

# Advancing the EITI in the Mining Sector: Implementation Issues

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## Executive Summary

The Extractive Industries Transparency Initiative (EITI) has now become a standard for improving transparency and accountability in the majority of mineral and metals (mining) rich countries. There are a number of features of the mining sector (as opposed to the oil and gas sectors) which significantly influence how the EITI is implemented in such countries. This chapter focuses on four of those issues – deciding which companies to include in the process; whether to include payments to sub-national governments; addressing the issue of artisanal mining; and considering the impact of non-cash payments by companies. The chapter concludes with a number of recommendations on how EITI policy and guidance might be improved so as to better reflect the challenges of implementing the Initiative in mining countries.

## Introduction

In the earlier years of EITI's existence as an initiative there was some perception that it was not "proceeding well"<sup>2</sup> in mining countries. This was in part due to the fact that early progress was made in oil and gas countries leading the development of EITI (such as Azerbaijan and Nigeria), while progress in mining countries such as Ghana, the Kyrgyz Republic, and Peru was initially slow. That picture has now

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<sup>2</sup> See Rader, J. And Sabater, C. *EITI and the Mining Sector: Stakeholder Research Report*, The EITI Secretariat, 2006, available at <http://eitransparency.org/UserFiles/File/miningsectorreportmelbourne.pdf>

changed. Of the 23 EITI “candidate countries” ten<sup>3</sup> of them have or will be exclusively reporting on mining sector revenues whilst a further three<sup>4</sup> have or intend to produce reports covering the oil and gas, as well as the mining sectors. Of the 10 countries which have produced some form of EITI report, four of them are from mining countries. Relative to the overall number of resource rich countries there is now proportionately much greater adherence to the EITI in mineral rich countries than in oil and gas rich countries.<sup>5</sup>

This chapter will briefly outline some of the factors which lead to different kinds of EITI programs in mining countries, from those which are adopted in oil and gas countries. The chapter pays particular attention to two of these issues – the need for a materiality point when deciding which mining companies should be responsible for reporting as part of the EITI process, and the importance of revenues received by sub-national governments from mining companies. Finally, the chapter concludes with some thoughts on two issues which are presently not addressed as part of the EITI process but are increasingly becoming an implementation issue – the inclusion or exclusion of artisanal and small scale mining (ASM) from the EITI, and how to deal with “non-cash” payments made by companies. The issue of non-cash payments, as well as payments made to sub-national governments, are particularly important because they are often the most visible and tangible ways in which companies seek to address the social and environmental impacts of mining and to distribute benefits to local communities.

Finally, it should be noted that there are many important implementation issues (e.g. how to ensure that all companies required to report in an EITI process actually *do* report) which are not addressed in this chapter because they are not issues specific to the mining sector and are as equally applicable to hydrocarbon rich countries implementing the Initiative. Some of these issues are explored in various guides which have recently been produced on the EITI.<sup>6</sup>

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<sup>3</sup> D.R. Congo, Ghana\*, Guinea\*, the Kyrgyz Republic\*, Liberia, Madagascar, Mali, Mongolia\*, Niger, and Sierra Leone. Those countries with an asterisk (\*) have produced some form of EITI report.

<sup>4</sup> Kazakhstan, Mauritania, and Peru.

<sup>5</sup> The International Monetary Fund’s *Guide on Resource Revenue Transparency* (2007) identifies 38 hydrocarbon rich or potentially rich countries of which 12 are EITI Candidate Countries – a “take up rate” of 31.6%, and 18 minerals rich countries of which 10 are EITI Candidate Countries – a take-up rate of 55.6%.

<sup>6</sup> Those interested in better understanding the “how to” of EITI implementation should consult core EITI policy documents (such as the *EITI Sourcebook* and the *EITI Validation Guide*) available at <http://www.eitransparency.org/document>, as well the following guides: the World Bank’s *Implementing the EITI – Applying Early Lessons from the Field* available at <http://go.worldbank.org/C5OKJZ7860>; the Revenue Watch Institute’s *Drilling Down – The Civil Society Guide to Extractive Industry Revenues and the EITI* available at <http://www.revenuwatch.org/news/publications/drilling-down.php>; and the International EITI Secretariat and

## Differences between the oil and gas sector and the mining sector and their impact on EITI implementation

It is important up front to note some points of difference between the oil and gas sector, and the mining sector, which when combined have a significant impact on the way in which EITI is implemented in those countries. Firstly, the mining sector is characterised by a large number of companies of varying sizes exploiting diverse minerals and metals, while the oil and gas sector tends to be dominated by a smaller number of large companies extracting only two commodities (albeit of various grades). At the early exploration phase the mining sector is considerably less capital intensive than the oil sector, in which drilling even one test well (particularly offshore) is an extremely expensive undertaking. There is also greater diversity in the functions of mining companies – with smaller exploration companies often operating alongside major operating companies. This very large number of companies often makes tax administration and collection very difficult relative to the oil and gas sector. In the context of EITI it also raises the question of how many companies should be included in the EITI process, and this issue is discussed further below.

Because oil and to a lesser degree gas (because of the need for expensive transportation and storage facilities, or close proximity to markets) have clear international market values it is easier to price the value of production. In mining, however, some products (e.g. sand and granite) may only be commercialised at a local level; others may be exported but be priced relative to their proximity to other facilities (e.g. bauxite exports and their proximity to a cheap source of electricity for a smelter); while other products (e.g. gold) can be sold internationally. The market price of metals and minerals is also highly dependent on the costs of transporting the materials to market. Moreover, production sharing arrangements (whereby a government receives a certain percentage of physical production) are relatively common arrangements in oil and gas producing countries, whereas fiscal regimes in mining countries are more focused on a mixture of income / profit taxes, license payments and production royalties, rather than the transfer of an actual portion of production to the government. That said, fiscal regimes for the mining sector are often set on a national basis and can be relatively easy to follow, whereas in the oil and gas sector the fiscal regime often varies from field-to-field.

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the International Business Leaders Forum's *EITI Business Guide* available at <http://www.eitransparency.org/document/businessguide> .

Secondly, mining companies almost always have a bigger “footprint” in terms of their impact on a community’s economy (e.g. in levels of employment) and the local environment. Because of their visibility, the expectations and demands placed on mining companies by governments and civil society groups are often high. This means that revenue transparency is sometimes seen as a “second order” concern in the mining sector compared to the more pressing issues of employment, occupational health and safety, local development, and rehabilitation of any environmental damage. Revenue transparency is, however, very relevant as an *enabler* to remediation of these primary concerns – mining companies often voluntarily, or by law, contribute very significant amounts of money to community development, mine safety and environmental rehabilitation. But because revenue transparency is an enabler rather than a primary concern, local communities and civil society groups operating on their behalf often have either less interest in, or do not possess the skills to engage in, programs such as the EITI.

Third, while direct state participation (through a state-owned company) is very common in oil and gas producing countries, it is less common in mining countries. In some ways this has the potential to simplify EITI implementation as it removes the complexity of including a company which both receives revenues from other companies on behalf of the government, as well as making payments to the government. In some EITI countries financial information provided by state-owned companies has required additional scrutiny due to the inconsistent use of international auditing standards. It does mean, however, that attention needs to be paid to the other ways in which governments hold interests in the mining sector. In Ghana, for example, the government holds a 10 percent shareholding in all mining companies, and thus receives income from company dividend payments (which it reports as part of its EITI process).

Finally, while in oil and gas producing countries revenues are captured primarily at the national / federal level, there is an increasing trend in the mining sector for significant revenues to be paid to sub-national levels of government (such as state and regional governments, and local and district authorities). Sometimes these payments are made directly by the company to the relevant authority, while in other cases funds are redistributed via national revenue collection agencies. This issue is discussed in greater detail below.

Which companies should be included in the EITI process?

As mentioned above, a common feature of the mining sector is that it contains companies which vary immensely in size. While production in a country maybe dominated by a few large companies, it is extremely common for there to be a large number of small companies present as well, and this presents the question of whether all companies should be required to report as part of the EITI process. While one of the main EITI criteria states that Initiative should include all companies operating in a country, the EITI Sourcebook further states that “an entity should be exempted from reporting only if it can show with a high degree of certainty that the amounts it would report would in any event be immaterial”.<sup>7</sup> This has led to considerable debate on precisely what would constitute a material or immaterial level of payments, and no existing EITI policy provides further clarity on this point.

The result of this ambiguity in EITI policy has meant that in practice the level of company materiality has been determined by the multi-stakeholder group managing the EITI process in each country. This approach of not having a defined materiality standard has been seen as an inconsistency in EITI by some, but in reality inserts a useful degree of country ownership into the design of EITI programmes – what is immaterial in one country maybe considered very material in another. **Table 1** below summarises the approach taken to materiality in various EITI countries.

**Table 1: Approaches to company materiality in EITI countries**

Country	Approach to materiality
Ghana	Eight mines owned by 5 companies are required to report – out of a total of 13 multi-national companies, and 300+ smaller local companies operating in the Country. These 8 mines are responsible for (based on 2004 data) 99% of all mineral royalty payments, which in turn constitute 89% of payments received by the government from those companies.
Guinea	All “industrial” companies required to report, but no definition of what constitutes an industrial company.
Kyrgyz Republic	Companies with an income of more than US\$5m or more are required to submit reports to be audited as part of the EITI process. Companies with an income lower than this are required to submit reports on payments to government but are not required to be audited.
Mongolia	Companies making more than 200m Tugrug (approx. US\$170,000) in payments per year to government are required to report, but companies

<sup>7</sup> Page 29 of the EITI Sourcebook which can be accessed at <http://www.eitransparency.org/document/sourcebook>

	making payments less than this are allowed to report if they wish to do so.
Peru	At the time of writing the Peru EITI Action Plan envisages involving 19 mining companies which are responsible for approximately 75% of the value of total mining production.

While it is admirable to aim to include all companies in a reporting process, such an ambition necessarily needs to be tempered by two factors: (i) which companies have a macro-critical economic impact and/or major development impact for a significant number of people; and (ii) what resources are available to carry out an EITI reconciliation or audit process. Where resources are limited, a requirement for the audit company appointed to produce the EITI report to gather information from all companies may in fact detract them from the more important task of properly scrutinising the data it receives from major companies and government agencies.

While a fixed materiality point based on the value of a company's production or the amount of payments which they make to government may seem the easiest approach, it incurs the risk that the payments made by all the companies operating below the materiality point may cumulatively be quite significant. Because of this it is perhaps better to develop a materiality system in which all the companies which cumulatively contribute a certain proportion of mining revenues are required to report. This has the advantage of ensuring that whatever combination of companies report under EITI, the process always includes the companies which contribute the vast majority of revenues.

The lessons learnt on this issue are clear:

- Adopting a materiality point is often a practical way of focusing the efforts of the Initiative on the small number of companies which contribute most.
- The decision of what the materiality point should be needs to be taken by the multi-stakeholder group overseeing EITI implementation in a country. If a materiality point is imposed from above by a government there is a risk that other stakeholders will see it as an attempt by a government to unfairly constrain the scope of the Initiative.
- In order to be able to defend a materiality point, it is important for the administrator hired to reconcile payment and revenue data, to also publish details of what percentage of mining production value and payments to government from the mining sector, is covered by the companies which are included in the process.

- Where a significant number of small companies are excluded from the EITI process for materiality reasons, it is still useful for the government to provide details of the aggregate revenues received from all such companies for inclusion in the EITI report.
- Finally, because companies regularly enter and leave the sector, it is important to keep the list of companies required to report their payments under constant review.

### Sub-national reporting

After the issue of company materiality the next issue that is important for mining countries implementing the EITI is how to address payments which are made or redistributed to sub-national levels of government.<sup>8</sup> It is increasingly common in mining countries for a portion of revenues to be either paid directly by companies to sub-national governments (e.g. state, regional, municipal or community-level governments), or for there to be a legal or constitutional formula for redistributing an element of revenues from national government back down to sub-national governments.<sup>9</sup> Some types of revenues (e.g. land rents, license payments) are often paid directly to sub-national governments. All of these payments are often vital for maintaining local peace and stability; redressing environmental damage or loss of livelihoods caused by mining operations; and contributing to economic development in the communities in which mines operate. This focus on ensuring that funds filter down to promote local economic development is important because while mines are highly visible and capital intensive enterprises they often produce revenues which are disproportionate to the comparatively small number of people that they employ. **Table 2** provides examples of different formulas used in different countries for this kind of distribution of benefits.<sup>10</sup>

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<sup>8</sup> A useful resource on this issue is Warner, M. And Alexander, K. *Sub-National Implementation of the Extractive Industries Transparency Initiative (EITI)*, Overseas Development Institute (2006) which can be accessed at [http://www.odi.org.uk/iedg/Business\\_Development\\_Performance/Papers/ODI\\_PubSecCSR\\_SubNatImplementation.pdf](http://www.odi.org.uk/iedg/Business_Development_Performance/Papers/ODI_PubSecCSR_SubNatImplementation.pdf)

<sup>9</sup> Many oil and gas countries also have legal or constitutional arrangements for redistributing sector revenues to sub-national governments, but they are not always explicitly linked to the communities or regions where production is actually taking place. Also, because of the considerable environmental impact of mining operations, payments to sub-national governments in mining countries are often seen as compensation for the loss of natural resources, whereas revenues from the oil sector are more often seen (and treated) as a region's share in the nation's natural resource endowments and are therefore less compensatory in nature.

<sup>10</sup> A very extensive list of sub-national revenue distribution models can be found in Annex B of Warner and Alexander (2006) – see footnote 8 for full reference.

**Table 2: Division of revenues between national and sub-national levels of government**

Country	Division of mining revenues
Democratic Republic of Congo	Under the terms of the Mining Code, 40 percent of collected mining royalties, as well as 10 percent of surface rents, should be returned to the provinces in which mining takes place. Of that 40 percent, 25% is retained for the provincial administration while 15% is given to the administration of the area where mining activities are conducted. In addition to this redistribution of royalties provided for in the Mine Law, the Constitution stipulates that 40 percent of all tax revenues coming from national enterprises, including mining-related tax revenues, be redistributed to provincial governments.
Ghana	All income tax, dividends, and royalties are paid to the national government. Of the royalties received, 90% is retained by the national government (80% in the consolidated fund, 10% in the minerals development fund), while the remaining 10% is distributed to the Administrator of Stool Lands (1%), District Assemblies (4.95%), Stools / traditional authorities (2.25%), and traditional councils (1.8%).
Papua New Guinea	At least 20% (though often more) of mining royalties are paid to local landowners while the remaining <80% is paid to sub-national governments. Proceeds from state equity in mines are also redistributed to sub-national governments at varying rates.
Peru	All company income tax and mining royalties are collected by the national government that then redistributes up to 50% of them to regional and municipal regional governments. In addition companies with large profits have created social funds of different sizes for the benefit of local communities.

EITI policy is silent on this issue. None of the EITI policy documents provide a definition of “government”, and thus EITI neither proactively excludes nor includes sub-national government. In practice both the reports produced in Ghana and Mongolia include payments made to sub-national governments. In Ghana the efficacy of the redistribution of revenues to district assemblies and other local authorities has been examined, as has how those local governments have used the revenues. In Mongolia the EITI reports also include voluntary donations made by companies directly to sub-national government agencies.

It is clearly important to report on payments made to sub-national levels of government if they are material. Because of the direct proximity of mines to communities and the bigger local footprint of mining operations, there is often considerable local demand for more information on the financial contribution of mines to those communities. These revenues may appear to be small relative to those received at the national level, but are sometimes the major source of income for communities and sub-national governments in mining areas. Including such payments in an EITI process, does, however, create a number of challenges:

- The administrative capacity, both in terms of personnel and record keeping, of local revenue collection agencies and finance departments is often weak relative to national agencies.
- There are a variety of ways in which revenues can be paid – either directly from the company to the sub-national government, or indirectly by being redistributed by national revenue agencies back to sub-national governments. This requires the audit company hired to produce the EITI report to gather data not only from national government, but also from a number of often geographically remote sub-national government bodies.<sup>11</sup>
- There is often resistance by sub-national governments to scrutiny or control over such revenues by national agencies. In some countries national government agencies have introduced control mechanisms to ensure a minimum of accountability and coherence between sub-national and national infrastructure development plans,<sup>12</sup> while in others the national government agencies have no right to scrutinise such payments.
- In some countries there are differing levels of authority, jurisdiction and mandate of the central versus provincial governments to levy and impose taxes. This might lead to discrepancies between the revenues provided for by national regulation and taxes imposed on companies by local authorities.

### Dealing with artisanal and small scale mining

In some countries implementing the EITI there has been discussion on whether to extend the EITI to the artisanal mining sector. Indeed, it could be argued that a lot of the early “publicity” for the resource curse (which in turn was a driving force behind the establishment of the EITI) was in fact focused on the links between artisanal mining and conflict in countries such as Angola, D.R. Congo, Liberia, and Sierra

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<sup>11</sup> The “tier” of sub-national government receiving revenues also has an impact on the ease with which data can be gathered. In some mining countries revenues are paid or redistributed beyond regional governments to local communities and landowners.

<sup>12</sup> Vigila Peru, *Surveillance of Extractive Industries – National Report No. 7*, Lima, 2008.

Leone. There has also been some recent research on the issue of how artisanal mining could be included within an EITI process.<sup>13</sup>

There are many very obvious reasons why artisanal mining<sup>14</sup> might be difficult to include within an EITI reporting framework, and indeed thus far no country has done so. The impact of revenue streams derived from artisanal activities on the macroeconomic environment is low, due to almost negligible contributions to the national treasury.<sup>15</sup> Profit margins for the individual miners themselves are far too low, and miners themselves too geographically spread out, to allow for any meaningful taxation. More often than not, the sector is extremely informal and subject to limited effective regulation.<sup>16</sup> Against this background, is it worth thinking about EITI in the context of artisanal mining?

Artisanal mining is directly affecting people's life all around the world. An estimated 13 - 20 million men, women, and children from over 50 developing countries are directly engaged in the artisanal mining sector. Additionally an estimated 100 million more are indirectly dependent on the sector for their livelihood. Moreover, in many countries, particularly in Africa, the artisanal mining sector accounts for the vast majority of production - in D.R. Congo it accounts for over 80% of mining production,<sup>17</sup> in the Central African Republic almost 100%.<sup>18</sup> All together that implies that there are many more people engaged in artisanal mining than are employed by multinational mining companies, which perhaps

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<sup>13</sup> Garrett, N, *The Extractive Industries Transparency Initiative & Artisanal and Small Scale Mining. Preliminary Observations from the Democratic Republic of Congo*. The EITI Secretariat, 2007 – available at <http://www.eitransparency.org/research/garrett>

<sup>14</sup> For the purposes of this discussion artisanal mining is defined as mining activity in which a person exploits minerals with a minimal amount of capital and fixed installations, mostly by rudimentary means. Small-scale mining activities in contrast involve a higher deployment of capital and fixed installations. Artisanal mining as well as small scale mining is often informal in that it commonly operates illegally and at the point of extraction does not make tax or royalty payments to a government.

<sup>15</sup> Though it could be argued that the lack of revenues derived from artisanal mining is caused by a lack of scrutiny (such as what EITI would provide) on the tax payments – or lack thereof – of traders and exporters of minerals and metals.

<sup>16</sup> The EITI criteria and validation indicators specifically ask for companies to report, something which assumes a certain grade of formalisation.

<sup>17</sup> D'Souza, K, *Artisanal Mining in the DRC: Key issues, challenges and opportunities*. CASM, 2007.

<sup>18</sup> Runge, J. *Geologische Ressourcen und Transparenz im Rohstoffsektor Zentralafrikas – eine GTZ Fallstudie (Afrikagruppe deutscher Geowissenschaftler (AdG), Stuttgart, (2009 forthcoming)*.

accounts for its high profile relative to its often small contribution to government revenues.<sup>19</sup> Because of its widespread and very visible impact, and because of the large number of people that it employs, artisanal mining is often disproportionately visible as an issue in mining countries relative to its economic contribution.

To assess how the EITI could be extended to artisanal mining, a closer look at the value chain of the sector is revealing. The EITI would need to intervene at the stage where (substantial) taxes are paid. In a simplified pattern, the miner sells his product to a dealer close to the mine who himself sells the product to a trading house with a license to export the product. The trading house will sell the product, sometimes already processed or purified, to an international buyer. The grade of formalisation and the fiscal potential increase considerably along this value chain. In Sierra Leone in 2005, \$120m of mainly artisanally mined diamonds were exported by only 20 exporters, who paid 3% export tax on those diamonds.

For EITI to have any relevance in the artisanal mining sector it would need to intervene at the point at which significant and concentrated financial flows occur and taxes are (sometimes) paid – i.e. it would need to focus on exporters and traders.<sup>20</sup> In some countries exporters act as effectively the headquarters of a feudally structured corporation in which investments for artisanal mining activities flows out from exporters through a multiplicity of intermediaries to the miners themselves, who in turn sell their product back up the chain to those exporters. In Ghana, for example, 10% of total gold production is accounted for by a single exporter purchasing solely from artisanal miners.

Thus far expanding EITI to cover artisanal production has been placed in the “too hard” basket by all countries implementing the EITI. This is either because the sector lacks the required level of formalisation to generate significant and concentrated revenue streams, and/or because other issues related to artisanal mining (e.g. environmental impacts, health and safety, smuggling, the capture of revenues by armed groups) are perceived as greater priorities. That said the issue of artisanal mining is clearly an issue in EITI countries such as the Central African Republic (where exporters are represented on the EITI multi-stakeholder steering group), D.R. Congo, Guinea, Liberia, and Sierra Leone – i.e. almost half of the mining countries presently implementing the EITI. Moreover, operations by exporters or

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<sup>19</sup> Figures from <http://www.artisanalmining.org>

<sup>20</sup> Many countries also require artisanal miners to purchase licenses which, in aggregate, may constitute a material revenue stream for the recipient national or sub-national government authority. Individual license payments, however, are very small and thus if they were included in an EITI reporting process it would only make sense for total license revenues (rather than payments) to be reported.

"comptoirs" tend to be significant, resulting in material revenue streams to governments. For these two reasons alone the issue of how to address artisanal mining in EITI is worthy of further consideration in EITI programs.<sup>21</sup>

### Reporting on non-cash payments

The final issue that is of considerable debate in many EITI (both oil and gas, but particularly in mining) countries is that of how to handle non-cash payments. While in oil and gas producing countries this is an issue of how to accurately report the value of government production share, in mining countries this is often focused on the provision of often significant social services and goods by mining companies to local communities. Provision of such goods and services are sometimes voluntary, and sometimes required by the terms of the contract. Most often they are counted as operational expenses, and thus the provision of such goods and services ultimately reduce a company's tax liability.

The challenges of including such payments (sometimes referred to as "para-fiscal payments") within an EITI programme are obvious. There is no government agency which is receiving the payment, and thus one is entirely reliant on figures provided by companies to assess the value of such work. This removes a key component of the EITI – the independent comparison and reconciliation of company and government data. That said, the value of such activities is often extremely significant, and to omit it challenges EITI's core tenet of the need to report on all "material payments". Moreover, reporting a company's tax and royalty payments in isolation of their provision of social goods and services can risk understating the true development impact and contribution of mining company operations.<sup>22</sup>

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<sup>21</sup> In some countries this may require research specific to the mineral concerned. For example, in Sierra Leone the World Bank is sponsoring research into the issue of transfer payments to diamond exporters – i.e. is what these exporters receive from the sale of diamonds on overseas markets similar to the valuation of the diamonds which takes place in Sierra Leone for the purposes of calculating export tax.

<sup>22</sup> Similarly EITI policy states that the Initiative should focus only on production-related taxes and payments and should not include details of payments related to ongoing operations such as customs duties, income taxes, and excise duties. Country experience on this point has been mixed. Some countries (such as Kazakhstan and Mongolia) have included customs duties payments and excise taxes in their EITI reports while other countries have not. Including such payments in an EITI report would provide a far more comprehensive view of a company's contribution to a country, particularly during construction of production facilities when a company's level of tax and royalty payments will be minimal, even though the company will be having a very visible impact in the community in which it operates.

At present only one country (Mongolia) has attempted to address the issue of reporting the value of non-cash payments by companies as part of its EITI program. While recipient organisations may struggle to place an accurate value on the goods and services that they receive, a value can be placed on them by the company providing them. Not being able to provide comparative data might be perceived by some as “un-EITI” but given the local significance of such payments, as well as their susceptibility to corruption, where the expenditures made by companies on such payments are significant they should be included within the EITI process.

Also worthy of some brief comment, though not in the context of EITI, are contracts in which the provision of infrastructure is provided in return for mining rights – the case of copper mining rights being provided in return for the construction of roads, railways, hospitals, and universities in D.R. Congo<sup>23</sup> is an obvious example of this phenomenon. In these circumstances non-cash products directly replace normal revenues. In countries which are engaging in infrastructure-for-minerals contracts there has been considerable debate over the value of such deals. Most often the total value of the goods and services provided by such deals is considerably less than would be realised from a more regular arrangement involving taxation and royalty payments because those goods and services are most commonly provided up-front before significant value has been extracted from the mine. And because it is more difficult to place an exact value on the goods and services provided, there is possibly greater scope for either a poor deal or for corruption. That said, in countries where tax and royalty revenues are captured predominantly by elites who provide little or no public goods and services in return, it could be argued that non-cash payments ensure that citizens receive at least some benefit from mining operations. While it would clearly be very difficult to include the value of such deals as part of an EITI process, greater transparency around is needed so that the risks and rewards of such arrangements for governments and the wider public can be more accurately assessed.

### Conclusion and recommendations

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<sup>23</sup> The development of this infrastructure is not strictly in return for the mining rights, but under the terms of the deal the mining company is exonerated from all payments to government until the costs of developing the mine and the infrastructure projects have been fully recovered. Thus, indirectly, the provision of infrastructure has an impact on revenue streams to the government.

The EITI had a slow start in mining countries but now has a higher take up rate in these countries than in those dominated by the oil and gas sector. This rapid uptake of EITI in such countries is largely due to the realisation of revenue transparency being a key enabler to addressing other concerns in the sector, and because of the very visible impact of mining sector revenues at the community level.

The benefit of EITI implementation in all countries – regardless of industry – is becoming clearer. While EITI does not have an explicitly forensic anti-corruption focus, there is emerging evidence that it serves as a useful component in corruption *prevention* by increasing scrutiny – and legitimising civil society’s role in that scrutiny – over payments and revenues. Even where there is not an explicit focus on maladministration, EITI is increasingly being used to identify poor administration by being used as a diagnostic of the efficacy of revenue assessment, collection, and (in some cases) redistribution systems. Most intangibly, but possibly of greatest value of all, is EITI’s ability to reduce political tensions and risks to extractive industry investments by creating a forum in which all parties (government, companies, and civil society) regularly meet and come to better understand each others’ positions and concerns. It is this confidence-building aspect to EITI which is the most difficult to build, but which also has the potential to deliver long-term benefits by reducing the risk of conflict.

That said, it is clear that in a number of areas EITI policy and guidance does not provide sufficient clarity on a number of issues important in mining countries. This chapter would therefore recommend that:

- i. The EITI Board should consider whether it would be useful to provide further guidance or policy on what constitutes an acceptable overall materiality level – i.e. that successful EITI implementation needs to include companies responsible for xx% or more of the value of mineral and metal production.
- ii. The EITI Board should consider producing guidance on how the issue of materiality will be dealt with in the validation process. Multi-stakeholder groups which set a materiality point to exclude minor companies from the process need to be reassured that in doing so they are not making themselves vulnerable to being assessed as not being “EITI compliant” by the validation process.
- iii. The EITI Board should provide more explicit guidance on the need to include any material payments to sub-national governments in EITI programs. This would need to include guidance on scrutinising not only company-to-government transfers, but also intra-governmental transfers. Failure to include such payments seriously risks the perceived relevance of the EITI in countries where these payments are significant.
- iv. Donors involved in supporting EITI implementation should consider making resources available to sub-national governments involved in EITI processes.

- v. Exporters of artisanally mined metals and minerals should be brought into the EITI process in countries where the value of their exports is material.
- vi. Where non-cash payments are material, EITI reports should attempt to obtain a value of those payments from companies, even if they cannot be reconciled with government accounts.