

Implementing the 2013 EITI Standard in Mongolia

Gap analysis and recommendations

May 2014

INTRODUCTION

The International EITI board approved a new Standard for reporting by EITI implementing countries at its annual board meeting held in Sydney in May 2013.

Mongolia's EITI (MEITI) reporting process for fiscal year 2012 started in March 2013, before the introduction of the new Standard. The government report was finalized in September and the reconciliation report in December 2013. On the purpose of designing further improvements into MEITI, an assessment of the gaps between the current reporting practices and the new standard requirements needs to be done.

Also we have witnessed significant changes in extractive industry policy environment in Mongolia since 2013. For instance, the new investment law, which replaced former law on foreign investment regulation in strategic industries (including mining), was passed by parliament in September 2013 and the state policy on extractive industries has come into force since January 2014. And it is necessary to assess those changes in policy environment from the view of transparency matters.

Acknowledging the need for an assessment of the gaps between MEITI's current reporting in the 2012 report and what is required by the new Standard that also takes into consideration of the specificities of the Mongolian extractive sector, NRGi produced this gap assessment report with assistance of a local expert. (Batpurev A.¹)

Purpose and Organization of this Document

This document provides MEITI with two things. First, the analysis in this document describes significant gaps between current reporting practices and the new Standard. To assess current practices, we examined MEITI reconciliation report for year 2012 and the other relative documents or sources such as laws and rules and the official web sites of Government authorities.

We focus our analysis on the selected topics (listed below) that represent the most pressing challenges – and the greatest opportunities for progress – as MEITI begins to implement the new EITI Standard. The other straightforward supporting requirements are indicated in the attached Excel file.

Second, we recommend how MEITI can address the reporting gaps identified, including through the completion of the its next report (2013). In some cases, more detailed planning will be required and could constitute the next steps in our collaboration.

¹ http://www.linkedin.com/profile/view?id=92570890&trk=nav_responsive_tab_profile

The priority topics addressed by this document are:

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Allocation of Rights

LICENSE REGISTRY §3.9
LICENSE ALLOCATION §3.10
BENEFICIAL OWNERSHIP §3.11 & §3.6(c)
CONTRACT DISCLOSURE §3.12

LICENSE REGISTRY (3.9) & LICENSE ALLOCATION (3.10)

Most countries publish a list of licenses and license holders, often in the form of a map, in order to clarify to host communities, potential investors and other audiences which companies hold which upstream assets.

From the 2013 EITI Standard:

LICENSE REGISTRY 3.9(a)/(b)/(c)

“Implementing countries are required to maintain a publicly available register or cadastre system(s) with the following timely and comprehensive information regarding each of the licenses pertaining to companies covered in the EITI Report:

- i. License holder(s).
- ii. Coordinates of the license area.
- iii. Date of application, date of award and duration of the license.
- iv. In the case of production licenses, the commodity being produced.”

“It is expected that the license register or cadaster includes information about licenses held by all entities, including companies and individuals or groups that are not included in the EITI Report, i.e. where their payments fall below the agreed materiality threshold.”

“Where the information set out in 3.9(b) is already publicly available, it is sufficient to include a reference or link in the EITI Report. Where such registers or cadastres do not exist or are incomplete, the EITI Report should disclose any gaps in the publicly available information and document efforts to strengthen these systems. In the interim, the EITI Report itself should include the information set out in 3.9(b) above.”

LICENSE ALLOCATIONS 3.10(a)-(c)

“Implementing countries are required to disclose information related to the award or transfer of licenses pertaining to the companies covered in the EITI Report, including: a description of the process for transferring or awarding the license; the technical and financial criteria used; information about the recipient(s) of the license that has been transferred or awarded, including consortium members where applicable; and any non-trivial deviations from the applicable legal and regulatory framework governing license transfers and awards. Where licenses are awarded through a bidding process during the accounting period covered by the EITI Report, the government is required to disclose the list of applicants and the bid criteria. Where the requisite information set out in 3.10(a) and 3.10(b) is already publicly available, it is sufficient to include a reference or link in the EITI Report.”

ENCOURAGED DISCLOSURES 3.10(d)

“The multi-stakeholder group may wish to include additional information on the allocation of licenses in the EITI Report, including commentary on the efficiency and effectiveness of these systems.”

GAP ANALYSIS

A Computerized Mining Cadastre System² (CMCS) released by the Mineral Resources Authority (MRAM) under a technical assistance project of the World Bank provides publicly available data on licenses, special areas and licensing procedure documents in the mining sector. However, information about licenses in the oil and gas and nuclear mining sectors are not publicized by the Petroleum Authority (PAM) and the Nuclear Energy Authority (NEA) which are responsible for licensing in these respective sectors.

The CMCS provides a list of all the the names of the exploration/production license holder/applicant and the coordinates of the license area regardless of any threshold level. It does not provide important dates such as date of application, date of award and expiry, though one can find those dates, except for application date, along with information on the commodity being produced in a monthly update³ from the MRAM. (Only in Mongolian)

The 2012 EITI report (annex 4)⁴ discloses the name of the company holding the license, the type of minerals/products, the size of the licensed area, the allocation date and the location. Because CMCS was released in late May 2014 the report has no link or reference to it. The next EITI report should include a reference to the CMCS.

Some information on the license extension procedure is in the EITI report but there are no details on the general licensing process.. The Minerals law of Mongolia⁵ describes all the technical and financial criteria that must be used in the licensing process. The CMCS also describes the process of any license related transaction and provides templates and a list of required documents. This is not part of the 2012 EITI report but it should be referenced in the next report.

The MRAM published a rule of awarding the license through bidding which describes the procedure as well as the bid criteria⁶ but no information about applicants or bid-winners, if there are some, was mentioned in the EITI report. The report does not provide any encouraged disclosure such as comments on the efficiency and effectiveness of the licensing systems either.

RECOMMENDATIONS

Concerning the license registry:

- Further development of CMCS: In order to make it easy to use for rural people, need to make some improvements to CMCS. For instance, redesign it in an interactive data map style where people can click on specific area of the map (their soum i.e) and get all information about the licenses in that area. Now how it works is that user can see cadastral map for only the selected license and it is not able to select the area and see the licenses in there. Also, important dates related to the license and the commodity being discovered or produced should be added to the database.

² <http://cmcs.mram.gov.mn>

³ http://mram.gov.mn/index.php?option=com_content&view=category&layout=blog&id=14&Itemid=34&lang=en

⁴ Link to National report 2012;

[http://resource3.sodonvision.com/eiti/file/2014/1/9q9l08xjggaa2woszyt19afm/Final%20report%20-%20EITI%20Mongolia%202012%20ENG%20\(19-12-13\)%20signed.pdf](http://resource3.sodonvision.com/eiti/file/2014/1/9q9l08xjggaa2woszyt19afm/Final%20report%20-%20EITI%20Mongolia%202012%20ENG%20(19-12-13)%20signed.pdf)

⁵ Minerals law in English; http://www.forum.mn/policy_issue/MineralsLawOfMongolia20090919_en.pdf

⁶ Bidding rule in Mongolian; http://mram.gov.mn/images/stories/mram/AMG/Legal/info/tender_juram_2010.04.01.pdf

- Oil and uranium licenses: Considering significant numbers of licenses are awarded in uranium exploration (one is already ready for production) and in oil exploration and production, it is essential to disclose license data in those fields.

Concerning license allocation:

- The terms of reference (TOR) for the EITI report audit: To meet the Standard, the content of the report must be enriched with more information on the licensing process, its regulation and efficiency. Therefore, the TOR for auditor or reconciler of national report should be amended precisely describing tasks related to reviewing license allocation. (MEITI secretariat commits it has updated TOR for adopting the Standard but information in their web site was linked to old TOR⁷)
- Further data: In addition to the required elements, MEITI should consider including in the registry:
 - The level of ownership of each partner and which member is the operator in case when project is owned by different parties;
 - Notes on the size of any signature bonus offered for the asset, and whether the bonus has in fact been paid;
- Bidding transparency: For the deposit that discovered by state budget funding or retaken, the license is awarded through a bidding procedure. This has been a closed process where citizens cannot obtain enough information for public oversight.
- Ensure that any license awards, which occurred in 2012, are captured in the audit report in accordance with requirement 3.10 about license allocation.

OTHER COUNTRY ILLUSTRATIONS

- The Norwegian Petroleum Directorate provides online and through a user-friendly app detailed and regularly updated information about each license, including a narrative on its status and future outlook, identify of all partner companies including the operator, reserves, production levels over time, and its location on an interactive map.
- Mozambique's Ministry of Mineral Resources has a mining cadastre portal that allows users to click on a tenement or contract in the map to view detailed information or search by tenement code, company name or contract name. However, contracts are not disclosed.

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<http://resource3.sodovision.com/eiti/file/2013/1/1rwbga0pe5og68jcmzmzakfo/2012%20ony%20Tailan%20gargah%20urdirdamzh%202013%2001%2002.pdf>

BENEFICIAL OWNERSHIP 3.11

Disclosing the beneficial owner of companies active in the extractive sector can guard against the allocation of licenses to politically-exposed persons, and also reveal the extent to which companies are utilizing shell companies to potential lessen their tax burden in the producing country. The beneficial owner refers to the natural person(s) who directly or indirectly controls the corporate entity.

ENCOURAGED DISCLOSURES 3.11(a) and 3.11(b)

“It is recommended that implementing countries maintain a publicly available register of the beneficial owners of the corporate entity(ies) that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s) and the level of ownership. Where this information is already publicly available, e.g., through filing to corporate regulators and stock exchanges, the EITI Report should include guidance on how to access this information.”

“Where such registers do not exist or are incomplete, it is recommended that implementing countries request companies participating in the EITI process to provide this information for inclusion in the EITI Report.”

“...it was agreed that the EITI will in the future require disclosure of beneficial ownership. Subject to successful piloting, the EITI Board will develop detailed provisions with a view to make this a requirement from 1 January 2016.”

GAP ANALYSIS

Mongolia has no established policy or practice of revealing the beneficial owners of companies (extractive companies and others). Although there is a law on corporate secrecy⁸ that is used as a shell by people against this requirement, Article 3.2 of the corporate secrecy law states that any legal entity can define itself what kind of information (meet some very general criteria) should be considered as their corporate secret. But it does not necessarily mean that the law prohibits disclosing beneficial ownership of any company.

The General Authority for State Registration and the Tax Office compile records on beneficial ownership but neither has disclosed that information. Available outside sources of beneficial ownership information are no substitute for more official disclosures. For companies listed on international stock exchanges, most of beneficial ownership information is disclosed in their websites according to exchange rules. But they are almost hundred percent only in English.

The 2012 EITI report does not release any information on beneficial ownership. Annex 2 gives some very rough information on nature of the company ownership for covered companies i.e., legal form of entity (public or private), whether state-owned and foreign or Mongolian etc.

The TORs for the reconciliation of 2012 reports did not require the auditor to extract or encourage companies to release beneficial ownership information. This should be included in the next TORs.

RECOMMENDATIONS

⁸ English translation of the law wasn't found. Link to Mongolian text:
<http://www.legalinfo.mn/law/details/102?lawid=102>

- Clear legal environment: There is still room for avoiding disclosure of beneficial ownership information in the legal framework because of some contradiction of articles in relevant laws. This is why Mongolia needs to establish a clear policy and supportive legal environment for disclosure of beneficial ownership. A draft law on transparency in the extractive industry could be crucial for this purpose.
- Company reporting of beneficial ownership: MEITI can instruct reporting entities to report their beneficial owners. We recommend that MEITI add an improved definition of beneficial ownership to the draft TOR's current language, and specify that the reporting template should collect the following information:
 - The company's full name;
 - Legal form and status;
 - Year of incorporation;
 - A full list of directors and senior officers;
 - All individuals or entities holding more than 5 percent of total shares in the company, including their full names, addresses, numbers and categories of shares held.
- Verification of the list by the GASR: The General Authority for State Registration (GASR) could be asked to verify the beneficial ownership data submitted by the companies themselves. This could be added to the reconciler terms of reference. If the above proposals prove to be too difficult, another route is for the GASR to publish the recorded beneficial ownership information of the companies covered by the next MEITI report rather than the companies providing the information themselves.

OTHER COUNTRY ILLUSTRATIONS

- In South Sudan, the Petroleum Act requires the publication of beneficial ownership data for companies holding exploration and production sharing agreements.
- Tanzania's Business Registrations and Licensing Agency provides the option to request beneficial ownership information.
- The Financial Action Task Force (FATF) is an inter-governmental body established in 1989. The FATF has developed a series of recommendations, including on disclosing beneficial ownership information to law enforcement agencies. The FATF Recommendations are applied by over 180 countries, including 29 countries implementing EITI, through a global network of regional affiliated bodies.

CONTRACT DISCLOSURE 3.12

An increasing number of countries are disclosing the text of the contracts and associated agreements (e.g. MOUs) that govern petroleum and mineral production. Contracts are the fundamental agreements that set out a company's fiscal, environmental, social and operational obligations.

REQUIRED DISCLOSURES 3.12(b)

"It is a requirement that the EITI Report documents the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals. This should include relevant legal provisions, actual disclosure practices and any reforms that are planned or underway."

"Where applicable, the EITI Report should provide an overview of the contracts and licenses that are publicly available, and include a reference or link to the location where these are published."

ENCOURAGED DISCLOSURES 3.12(a)

"Implementing countries are encouraged to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals."

GAP ANALYSIS

The Government of Mongolia has not made any effort to disclose the contracts signed with extractive companies so far. No government agency has published any type of primary agreement in the industry. The coalition has publicized investment agreement for Oyu Tolgoi and 3 other stability agreements in their website⁹. All other primary contracts, including 3 more stability agreements in mining, 1 shareholders agreement in uranium exploration and development and approximately 20 product-sharing agreements in oil & gas industry, are not publicly available.

The 2012 EITI report does not disclose any contract nor does it document the government's policy on contracts disclosure, including relevant legal provisions, actual disclosure practices and any reforms that are planned or underway as required by the EITI standard. It only provides some observation on non-primary agreements with local administration by a number of companies.

MEITI should strongly consider publishing upstream agreements as part of its future reporting. Having access to contracts would allow NGOs, journalists, industry analysts and other demand-side accountability actors to improve their reporting and advocacy around key sector operations and transactions. Greater contract transparency would help close some avenues for discretion-based, concessionary deal-making between government and the private sector. It would also help interested parties pursue related topics such as infrastructure deals or community payments, where accurate reporting requires knowledge of what is in the underlying contracts.

RECOMMENDATIONS

- Amendment to laws: The Ministry of Mining has recently submitted a draft law on transparency in extractive industry, which has a clause about contract transparency, to the parliament. But it is too general and does not regulate disclosure of contracts in a way multi stakeholders can get necessary information. Therefore, it must be changed to clearly reflect what content of which

⁹ <http://www.eiti.mn>

contracts should be disclosed. New drafts of Minerals law and Oil law should also be improved in order to support contract disclosure.

- Parliamentary hearing: For the strategic mines, the government asks parliamentary approval for signing the contract between government and the investor. In that case, it is an idea to have an open hearing at the parliament on proposing contracts.
- Collecting the contracts: MEITI should collect copies of the relevant contracts both from the companies and from the relevant government agency through its secretary.
- Online Contract Portal: Once the materials are gathered, disclose all active exploration and production agreements on a website that individuals can access free of charge and anonymously. Future audit reports and the MEITI website should provide a link to the portal. In particular, the portal should contain the full texts of all contracts, MoUs and other agreements establishing the terms under which exploration and production will take place, together with any related addendum, annex, rider, amendment, alteration, executive directive or other supporting document that clarified or altered terms.
- Non-redaction of contracts: As per 3.12(c), EITI implementing countries should disclose the full text of contracts. In most countries where exploration and production contracts have been disclosed by governments (Liberia, Peru, the US, Congo-Brazzaville, Mauritania, Ghana, Afghanistan, DRC, etc.) and companies (Rio Tinto, BP, Tullow, Kosmos, etc.), there have been no redactions.

OTHER COUNTRY ILLUSTRATIONS

- Contracts from 11 countries are available at www.resourcecontracts.org.
- The government of Guinea has an excellent website with summaries and full digital documents of contracts, conventions, annexes and amendments related to the extractive industries. Although access to information is included in the Constitution, the new Mining Code will require further transparency.
- Open Contracting Global Principles: The Open Contracting Partnership has facilitated a global consultation process to create a set of global principles that can serve as a guide for all of those seeking to advance open contracting around the world. The principles reflect norms and best practices from around the world related to disclosure and participation in public contracting.

PRODUCTION DATA FOR FISCAL YEAR (3.5)

Production volumes and values can be an important factor in the level of government take that countries receive from extraction. Production volumes and values help to contextualize the revenue figures contained in EITI Reports.

EITI reporting in this area could contribute to reforms such as policies to tackle tax evasion and improvements in revenue forecasting.

EXPLORATION ACTIVITY: REQUIRED DISCLOSURE §3.3

“The EITI Report should provide an overview of the extractive industries, including any significant exploration activities.”

TOTAL PRODUCTION: REQUIRED DISCLOSURE §3.5(a) & §3.4(e)

§3.5(a) “The EITI Report must disclose production data for the fiscal year covered by the EITI Report, including total production volumes and the value of production by commodity, and, when relevant, by state/region.”

§3.4(e) “The EITI Report must disclose, when available, information about the contribution of the extractive industries to the economy for the fiscal year covered by the EITI Report. This information is expected to include...key regions/areas where production is concentrated.”

TOTAL EXPORTS: REQUIRED DISCLOSURE §3.5(b)

The EITI Report is required to disclose “total export volumes and the value of exports by commodity, and, when relevant, by state/region of origin.”

GAP ANALYSIS

A very brief overview of oil/gas and mining industries is included in the report. (page 12-18) It does not emphasize any company or significant project. Especially for exploration activities, the report cannot give proper understanding.

Exploration activities: Information on exploration activities, disaggregated by commodity and company, could be estimated from the given data.

Production data: Production volumes and values of all commodities are combined in MEITI report 2012. This information is also disaggregated by company. The MRAM and the Customs Office of Mongolia (which reports to the Ministry of Finance) disclose monthly statistics¹⁰ too on the aggregate value of minerals production and exports. The [Ministry of Finance](#) publishes annual data on export quantities, taxes and fees paid by resource companies.

Annex #4 of the report gives locations of each company's license areas and mine sites. Combining this with appendix #3, which shows production volumes by company, could produce information of production volume by regions theoretically. But it is complicated when a company operates in many different regions.

¹⁰ Link to latest report (by April, 2014) in Mongolian:
http://mram.gov.mn/images/stories/mram/statistek/2014/monthly_report_2014.05.09.pdf

Exports: Export values and volumes of minerals are not included in MEITI report 2012. However, above-mentioned monthly statistics from MRAM discloses export data as well as a survey of licensing. It is not referenced in the report.

RECOMMENDATIONS

- Project disaggregation: It is quite common that a company runs more than one exploration or production projects together and is complicated for local people to know about a specific project in their living area. Reporting templates should be revised to include a section on production volumes and values for the years covered by the reporting period and at least for one previous year. The data should be reporting in a manner that is disaggregated by company, project, and commodity.
- Sub-national data: Not only the revenue but also production data should be given by aimags/regions in order to reinforce local oversight.
- Other recommendations by NRG
 - EITI Reports should also disclose the quantity of estimated proven reserves for each commodity.
 - To enable comparisons, figures should be disclosed for the reporting year and at least one prior year.
 - Information about the stage of production of the commodity in each state/region should be provided to allow for more informed understanding of the relationship between production and revenue levels.
 - The source of information for volume data should be included in the EITI Report. The methodology and prices used to calculate the value of production and export volumes should also be fully explained.
 - Exploration data should be displayed alongside related information, such as details on exploration license allocations and any revenues associated with such exploration activities.
 - The source of the export data should be included in the EITI Report along with the formula used to calculate the value of the exports.
 - Reports could also contain information on the destination market for exports.
 - EITI Reports should detail the purpose and buyer for non-exported commodities as well, such as commodities that are processed domestically.

OTHER COUNTRY ILLUSTRATIONS

- The Nigerian National Petroleum Corporation discloses production information by company in its [Annual Statistical Bulletins](#).
- Zambia discloses online maps of exploration activities, including the type of mineral and the area of exploration
- In Chile, the [Ministry of Finance](#) regularly publishes information on production volumes, prices and mineral export values. The [Ministry of Mines](#) publishes information on mineral reserves, production volumes, prices and mineral export values. The [Chilean Copper Commission](#) publishes information on reserves, production volumes, prices, value of mineral exports,

production costs, companies operating in the country, production data by company, and production stream values.

- In Timor Leste, the [Ministry of Finance Budget Reports](#) include data on production volumes, prices, export values, and disaggregated resource revenue streams. The [National Petroleum Authority](#) also publishes considerable information on the petroleum industry, including data on reserves, production volumes, and investment, but these figures are not organized systematically. Timor's [Central Bank](#) and [Ministry of Finance](#) publish Petroleum Fund receipts. The Ministry of Finance's budget disaggregates petroleum and non-petroleum revenues.

Revenue collection – contextual information

LEGAL FRAMEWORK & FISCAL REGIME (3.2)
OVERVIEW OF EI (3.3)
CONTRIBUTION OF EI TO ECONOMY (3.4)
PRODUCTION DATA FOR FISCAL YEAR (3.5)

LEGAL FRAMEWORK & FISCAL REGIME (3.2)

The legal framework and fiscal regime establish the rules that will determine the contribution that royalties, taxes, in-kind revenues, infrastructure/barter arrangements, transportation revenues and

REQUIRED DISCLOSURE 3.2

The EITI Report must describe the legal framework and fiscal regime governing the extractive industries.

This information must include a summary description of the fiscal regime, including the level of fiscal devolution, an overview of the relevant laws and regulations, and information on the roles and responsibilities of the relevant government agencies.

Where the government is undertaking reforms, the multi-stakeholder group is encouraged to ensure that these are documented in the EITI Report.

other payments make to the national economy. In other words, comprehensive information on the legal environment and fiscal regime can give people a broad picture of the extractive industry's role in the economy and gives the possibility to assess the effectiveness of the natural resource exploitation.

Requirements about the legal framework and fiscal regime and contribution of extractive industry to the economy are discussed within production data instead of revenue session.

GAP ANALYSIS

The 2012 EITI 2012 does not describe the legal framework and fiscal regime governing the extractive industry. The TOR for the audit did not require the auditor to do a summary of the fiscal regime, including the level of fiscal devolution, overview of the relevant laws and regulations and information on the roles and responsibilities of the relevant government agencies per the standard. Broad reforms in this sector are underway but the report does not mention them.

RECOMMENDATIONS

- TOR update: Giving an overview of the legal environment and fiscal regime according to the standard requirement would be straightforward. We recommend to update the TOR and publish the relevant background information in the next report. Within that inclusion, the EITI Report should;
 - Describe the types of contracts used in the sector (e.g., concession or license agreement, a production sharing agreement, a service contract, or a hybrid system mixing various elements of these) and describe their main features.
 - Provide a link to the relevant legislation and summarize the relevant provisions.
 - Indicate whether the fiscal regime is found in the mineral legislation and regulations or negotiated in individual agreements, and describe its core elements.
 - Indicate which authority collects each of the major payments received from extractive companies as well as the division of all policymaking, licensing/concessionaire and regulatory responsibilities.

OTHER COUNTRY ILLUSTRATIONS

- Ghana's [2010-2011 EITI Report](#) provides an overview of the regulatory framework in the petroleum sector, including relevant legislation, fiscal provisions and agencies.
- Albania's [2010 EITI Report](#) features a description of the institutional framework in the mining sector, including the legislation that compels mining companies to make EITI disclosures.

ECONOMIC CONTRIBUTION (3.4)

EITI reports must disclose information about the extractive sector's contribution to the economy, including as a share of GDP , revenues and exports.

GAP ANALYSIS

REQUIRED DISCLOSURE 3.4(a)-(c)

"The EITI Report must disclose, when available, information about the contribution of the extractive industries to the economy for the fiscal year covered by the EITI Report. This information is expected to include:

- a) Size of the extractive industries in absolute terms and as a percentage of GDP, including an estimate of informal sector activity.
- b) Total government revenues generated by the extractive industries (including taxes, royalties, bonuses, fees, and other payments) in absolute terms and as a percentage of total government revenues.

The 2012 MEITI report provides a brief overview of the mining and oil industry in its introduction chapter. That overview gives some background information but the information about the contribution of extractive industries to the economy is not enough to meet the new requirements. For instance, it does not include any estimation of informal sector activity, description of key regions or areas where production is concentrated and export values from the extractive industries both in absolute terms and as a percentage of total exports.

The report gives some data on quantities and dollar values of major commodities but does not give the size of the whole industry in absolute terms. But it gives percentage of the mining production, not uranium and oil, in GDP (18% in 2012) and Gross Industrial Product (67% in 2012).

The report also publishes figures of total government revenues generated by the extractive industries in both absolute and percentage term from the report.

RECOMMENDATIONS

Electronic database: Using the collected information, which available in Excel file, , the EITI secretariat may establish an electronic database of extractive industry and its economic implications that will make it easier for auditors to analyze statistics and to do a comprehensive review of the industry.

OTHER COUNTRY ILLUSTRATIONS

- Kyrgyzstan's [2011 EITI Report](#) includes information on the mining sector's contribution to GDP, industrial output, total exports and total tax and customs revenues.
- Burkina Faso's [2010 EITI Report](#) provides information on the contribution of revenues from the extractive industries as a percentage of GDP.
- Iraq's [EITI Reports](#) include market data.
- The [U.S. Energy Information Administration](#) provides relevant data for the United States and the rest of the world.

Revenue Collection	REVENUE DISSAGGREGATION §5.2(e) BARTER DEALS §4.1(c)/(d) IN-KIND REVENUES §4.1(c)
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Reconciliation results session of the MEITI report 2012 details all kinds of revenue streams (27 to state budget, 12 to local budget) from covered companies. But the report does not include total revenues from all extractive companies and its percentage in total government revenue. Section 2.2.2 mentions the lack of information on total extractive industry revenue to compare to the reported.

Except for this, revenue reporting of MEITI meets all requirements in 4.1a-4.1b. Hence, this gap assessment focuses on other relevant requirements.

IN-KIND REVENUES 4.1(c)

REQUIRED DISCLOSURE 4.1(c)

“Where the sale of the state’s share of production or other revenues collected in-kind is material, the government, including state-owned enterprises, are required to disclose the volumes sold and revenues received.”

ENCOURAGED DISCLOSURE 4.1(c)

“Reporting could also break down disclosures by the type of product, price, market and sale volume.”

“Where practically feasible, the multi-stakeholder group is encouraged to task the Independent Administrator with reconciling the volumes sold and revenues received by including the buying companies in the reporting process.”

GAP ANALYSIS

In-kind revenue stream is not used in practice in Mongolia under the current legal framework and fiscal regime. It could be relevant to the production sharing agreement with the company “Daqin Tamsag” on Mongolia’s only oil producing project so far. But in this agreement, the government (Petroleum Authority) does not sell any production, instead it receives value entitlements at pre-defined price.

Most important thing here is that the revenue sharing scheme in the production sharing agreement and the pricing rules are not publicly disclosed.

RECOMMENDATIONS

- Revenue sharing scheme and pricing rules for the oil production sharing agreements must be disclosed.

INFRASTRUCTURE/ BARTER ARRANGEMENTS 4.1(c)/(d)

EITI Reports are required to report on deals where companies provide the government with goods and services – such as infrastructure projects or loans – in exchange for extractive rights.

REQUIRED DISCLOSURE 4.1(d)

“The multi-stakeholder group and the Independent Administrator are required to consider whether there are any agreements, or sets of agreements involving the provision of goods and services (including loans, grants and infrastructure works), in full or partial exchange for oil, gas or mining exploration or production concessions or physical delivery of such commodities.

Where the multi-stakeholder group concludes that these agreements are material, the multi-stakeholder group and the Independent Administrator are required to ensure that the EITI Report addresses these agreements, providing a level of detail and transparency commensurate with the disclosure and reconciliation of other payments and revenues streams. Where reconciliation of key transactions is not feasible, the multi-stakeholder group should agree an approach for unilateral disclosure by the parties to the agreement(s) to be included in the EITI Report.

The multi-stakeholder group and the Independent Administrator will need to gain a full understanding of: the terms of the relevant agreements and contracts, the parties involved, the resources which have been pledged by the state, the value of the balancing benefit stream (e.g. infrastructure works), and the materiality of these agreements relative to conventional contracts.”

GAP ANALYSIS

Neither the multi-stakeholder group nor the secretariat of MEITI has full information on whether companies are in any agreements, or sets of agreements involving the provision of goods and services including infrastructure works, in exchange for exploration or production rights since agreements between companies and government entities are not disclosed.

Companies often claim that they do lots of infrastructure constructions as well as barter payments upon local administration requests. Since local authorities have no legal right to impose any social payment on the companies, those infrastructure provisions and barter payments cannot be treated as mandatory social payment unless the company accepted obligation by the contract. (to which we don't have access) They tend to value those provisions on their own without any validation or audit and report them as a non-monetary donation. The reporting forms allow them to disclose non-monetary donations voluntarily. The reconciler noted in the report that “the reporting of monetary and non-monetary donations was poor especially from the government side. In our view this was due to the fact that ‘donations’ were classified under Basic Payments. In addition, the donations include both monetary and non-monetary and it is obviously difficult for a recipient to evaluate non-monetary donations.”

Since no one, except signed parties, has full access to this kind of agreements, it is impossible to review terms of agreements and to reconcile barter payments and receipts. That is why some companies report infrastructure and barter provisions unilaterally.

RECOMMENDATIONS

- Amendment to reporting form: Current reporting forms include infrastructure construction and barter arrangements as a non-monetary donation. But it could be either a donation or an

obligation. Following voluntary nature of donations, infrastructure provisions are not reconciled in an appropriate way considering valuations of both parties for that project. These nuances need to be reflected in MEITI reporting forms.

- Disclosure of infrastructure and barter agreements: Any such agreements signed during the audit period should be disclosed in the final audit report, together with a robust description of the agreement's parties, value, period of performance, and key obligations and mechanisms.
- Full reconciliation for alternative finance arrangements: the terms of reference for the auditor may require some amendment to ensure the reconcilers perform this task.

OTHER COUNTRY ILLUSTRATIONS

- The DRC's 2010 EITI Report describes a contract between the state-owned company Gecamines and Chinese mining companies, including infrastructure provisions. A list of infrastructure projects is given, including their cost, along with the amount of signing bonuses and loans under the agreement. However, the revenues (value of infrastructure and monetary flows) have not been included in the reconciliation portion of the report. The report specifically notes that the lack of clarity around the terms of the contract limited the ability to report on these payments.

PROJECT DISSAGGREGATION 5.2(e)

Disaggregation is perhaps the greatest determinant of whether an EITI report is useable and significant. Complex industries cannot be captured in single figures. Revenue data is more valuable if it is detailed because users of EITI reports can tell very little from aggregated information, which does not enable monitoring or investigation of specific issues.

REQUIRED DISCLOSURE 5.2(e)

“The multi-stakeholder group is required to agree the level of disaggregation for the publication of data. It is required that EITI data is presented by individual company, government entity and revenue stream. Reporting at project level is required, provided that it is consistent with the United States Securities and Exchange Commission rules and the forthcoming European Union requirements.”

GAP ANALYSIS

One of the pros of MEITI reporting is that it gives broad range information detailed by individual company, government entity and revenue streams. However, project level reporting is still in debate in Mongolia’s EITI framework.

Civil society coalition strongly demands project level reporting, arguing that reconciling every project separately would prevent from tax avoidance where companies often hold many licenses even they tend to operate in different sectors and offset its loss in any other business with profit from mining/oil.

Other stakeholders in EITI mechanism argue that project level reporting would make EITI reporting and audition process much more complicated. Using the approach to defining “project” that was adopted by the European Union in 2013, it appears that current MEITI reporting fulfills the requirement only partially, though there is scope for interpretation.

RECOMMENDATIONS

- When appropriate, disaggregate reporting by projects: At least some important information could be reported at project level making some changes to reporting forms. The EITI secretariat should play a leading role in this. Because of the accounting standard used in Mongolia, companies usually do not book financial records of its projects separately. It makes them reluctant about reporting at project level. The companies tend to operate in many different sectors in addition to mining. To decrease their tax cost, those companies set their losses or investments in other fields with profit from the mining project. They also take the holes in tax regulations to lower the tax deductible income of the mining project by combining costs of independent exploration activities. In order to overcome these problems with tax accounting, the country needs to conduct much broader legal reform in tax accounting. But before that, MEITI should request that main financial information of extractive projects to be reported as disaggregated at project level.

NRGI RECOMMENDATIONS

- The revised EU Accounting and Transparency Directives, agreed in 2013, require disclosure by extractive companies of payments arising from specific projects on a project-by-project basis. Payments made at

entity level, such as corporate income tax, would not be included in project-level reporting. Transposition of the Accounting Directive into EU Member State law must be complete by July 2015. The Transparency Directive is expected to be formally written into law in October 2013, at which time a transposition deadline will be established.

- EU project definition: The size of project-level payments largely derives from the fiscal terms assigned to a given concession or license area. It follows that an extractive industry project should be defined in relation to the lease, license or other concession-level legal arrangement that governs its rights and fiscal obligations (while avoiding the artificial apportionment to projects of entity-level payments such as corporate income tax). This is provided for under the EU Accounting Directive, which defines a project as “the operational activities that are governed by a single contract, license, lease, concession or similar legal agreements and form the basis for payment liabilities with a government.”
 - To provide flexibility to companies, the Accounting Directive also permits extractive companies to report as a single project operations under “multiple such agreements” provided these are “substantially interconnected,” i.e., “a set of operationally and geographically integrated contracts, licenses, leases or concessions or related agreements with substantially similar terms that are signed with the government” and “give rise to payment liabilities.”
- Section 1504 of the 2011 US Wall Street Reform Act required US-listed extractive companies to report payments to governments on a project-by-project basis. The regulations pertaining to this provision have not yet been agreed: the Securities and Exchange Commission is revising the original version following a court decision in the lawsuit filed by the oil industry lobby group the American Petroleum Institute.
 - §4.1(c) requires that reporting on in-kind revenues is disaggregated to a level commensurate with that required in §5.2(e). We provide recommendations for how to do this in the section of the Guide on in-kind revenues.
 - §4.1(f) requires that reporting on transportation revenues is disaggregated to a level commensurate with that required in §5.2(e). We provide recommendations for how to do this in the section of the Guide on transportation revenues.
 - The EITI Standard is unclear on the level of disaggregation required for reporting on SOE quasi-fiscal expenditures (§3.6(b)), infrastructure provisions and barter arrangements (§4.1(d)), and social expenditures (§4.1(d)). RWI recommends that the data is disaggregated to a level commensurate with that required in §5.2(e) so as to achieve consistency. Guidance for how to do that is contained in the sections that address these topics.

OTHER COUNTRY ILLUSTRATIONS

- In **Indonesia**, the final EITI reporting template for oil and gas sectors requires material companies to report revenues separately for each of their production-sharing contracts. Multinational oil companies (including BP, CNOOC, INPEX, Petrochina, Total and others) participated in the multi-stakeholder process that generated these templates. In **Timor-Leste**'s 2009 EITI report, companies reported data on each oil and gas production-sharing contract they held with the government. In this report, six different ConocoPhillips subsidiaries, each linked to a particular block or concession area governed by one contract or agreement, reported individually and publicly on project proceeds.

SOE LEVEL OF BENEFICIAL OWNERSHIP 3.6(c)

REQUIRED DISCLOSURE 3.6(c)

“Where state participation in the extractive industries gives rise to material revenue payments, the EITI Report must include disclosures from the government and SOE(s) of their level of beneficial ownership in mining, oil and gas companies operating within the country’s oil, gas and mining sector, including those held by SOE subsidiaries and joint ventures, and any changes in the level of ownership during the reporting period. This information should include details regarding the terms attached to their equity stake, including their level of responsibility to cover expenses at various phases of the project cycle, e.g., full-paid equity, free equity, carried interest. Where there have been changes in the level of government and SOE(s) ownership during the EITI reporting period, the government and SOE(s) are expected to disclose the terms of the transaction, including details regarding valuation and revenues. Where the government and SOE(s) have provided loans or loan guarantees to mining, oil and gas companies operating within the country, details on these transactions should be disclosed in the EITI Report.”

GAP ANALYSIS

State participation in mining activities is a commonly accepted tradition in Mongolia. Following then newly introduced concept of the Strategic deposit by Minerals law 2006, government shareholding and ownership has increased to a very high level. For instance, nowadays the country’s biggest copper producer “Erdenet” is 51 percent state-owned, the world class copper-gold project “Oyu tolgoi” is owned at 34 percent by the state-owned company Erdenes Oyu Tolgoi, and most of the biggest coal producers of the country are owned by government or sub-national governments.

In uranium exploration and prospective production, the government also established a joint venture with France’s “Areva” group and Japan’s “Mitsubishi” corporation. In oil and gas, Mongolia uses Product sharing agreement model instead of joint venture. The process to consolidate all those state ownerships under a holding company “Erdenes Mongolia” is underway.

According to Mongolian laws, SOEs are treated as a regular company, not as a government entity, and so is in MEITI processes. Hence, no special requirements are set for SOEs and no specific tasks regarding SOEs are given to the auditor.

MEITI report 2012 answers whether its covered companies are state owned or not. Though there is no information like beneficial ownership, details of agreements attached to their equity stake, government’s level of responsibility to cover expenses at various phase of project cycles and changes of ownership etc.,

RECOMMENDATIONS

- Beneficial ownership registry: If the country maintains a publicly available beneficial ownership registry as recommended in the allocation of rights section SOEs would be included in it too.

- **Broader context:** An explanation of the prevailing rules and practices regarding the financial relationship between the government and SOEs needs to be included in the MEITI report.
- For each enterprise that the SOE fully or partially owns, the report should describe the entity's activities, objectives, governance structures, earnings, identity of other owners (including beneficial ownership) and the shares held by each owner. It should also explain how earnings from each are shared with the parent company and with the state, such as the retention of revenues, the payment of dividends, the payment of associated investment and operating costs, etc.
- Because the acquisition and sale of equity by SOEs has major revenue implications, these sales should be fully transparent. For sales, in addition to the price paid, the report should explain the process for selecting the buyer and what happens to the proceeds from the sale.

OTHER COUNTRY ILLUSTRATIONS

- According to the 2013 Resource Governance Index (RGI), SOEs issue full financial reports that include information on subsidiaries in countries including Trinidad and Tobago, India, Indonesia, Brazil, Kuwait, Morocco, Norway, Russia, Chile, China and Mexico.

SOE PAYMENTS AND TRANSFERS 4.2(c)

REQUIRED DISCLOSURE

3.6(a)

"Where state participation in the extractive industries gives rise to material revenue payments, the EITI Report must include: a) An explanation of the prevailing rules and practices regarding the financial relationship between the government and state-owned enterprises (SOEs), e.g. the rules and practices governing transfers of funds between the SOE(s) and the state, retained earnings, reinvestment and third-party financing."

4.2(c)

"The multi-stakeholder group must ensure that the reporting process comprehensively addresses the role of SOEs, including material payments to SOEs from oil, gas and mining companies, and transfers between SOEs and other government agencies."

GAP ANALYSIS

The report publishes all the fiscal transfers between the SOEs and government entities as same as private companies. (page 34-41) But it does not distinguish SOEs from other companies. The data, disaggregated by revenue streams cross companies, can be seen in an Excel file attached to the report. (Downloadable on MEITI web site) However, it is not clear whether the SOEs received material payments from oil, gas and mining companies. The report does not mention either whether there were transfers between SOEs. The kinds of transfers between the SOEs and the treasury will vary, and they are often both sizeable and complex. Careful oversight is essential.

Since all the state holdings will be collected under “Erdenes Mongolia” SOE, it might receive dividends from its subsidiaries and joint-ventures.

RECOMMENDATIONS

SOE-specific reporting form: Given the specificities of SOEs, MEITI should produce an SOE-specific reporting form

- The SOE-specific reporting should cover, in addition to payments by SOEs to government entities, the following kinds of revenue payments received by the SOE;
 - Dividend payments to the SOE from joint ventures in which the SOE holds equity
 - Royalties (mineral royalties are not paid directly to the SOE, but there could be some other cases)
 - Area fees/surface rentals
 - Petroleum or minerals received by the SOE pursuant to production sharing agreements or other contractual clauses (possible in future case)
 - Petroleum or minerals taken by the SOE in-kind as coverage for a tax or other fiscal obligation (dates, volumes, grades, monetary equivalent)
 - The proceeds from the sale of the SOE’s production share
 - Training and data fees
 - Social contributions
 - Other earnings, especially from non-commercialized companies.

- The EITI Report should cover any transfers from government to the SOE;
 - Contributions to operating and capital expense
 - Loans
 - In-kind transfers
 - Funds to pay for fuel subsidies

- In addition to explaining the financial relationship between SOE and the state, the report should include the rules and practices related to: corporate governance including the members of the board and their appointment procedure; the identity of the company’s shareholders and their rights; and oversight mechanisms (including parliament) and auditing procedures. The EITI Report should also direct the reader to publicly available SOE annual reports and independent audit statements – essential components of corporate governance that the EITI Reports cannot replace. The explanation of the prevailing rules and practices should include annual reports and independent audits of state-owned enterprises.

OTHER COUNTRY ILLUSTRATIONS

- Cameroon’s [2006-08 EITI Report](#) includes information on the national oil company’s royalty receipts, signature bonuses, dividends and training fees, share of barrels produced, and transfers to the treasury.

- Cote d'Ivoire's [2007-08 EITI Reports](#) reconcile statements regarding the value of oil and gas transfers between private partners and the SOE, as well as SOE's tax and dividend payments to the state.
- The DRC's [EITI Reports](#) provide information on the revenue that the government receives as a shareholder separate from the revenue it receives as a public institution. About a fifth of the government's mineral revenue derives from its shareholding capacity.

SOE EXPENDITURES 3.6(b)

SOEs frequently spend for reasons other than its core business, usually acting on behalf of government. It funds donations, pays social services, funds infrastructure and acquires assets for other government entities. These expenditures require extensive oversight because they bypass the central budget and are often discretionary.

REQUIRED DISCLOSURE 3.6(b)

SOE(s) are required to report "their quasi-fiscal expenditures such as payments for social services, public infrastructure, fuel subsidies and national debt servicing. The multi-stakeholder group is required to develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams, and should include SOE subsidiaries and joint ventures."

Quasi-fiscal expenditures include payments for "social services, public infrastructure, fuel subsidies and national debt servicing."

GAP ANALYSIS

MEITI does not publish quasi-fiscal transactions. There are lots of unproved information about quasi-fiscal expenditures by SOEs. The biggest and only proved one is that "Erdenes Tavan Tolgoi" SOE fueled \$300M to Human Development Fund which was used to distribute cash handouts to all citizens before the election 2012. This transaction was not disclosed at the time and was revealed after the election which was held in June 2012.

RECOMMENDATIONS

- Systematic collection of QFE data. As recommended above, a special task should be added to the financial audit ToR which can request quasi-fiscal reporting. The ToR should include a comprehensive definition aligned with international good practice, and the reporting should be extended to all SOEs and JVCs.
- Disaggregation and explanation. Section 3.6(b) of the new Standard requires reporting on QFEs that achieves a level of transparency "commensurate with other payments and revenue streams." To adequately disaggregate QFE reporting, SOEs should provide information about each major quasi-fiscal transaction type. At a minimum, data should be divided by type, and by major transactions within that type. For example, "Company X spent \$250 million repaying government loans, paying \$100 million in May to repay Loan A and \$150 million in November to

repay Loan B.” In addition, SOEs should be required to explain the nature of the expenditure and the authorizing authority.

- Reconciliation. When the expenditure involves a transfer between a SOE and a government entity, the payments should be reconciled.

OTHER COUNTRY ILLUSTRATIONS

- Eight of the state-owned companies assessed by the Resource Governance Index publish information about their quasi-fiscal expenditures including Kazakhstan, Yemen, Morocco, Chile and Mexico.
- A report by the International Budget Partnership explains why QFEs require public scrutiny and explain good practices in how they should be reported.
- The IMF’s Guide on Resource Revenue Transparency identifies several common kinds of QFEs and identifies the associated economic and governance risks.

Subnational Revenues | DIRECT PAYMENTS/RECEIPTS §4.2(d) TRANSFERS §4.2(e)

DIRECT PAYMENTS/RECEIPTS 4.2(d)

The EITI requires the disclosure of material payments from companies to subnational governments. Because policy decisions regarding subnational revenues determine the benefits received by producing communities and the share of revenues available for specific regions versus the entire country, transparency about these revenue flows is crucial. Key governance challenges associated with subnational revenues include bribery of local officials to gain a social license to operate; low technical capacity of subnational governments to negotiate and monitor company obligations; the partial and/or opaque execution of revenue sharing systems by national governments; social tensions and conflicts around who receives what share of revenues; and ineffective spending at the local level.

REQUIRED DISCLOSURE 4.2(d)

“It is required that the multi-stakeholder group establish whether direct payments, within the scope of the agreed benefit streams, from companies to subnational government entities are material. Where material, the multi-stakeholder group is required to ensure that company payments to subnational government entities and the receipt of these payments are disclosed and reconciled in the EITI Report.”

GAP ANALYSIS

The 2012 MEITI report discloses direct material payments from a selected 200 companies, which generate nearly 90 percent of all revenue streams to subnational governments, by aimags/provinces and by payment types. It is possible to disaggregate subnational revenue from the companies by doing some calculation with the electronic database of the report. But the auditor did not show the calculations in that form.

The MEITI national report 2012 defines 12 streams of payments that are paid to local budget, including property tax, number of fees, fines, compensation and royalties for some abundant minerals, and monetary or non-monetary donations paid to either aimag or soum level. All those payments are reconciled at reasonably low materiality level of 100.000 MNTs or approximately \$70 (materiality level in reporting is MNT 10K).

Although subnational revenue equals merely 4 percent of national level revenue, almost half of the total discrepancies come from payments and donations to local budget according to the report. This fact shows accounting and reporting standard is weakly implemented at the subnational level.

RECOMMENDATIONS

- EITI at subnational level: Mongolian EITI multi-stakeholders board initiated an EITI subnational implementation a few years back. Following this idea, most of aimags/provinces established their multi-stakeholder council¹¹ responsible for extractive industries transparency. Some of them such as Umnugobi (biggest mine area), Selenge and Bulgan produced aimag-level reports. Civil society coalition also works on soum-level reporting in pilot soums; Tsogt-tsetsii (where Tavan Tolgoi, Energy resources and other big coal miners operate) and Khanbogd (Oyu tolgoi

¹¹ <http://english.eitimongolia.mn/page/341.shtml?sel=608>

operated by Rio Tinto). Those subnational reports are introduced at the multi-stakeholders seminars in their region and are not published online.

Deepening those mechanisms, Mongolia can expand EITI to subnational level where deeper and minor data could be disclosed.

- Public awareness of subnational revenue and revenue sharing: If the local people were well aware of what payments from extractive companies go to what local budget and how license fees and royalties are allocated between national and subnational budgets, importance of the disclosure of subnational transfer would be high enough.
- Contracts should be disclosed in order to reveal what payments are due to subnational governments.
- The government should indicate to the MSG what percentage of overall subnational direct payments and what percentage of operating companies will be captured using the materiality threshold. Materiality thresholds should be regularly reviewed to ensure that no significant payments or companies are omitted from the process.
- Company, agency, revenue stream and project should disaggregate subnational-level reporting. Reporting should be consistent and comparable across jurisdictions.
- Subnational governments should indicate what percentage of their total revenues comes from extractive payments and transfers, and how the extractive revenues are spent.
- In jurisdictions that receive large extractive revenues, a subnational multi-stakeholder group can improve linkages with the national EITI process; improve accountability over the collection and use of funds; and build trust across key constituencies. Through more explicit language in the financial audit TOR, the reports could include company-reported data on payments to subnational governments. Specifically, the reports should:
 - Disaggregate this payment data by company, project and recipient government.
 - Devise a strategy for how to cover any state or local government earnings associated with their equity participation in the extractive sector.

OTHER COUNTRY ILLUSTRATIONS

- An increasing number of EITI reports now include direct payments and revenues collected at the subnational level. These include reports from [Tanzania](#) and [Zambia](#).
- In [Ghana](#), EITI reporting captures all receipts and records the utilization of funds at the local level.

TRANSFERS 4.2(e)

The EITI requires the disclosure of mandated transfers of extractives revenues between national and subnational governments, including any discrepancies between actual and owed amounts. Reconciliation is encouraged, as is the disclosure of non-mandated transfers.

REQUIRED DISCLOSURE 4.2(e)

“Where transfers between national and sub-national government entities are related to revenues generated by the extractive industries and are mandated by a national constitution, statute or other revenue sharing mechanism, the multi-stakeholder group is required to ensure that material transfers are disclosed in the EITI Reports. The EITI Report should disclose the revenue sharing formula, if any, as well as any discrepancies between the transfer amount calculated in accordance with the relevant revenue sharing formula and the actual amount that was transferred between the central government and each relevant sub-national entity.”

ENCOURAGED DISCLOSURES 4.2(e)

“The multi-stakeholder group is encouraged to reconcile these transfers. The multi-stakeholder group is encouraged to ensure that any material discretionary or ad-hoc transfers are also disclosed and where possible reconciled in the EITI Report.”

GAP ANALYSIS

Article 58 and 59 of the 2006 Minerals law mandate revenue sharing formulas between national and subnational governments related to allocation of royalties and license fees respectively. According to the country’s minerals law, 30 percent of royalty payments and 50 percent of special license fees go to local governments. These transfers are published by the central government, but are not disaggregated by entity or revenue streams. The only information available is the transfer amount. As a result, the payment destination be it the central or local government budget, or somewhere else, cannot be directly verified from EITI data. While some payments can be tracked to local governments, it is not possible to verify how much is given to a specific local government. This information would be useful in empowering local communities to keep the central government accountable.

Then, the report does not calculate any discrepancies between the amounts transferred in accordance with the relevant revenue sharing formula and the actual amount that was transferred between the central government and each relevant sub-national entity.

For the encouraged disclosures in this requirement, the MEITI report does not reconcile subnational transfers mandated by law or other revenue sharing mechanism and ad-hoc or discretionary transfers.

RECOMMENDATIONS

- Encouraged to mandatory: MEITI Reports should include all of the disclosures encouraged in §4.2(e). Reconciliation is crucial given frequent disparities between what should be transferred and what is actually transferred.
- Review of revenue sharing in the report: Any legislation relating to the revenue sharing formula(s) and institutional arrangements for revenue sharing should be disclosed in the EITI Report, including a link to where the full legislation can be found.
- In addition to constitutionally or statutorily mandated transfers, reporting should also cover authorized assignments that result from regular, often annual, decision-making by national authorities (e.g., parliament or other parties authorized to agree disbursements from national natural resource funds) as well as fully discretionary transfers.

- In addition to the revenue sharing formula, the report should disclose how the calculations are made, such as the choice of tax base and tax rate used in the calculation, or the price used if amounts depend on a valuation of production. The timing of all transfers should be disclosed in the EITI Report.

OTHER COUNTRY ILLUSTRATIONS

- In Brazil, the Ministry of Finance publishes on monthly basis all transfers made from the national treasury to subnational governments. Banco do Brasil receives the revenues from the national treasury and transfers revenues to the sub-national governments' accounts. The public can view the Banco do Brasil website to check these transfers, include the date and value.
- Peru's regularly updated online reporting system of transfers to local governments is an example of good practice; the Economy and Finance Ministry and local governments disclose transfers. Rules for revenue sharing are defined by legislation and published. Peru's 2008-2010 EITI Report discloses revenue transfers from the central government to subnational government entities and compares the transfers with the subnational governments' receipts.

EMPLOYMENT 3.4(d)

The EITI Report is expected to include information on the absolute amount of extractive sector employment and on its percentage of total employment.

REQUIRED DISCLOSURE 3.4(d)

“The EITI Report must disclose, when available, information about the contribution of the extractive industries to the economy for the fiscal year covered by the EITI Report. This information is expected to include...employment in the extractive industries in absolute terms and as a percentage of the total employment.”

GAP ANALYSIS

MEITI report 2012 does not address this issue at all. The TOR for the next audition needs additional details in order to comply with the new requirement.

RECOMMENDATIONS

Concerning employment, MEITI should include language in the 2012 audit ToR requiring the reconciler to:

- Disclose the data collected on a per company basis.
- The reports should also disclose the share of national versus foreign employees.
- Local content information beyond employment should be included in EITI Reports:
 - The MSG should develop a reporting template in partnership with the government and procurement managers from companies and supplier representatives, and it should cover both employment and the provision of goods and services
 - Along with the prevailing local content policy and/or targets, the EITI Report should include disaggregated information on company spend, as well as indirect and induced employment. Consider reporting on different categories of suppliers and on supplier development efforts.
 - Local content information should be disclosed by companies and government entities, and should be reconciled by the independent administrator.

EXAMPLES

South Africa’s Mineral and Petroleum Resources Development Regulation requires all oil, gas and mining companies to submit an annual plan to the regional manager, who is a member of the Regional Mining Development and Environment Committee (RMDEC). The human resources development plan not only requires identifying, but also reporting on the number and education levels of the employees and the number of vacancies that the mining operation has been unable to fill for more than 12 months despite concerted efforts to recruit suitable candidates. Additionally, companies must submit a report on the implementation of a career progression plan, a mentorship plan, and an internship and scholarship plan in line with the skills development plan and the needs of the specified groups of workers.

SOCIAL EXPENDITURES 4.1(e)

Material social expenditures that are mandated by law or by contract are required to be disclosed and, where possible, reconciled in the EITI report.

REQUIRED DISCLOSURE 4.1(e)

“Where material social expenditures by companies are mandated by law or the contract with the government that governs the extractive investment, the EITI Report must disclose and, where possible, reconcile these transactions.

- i. Where such benefits are provided in-kind, it is required that the EITI Report discloses the nature and the deemed value of the in-kind transaction. Where the beneficiary of the mandated social expenditure is a third party, i.e. not a government agency, it is required that the name and function of the beneficiary be disclosed.
- ii. Where reconciliation is not feasible, the EITI Report should include unilateral company and/or government disclosures of these transactions.
- iii. Where the multi-stakeholder group agrees that discretionary social expenditures and transfers are material, the multi-stakeholder group is encouraged to develop a reporting process with a view to achieving transparency commensurate with the disclosure of other payments and revenue streams to government entities. Where reconciliation of key transactions is not possible, e.g., where company payments are in-kind or to a non-governmental third party, the multi-stakeholder group may wish to agree an approach for voluntary unilateral company and/or government disclosures to be included in the EITI Report.”

GAP ANALYSIS

Within the current legal framework no social expenditure is mandated by law or by contract except in the Oyu Tolgoi investment agreement which imposed some social obligations to Turquoise Hill Resources social insurance and environment rehabilitation cost¹² are not considered social expenditures.

The MEITI report does not describe the nature of the projects or events funded by donations from companies to local authorities and third parties so it is not able to distinguish what did each donation used for. Reason emphasizing this is that big part of donations by companies goes to not socially beneficial activities like prize for local staffs, renovation of their office or furniture etc. Even though, MEITI usually consider all kind of monetary and non-monetary donations to state entity, local authority, citizens and NGOs as the social transaction.

It is compulsory to report donations and assistance to government entities and voluntary to report donations to individuals and NGOs. The report also discloses donations disbursed in cash and in-kind, their purpose and the funds devoted to environmental protection.

Bilaterally reported donations are described and reconciled in the 2012 MEITI report. Section 7.3 describes a number of social responsibility contracts between companies and local authorities. But if the donation is made to a third party (not a government entity), the name and function of the beneficiary is

¹² Since the term ‘social expenditure’ has broad meaning, used it as defined by OECD glossary; <http://stats.oecd.org/glossary/detail.asp?ID=2485>

not disclosed and the amounts are not reconciled. Some 80 companies reported their discretionary social payments unilaterally.

RECOMMENDATIONS

- Mandatory social expenditures: As the New Minerals law of Mongolia introduces mandatory social responsibility contracts called Community Development Agreements, it could be an opportunity to introduce mandatory reporting of social expenditure from companies to local communities.
- Reconcile mandated expenditures whenever possible: The 2012 audit ToR should be amended to ensure for example that the consultant reconciles data on Educational payments collected from companies and government.
- Social expenditure reporting should be disaggregated by company, recipient, type and associated extractive project.
- The company should disclose the actual cost of in-kind contributions, such as the amount paid to contractors who built a road for a community. When actual amounts are not available, the methodology for assigning values to in-kind contributions should be fully explained.
- The institution, organization or entity responsible for allocating and disbursing resources in the community should be identified.
- It is important that companies disclose the objective of each project. This information is essential to measure outcomes and also impact.

OTHER COUNTRY ILLUSTRATIONS

In view of rising mining prices, the Peruvian government signed a 5-year agreement with 30 mining companies to attract voluntary contributions aimed at mitigating poverty in communities adjacent to mining extraction sites. In 2006, companies participating in the Solidarity with the People Mining Program (PMSP) agreed to devote a part of their direct social expenditures to voluntary funds. The agreement was chosen over a competing proposal to introduce a windfall profit tax on mining companies. Peru's 2008-10 EITI Reports contain information on PMSP, participating companies, resources invested in regional and local funds and resources allocated for the Truth and Reconciliation Commission.

Revenue Management | DISTRIBUTION OF REVENUES §3.7 & §3.8

DISTRIBUTION OF REVENUES 3.7 and 3.8

The EITI Standard requires that reports describe how extractive revenues are distributed and explain which extractive revenues are not recorded in the national budget.

REQUIRED DISCLOSURE 3.7(a)

“The EITI Report must describe the distribution of revenues from the extractive industries. The EITI Report should indicate which extractive industry revenues, whether cash or in-kind, are recorded in the national budget. Where revenues are not recorded in the national budget, the allocation of these revenues must be explained, with links provided to relevant financial reports as applicable, e.g., sovereign wealth and development funds, sub-national governments, state-owned enterprises, and other extra-budgetary entities.”

ENCOURAGED DISCLOSURES 3.7(b) and 3.8

“Multi-stakeholder groups are encouraged to reference national revenue classification systems, and international standards such as the IMF Government Finance Statistics Manual.”

“Multi-stakeholder groups are encouraged to include further information on revenue management and expenditures in the EITI Report, including:

- A description of any extractive revenues earmarked for specific programmes or geographic regions. This should include a description of the methods for ensuring accountability and efficiency in their use.
- A description of the country’s budget and audit processes and links to the publicly available information on budgeting, expenditures and audit reports.
- Timely information from the government that will further public understanding and debate around issues of revenue sustainability and resource dependence. This may include the assumptions underpinning forthcoming years in the budget cycle and relating to projected production, commodity prices and revenue forecasts arising from the extractive industries and the proportion of future fiscal revenues expected to come from the extractive sector.”

GAP ANALYSIS

The report makes clear which revenue stream goes to state and local budgets, but there is no comprehensive description of budgetary vs. extra-budgetary revenues. The fiscal stability law of Mongolia 2010 has set a ceiling for annual state budget revenue. The extra revenues must be distributed to the Fiscal Stability Fund. At the time of the 2012 EITI reporting, the Human Development Fund was also used in practice (will be dissolved when Sovereign Wealth Fund starts), which was collecting some earmarked revenues from the extractive industry.

All those revenue allocation mechanisms are not explained in the report and financial reports of that fund are not referenced.

Implementation of international standards on accounting and auditing of the extractive companies that involved in final report are summarized in appendix #5 of the report. Some comments and recommendations on national taxation environment and its standardization are also included in there.

RECOMMENDATIONS

- Any legislation relating to revenue allocation policies and institutional arrangements for revenue allocation should be explained in the EITI Report along with a link to where the full legislation can be found. This will make people able to see where the money comes from and where it is disbursed.
- EITI Reports should include all of the disclosures encouraged in §3.7(b) and §3.8.
- EITI Reports should contain or provide references to full information about any natural resource funds. Basic elements of fund reporting include: the amount of deposits, withdrawals, principal and returns during the accounting period in question; the rules that govern fund deposits, investments and withdrawals; the formula(s) for determining deposits and withdrawals; and disaggregated data on specific investments.
- Given their vulnerability to abuse, EITI Reports should contain detailed explanations of any non-statutory extra-budgetary spending of resource revenues.

OTHER COUNTRY ILLUSTRATIONS

- The Timor-Leste Ministry of Finance publishes extensive information on the size of oil revenues deposited into the Petroleum Fund, withdrawals, and investments, including disaggregation by geographic region and asset class, and a list of specific investments. The roles and responsibilities of different governing bodies and staff in the operational manager are clearly stated in legislation and regulation, as well as in the annual report. The report of the Consultative Council is also publicly available.
- The RGI and the Sovereign Wealth Scoreboard indicate which SWFs have reporting practice which could be emulated (*The 2013 Resource Governance Index*, Revenue Watch Institute, 2013, www.revenuewatch.org/rgi; *Sovereign Wealth Fund Scoreboard*, Edwin Truman and Allie Bagnall, September 2013, <http://piie.com/publications/pb/pb13-19.pdf>.)

ELECTRONIC REPORTING 5.3(b)

If MEITI data is to be used by serious and analytical actors including policymakers, civil servants, researchers, market analysts, investors and journalists, it needs to be made available in an electronic form. The figures published by MEITI are far too vast (and far too important) to be published in a pdf report alone.

REQUIRED DISCLOSURE 5.3(b)

“The Independent Administrator should produce electronic data files that can be published together with the EITI Report. Summary data from each EITI Report should be submitted electronically to the International Secretariat according to the standardized format provided by the International Secretariat.”

GAP ANALYSIS

Currently, MEITI reports are released in pdf format, which severely limits their usefulness. Electronic version of spreadsheets of report including report by government entities and companies can be found in www.eitimogolia.mn website. But the reconciliation work file, which must be submitted by the auditor, is not online.

In order to transfer MEITI reporting process to electronic reporting, the companies Adam Smith International of Australia and Interactive Software from Mongolia started implementing a project.

RECOMMENDATIONS

The electronic reporting system, which is the underway, must be used not only for submitting reports of the companies separately. It could be also used as an interactive database. Therefore, technical features of the new system must meet to that needs.

OTHER COUNTRY ILLUSTRATIONS

Norway publishes its EITI data online. Here is an example of one data table which can be viewed online and downloaded by users into a CSV file: <http://hotell.difi.no/?dataset=oed/eiti-2009/totalt>