REVISITING THE EITI STANDARD: CRITICAL UPDATES TO ENSURE IMPACT AND RELEVANCE

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Twenty years after its creation, the Extractive Industries Transparency Initiative (EITI) is at a crossroads. Can it deliver on its core objectives to counter corruption and help citizens and communities ensure a fair deal from mining, oil, and gas projects? Or will the EITI Standard remain too weak to fully address these challenges?

In the prior revisions to the Standard, the EITI has only incrementally addressed gender issues and has wholly ignored the energy transition, failing to incorporate necessary disclosure requirements. This June, it must fully address the realities of the energy transition, corruption, revenue generation from the sector and the sector’s gender differentiated impacts, or risk becoming obsolete.

Every three to four years, the EITI—the international standard for transparency in the mining, oil, and gas sector—considers revisions to its Standard, the set of requirements with which its member countries must comply. Substantial progress has been made behind the scenes to queue up potential revisions, but it is critical that the EITI gets the details right.

The EITI Board will vote on revisions to its Standard this June at its Global Conference in Dakar, Senegal. Board members representing 57 Implementing Countries, 67 Supporting Companies, a range of supporting countries, and civil society from around the world will gather to update and determine best practices for transparency in mining, oil, and gas projects for the years to come.

But the legwork is being done now, including at the March 1-2 EITI Board Meeting taking place in Buenos Aires—the last such meeting prior to Dakar. Oxfam has written to the EITI and, through our civil society board members, suggested amendments to the Standard. These requirements will bring us one step closer to ensuring that people throughout the world see equitable development opportunities in exchange for the extraction of their natural resources, and that the energy transition does not repeat the mistakes of the past.

In particular, we urge the EITI to integrate strong requirements and disclosures into the Standard across a range of critical topics that have been discussed among companies, countries, and civil society engaging in the EITI:

- **Anti-corruption**: Company due diligence requirements; reporting on corruption investigations; documentation of “fast-tracking” new licenses; disclosure of contracts governing exploration, barter agreements, infrastructure deals and social/environmental payments; beneficial ownership thresholds of 10% or less and disclosure of beneficial owners of SOE partners; and deviations from revenue management rules.
- **Public revenues**: Fiscal regimes at the project-level; effective tax rates, deductions, and incentives; project-level production and export data; government tax avoidance efforts; project costs; and project audits.
- **Energy transition**: Country-level energy transition plans; subsidies; project GHG emissions; reserves by project; project break-evens and shut-in prices; country forecasts of scenarios for future revenues; and environmental and social impact management and enforcement.
- **Gender**: Gender in EITI principles; gender balance in MSGs; gender workplanning; consultation and compensation disclosures; gender-disaggregated occupation-level employment data; gender considerations in public social expenditures; and more accessible EITI reports.
- **Corporate Accountability**: Full integration of the EITI Company Expectations.

The following outlines what the EITI must do to adequately address each of these items and ensure that the initiative can deliver impact and maintain relevancy.
ANTI-CORRUPTION

The extractive sector has long been notorious for corruption. In its mission statement, the EITI claims that it “provides data that can help identify and close channels for corruption—not only in mining, oil and gas but increasingly in the renewables sector.” While EITI has indeed improved disclosures in the sector, unfortunately, corruption scandals continue to plague mining, oil, and gas; and accountability for past corruption is also insufficient. These scandals undermine EITI’s core argument: that it is the necessary bulwark against corruption in the sector.

This doesn’t mean that EITI has failed in its goal of fighting corruption, but it does mean that we haven’t yet armed EITI with the tools to fully do the job.

In order to more fully deliver on its anti-corruption promise, EITI must integrate the following strong requirements into the Standard:

- **Rigorous due diligence requirements for companies, including publication of an anti-corruption policy.** The policy should align with EITI Company Expectation 7, and should set out how the company manages corruption risk, including how the company collects and takes risk-based steps to use beneficial ownership data regarding joint venture partners, contractors, and suppliers in its processes.

- **Company, country, and Multi-Stakeholder Group (MSG) reporting on any relevant official anti-corruption investigations.** EITI cannot claim to be an anti-corruption initiative if it ignores actual cases of corruption. Country-level MSGs’ reporting needs to include a narrative of whether it has considered publicly-known corruption cases in the sector that are of national relevance for the year in review, and to document its discussion, response, and recommendations. These changes would align with a broader push to ensure accountability for corruption, in line with recommendations from members of the joint EITI-OECD-NRGI-convened Expert Group on Preventing Corruption in Transition Minerals.

- **Documentation by governments of any expedited license award processes (“fast-tracking”).** With the rush to extract minerals necessary for batteries, and in attempts to profit from oil and gas extraction before expected declines in demand and price, countries may be inclined to expedite normal contracting and licensing processes, which could lead to hasty public consultation and decision-making. If expediting licensing, EITI should require that countries report on the rationale for their choice; the award or transfer processes to which these processes applied; the procedures and criteria used; the institutions involved; and the outcomes of the award and transfer processes. They must also divulge any material deviations from the applicable legal and regulatory framework governing license transfers and awards, including an explanation of the methodology adopted for the assessment.

- **Explicit inclusion of exploration contracts, barter agreements, infrastructure deals, and any contracts detailing or mandating social or environmental payments in contract disclosure requirements.** As these contracts and related payments are of interest to stakeholders and may also present corruption risks, they should be made public. Countries should also be required to disclose environmental, social, and gender impact assessments. These are both changes that would complement existing environmental reporting in EITI.

- **Beneficial ownership reporting thresholds of ten percent or lower.** Lower reporting thresholds would ensure greater disclosures of those beneficial owners with significant stakes in a company (those physical persons who have significant ownership or control of a company), and reduce corruption risks. Countries should further be required to provide full disclosure of Politically Exposed Persons’ (PEPs) beneficial ownership regardless of their level of ownership. They should also be required to link publicly available registers on license holders to other platforms that disclose the legal and beneficial owners of companies that hold licenses and contracts.

- **State-owned company disclosures of the identity and beneficial ownership of their agents or intermediaries, suppliers, and contractors.** These disclosures should be required for all material transactions, and state-owned companies should also be required to disclose the sum of public finance invested in the extractive industries (including assets and liabilities, and noting
retained earnings), and to disclose how energy transition and climate risk considerations are informing their decision making.

- **Identification of deviations from existing rules on the distribution of revenues.** This is particularly important where there are missing, unrecorded, or diverted extractive sector revenues. Deviations from rules is a key corruption red flag, and EITI can have concrete impact if this is required.

### PUBLIC REVENUES AND PRODUCTION DATA

The EITI’s strategic priorities include “strengthening revenue mobilisation,” noting that it is “critical for supporting national development and public expenditure priorities, especially in the face of economic downturns and commodity price volatility.”

Unfortunately, the key question of whether a producer country is getting a fair deal for the extraction of its natural resources, in a way that helps strengthen country revenue mobilization, is not yet answerable based on existing EITI disclosures.

While the current disclosures tell us how much extractive companies have paid to governments, they don’t yet arm the public with enough information about why that amount was paid, and whether it’s in line with obligations and expectations. This leaves the disclosures insufficient to inform potential reforms that could otherwise strengthen revenue mobilization and ensure that companies are contributing their fair share to national and local development.

In order to more fully deliver on its strategic priority of revenue mobilization, EITI must integrate the following strong requirements into the Standard:

- **Disclosure of fiscal regimes at the project level.** This detail on project-level obligations would complement the project-level payments-to-governments disclosures at the core of EITI disclosures. The sources of fiscal obligations—i.e. the relevant provisions of laws or contracts—should also be clearly identified.

- **Disclosure of effective tax rates, deductions, and incentives.** This would align with good practice in the sector, demonstrated by a number of EITI Supporting Companies, in publishing tax transparency reports and adopting responsible tax practices.

- **Disaggregated production and export data at the project-level.** This would include data by project, mineral type(s), quality, quantity, and production/export value. Production and exports linked to artisanal and small-scale mining (ASM) should also be included.

- **Documentation of government efforts to combat tax avoidance in the sector.** This would include a description of anti-tax avoidance policies and practices, including transfer pricing rules, and a summary of tax and cost audits undertaken, including their results.

- **Project cost disclosure.** While project revenues in the extractive sector can be estimated from the disclosure of project-level production data, project costs—which are deducted before arriving at taxable profits—cannot be easily estimated without more detail. Project cost disclosure is needed to understand individual project economics, and whether or not companies’ payments align with their obligations. A number of EITI Implementing Countries have experimented with forms of cost disclosure already, including Senegal, Republic of Congo, Ghana, and Nigeria. Cost disclosure should be at a project level and include historical costs to understand any cost overhang or loss carryforward that continues to impact current year tax liability.

- **Project audit disclosure.** Implementing Countries must also publish audit findings and resulting tax liability changes. They should also consider full publication of the audits themselves, as the Republic of Congo has done. These recommendations follow Oxfam’s seminal research on cost control in the oil and gas sector, *Examining the Crude Details*, which was also discussed at the EITI’s last Global Conference in Paris in 2019.

### ENERGY TRANSITION

The existential challenge of confronting the climate crisis requires a massive energy transition from coal, oil, and gas power to cleaner energy sources. For countries reliant on extractive industries—and the
citizens and communities impacted by them—this transition presents a dual challenge of managing the risks associated with the phase out of these dirtier energy sources and of managing those associated with unprecedented demand for mineral resources necessary for battery and electricity transmission technologies.

In order to better assess and manage these risks, increased transparency is needed in the mining, oil, and gas sectors with new types of disclosures. EITI is well positioned to play a leadership role in requiring these sector-specific disclosures, and indeed civil society has been pushing it to do so for at least eight years; but so far the Standard is silent on the energy transition. At this juncture, the energy transition has become an imperative to address the climate crisis, one which can no longer be ignored by an organization dedicated to disclosures in mining, oil, and gas. If EITI declines to integrate energy transition disclosures into its framework, it will lose relevancy as other transparency initiatives and standards will proliferate; EITI will fail in its objective to be the “internationally accepted standard for transparency in the oil, gas and mining sectors.” Worse, the EITI risks effectively greenwashing the industry by allowing fossil fuel companies to showcase their fiscal benefits without also requiring a credible disclosure and consideration of the related risks.

In order to avoid ceding its claim as the international transparency standard for the sector or being accused of fossil fuel greenwashing, and to maintain relevance and inform a just energy transition in mining, oil, and gas producer countries, EITI must integrate the following strong requirements into the Standard:

- **Country-level energy transition plans.** Producer country disclosure of current national energy transition commitments, policies, and plans relevant to extractive industries and reporting of progress made against those plans will help stakeholders better understand how EITI countries are managing the energy transition, its impacts on the extractive sectors, and fiscal risks related to the transition. These disclosures must also include any information on carbon pricing mechanisms and carbon taxes, with details on what is being taxed (carbon consumption or production) and on the systems and methods used to measure it, as well as any policies to harness opportunities or minimize risks related to the energy transition, including workforce policies.

- **Subsidies to the extractive sectors.** Production subsidies for oil, gas, and mining must be disclosed, both because of their fiscal impacts (reducing potential revenues associated with extraction) and because of their contributions to accelerating or impeding potential progress toward the energy transition. Countries could also consider disclosing consumer subsidies.

- **Greenhouse gas (GHG) emissions from extractive projects.** Companies should be required to disclose project-level disclosures of emissions, including scope 1, 2, and 3 emissions.

- **Project-level reserves data.** Companies should be required to disclose project-level details on the reserves associated with extractive projects. This would include the types of resources extracted, the quantity, and quality. When considered in tandem with project-level production data, project-level reserves data can help stakeholders understand forward-looking fiscal revenue potential and potential risks to those revenues over time. Stakeholders can also assess potential emissions embedded in reserves.

- **Project breakeven prices and shut-in prices.** Companies regularly calculate the prices at which their projects will generate a profit and below which producing would be uneconomical. These should be required disclosures, as they would help stakeholders better understand price-related risks that might be associated with decreased demand for specific resources.

- **Forecasted scenarios for future revenues.** Countries should be required to disclose any forecasts related to future revenues from the extractive sector, including the underlying assumptions related to projected production levels, costs, and commodity prices where they exist, accompanied by explanations of how energy transition and climate risk considerations have been considered in revenue forecasting. State-owned companies should also be required to disclose any public finance at risk in their investments (including reinvested capital). To assist in this planning, MSGs should be empowered to request company disclosures of any timelines related to cost recovery.
• **Disclosure of environmental and social impact management and monitoring and project-level enforcement actions.** To ensure that projects are not rushed without essential safeguards, the EITI should require countries to disclose rules related to environmental permits and licenses, rehabilitation, decommissioning, and closure programs. Countries should also be required to disclose information about social and environmental enforcement actions undertaken related to water, land, emissions, and human rights, and the impact of those activities, as well as any related sanctioning processes.

**GENDER**

It is now broadly understood that the extractive sector impacts people differently due to their gender and the ways in which gender intersects with other facets of their identities. Mining, oil, and gas projects can inadvertently reinforce unequal power structures, disrupt the livelihoods of women, including and particularly Indigenous women, as well as increase risks of gender-based violence against women and gender diverse people in local communities. Potential benefits of extractives, such as employment, are often experienced unevenly, with cisgender, non-Indigenous men having greater access.

While many countries and companies see these disparities and are determined to make the sector more equitable, it is difficult to make tangible improvements and identify commitments and targets without the requisite gender-disaggregated and gender-relevant data.

To better address gender-differentiated impacts and advance gender equity in the extractive sectors, the EITI must integrate the following strong disclosure requirements into the Standard:

• **Specific gender reference in the EITI Principles.** The EITI must leave no ambiguity about its support of gender equity and SDG5. It must directly mention gender in its first principle, alongside sustainable development and poverty reduction, as a goal for extractive sector good governance.

• **Mandatory gender balance on the EITI Board and in multi-stakeholder groups.** The EITI Standard currently encourages gender balance in EITI multi-stakeholder groups (MSGs). Despite this provision having been in place for several years, EITI MSGs remain woefully male-dominated. In order to realize this ambition, the EITI Standard must require–rather than merely encourage–gender parity in MSG and Board representation. Further, the EITI Board should demonstrate this value itself by requiring and actualizing gender parity.

• **Gender workplanning.** Encouragingly, many countries support gender equity; however, few have concrete gender work plans in place. The Standard must require that gender considerations are incorporated into work planning. Setting gender action plans with time-bound and measurable targets can help countries move toward mitigating negative and enhancing positive gender-differentiated impacts of the sector. Specifically, EITI MSG work plans must include actions to address gender disparities in participation in the EITI process, representation in EITI data, and access to and use of EITI data.

• **Consultation process disclosures.** Women and other marginalized groups are often left out of major decisions about the extraction that takes place on their land. To ensure inclusive consultation, the EITI Standard must require that a description of community consultation requirements—including Free, Prior, and Informed Consent (FPIC)—is included in the existing requirement about the description of a country’s legal framework. Further, the contract and license allocation provision in the Standard must call for a description of the consultation process that occurred with impacted communities before the license was awarded or transferred. Required data should include the number of people consulted, disaggregated by gender, and how a diversity of perspectives on the project’s impacts were collected, considered, and included in impact assessment results.

• **Land compensation disclosures.** Mining, oil, and gas companies often pay landholders—typically men—compensation in order to access their land. These monies are often not recorded publicly, rendering the deals secret. Communities, and within them women and others relegated to the sidelines of these negotiations, should be able to access this information. In order to make sure that entire communities and households have equal understanding of deals made on their behalf, the EITI Standard can support this by requiring companies to disclose the amount of compensation they have paid to previous surface landholders.
Revising the EITI Standard: Critical Updates to Ensure Impact and Relevance

- **Gender-disaggregated occupation-level employment data.** While women’s overall participation in the global workforce is 47 percent, women make up only 22 percent of the oil and gas workforce and only 14 percent of the industrial mining workforce. Further, women working in the extractive sector overwhelmingly occupy the lowest-paid positions. Data disaggregated by gender and other social identifiers (such as age and Indigenous status) can help set diversity targets. This data must also reflect occupational level, including Boards of Directors. In addition, the EITI Standard must also require a description of gender considerations in procurement, subcontracting, and social expenditures—expenditures that contribute to ways women benefit from the sector through related employment.

- **Gender considerations in public social expenditures.** State-owned enterprises (SOEs) often undertake public social expenditures—such as paying for social services, public infrastructure, fuel subsidies, and national debt servicing outside of the normal budgetary process. As these expenditures have gender differentiated impacts, the EITI Standard should require SOEs to describe how they have considered the gendered impacts of these expenditures.

- **More accessible and relevant EITI reporting.** The EITI is often criticized for producing lengthy reports that are inaccessible to people who live in extraction-affected communities. In order to make EITI reporting more useful so that it contributes meaningfully to public debate, countries should produce summary reports for municipalities and districts that include all data related to the active projects and money tied to that geographic area. These summaries should use plain language and be communicated through radio and other local communication channels.

**CORPORATE ACCOUNTABILITY**

While it’s important for the EITI to have a clearly-articulated set of requirements, those rules are only worthwhile if countries and companies uphold them.

EITI offers tremendous reputational benefit. For businesses and investors, a country’s successful implementation of EITI shows that it has made a commitment to good governance of its natural resource sector and the preservation of civic space, and is an attractive investment destination. For investors, governments, and citizens, a company’s participation in EITI should signal that it is committed to following global best practices that will help make sure that citizens benefit from the extraction of their resources.

However, while the EITI has a formal process for evaluating countries against its Standard, and suspending or expelling them if they fail to comply, it is largely unable to hold companies accountable for their own commitments.

For example, American oil companies Chevron and Exxon have maintained Supporting Company status in the EITI for nearly two decades without ever reporting their payments to governments in all countries of operation—an EITI Company Expectation derived from the basic transparency principle upon which the organization was founded.

Perhaps even more alarmingly, in May 2022, Glencore—another long-time EITI Supporting Company—pleaded guilty to corruption, having paid bribes in at least eight countries (most of them EITI Implementing Countries) over a ten-year period. While news of Glencore’s global corruption continues to mount, the company has been able to maintain its status in EITI. While the Chair of EITI’s Board released a statement condemning Glencore’s actions, the company has not been asked to leave the initiative, nor has the initiative led to greater accountability for the company.

Being an EITI-Supporting Company should mean something. It shouldn’t be a stamp of approval that companies can use to enhance their reputation and stock price without meaningful action.

The EITI must adopt the anti-corruption and other transparency requirements detailed above. It must also create accountability for Supporting Companies in the EITI Standard itself. Last year, after lengthy deliberations, the EITI adopted a set of Company Expectations. This is a good starting point, although accountability for meeting these Expectations is weak. To reinforce the importance of these provisions, the EITI must require compliance with the Company Expectations in its Standard.
The EITI’s Global Conference will take place June 13-14, 2023 in Dakar, Senegal, where its Board will vote on proposed refinements to its Standard. We hope it will adopt a revised and strengthened Standard that requires all of the essential content outlined above to ensure it remains both relevant and impactful.