and non-EITI countries**

   Proposed changes to the wording of Expectation 3 seem to allow supporting companies to be less rigorous about their reporting in countries that are not themselves EITI-implementing countries. These are the places where it’s most important that companies fully report. Unable to access this data from their government, citizens are often wholly reliant on company disclosure to access this valuable information on their natural-resource revenues. Both Expectations 2 and 3 must maintain that supporting companies report project-level payments to governments in all jurisdictions—including non-EITI countries—in line with the EITI Standard.

Adopt Sanctioning Methods

The EITI must have a way of sanctioning companies that are not compliant with its Standard.

There is a clear process in place for assessing countries’ compliance: countries undergo a regular validation process. If they are evaluated as having failed to comply with the EITI
Standard, they are suspended and given directives for how they can improve. If they continue to fail to comply, they can be removed from the organization. However, if they make the necessary improvements, they can be reinstated as an implementing country.

The EITI is currently operating with a double standard: countries can be sanctioned and must comply with the Standard in order to maintain their membership and the reputational benefit that they derive from it. But companies can act with impunity, gaining the reputational benefit of EITI membership while flaunting the core transparency elements of the EITI and even lobbying against them.

In particular, companies that are not fully compliant with the core expectations of EITI must not be permitted to sit on its Board. That Exxon and Chevron continue to occupy seats on the EITI Board while they flagrantly impede the progress of the organization and its transparency mission is alarming. The EITI must instate a mechanism for removal of companies like this, or it will surely lose its legitimacy.

As the world moves forward with the energy transition, and as countries, companies, and citizens do all we can to try to avert the devastating impacts of climate change, it is more important than ever that we have ample and readily available data from the energy sector. The EITI should be leading the charge in pushing for transparency reforms—from contract disclosure to Scope 3 emissions data to beneficial ownership transparency, and more. Instead, it remains mired in debate around the basic tenets of transparency. Only by holding companies accountable will the EITI truly be able to fulfill this critical need for transparency.