



global witness

International laws and standards for extractive industry transparency

Essentials of Extractives

September 2013



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Two parts:

- Extractive Industries Transparency Initiative
- US Dodd-Frank Act & EU Directives

Extractive Industries Transparency Initiative (EITI)



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- A global standard that promotes greater transparency in the oil, gas and mining sectors.
- Governments sign up voluntarily.
- Supporters include UK, US, Germany, Japan, World Bank, IMF.
- DFID – £6.6m spend.

Extractive Industries Transparency Initiative (EITI)



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- Secretariat in Norway, overseen by an International Board.
- **39** countries implementing – more than half in Africa.
- **23** countries are EITI Compliant.
- **16** countries are EITI Candidates.
- **34** countries have produced reports (\$1 trillion).

Extractive Industries Transparency Initiative (EITI)



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- Reports – companies disclose payments, governments disclose receipts.
- Process overseen by a national Multi-Stakeholder Group.
- Flexible – each country creates its own process.

Extractive Industries Transparency Initiative (EITI)



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- EITI Standard – the methodology countries follow to become EITI Compliant.
- This must include:
 - effective oversight by the Multi-Stakeholder Group
 - timely publication of reports
 - a credible auditing process
 - reports are actively promoted
 - steps are taken to act on lessons learned.

Extractive Industries Transparency Initiative (EITI)



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- EITI Standard was revised this year.
- ***Requirements:***
 - project-by-project reporting
 - contextual information
 - transparency for SOEs
 - register of licences
 - licence allocation transparency.

Extractive Industries Transparency Initiative (EITI)



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- ***Encouraged*** – disclosure of:
 - companies' beneficial owners
 - primary contracts.

Extractive Industries Transparency Initiative (EITI)



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Benefits:

- shows revenue intake and discrepancies
- improved management of & increased revenue inflows (e.g. Ghana, Burkina Faso, Nigeria)
- more space for civil society
- strengthened public policies (e.g. Liberia, Tanzania, US/EU)
- builds trust between stakeholders.

Extractive Industries Transparency Initiative (EITI)



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Challenges:

- “...few indications that EITI is having an impact on governance, corruption, poverty reduction....” ~ *EITI evaluation, 2008*
- information is often out-of-date & poorly disseminated
- doesn't address community consent, human rights and environmental impacts
- voluntary – important countries left out
- weak support for civil society
- can information challenge corruption amongst entrenched elites?

US Dodd-Frank Act (Section 1504)



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- Applies to all oil, gas & mining companies that file annual reports to the US Securities and Exchange Commission.
- Requirement to publish revenue payments to governments, annually.
- Country-by-country & project-by-project.
- Subsidiaries and ‘entities under control’ included.

US Dodd-Frank Act (Section 1504)



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- Payment types:
 - taxes (on production and profits)
 - royalties
 - fees
 - production entitlements ('profit oil')
 - bonuses
 - in-kind payments
 - dividends
 - infrastructure improvements.

US Dodd-Frank Act (Section 1504)



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- ‘Project’ not defined, but certain definitions prohibited.
- Project linked to the contractual arrangements with government.
- Enforcement – fines, investigation, shareholder civil suit.

EU Accounting and Transparency Directives



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- Apply to oil, gas, mining & logging companies.
- Accounting Directive – all large, non-listed companies registered in EU.
- Transparency Directive – all companies listed on EU ‘regulated’ equities markets.
- Subsidiaries and ‘entities under control’ included.

EU Accounting and Transparency Directives



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- Same types of payments as Dodd-Frank.
- All payments of €100,000 and above.
- Project defined 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.”*



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State of play

- PM David Cameron: *“G8 must move toward a global common standard for extractive companies to report all payments to governments ... reporting project by project payments across the world without exception.”*
- **G8** communiqué – calls for a global project-by-project reporting standard.
- **Canada & Norway** following suit, **Switzerland** considering.
- CEO of **Rio Tinto** called for a consistent global standard based on US/EU laws.
- **Statoil, Tullow, Rio Tinto, Newmont** and others – voluntarily report country-level data.
- **39 EITI countries** – project reporting is now a requirement.

State of play



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- American Petroleum Institute legal challenge – SEC implementing rule now withdrawn.
- API wants country exemptions (Angola, China, Cameroon, Qatar) & limited disclosure.
- SEC must review and re-issue the implementing rule.
- EU Directives immovable – risk of new US rule being inconsistent & ‘double reporting burden’ for companies.
- UK publicly committed to early transposition – aiming for disclosures in 2016, reporting on payments made in 2015.