

Applying the 2013 Extractive Industries Transparency Initiative Standard in Liberia

Gap Analysis and Recommendations

April 2015



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ABBREVIATIONS

ANP	National Agency of Petroleum, Natural Gas, and Biofuels (Brazil)
CBL	Central Bank of Liberia
CIMS	Concession information management system
CITES	Convention on International Trade in Endangered Species
COSIS	Chain of Custody Information System
CSR	Corporate social responsibility
DRC	Democratic Republic of Congo
EITI	Extractive Industries Transparency Initiative
FATF	Financial Action Task Force
FDA	Forestry Development Authority
FLEGT	Forest Law Enforcement, Governance and Trade
FY	Fiscal year
GAC	General Auditing Commission
GEMS	Governance & Economic Management Support Project
GIZ	Gesellschaft für Internationale Zusammenarbeit (German International Development Agency)
GoL	Government of Liberia
IMF	International Monetary Fund
LEITI	Liberia Extractive Industries Transparency Initiative
LRA	Liberia Revenue Authority
LRC	Liberia Revenue Code
LVD	Legality Verification Department



M&As	Ministries and agencies
MFDP	Ministry of Finance and Development Planning
MLME	Ministry of Lands, Mines and Energy
MoA	Ministry of Agriculture
MSG	Multi-stakeholder group
NBC	National Bureau of Concessions
NFRL	National Forestry Reform Law
NGO	Non-government organisation
NIC	National Investment Commission
NOCAL	National Oil Company of Liberia
NRGI	Natural Resource Governance Institute
PFM	Public financial management
PEP	Politically exposed person
PMSP	People Mining Program (Peru)
PSC	Production-sharing contract
SDF	Social Development Fund
SOE	State-owned enterprise
USAID	United States Agency for International Development
VPA	Voluntary Partnership Agreement



EXECUTIVE SUMMARY

Liberia was admitted as an Extractive Industries Transparency Initiative (EITI) candidate country in 2008 and was the first African country to become EITI-compliant in 2009. The Liberia Extractive Industries Transparency Initiative (LEITI) process covers four sectors: mining, petroleum, forestry, and agriculture.

The EITI Standard, which lays down the requirements EITI countries are expected to comply with, was approved in May 2013 and replaced the 2011 EITI Rules. Under the EITI Standard, the scope of the EITI is widened to ensure transparency at all stages of the extractive industries value chain in order to promote more effective governance of natural resources among EITI-compliant countries.

The LEITI is required to publish its next (6th) report covering fiscal year (FY) 2012/13 in accordance with the EITI Standard. This LEITI Gap Analysis aims to increase understanding of the scope of available information and assist the Government of Liberia in identifying key issues to be addressed in order to comply with the Standard and establish an EITI process linked to national priorities and government policies.

The Gap Analysis builds on a model developed by the Natural Resource Governance Institute and its 'Guide to the EITI Standard'. It provides LEITI with:

1. An assessment of the extent to which the EITI Standard has been met in the 5th LEITI report. The Gap Analysis highlights critical gaps in the report and, where relevant, the existing legal and policy framework. It focuses on selected topics, mainly related to reinforcing the policy linkages across the value chain, which represent some of the most pressing reporting challenges – and the greatest opportunities for progress – as Liberia begins to implement the EITI Standard.
2. The Gap Analysis makes recommendations on how LEITI can address the reporting gaps identified. In some cases, more detailed planning and efforts will be required to meet the EITI Standard for the 6th LEITI report.

The nine main components covered by this Gap Analysis are: allocation of rights, production, revenue collection, state-owned enterprises (SOEs), sub-national payments and transfers, social impact, revenue management, electronic and timely reporting, and impact and funding.

In addition to the detailed analysis and recommendations, the accompanying EITI Gap Assessment Template – a user-friendly Excel spreadsheet – provides a brief overview of where Liberia's current approach to EITI reporting will need to be modified in order to provide



additional information to meet the EITI Standard and where entirely new disclosures would need to be made in order to do so.

The general conclusion is that substantive efforts will need to be made for the LEITI to meet the EITI Standard, in particular improving the narrative of the LEITI report, e.g. including a description of licensing processes; information about government policies on contract and licensing disclosures; disaggregating revenue data; overview of the extractive sectors, including contracts and licenses; summary of fiscal regimes; explanation of rules guiding financial relations between the government and SOEs. The good news is that, due to the wide mandate of the LEITI under its 2009 Act, there appear to be no particular legal barriers to enhancing disclosure of the required information.

The more difficult requirements to be met within a short timeframe are the establishment of a publicly available cadastre system; and improving the quality of data on production, social expenditure, and employment.



INTRODUCTION

The Extractive Industries Transparency Initiative (EITI) is a global standard that promotes transparency and accountability in the oil, gas, and mining sectors. It has a robust, but flexible, methodology for disclosing and reconciling company payments and government revenues in implementing countries.

The EITI Standard, which lays down the requirements EITI countries are expected to comply with, was approved in May 2013 and replaced the 2011 EITI Rules. In the EITI Standard, the scope of the EITI is widened to ensure transparency at all stages of the extractive industries value chain.

Moving beyond disclosure of revenue data, the new requirements include disclosure of data on the value and volume of production and export of commodities, allocation of licenses and beneficial ownership, social expenditure, revenue collection, revenue management, government transfers by state-owned enterprises (SOEs), sub-national payments, social impact, and revenue management. The EITI Standard is intended to contribute to promoting effective governance of natural resources in EITI implementing countries.

Liberia was admitted as an EITI candidate country in 2008 and was the first African country to become EITI-compliant in 2009. The Liberia EITI (LEITI) process covers four sectors in Liberia: mining, petroleum, forestry, and agriculture. In implementing the EITI, Liberia has to date produced five reconciliation reports covering the periods from 1 July 2008 to 30 June 2012. The 5th report was published in June 2014.

In accordance with the EITI Standard, LEITI is required to publish its next report covering the fiscal year (FY) 2012/13 by 30 June 2015. However, due to the Ebola epidemic, Liberia requested an extension to its next reporting deadline and to its Validation deadline (1 July 2015). In April 2015, the EITI Board agreed to extend Liberia's reporting deadline to 31 December 2015, and the commencement of Validation to 1 January 2016.

Purpose and Structure of the Gap Analysis

This EITI Gap Analysis seeks to increase understanding of the scope of available information and assist Liberia in identifying key issues that need to be addressed in order to comply with the EITI Standard and establish an EITI process linked to national priorities and government policies.



It builds on a model developed by the Natural Resource Governance Institute (NRGI) and its 'Guide to the EITI Standard'.¹ The Guide was developed following the adoption of the revised Standard in 2013, and is meant to underpin the Standard's objective of making closer policy linkages across the value chain.

More specifically, the Guide is intended to help stakeholders: (a) identify how the EITI Standard links to the policy objectives that are most relevant to their country's extractive sector; and (b) develop disclosure methods that reflect good practice and generate information of maximum value to national reform and oversight processes. The Guide does not seek to cover every EITI requirement and is not intended to facilitate the validation process in that manner.

This Gap Analysis provides LEITI with two things:

1. It assesses the extent to which the EITI Standard has been met in the 5th LEITI report, highlighting critical gaps in the report and, where relevant, the existing legal and policy framework. The analysis here focuses on the selected topics, mainly related to reinforcing the policy linkages across the value chain (listed below), which represent some of the most pressing reporting challenges – and the greatest opportunities for progress – as Liberia begins to implement the EITI Standard. There are other requirements that LEITI does not currently meet. Most of these are more straightforward, and indicated in the attached NRGI Gap Assessment Template.
2. The report makes recommendations on how LEITI can address the reporting gaps identified. In some cases, more detailed planning and efforts will be required to meet the EITI Standard.

Since the EITI Standard emphasises the need for transparency within the system generally rather than exclusively through the reports, we consulted several complementary documents:

- LEITI Act (2009)
- LEITI Strategic Two-Year Work Plan FY2012/13-FY2013/14
- LEITI Approved Work Plan FY2014/15
- National Bureau of Concessions Act (NBC 2011)
- LEITI Post-Award Process Audit (2013)
- Freedom of Information Act (2008)
- ToR for LEITI Beneficial Ownership Disclosure study (2014)
- Liberia Public Financial Management (PFM) Act (2009)
- Liberia Mineral Law (2000)
- Liberia Mining Regulation (2010)

¹ <http://www.resourcegovernance.org/eitiguide/>



- An Act Adopting the New Petroleum Law (2002)
- Public Procurement and Concessions Act 2005 (PPCA 2005)
- Amended and Restated Public Procurement and Concessions Act (2010)
- National Investment Commission Act (NIC 2010)
- Liberia Revenue Code (LRC 2011)

The nine main components covered by this narrative report are:

1. ALLOCATION OF RIGHTS

- Register of Licenses §3.9
- License Allocation §3.10
- Beneficial Ownership §3.11
- Contracts Disclosure §3.12

2. PRODUCTION

- Exploration Activities §3.3
- Total Production §3.5(a) & §3.4(e)
- Total Export §3.5(b)

3. REVENUE COLLECTION

- Legal Framework & Fiscal Regime §3.2
- Economic Contribution §3.4(a)-(c)
- Taxes & Primary Revenues §4.1(a)-(b)
- Infrastructure/Barter arrangements §4.1(b)
- Transportation Revenues §4.1(f)
- Disaggregation §5.2(e)

4. STATE-OWNED ENTERPRISES

- SOEs' Level of Beneficial Ownership §3.6(c)
- SOE Transfers and Payments §3.6(a) & §4.2(c)
- SOE Expenditures §3.6(b)

5. SUB-NATIONAL PAYMENTS AND TRANSFERS

- Direct Payments/Receipts §4.2(d)
- Transfers §4.2(e)

6. SOCIAL IMPACT

- Employment §3.4(d)
- Social Expenditures §4.1(e)



7. REVENUE MANAGEMENT

- Distribution of Revenues §3.7 & §3.8

8. ELECTRONIC AND TIMELY REPORTING

- Electronic Reporting §5.3(b)
- Machine Readable Reporting §6.2
- Timely Reporting §2.2

9. IMPACT AND FUNDING

- Government engagement §1.2 & §1.3(a) (e) (f)
- Public debate §6.1(d)
- Funding and Technical Assistance §1.4(d)



Allocation of Rights

LICENSE REGISTRY §3.9

Publishing basic information about each exploration and production license enables the public to know how many licenses exist, their location, and which companies hold them. Maintaining such a registry is a basic component of sector governance. Many countries publish a list of licenses and license holders or a detailed cadastral map that makes it possible for affected communities, potential investors, and other interested parties to see which companies hold which extractive rights.

From the 2013 EITI Standard

REQUIRED DISCLOSURE §3.9(a)

‘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.’

REQUIRED DISCLOSURE §3.9(b)

‘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.’

REQUIRED DISCLOSURE §3.9(c)

‘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.’



Assessment

According to the 2009 LEITI Act, the LEITI is to 'serve as one of the national depositories of all concessions, contracts, and licenses and similar agreements and rights granted by the Government of Liberia to individuals and companies in respect of the logging, mining, oil, forestry, agriculture and other designated sectors; and to grant members of the public access to such concessions and agreements in keeping with their status as public documents' (LEITI Act §4.1(f)). This information is currently maintained and made available to the public on the LEITI website.² (<http://www.leiti.org.lr/companies.html>)

The website includes information related to the EITI Standard on (a) license holders; (b) physical location, *excluding specific coordinates*; (c) date of issue and date of expiry, *but not date of application*; and (d) extractive sector, *but not specific commodity produced*. The website includes information about licenses held by all entities, including companies and individuals or groups for which payments fall below the agreed materiality threshold.

The 5th LEITI report lacks any detailed information on the license holders in the four sectors, although on p. 46 it refers to the websites for the LEITI database on extractive companies, and the National Oil Company of Liberia (NOCAL)'s website. The report also includes an Annex with the Mineral Property Map of Liberia. Although the independent administrators note on p. 57 that not all contracts were made available to them for review, the report does not identify any inaccuracies and omission of information in the database, and makes no recommendations regarding how to address these potential problems.

Mining

The Ministry of Lands, Mines, and Energy (MLME) maintains a cadastre of all mining licenses, which is updated on quarterly. The cadastre holds basic information on all exploration and mining companies, as well as artisanal and small-scale miners. The MLME also has a standing Memorandum of Understanding (MOU) with both the Forestry Development Authority (FDA) and the Ministry of Agriculture (MoA) to exchange concession shape-files.

With the support of the German bilateral agency GIZ, the ministerial website is being upgraded. There will be an online repository of all license data and the website will include information on all licensing agreements included in the cadastre, as well as a map indicating their location. At the time of writing the website was not yet operational, so it was not possible to verify the level of detailed information it will include.

² The LEITI Secretariat, annually and prior to the commencement of each reconciliation period, writes to the four monitoring agencies officially requesting an updated listing on companies with active licenses and rights for the period under review. On receiving the list, the Secretariat compiles them per sector and follows up to authenticate the details. Hence, it is very rare that any license is missing for the FY under review.



The objective is to also provide information concerning artisanal mining and the work of the Artisanal Mining Vetting Committee on the website. This committee has been functioning since 2013 and is headed by the Deputy Minister for Planning and Human Resource Development, who also has oversight responsibility on exploration.

Petroleum

NOCAL maintains a website (<http://www.nocal.com.lr>), which includes detailed information about its operations, including the status of all of Liberia's 30 offshore blocks and the related bids and interactive maps. All information set out in EITI Requirement §3.9a is found on NOCAL's website, except the date of application. The dates of award and duration of the license are recorded in the production-sharing contract (PSC). Requirement 3.9a(iv) is not applicable to Liberia since there is as yet no petroleum production.

Forestry

As part of the new Chain of Custody Information System (COCIS) and the Legality Verification Department (LVD), which SGS is establishing with the FDA, certain areas of the electronic software programme LiberTrace will be available to the public, including the requirements under §3.9(a), in accordance with the provisions of the Freedom of Information Act (2008). Moreover, the FDA website, which is being redesigned, will also act as an information portal for the COCIS and the LVD, including information about the forestry concessions. In addition, the MLME hosts forestry-related concessions and reserved/protected forest in its cadastre system and is planning to include information about these concessions on its website.

Agriculture

The MLME is planning to include information about the agriculture concessions on its website in due course. There is, however, a challenge concerning some of these concessions, as many of them do not have established shape-files defining their means and bounds. In most agro-concession agreements, clauses provide that MLME carry out surveys to define means and bounds at the expense of the concessionaire, something that is still posing problems. The Land Commission has surveyed at least some of the agricultural concessions and so may be a source of information regarding the means and bounds.

Recommendations

To meet the basic EITI requirements:

- a) If the LEITI updates its database to include the specific coordinates of the licenses, the date of application, and information on the specific commodity being produced, as an absolute minimum, the LEITI report need only refer to the database and include a link to the LEITI registry.



- b) If the registry is incomplete, the report must disclose any gaps in the information and document efforts to strengthen these systems, including regular updates of the database.

In order for the LEITI registry to be comprehensive and useful, we also recommend that:

- a) Individual sector ministries and agencies (M&As) should be encouraged to make their websites fully functional and to host all of the up-to-date information that is relevant for the EITI process. Links to these websites should be provided in the LEITI report.
- b) The LEITI website should provide access to a concession information management system (CIMS) developed for the extractive sectors^{3,4} (possibly hosted by the National Bureau of Concessions (NBC) as envisaged), capturing – in addition to the basic requirements set out in §3.9(a) – the following information:
 - i. Beneficial ownership of each license-holding company (see section on beneficial ownership below);
 - ii. The contract associated with the license;
 - iii. Production levels;
 - iv. Reserves;
 - v. Project-level payments made by the companies; and
 - vi. A geographic information system (GIS) interface to plot coordinates on a basic geological or topographic map.

Other country illustrations

- The Norwegian Petroleum Directorate provides online, and through a user-friendly application, detailed and regularly updated information about each license, including a narrative on its status and future outlook, identifying all partner companies including the operator, reserves, production levels over time, and its location on an interactive map. (<http://www.npd.no/en/publications/norwegian-continental-shelf/no1-2013/app-on-every-platform/>)
- Mozambique’s Ministry of Mineral Resources has a mining cadastre portal (<http://portals.flexicadastre.com/mozambique/en/>) that allows users to click on a tenement or contract in the map to view detailed information or to search by tenement code, company name or contract name. Contracts are not disclosed.

³ NOCAL could be providing this information on its own website.

⁴ A similar system is also being developed at MLME and there is a working group to link data from Liberia Revenue Authority, LEITI, etc. Coordination between various initiatives should be improved to avoid duplication.



- The Democratic Republic of Congo (DRC) has an online public mining cadastre that is updated monthly. It includes maps and details such as the type of license, date granted, expiry date, party names, area and minerals. (<http://www.flexicadastre.com/drc/>)
- The Government of Peru publishes licensing requests before decisions are made. Once awarded, licenses must be listed in the official gazette before concessions take effect.
- Sierra Leone has an online repository, which contains data on all mineral rights, export licenses, and related payments managed by the National Minerals Agency, and all forestry licenses issued by the Forestry Department. The Sierra Leone repository is the model for what is being developed in Liberia with the support of GIZ. (<http://sierraleone.revenuesystems.org/login/auth>)

LICENSE ALLOCATION §3.10

Policy decisions regarding the allocation of rights to extract natural resources can either lay the foundation for successful sector management or set countries on a path towards misuse. Governance challenges associated with the allocation of rights include bribery of public officials to gain access to extractive rights; license and/or contract allocations to politically exposed persons (PEPs); forgone social and economic benefits resulting from poor negotiation of fiscal, social, and economic terms; and lack of oversight of the fulfilment of contract terms.

From the 2013 EITI Standard

REQUIRED DISCLOSURE §3.10(a)

‘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.’

REQUIRED DISCLOSURE §3.10(b)

‘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.’

REQUIRED DISCLOSURE §3.10(c)

‘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 DISCLOSURE §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.’



Assessment

In 2013, and as mandated by the LEITI Act, the LEITI conducted a Post-Award Process Audit of the processes involved in awarding material public concessions, contracts, licenses, permits, and other rights of exploitation of Liberia's diamond, gold, oil, timber, and agricultural resources between 13 July 2009 and 31 December 2011. The auditors were required to ascertain that these processes were in compliance with Liberian legislation at the time of award. The audit involved each material concession, contract, license, and other rights awarded during the period under review.

As part of the assignment, the auditors were also required to develop sector-specific compliance templates summarising all relevant laws and procedures applicable to the sectors covered under the LEITI programme. Such templates will serve LEITI as a future guide in evaluating the process of the award of concessions, contracts, licenses, permits, and any other rights. Funding for a new process audit to be conducted in FY 2014/15 is available, but only one contract (Petroleum Block-16) has been awarded since the last audit. Hence, it may not be deemed cost effective to engage an audit firm before the next review.

The 5th LEITI report does not disclose the processes involved in awarding and transferring of licenses in the four sectors, refer to the main findings of the audit, or provide a link to the audit report, which is available on the LEITI website.

The LEITI multi-stakeholder group (MSG) approved all audit recommendations and officially communicated its decision to the President. All Government of Liberia (GoL) agencies involved with the awarding of contracts have been officially notified of the audit findings and recommendations. GoL agencies on the LEITI MSG are also aware of the MSG policy actions adopted for implementation by the Executive. The NBC and the National Investment Commission (NIC) have already begun to implement some of the recommendations, although progress has been remarkably slow overall.

Mining

The MLME publishes information on the number of bids received, bidding requirements, and winning bids, but only after licenses have been awarded.⁵ The MLME is currently updating the Mining Act, which will clarify rules and procedures in awarding licenses.

Petroleum

NOCAL publishes information on the number of bids received, bidding requirements, and winning bids. The website also provides an example of the model production-sharing contracts for the petroleum sector in Liberia as well as information on its bid round process and

⁵ It is not clear where this information is currently published and how frequently.



requirements.⁶ The number of bids received and winning bids has not been published because these are still being evaluated and no contract(s) have been completed. It is expected that, once completed, such information will also be published in line with EITI Requirement §3.10(a-c).

In urgent need of revenue to respond to the Ebola epidemic, the GoL has recently tendered four offshore oil blocks. Global Witness believes that, if these concessions are to benefit Liberia in both the short and long term, additional safeguards should be included to improve transparency during the bid round, disclose company ownership, and ensure information is publicly available during companies' operations.

Forestry

No new concessions have been granted in the forestry sector since February 2012 and following the agreement with the Norwegian government for a USD150 million grant to protect the Liberian rainforest through a REDD+ investment programme,⁷ it is not expected that any new large concessions will be granted in the foreseeable future. In line with the agreement under the programme, an independent team will review all current concessions and licenses (awarding process and implementation) in the coming months.

The FDA, with support from USAID-funded PROSPER, is developing checklists that the FDA's Community Forestry Department will use to guide the due diligence processes in the issuance of new Community Forestry Management Agreements. The FDA will be responsible for posting guidelines on its website.

Agriculture

There is currently no information related to the award or transfer of licenses pertaining to the agricultural companies covered by the LEITI report on the MoA website.

Recommendations

- a) The LEITI report should refer to the processes involved in awarding and transferring of licenses in the four sectors, as required by the EITI Requirement §3.10(a)-(b), drawing on the information available in the Post-Award Process Audit. It should also include a link to the audit report.

⁶ Information about the model PSC is found on the NOCAL website at: <http://info.tgs.com/liberia-basin-bid-round-2014>. This link connects to the model PSC, which is the Republished PSC. Click Republished PSC.

⁷ A Letter of Intent between the GoL and the Kingdom of Norway was signed on 23 September 2014. (<http://www.fda.gov.lr/#>)



- b) If any new bidding rounds have taken place or licenses were transferred after the audit period (1 January 2012 and up to the period covered by the reconciliation), the LEITI report should disclose and describe the process of transferring and allocating licenses, as required by the EITI Standard §3.10(a)-(c). Hence, every LEITI report should contain a 'mini-process audit' of material concessions awarded during the reporting period. Alternatively, the Post-Award Process Audit could be repeated annually as a matter of course.

In addition to the required elements – and to the extent it is not already included in the Post-Award Process Audit – we recommend LEITI to consider the following:

- a) The LEITI report should state how the Post-Award Process Audit recommendations are being taken forward and implemented, and indicate how progress on these actions is and will be monitored. An action plan for the relevant stakeholders should be developed.
- b) A commentary on the efficacy of the existing system of allocating licenses (as encouraged by EITI under §3.10(d)). The report should comment on lack of transparency in the negotiations and awarding or transfer of extraction rights.
- c) Information on any other factor(s) that affect licensing in the four sectors (as encouraged by EITI under §3.10(d)).
- d) Additional disclosures of information such as the reasons for refusing unsuccessful awards, conflicts arising from the bidding process, and the key terms of a winning bid.
- e) The structure and composition of the technical negotiation teams and existing checks and balances.
- f) Any conditions attached to extractive rights, such as partial government ownership, local employment requirements, or investments in infrastructure projects.

OTHER COUNTRY ILLUSTRATIONS

- The government of Trinidad and Tobago publishes information regarding the licensing process. Awards and block locations are published once bidding is complete. (<http://www.energy.gov.tt/investors.php?mid=208>)
- In Brazil, the National Agency of Petroleum, Natural Gas, and Biofuels (ANP) publishes extensive information on the results of the licensing process, including the number of bids received, winning bids, final contracts awarded and licensed blocks and duration, royalties and other tax obligations. ANP publishes this information in its website, in the official press and the media. (<http://www.anp.gov.br>)



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 (PEPs), and also reveal the extent to which companies are using shell companies to reduce their tax burden in the producing country. The beneficial owner refers to the natural person(s) who directly or indirectly controls the corporate entity.

It has been 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 making this a requirement from 1 January 2016.

From the 2013 EITI Standard

REQUIRED DISCLOSURE §3.11(c)

‘It is required that the government and/or state-owned enterprises disclose their level of beneficial ownership in oil, gas and mining companies operating within the country, and any changes in the level of ownership during the accounting period covered by the EITI Report (Requirement 3.6(c)).’

ENCOURAGED DISCLOSURE §3.11(a)

‘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.’

ENCOURAGED DISCLOSURE §3.11(b)

‘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.’

ENCOURAGED DISCLOSURE §3.11(d)

‘Definition of beneficial ownership:

- i. A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity.
- ii. Where the MSG addresses beneficial ownership, the MSG should agree an appropriate definition of the term beneficial owner. The definition should be aligned with 3.11(d)(i) above and take international norms and relevant national laws into account.
- iii. Publicly listed companies, including wholly owned subsidiaries, are not required to disclose information on their beneficial owner(s).
- iv. In the case of joint ventures, each entity within the venture should disclose its beneficial owner(s), unless it is publicly listed or is a wholly-owned subsidiary as per 3.11(d)iii. Each entity is responsible for the accuracy of the information provided.’



Assessment

At present, the 5th LEITI report does not disclose beneficial owners of the companies that bid for, operate, or invest in extractive industries in Liberia. The report simply mentions on p. 31 that ‘there was no report of any level of beneficial ownership by government of any company in the extractive sector’. There is no publicly available register of the beneficial owners of corporate entities as there should be to comply with the new EITI Standard.

LEITI participates in the EITI beneficial ownership pilot project.⁸ Work on the beneficial ownership report is underway and was to have been completed by 30 June 2015. The report will include a database of all natural person(s) as well as intermediaries that hold ownership rights of $\geq 5\%$ in the companies that exploit oil, minerals, forestry, or agricultural resources in Liberia. This will include current ownership of all active concessions as well as any changes in ownership during the period July 2009 – December 2014. Where no single individual holds $\geq 5\%$ of ownership rights, the report will list the top five shareholders with the greatest share of ownership. The database will be updated regularly as part of the annual LEITI reconciliation process. A verification mechanism will be part of the due diligence conducted by the independent administrator. The LEITI has expressed interest in maintaining this registry, although it may be better if a GoL agency such as the Liberia Revenue Authority (LRA) or NBC is the custodian of such a registry, to avoid LEITI creating its own structures.

Recommendations

- a) The GoL and/or SOEs must disclose their level of beneficial ownership in extractive companies operating in Liberia, and any changes in the level of ownership during the accounting period covered by the LEITI report. It is expected that the beneficial ownership pilot project will capture this information for the forthcoming LEITI report.

For beneficial ownership disclosure to have the most benefit, we recommend that LEITI go beyond the minimum requirements:

- a) In the absence of adequate information from a publicly available register in Liberia, the LEITI independent administrator should request corporate entities to disclose information on their beneficial ownership in companies in the petroleum, mining, agriculture, and forestry sectors. This information should be included in or referred to in the LEITI report. It is expected that the beneficial ownership pilot project will capture this information for the forthcoming LEITI report.
- b) The LEITI report should identify PEPs who have an interest in any extractive licenses and/or contracts, and Liberia’s rules and restrictions on PEPs, if any. PEPs, including SOE

⁸ See <http://eiti.org/pilot-project-beneficial-ownership>



officials, should be required to disclose information about their interest in any extractive industries or projects.

- c) An LEITI reporting template should be designed⁹ to collect the following information on the company:
- i. Full name, proof and year of incorporation, and address of registered office
 - ii. Legal ownership and control structure
 - iii. Legal form and status
 - iv. A full list of directors and senior officers
 - v. Name, date of birth, address, contact information, employment/business history, nationality, numbers and categories of shares held, and other relevant information of all owners (shareholders) with not less than 5% ownership of shares (aggregate or otherwise) issued by the respective company. If no single individual owns at least 5%, information about the top five shareholders with the greatest percentage of ownership (shares) rights should be included.
- d) The template should include provision for attestation by senior person(s) of the extractive company, and be approved by the MSG prior to data collection.
- e) Ideally, the beneficial ownership information should be presented as part of the license registry.
- f) Like other data, this information should be presented in a machine-readable, interoperable format. This, along with using unique corporate identifiers, will allow the data to be plugged into networking programmes such as Gephi (<http://gephi.github.io>), uploaded to a website such as OpenCorporates (<https://opencorporates.com>), and be used across platforms for journalists and activists in order to facilitate cross-country understanding.

Other country illustrations

- In South Sudan, the Petroleum Act requires the publication of beneficial ownership data for companies holding exploration and production sharing agreements. (http://www.globalwitness.org/sites/default/files/library/Blueprint%20for%20Prosperity_LR_1.pdf)
- The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 'to set standards and promote effective implementation of legal, regulatory and

⁹ A similar template should be a requirement for license allocation. With that in place, data could be collected directly from the respective M&As and duplication of efforts could be avoided.



operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system'. The FATF has made various recommendations, including on disclosing beneficial ownership information to law-enforcement agencies. The FATF Recommendations have been adopted by over 180 countries, including 29 countries implementing EITI, through a global network of regional affiliated bodies. (<http://www.fatf-gafi.org>)

- Tanzania's Business Registrations and Licensing Agency provides the option to request beneficial ownership information. (<http://www.brela-tz.org/?section=business>)

CONTRACT DISCLOSURE §3.12

Contracts are the basic agreements that set out a company's fiscal, environmental, social, and operational obligations. Disclosing contracts and licenses is one of the main steps that EITI implementing countries can take to promote more accountable management of their extractive industries. Contract transparency promotes trust and more constructive relationships among citizens, companies, and governments. It helps set realistic expectations surrounding terms and timelines for extraction. It provides enhanced opportunities for multi-stakeholder monitoring that facilitates effective and accountable project implementation. It also enhances the value of the other EITI disclosures, by providing context that facilitates the analysis and understanding of revenue and other data.

From the 2013 EITI Standard

REQUIRED DISCLOSURE §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 DISCLOSURE §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.'

Assessment

As stated in the LEITI Act (§4.1(f)), the LEITI is designed to 'serve as one of the national depositories of all concessions, contracts, and licenses and similar agreements and rights granted by the Government of Liberia to individuals and companies in respect of the logging, mining, oil, forestry, agriculture and other designated sectors; and to grant members of the



public access to such concessions and agreements in keeping with their status as public documents'. These concession contracts are currently hosted on the LEITI website (<http://www.leiti.org.lr/contracts-and-concessions.html>) and a print copy is held in the LEITI Secretariat library, meaning that the documents are available to the public. However, anyone searching by county is directed to Scribd, a subscription service that renders the contracts somewhat inaccessible to the average Liberian, who might well be conducting a search from an internet café. A contract matrix is currently being developed to help simplify existing contracts and make them more user-friendly for the layperson. The matrix should be made available on the LEITI website by 15 July 2015.

The LEITI has a communication strategy that supports dissemination of LEITI reports in all parts of the country; airing of LEITI jingles and dramas about contract transparency; establishment of extractive clubs in various high schools to stimulate debates on transparency and accountability in the extractive sectors concerning contracts and the non-renewability of natural resources; and regular hosting of editors' forums to encourage the media to contribute to the debate on the extractive sectors.

The 5th LEITI report does not document Liberia's policy on disclosure of contracts, although on p. 46 it refers to the LEITI website, which hosts the concession contracts. However, on p. 57 the independent administrators acknowledge that 'not all contracts were made available for our review' and Table 32 lists 43 companies for which contracts were not made available to them, all but one of which were mining contracts.

Recommendations

- a) In accordance with the EITI Standard, the LEITI report should document Liberia's policy on disclosure of contracts that provide terms for exploration and exploitation activities in petroleum, mining, forestry, and agricultural industries. This would include any relevant legal provisions, actual disclosure practices, and any reforms planned or underway.
- b) In addition to providing a link to the LEITI website, the LEITI reports should provide an overview of the contracts and licenses that are publicly available. If certain contracts are not published on the website, this should be clearly stated in the report.

For contract disclosure to have the most benefit, we recommend that LEITI go beyond the minimum requirements:

- a) Where contracts and licenses are not made public or are incomplete, the LEITI Secretariat should mandate the independent administrator to collect copies of any contracts and licenses governing exploration and production of petroleum, mining, forestry, and agriculture.



- b) The LEITI website should display contract summaries (e.g. in matrix format), defining the key contractual terms in plain language to make these more user-friendly and facilitate understanding among non-expert stakeholders.

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. (<http://www.contratsminiersguinee.org/about/legislation.html>) Guinea is also fully integrated in the database on resource contracts. (<http://www.resourcecontracts.org>)
- 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 those seeking to advance open contracting worldwide. The principles reflect norms and best practices from around the world related to disclosure and participation in public contracting. (http://www.open-contracting.org/global_principles)



Production Data

EXPLORATION ACTIVITIES §3.3, TOTAL PRODUCTION §3.5(a) & §3.4(e), TOTAL EXPORTS §3.5(b)

Production volumes and values can be an important factor in determining the revenues the government should receive from extractive companies. A lack of accurate production data can result in underpayment. In addition, information on the status and location of exploration activities is often crucial to long-term forecasting and budgeting and important for tackling tax evasion.

From the 2013 EITI Standard

REQUIRED DISCLOSURE §3.3

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

REQUIRED DISCLOSURE §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.’

REQUIRED DISCLOSURE §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.’

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.’

Assessment

The 5th LEITI report does not provide a narrative overview of the extractive sectors, including significant exploration activities. However, on pp. 21-25, the report presents total production volumes, value of production (including as a share of GDP), and value of exports (including as a share of total exports) by commodity, but not by state/region of origin. The information on the regional distribution of the companies’ operations is incomplete.

The report does not provide the formula used to calculate the value of commodities produced and exported, nor does it give any information at the company or project level.



Although information on production and exports in the 5th report is clearly sourced, it is well known that production data collected by the GoL is provided directly by the extractive companies and, apart from the forestry sector where SGS acts as an intermediary, currently the GoL lacks the capacity to inspect and audit the extractive sectors.¹⁰

Under the terms of the NBC Act (2011), the NBC is mandated to ‘monitor and evaluate compliance with concession agreements in collaboration with concession entities’ (NBC Act §4.1(a)). As yet, however, due to capacity and funding constraints, the NBC has been unable to fulfil its mandate.

The NBC is currently developing its website (www.nbcliberia.org). In parallel, a CIMS has been designed by the USAID-GEMS project and may be used by all extractive sectors, except hydrocarbons, when it is fully operational. The CIMS will facilitate monitoring and enable NBC and other concession-related entities to better manage Liberia’s natural resource concessions.¹¹ The CIMS will probably be hosted by the NBC. All concessions in the mining, forestry, and agricultural sectors will be recorded by the CIMS, which will also include scanned copies of concession agreements’ workflow management functionality.¹² The software envisaged for the CIMS, FlexiCadastre, is fully EITI-compliant and a number of countries already use the system to meet EITI requirements (www.spatialdimension.com).

In collaboration with representatives from other M&As (MLME, MoA, FDA, Ministry of Labour, Ministry of Health, Ministry of Education, Ministry of Public Works), the NBC has developed comprehensive templates for collection of data from the concessionaires. The templates are currently being finalised and should be launched prior to the end of the 3rd quarter 2015.. The data collected will subsequently be feeding into the CIMS.

As a service provides for operation and management of the Liberia COCIS for the GoL, SGS supplies data on forestry production, subject to FDA approval. SGS compiles a monthly report for the GoL specifically on the COCIS, which is shared with the FDA Managing Director and Deputies. This report should then be published on the FDA website (<http://www.fda.gov.lr>) and made available to the public in line with the Liberia Freedom of Information Act. At the time of writing, however, the SGS COSIS report could not be found on the website.

¹⁰ Even in the forest sector, where SGS is an intermediary, there are concerns about payments made by the timber companies under the LibFor systems.

¹¹ How the sectoral systems will interact is not yet decided. One recommendation is for CIMS to be an electronic clearinghouse and entry point to the sector-specific systems.

¹² NOCAL provides information regarding petroleum concessions on its website.



Recommendations

- a) The LEITI report should provide a narrative overview of the extractive sectors, including any significant exploration activities in the country.
- b) In addition to providing information on the contribution of each extractive industry to the economy for the reporting period, the LEITI report should disaggregate this information by region/area.
- c) In addition to providing information on the total export volumes and the value of exports by commodity, the LEITI report should disaggregate this information by region/area of origin.

To go beyond the minimum requirements:

- a) Information in the LEITI report on exploration activities should be disaggregated by commodity, company, project, and quantity of proven reserves.
- b) The LEITI report should document how production data is collected and verified and make recommendations on how to address issues of concern (lack of inspections, audits etc.) and monitor progress in forthcoming reports. The objective should be to enable full reporting and reconciliation on physical flows and the role and capacity of NBC should be particularly considered. To minimise duplication of data collection, LEITI should agree on reporting templates with NBC where their respective mandates overlap.
- c) The independent administrator should collect export figures for the reporting year and at least one previous year in order to enable comparisons over time.
- d) The LEITI report should include information on production volumes and value of different commodities to facilitate understanding of the relationship between production and revenue levels.
- e) The LEITI report should include the methodology and prices used to compute the value of volumes of commodities produced and exported.
- f) The independent administrator should collect information on the destination market for exports.



Other country illustrations

Production data:

- In Chile, the Ministry of Finance regularly publishes information on production volumes, prices, and mineral export values. The Mining Ministry 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.
(<http://www.minmineria.gob.cl/informacion-estadistica/graficos-nacionales-produccion/>)
- In Mongolia, the Ministry of Mineral Resources and Energy discloses mineral production data on a monthly basis. The Ministry of Finance publishes annual information on mineral production data by company. (<http://www.mmre.gov.mn/>)
- In Timor Leste, the Ministry of Finance Budget Reports include data on production volumes, prices, export values, and revenues disaggregated by resource. 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 organised systematically. Timor Leste's Central Bank and Ministry of Finance publish Petroleum Fund receipts. The Ministry of Finance's budget disaggregates petroleum and non-petroleum revenues.

Export data:

- The Ministry of Mineral Resources and Energy and the Customs Office of Mongolia (agency reporting to the Ministry of Finance) disclose monthly statistics on the aggregate value of minerals exports. The Ministry of Finance publishes annual data on export quantities, taxes and fees paid by resource companies.
- The US Energy Information Administration provides extensive US and foreign export data.



Revenue Collection

LEGAL FRAMEWORK AND FISCAL REGIME §3.2

The legal framework and fiscal regime establish the rules that determine the economic contribution made by royalties, taxes, in-kind revenues, infrastructure/barter arrangements, transportation revenues, and other payments to the national economy. Disclosures related to revenue collection that are required and/or encouraged under the EITI Standard should be provided in ways that address national governance challenges and lead to meaningful policy reform. Potential policy reforms in this area include strengthening fiscal policies and improving technical capacity to collect revenues, incorporating all revenue streams in the budget, and developing effective oversight mechanisms including audits and parliamentary checks.

From the 2013 EITI Standard

REQUIRED DISCLOSURE §3.2(a)

'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.'

REQUIRED DISCLOSURE §3.2(b)

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

Assessment

Chapters 6 and 7 of the 2011 Liberia Revenue Code (LRC) cover taxation of income from agriculture, renewable resources, and natural resources. Chapter 1, Section 17 covers stability of the fiscal regimes for mining, petroleum, and renewable resource projects.

The 5th LEITI report contains no information about the legal frameworks and fiscal regimes governing the extractive industries in Liberia, nor does it describe the roles and responsibilities of key government agencies in the four sectors. Nor does the report describe the major features of e.g. petroleum production-sharing agreements, mineral development agreements, or forestry management contracts, or explicitly describe the respective roles of relevant government entities in policy-making, licensing, and regulatory functions in the four sectors as required by the new EITI Standard. Furthermore, the LEITI report offers no description of efforts



being made to revise the NOCAL Act, Petroleum Law, and the Minerals and Mining Act, which represent some of the reforms being undertaken by the government in the four sectors.¹³

Mining

The Minerals and Mining Act (2000) governs the Liberian mining sector. The MLME is currently working towards updating the Act, which aims simultaneously to protect environmental and community rights and enable a conducive investment environment with transparent, accountable, and sustainable mineral resource management. An internal review in the MLME of the revised Act is underway, following public consultations.

Petroleum

The Petroleum Law (2002) mandates NOCAL to delineate, establish, and issue licenses for particular areas, fields, and blocks, as the case may be, on terms and conditions deemed appropriate, subject to the approval of the Board of Directors and final ratification by the President of Liberia. The Petroleum Law further mandates NOCAL to undertake and/or facilitate the exploration and establishment of the country's liquid and gaseous hydrocarbons deposits, both on land and in its sovereign waters.

NOCAL was established through an Act in 2000, for the purpose '... of holding all of the rights, titles and interests of the Republic of Liberia in the deposits and reserves of liquid and gaseous hydrocarbons within the territorial limits of the Republic of Liberia, whether potential, proven, or actual, with the aim of facilitating the development of the oil and gas industry in the Republic of Liberia'.

Liberia has recently enacted two pieces of legislation that could have a major impact on management of the country's nascent oil sector. One is the Petroleum (Exploration and Production) Act, which will govern upstream petroleum activities, including the government's institutional framework, transparency rules, and procedures for licensing. Under this new Act, the LEITI will sit on the bid evaluation panel. The other is the NOCAL Act, which will define the role of the national oil company. Both draft acts were developed following a lengthy reform and consultation process and contain several safeguards, but have yet to be signed by the President before coming into force.

Forestry

An act creating the Forestry Development Authority (FDA Act, 1976, Amended 1988 and 2013) provides for the FDA as a corporate body pursuant to the Public Authorities Law. It gives the FDA the power to establish Government Forest Reserves, Native Authority Forest Reserves, Communal Forests, and National Parks.

¹³ There are currently also reforms underway in the forestry sector, related to the Norwegian grant of USD150 million.



The National Forestry Reform Law (NFRL, 2006), National Forest Policy, and National Forest Strategy (2006/2007) emphasise the importance of different aspects of the forestry sector in Liberia. The NFRL and the FDA Ten Core Regulations (2007) form the basis for commercial exploitation of forest resources. The major piece of legislation governing community forestry is the Community Rights Law with respect to Forested Lands (CRL, 2009).

The conservation aspects of the forestry sector are framed in a number of elements of legislation, including the NFRL. The Protected Forest Areas Network Law (2003) built on the commitments in the Environmental Protection & Management Law (EPML, 2002), and enshrined a commitment to conserve 30% of Liberia's forest areas in national legislation.

In addition, Liberia is a signatory to a number of international conventions and agreements that affect the management of forests and also contribute to wider land-use planning and sustainable use of resources, including the United Nations Convention on Biological Diversity, the Convention on International Trade in Endangered Species (CITES), and a Voluntary Partnership Agreement (VPA) on Forest Law Enforcement, Governance and Trade (FLEGT) with the European Union (EU).

Agriculture

There is no particular law governing the agricultural sector in Liberia. The relevant laws are therefore general: the Public Procurement and Concessions Act and the Environmental Act.

Recommendations

- a) The LEITI report should describe the legal frameworks and fiscal regimes governing the four extractive industries in Liberia: a summary description of the fiscal regimes, 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 in policy-making, licensing, revenue collection, and regulatory functions in the four sectors.
- b) The report should document reforms or proposed reforms that featured in the fiscal year under review, e.g. the envisaged revision to the legal framework of the petroleum and mining sectors.

To go beyond the minimum requirements, we recommend that:

- a) The LEITI report should provide web links to the relevant legislation described in the report.
- b) The LEITI report should describe which types of contracts (e.g. petroleum production-sharing agreements, mineral development agreements, or forestry management contracts) are used in each of the four sectors and describe their main features.



- c) The report should indicate which authority collects each of the major payments received from industries in the four sectors as well as the division of all policy-making, 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. (http://eiti.org/files/Ghana-2010-2011-EITI-Report_0.pdf)
- 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. (<http://eiti.org/files/Albania-2010-EITI-Report.pdf>)
- A new booklet produced by the g7+ Group on Natural Resource Management in 18 g7+ countries features profiles of the reserves, production levels, and legal and institutional frameworks in the natural resource sectors, as well as a synthesis paper on shared issues and challenges, and is designed as a peer-learning tool for fragile states. (http://static1.squarespace.com/static/5212dafbe4b0348bfd22a511/t/54e478e1e4b015ce3b623efe/1424259297053/Natural_Resources_in_g7%2B_countries.pdf)

ECONOMIC CONTRIBUTION §3.4(a)-(c)

The EITI report should include information about the contribution of the extractive industries to the economy in absolute terms and also as a percentage of total figures. This information will make it possible to assess the size of the extractive sectors relative to the rest of the economy.

From the 2013 EITI Standard

REQUIRED DISCLOSURE §3.4

'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:'

REQUIRED DISCLOSURE §3.4(a)

'Size of the extractive industries in absolute terms and as a percentage of GDP, including an estimate of informal sector activity.'

REQUIRED DISCLOSURE §3.4(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.'

REQUIRED DISCLOSURE §3.4(c)

'Exports from the extractive industries in absolute terms and as a percentage of total exports.'



Assessment

The 5th LEITI report discloses information on the contribution of the four extractive sectors to the national economy (p. 21, Table 11a), although it does not calculate the percentage share. In the LEITI report, Table 11a appears to mix GDP calculations with revenue flows, estimating government revenue as a share of GDP rather than of total government revenue – this is confusing.¹⁴ Export values of various extractive commodities are included in the report, including as a share of total exports (p. 22).

The report does not provide information on contribution of specific commodities to the economy. This is particularly problematic for the agricultural sector, as the concessions that are monitored by the LEITI cover only certain products (rubber, palm oil etc.).

The report does not comment on the level of activities in the informal economy.

Recommendations

- a) The LEITI report should present information on government revenue from extractives as a percentage of total government revenues.
- b) Data on the economic contribution made by specific agricultural products covered by the LEITI should be provided.
- c) The LEITI report should include an estimate of activity in the informal economy in all four sectors, but particularly in the mining sector where the informal sector is considered to be substantive

In order to improve the comprehensiveness of the information and go beyond the basic requirements:

- a) Information about economic contributions presented in the LEITI should be framed within the broader domestic context.
- b) Information about economic and revenue contributions should be sufficiently disaggregated to address issues related to regional economic activity and individual revenue streams and commodities.

¹⁴ It is assumed that the last column, headed 'LEITI Results', indicates the government revenue generated by extractive sectors.



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. (<https://eiti.org/KyrgyzRepublic/reports>)

TAXES AND PRIMARY REVENUES § 4.1(a) & (b)

The MSG is required to provide materiality definitions and thresholds. If material payments and revenues are not reported properly or are omitted this could affect the comprehensiveness of the EITI report. The MSG is required to consider the size of revenue streams relative to total revenues.

The EITI requirement stipulates the inclusion of all revenue streams that are significant for the comprehensiveness of the EITI report. This includes government production entitlement, taxes, SOEs' production entitlement, and various fees and/or concessions.

From the 2013 EITI Standard

REQUIRED DISCLOSURE §4.1(a)

'A description of each revenue stream, related materiality definitions and thresholds should be included in the EITI Report. The multi-stakeholder group should document the options considered and the rationale for establishing the definitions and thresholds. Payments and revenues are considered material if their omission or misstatement could significantly affect the comprehensiveness of the EITI Report. In establishing materiality definitions and thresholds, the multi-stakeholder group should consider the size of the revenue streams relative to total revenues.'

REQUIRED DISCLOSURE §4.1(b)

'The following revenue streams should be included:

- i. The host government's production entitlement (such as profit oil).
- ii. National state-owned enterprise production entitlement.
- iii. Profits taxes.
- iv. Royalties.
- v. Dividends.
- vi. Bonuses, such as signature, discovery and production bonuses.
- vii. License fees, rental fees, entry fees and other considerations for licenses and/or concessions.
- viii. Any other significant payments and material benefit to government.

Any revenue streams or benefits should only be excluded where they are not applicable or where the multi-stakeholder group agrees that their omission will not materially affect the comprehensiveness of the EITI Report.'



Assessment

The 5th LEITI report broadly defines the individual taxes and revenues that are covered by the LEITI process in the four sectors on p. 45 (fixed elements), pp. 47-48 (forestry), p. 50 (mining), and p. 54 (petroleum). The information is more detailed for the forestry sector, but is lacking for the agricultural sector.

The LEITI MSG regularly reviews the materiality threshold to ensure that all significant payments including those from new corporate entities are included in the process and the report defines the threshold for each sector on p. 34. In a separate document, the LEITI Secretariat has documented the options considered and the rationale for establishing the definitions and thresholds but there is no specific reference to this document in the 5th LEITI report.

For the 5th LEITI report, a payment or revenue was considered as material where its exclusion or inaccuracy would significantly affect the final report. The report does not, however, indicate what percentage of the reported payments fall below the threshold. Moreover, companies that fall below the materiality threshold are still captured in the reporting process, which makes it difficult to distinguish between the two groups. Rather than reporting on these smaller companies in an aggregated manner (or in a detailed manner in an annex to the report), the findings are mixed with those of the larger companies. This negatively affects how the LEITI process is perceived.¹⁵

Recommendations

- a) The LEITI report should clearly identify and describe all individual taxes and revenues that are covered by the LEITI process for each extractive industry.
- b) The LEITI report should clearly indicate the percentage of reported payments falling below the materiality threshold.
- c) The LEITI report should document the options considered and the rationale for establishing the definitions and materiality thresholds (including the size of the revenue streams relative to total revenues), or make a specific reference to any document that contains this information. The threshold levels may vary between different sectors and between different revenue streams.

In order to improve the comprehensiveness of the information and go beyond the basic requirements:

¹⁵ For example, on p. 9 the 5th LEITI report states that '80 out of 148 extractive companies submitted templates for the reconciliation for the 2011/12 financial year. This represents a 56 percent submission rate', but does not distinguish between companies that do or do not fall below that threshold.



The independent reconciler could conduct a scoping study based on current data and recommend materiality thresholds to MSG for approval.

Other country illustrations

- Tanzania’s 2011 EITI Report explains how the material threshold was set and indicates that threshold results cover 99% of the total revenue collected. (<http://eiti.org/files/Tanzania-2011-EITI-Report.pdf>)
- Mozambique’s 2010 EITI Report includes diagrams of the components of the national and municipal tax systems, including an explanation of how each tax works and what the tax rate is. (<http://eiti.org/files/Mozambique-2010-EITI-Report.pdf>)

INFRASTRUCTURE/BARTER ARRANGEMENTS §4.1(d)

To increase contract transparency, EITI implementing countries are now 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.

From the 2013 EITI Standard

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.’

Assessment

In Liberia, a number of contracts and agreements in the four extractive sectors include clauses requiring holders to contribute to specific infrastructure investments. The 5th LEITI report does not, however, distinguish information on so called ‘in-kind contributions’ (presented in Table 42 on pp. 79-86) between payments that formed part of the contract and voluntary contributions.



Moreover, the report does not attempt to reconcile these payments (p. 79). Rather, companies were instructed to estimate the market value of their non-cash contributions, although these estimates are not included in the report. Such contributions include spending on road rehabilitation, water and sanitation, and school construction, and are disaggregated by company, activity, recipient, quantity, and description.

In addition to the so-called ‘in-kind contributions’, many extractive companies also make cash contributions to other projects (included in Table 40 on pp. 74-76 in the 5th LEITI report). These contributions include spending on rural energy, hydrocarbon development, and laboratory upgrades etc. and are disaggregated by company, agency, and beneficiary. Although these payments are properly reconciled in the report, no distinction is made between payments that formed part of the contract and voluntary contributions.

Recommendations

- a) The MSG should agree on the materiality threshold for in-kind and cash contributions for infrastructure investments, including annual rehabilitation costs.
- b) The LEITI report should disclose the nature and value of contributions for infrastructure investments made in exchange for extractive rights, in line with the EITI Standard. Where reconciliation of key transactions is not feasible, the MSG should agree an approach for unilateral disclosure by the parties to the agreement(s) to be included in the LEITI report.

In order to improve the comprehensiveness of reporting, we recommend that:

- a) The LEITI report should clearly distinguish between infrastructure investments that were made as a requirement of law and contracts in exchange for extractive rights and those that were made on a voluntary basis.
- b) The LEITI report should include the estimated value of the good or service being provided by the company and the methodology used to determine this. The valuation of infrastructure and barter arrangements is not always straightforward, which can complicate the reconciliation process. Close collaboration with the Ministry of Public Works to estimate these values is encouraged. Factors to consider may include: the quality of work against agreed standards, whether the infrastructure project meets agreed deadlines, the methodology for projecting reserves (e.g. size, accessibility, quality) against actual specifications, and price projections against actual prices (and the resulting impact on the transaction’s valuation).



- c) The LEITI report should indicate the status of the good or service in question (delivered, in progress, or not yet delivered, with an indication of the timeline). The results of any audits assessing compliance with the terms agreed should also be disclosed.
- d) The LEITI report should disclose disaggregated data on infrastructure expenditures by company, agency, beneficiary, type (voluntary or mandatory), and associated extractive project.

Other country illustrations

- The DRC's 2010 EITI Report describes a contract between the SOE Gecamines and Chinese mining companies, including infrastructure provision. 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) are not included in the reconciliation portion of the report, and specifically notes that the lack of clarity regarding the terms of the contract limited the ability to report on these payments. (http://eiti.org/files/Congo-DRC-2010-EITI-Report-ENG_0.pdf)

TRANSPORTATION REVENUES §4.1(f)

EITI Reports are required to cover material revenues from transporting oil, gas, and minerals, such as revenues associated with hosting pipelines.



From the 2013 EITI Standard

REQUIRED DISCLOSURE §4.1(f)

'Where revenues from the transportation of oil, gas and minerals constitute one of the largest revenue streams in the extractive sector, the government and state-owned enterprises (SOEs) are expected to disclose the revenues received. The published data must be disaggregated to levels commensurate with the reporting of other payments and revenue streams (Requirement 5.2.e). The EITI Report could include:

- i. A description of the transportation arrangements including: the product; transportation route(s); and the relevant companies and government entities, including SOE(s), involved in transportation.
- ii. Definitions of the relevant transportation taxes, tariffs or other relevant payments, and the methodologies used to calculate them.
- iii. Disclosure of tariff rates and volume of the transported commodities.
- iv. Disclosure of revenues received by government entities a SOE(s), in relation to transportation of oil, gas and minerals.
- v. Where practicable, the multi-stakeholder group is encouraged to task the Independent Administrator with reconciling material payments and revenues associated with the transportation of oil, gas and minerals.

Assessment

Liberia and West African Exploration/Sable Mining recently signed a 25-year iron-ore transshipment deal worth USD1.3 billion. The company will pay an annual concession fee of USD 1.5 million to USD5 million for the transshipment of iron ore from zero million/tons to 10 million/tons each year, as well as taxes and duties set out in the deal.¹⁶

The 5th LEITI report captures no information related to revenues generated from the transportation of extractive products through or across Liberia. Currently, the only such arrangement that is likely to generate future revenues for the GoL is the transshipment of iron ore by mining companies other than ArcelorMittal. There are no pipelines in Liberia and no

¹⁶ The company is also expected, as part of the deal, to construct a new railway from Guinea via Tokadeh to Yekepa in line with the railway there, as well as to rehabilitate and expand the existing railway from Yekepa in Nimba County to the port of Buchanan in line with the use of a third-party access rights between the GoL and steel giant ArcelorMittal. Moreover, the company will pay a signature fee of USD250,000 and on an annual basis, beginning on the first anniversary of the date of operations, will make a contribution of not less than USD2.5 million to the Social Development Fund of the affected counties. These revenue flows should also be captured in forthcoming LEITI reports under the relevant EITI requirements.



road taxes are collected the logging companies, for instance.

Recommendations

- a) The LEITI report should clearly identify and describe, in line with the EITI requirements, the agreement with West African Exploration/Sable Mining for the transshipment of iron ore from Guinea to the port in Buchanan.
- b) The LEITI MSG should review and determine the materiality threshold for transshipment payments.
- c) Any material payments and revenues associated with the transshipment of iron ore should be reconciled in the LEITI report under the relevant EITI requirements, disaggregated by company and by project (i.e. each transport venture).

Other country illustrations

- Cameroon's 2011 EITI Report explains that revenues from oil transport are derived from the Cameroon Oil Transportation Company through the Chad-Cameroon pipeline. (<http://eiti.org/files/Cameroon-2011-EITI-Report-English.pdf>)

DISAGGREGATION §5.2(e)

Disaggregation is a major determinant of whether an EITI report is useable and significant. Complex industries cannot be captured in single figures. Comparing revenues generated by each company and received by each government entity is critical to tracing the source of discrepancies and understanding the fiscal arrangements between the private industry and the state. In addition, communities often need project-level data in order to calculate local contributions to national resource revenues, and project disaggregation may be particularly important when large companies operate in multiple locations.

From the 2013 EITI Standard

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.'



Assessment

While the 5th LEITI report (in Tables 34-37 on pp. 60-67) disaggregates extractive revenues by company, it does not disaggregate revenues by receiving government entity and specific revenue stream in the main body of the text. Table 9 indicates how much revenue each agency receives in total, but not from which stream. And while it appears that the LEITI report provides project-level data, more information is needed to determine whether the companies that report payment data operate more than one license. Only the petroleum sector currently appears to report by project.

The LEITI report compiles the data from reporting templates into detailed tables comparing each company's payments to the GoL for each individual revenue stream. Such tables are provided as appendices (D-G) to the main report.

Recommendations

- a) The LEITI report should include a summary table grouping revenue streams by collecting government entity. This will make it easy to see how much is collected by the Ministry of Finance and Development Planning (MFDP), MLME, NOCAL, LRA, etc.
- b) Under the 2013 EU Accounting and Transparency Directives, for EITI reporting purposes a 'project' is 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'. Reporting templates sent to companies operating more than one project should be revised to require them to report payments made under each contract or lease (this would also be the place for companies to report production data for each project). These revenue flows should then be presented in tabular form in the LEITI report. For payments that are assessed at the corporate level or across multiple projects, such as corporate income tax, there is no need for project-level data.

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. (<https://eiti.org/report/timor-leste/2011>).



State-owned Enterprises

SOE LEVEL OF OWNERSHIP §3.6(c)

SOEs can play dominant roles in extractive sectors, often influencing commercial, regulatory, and policy-making spheres. In countries with a large national oil or mining company, extractive revenues nearly always depend whether these are well governed, high-performing, and accountable to national interests. Governance challenges associated with SOEs include the retention of revenues meant for the treasury; the purchase or sale of state assets in a manner that fails to maximise returns to the nation; and the use of SOEs as vehicles for corruption and patronage.

From the 2013 EITI Standard

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.’

Assessment

The 5th LEITI report offers no detailed explanation on the level of ownership by the government and SOEs in any of the four sectors in Liberia. It does not reveal any corporate entities where the state has partial ownership and simply mentions on p. 31 ‘there was no report of any level of beneficial ownership by government of any company in the extractive sector’. As mentioned earlier, however, the LEITI Secretariat is currently preparing a comprehensive report on beneficial ownership, which will also cover all SOEs (currently only NOCAL) in the four sectors.



Recommendations

- a) The LEITI report should disclose companies where the government and/or SOEs have full or partial ownership in line with Requirement §3.6(c). It is expected that the beneficial ownership pilot project will capture this information for the forthcoming LEITI report.

In order to improve the comprehensiveness of reporting:

- a) The report should disclose information on the activities of such companies, shares held by the government and/or SOEs, earnings of such companies, identity of other shareholders, and the shares they hold as well as their ownership. The report should explain the sharing of revenue formulas between the government and other shareholders such as the retention of revenue, payments of dividends, payment of investment and operating costs, etc. Again, it is expected that the beneficial ownership pilot project will capture this information for the forthcoming LEITI report.
- b) Because the acquisition and sale of equity by SOEs has major revenue implications, these sales should be fully transparent. The report should disclose payments on the sale of SOEs' equity, if any, their prices, the process of selecting the purchaser, and the use made of the revenue generated.

Other country illustrations

- The 2011 Zambia EITI report discloses that the SOE's shareholders are the Government (87.6%) and private investors (12.4%). (<http://eiti.org/files/Zambia-2011-EITI-Report.pdf>)



SOE PAYMENTS AND TRANSFERS §3.6 (a) & 4.2(c)

From the 2013 EITI Standard

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.’

REQUIRED DISCLOSURE §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.’

SOEs exist in many forms, from commercial companies that operate much like their private counterparts to entities that function more like government agencies than corporations. The kinds of transfer between the SOE and the treasury will vary, and they are often both sizeable and complex. Careful oversight is essential.

Assessment

NOCAL is currently the only Liberian SOE operating in the extractive sectors.

The 5th LEITI report does not describe the establishment of NOCAL or its roles, giving no explanation for the prevailing rules and practices on the financial relationship between the government and NOCAL or of corporate governance rules for SOEs in general. Moreover, the 5th LEITI report does not comprehensively present revenues received by NOCAL nor transfers from NOCAL to the government, without which the share of revenues that NOCAL retains or provides to the GoL cannot be discerned.

Although all material payments to any SOE are captured in the reporting process, in its narrative, the 5th LEITI report does not describe these payments and they are not reconciled as no flag receipts are issued upon receipt (p.15).

Recommendations

- a) The report should explain the prevailing rules and practices regarding the financial relationship between the government and NOCAL, e.g. the rules and practices governing transfers of funds between NOCAL and the GoL, retained earnings, reinvestment, and



third-party financing.

- b) The report should clearly distinguish payments that NOCAL makes similar to any other company operating in the sector (e.g. profit taxes, royalties) and transfers it makes because it collects revenues on behalf of the GoL, as detailed above.
- c) The reporting process should comprehensively address the role of SOEs, including material payments to any Liberian SOE from the extractive companies, and transfers between SOEs (NOCAL) and other government agencies. These amounts should be reconciled and the problem of issuing flag receipts must be resolved if these amounts are material.

To further improve the comprehensiveness of reporting, we recommend:

- a) In addition to explaining the financial relationship between NOCAL and the GoL, the explanation called for in §3.6(a) should include the rules and practices related to: corporate governance including the members of the board and their appointment procedure; the identity of the NOCAL's shareholders and their rights; and oversight mechanisms (including parliament) and auditing procedures.
- b) The independent administrator should cover any transfers from government to NOCAL, such as contributions to operating and capital expenses, loans, in-kind transfers, or funds to pay for fuel subsidies.¹⁷
- c) The LEITI report should include the reference or link to publicly available annual reports and independent audit statements for NOCAL.

Other country illustrations

- Côte 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 SOEs' tax and dividend payments to the government. (http://eiti.org/CotedIvoire/reports_)
- 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 20% of the government's mineral revenue derives from its shareholding capacity. (<http://eiti.org/DR Congo/reports>)

¹⁷ It should be noted that NOCAL does not currently receive any subsidies from the GoL, whether in cash or in-kind, for its operations.



SOE EXPENDITURES §3.6(b)

Given their often unparalleled access to funds, SOEs frequently spend for reasons other than their core business, usually acting on behalf of government. They pay for infrastructure, repay the government's debt, fund fuel subsidies, provide resources for social programmes, and acquire assets for other government entities. These expenditures require extensive oversight because they bypass the central budget, and are often highly discretionary.

From the 2013 EITI Standard

REQUIRED DISCLOSURE §3.6(b)

'Where state participation in the extractive industries gives rise to material revenue payments, the EITI Report must include: Disclosures from SOE(s) on 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.'

Assessment

The 5th LEITI report provides no specific explanations regarding potential quasi-fiscal expenditures by Liberian SOEs (in this case, NOCAL) as required by the EITI Standard. Nevertheless, on p. 75, it captures information about NOCAL's contributions to Liberia's Social Development Fund (SDF), which is on-budget and passes through the Consolidated Fund.

The SOE Unit within the MFDP has recently conducted a financial analysis of all Liberian SOEs. A Corporate Social Responsibility (CSR) Guide for Liberian SOEs is forthcoming, stating that their CSR spending should be aligned with GoL priorities.

Recommendations

- a) The LEITI reports should, in a separate section and in line with Requirement 3.6(b), disclose and explain information on all NOCAL's quasi-fiscal expenditures, and identify whether any of these transactions relate to specific contractual obligations.

In order to further improve the comprehensiveness of reporting:

- a) The concept of quasi-fiscal expenditures should be defined to include any major transactions carried out by NOCAL to perform a governmental role outside the core function of a petroleum company.
- b) The LEITI report should reconcile information on NOCAL's quasi-fiscal expenditures. The reconciler should collaborate with the SOE Unit in MFDP to obtain the relevant data.



- c) The LEITI report should provide a link to NOCAL’s website where detailed information about these expenditures may already be provided.

Other country illustrations

- Nigeria’s EITI Reports include information on quasi-fiscal expenditures incurred by the national oil company (NNPC) in order to pay for security operations. (<http://eiti.org/Nigeria/reports>)
- Eight of the SOEs assessed by the Resource Governance Index publish information about their quasi-fiscal expenditures including Chile, Kazakhstan, Mexico, Morocco, and Yemen. (<http://www.resourcegovernance.org/rgi>)
- A report by the International Budget Partnership explains why quasi-fiscal expenditures require public scrutiny and how they should be reported. (<http://internationalbudget.org/wp-content/uploads/Looking-Beyond-the-Budget.pdf>)
- The IMF’s Guide on Resource Revenue Transparency identifies several common kinds of quasi-fiscal expenditures and the associated economic and governance risks. (<https://www.imf.org/external/np/fad/trans/guide.htm>)



Subnational Revenues

SUB-NATIONAL PAYMENTS/RECEIPTS §4.2(d) AND SUB-NATIONAL TRANSFERS §4.2(e)

Policy decisions regarding sub-national revenues determine the benefits received by producing communities and the share of revenues available for specific regions versus the entire country. Key governance challenges associated with sub-national revenues include bribery of local officials to gain a social license to operate; low technical capacity of sub-national governments to negotiate and monitor company obligations; the partial and/or opaque execution of revenue-sharing systems by national governments; social tensions and conflicts regarding who receives what share of revenues; and ineffective spending at the local level.

From the 2013 EITI Standard

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 sub-national government entities are material.’

‘Where material, the multi-stakeholder group is required to ensure that company payments to sub-national government entities and the receipt of these payments are disclosed and reconciled in the EITI Report.’

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 DISCLOSURE §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.’

Assessment

Liberia does not have a natural resource fund and only minor amounts of its extractive resource revenues are earmarked for certain beneficiaries or regions (e.g. in the forestry sector). However, a number of contracts and agreements in the four sectors include clauses requiring holders to make contributions toward specific objectives, e.g. social contributions, scholarships, sector development. These payments do not appear to be made to any sub-national



government entities, but are channelled through the SDF or made directly to individual government agencies.

The 5th LEITI report does not capture the details of payments made by companies directly to the regions in the forestry sector. Rather, these payments are reconciled along with all other payments and not traced to their respective regions.¹⁸

The 5th LEITI report reconciles all payments made by the extractive companies to the SDF via the Consolidated Fund (pp. 72-77). The report also reconciles all payments made by the MFDP to the beneficiary counties (ibid.). The report does not, however, provide any information regarding how these funds are spent at the county level. However, many of the SDFs have recently been audited by the General Auditing Commission (GAC) and these audits are available online at <http://www.gac.gov.lr/index.php>.

All direct company payments to government agencies are disclosed on pp. 68-70 in the 5th LEITI report, although the amounts are not disaggregated by type of payment and there is no mention of materiality thresholds. Moreover, these payments are not reconciled in the report.

Recommendations

- a) The LEITI MSG is required to establish the materiality level for any payments, within the scope of the agreed benefit streams, between national and sub-national government entities. These amounts should be disclosed and properly reconciled in the report.
- b) The LEITI Report should disclose the revenue-sharing formula, if any, as well as any discrepancies between the transfer amount calculated in accordance with the relevant formula and the actual amount that was transferred between the central government and each relevant sub-national entity, including for the SDFs and the forestry sector.

To go beyond the basic requirements and provide comprehensive information:

- a) The independent administrator is encouraged to reconcile the transfers between national and sub-national government entities and ensure that any material discretionary or ad hoc transfers are also disclosed and where possible reconciled in the LEITI report. The recent GAC audits of the SDFs should provide relevant information.

¹⁸ Fifty-five per cent of land rental fees and 30% of surface rental and administrative fees should be distributed to the communities; and 30% of surface rental and administrative fees should be distributed to the counties and deposited in a benefit-sharing account. The fees for the community are paid to the government for onward transfer back to the communities, but are yet to be transferred to them.



- b) All materiality levels should be set with the local level in mind and be reviewed on a regular basis.
- c) Any legislation relating to the revenue-sharing formula(s) and institutional arrangements for revenue sharing should be disclosed in the LEITI report, including links to where the full legislation can be found.
- d) Subnational-level reporting by the LEITI should be disaggregated by company, agency, revenue stream, and project.
- e) The LEITI report should also examine and attempt to reconcile all expenditure related to the sub-national transfers, rather than revenue flows alone.

Other country illustrations

- In Nigeria, The Bayelsa Expenditure and Income Transparency Initiative (BEITI) examines all incomes accruing to the sub-national government (e.g. the sub-national transfers from 2007 to 2010 recorded), as well as expenditure, rather than extractive industry revenue and payment flows alone. (<http://www.resourcegovernance.org/publications/nigeria-uphill-struggle>)
- Peru's regularly updated online reporting system of transfers to local governments is an example of good practice by which 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 sub-national government entities and compares the transfers with the sub-national governments' receipts. (<https://eiti.org/Peru/reports>)



Social Impact

EMPLOYMENT §3.4(d)

Along with paying revenues, extractive companies provide employment, manage CSR programmes, and often seek to address social concerns such as education, community infrastructure, or environmental remediation. Employment is an important mechanism for ensuring that producing communities receive economic benefits from extraction, although local expectations often exceed the supply of jobs. Social expenditure can help companies to improve their social license to operate. The disclosures related to social impacts that are required and/or encouraged under the EITI Standard should be made in ways that address national governance challenges and lead to meaningful policy reform.

From the 2013 EITI Standard

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.’

Assessment

The 5th LEITI report includes some information on employment reported by companies in three of the four extractive sectors (petroleum, agriculture, and mining) in absolute terms.¹⁹ The report also provides information about employment in the mining, forestry, and agriculture sectors both in absolute terms and as a percentage of total employment (p 9). However, the sector classifications are not consistent between the company employment and the total employment figures, making comparisons impossible. Moreover, the information provided by the companies has not been reconciled with the Ministry of Labour. Finally, any contractual obligations on the companies are unexplained in the report.

Recommendation

- a) The LEITI report should include employment data in line with Requirement 3.4(d), and be presented separately for the four sectors covered by the LEITI process

¹⁹ Only 14 companies submitted this information at the request by the independent administrators.



To improve the comprehensiveness of the report:

- a) The LEITI reporting template should require each company to state the sex, number of expatriates, and number of nationals employed by the industry and in each extractive company, and refer to any clauses in company contracts that relate to employment commitments.
- b) The administrators should attempt to reconcile any data received by the companies with that of the Ministry of Labour, relevant sector ministry, and/or NBC. Where reconciliation is not possible, the LEITI report should state this clearly.
- c) Local content information should be included in the LEITI report along with employment:
 - i. In addition to the prevailing local content policy and/or targets, the LEITI report should include disaggregated information on company expenditure, as well as indirect and induced employment. Consider reporting on different categories of suppliers and on their development efforts.
 - ii. Local content information should be disclosed by companies and government entities, and reconciled by the independent administrator.

Other country illustrations

- 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). (<http://www.dmr.gov.za/publications/summary/32-mineral-policy/805-mineral-and-petroleum-resources-development-regulations-.html>) The human resources development plan requires identifying and 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 recruitment efforts. Moreover, 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 needs for specified groups of workers.



SOCIAL EXPENDITURES §4.1(e)

From the 2013 EITI Standard

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.’

Assessment

As mentioned earlier, a number of contracts and agreements in Liberia’s four extractive sectors include clauses requiring holders to make contributions toward specific objectives, e.g. social contributions, scholarships, sector development.

The 5th LEITI report reconciles all cash payments made by the extractive companies to the SDF and all payments made by the MFDP to the beneficiary counties (pp. 72-77).

In addition to the SDF contributions, many extractive companies also make social contributions to other beneficiaries, which are captured in Table 40 on pp. 74-76 in the report. These contributions include spending on health, education, research, environment etc. and are disaggregated by company, agency, and beneficiary. Once again, the report does not disaggregate data on social payments between payments that are mandated by law and those that are voluntary.

Although the 5th report captures companies’ in-kind contributions, as mentioned above, it does not attempt to reconcile these (p. 79). Rather, companies were instructed to estimate the



market value of their non-cash contributions, but these estimates are not included in the report. These contributions include spending on road rehabilitation, water and sanitation, school construction, and scholarships and are disaggregated by company, activity, recipient, quantity, and description, but information on in-kind contributions mandated by law and those that were voluntary are not disaggregated.

Recommendations

- a) In addition to the cash contributions, the LEITI report should also disclose the nature and value of in-kind contributions in line with the EITI Standard. Where reconciliation is not feasible, the LEITI report should include unilateral company and/or government disclosures of these transactions.
- b) Where the beneficiary of the mandated social expenditure is a third party, i.e. not a government agency, the name and function of the beneficiary must be disclosed.

In order to improve the comprehensiveness of reporting:

- a) The LEITI report should disaggregate social payments that were made as a requirement of law and contracts and those that were made voluntarily.
- b) The materiality threshold for social contributions should be based on the impact in a local context.
- c) The LEITI report should disclose disaggregated data on social expenditures by company, agency, beneficiary, type (voluntary or mandatory), and associated extractive project.
- d) The institution, organisation, or entity responsible for allocating and disbursing resources in the community should be identified.
- e) 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, possibly in collaboration with the Ministry of Public Works.
- f) It is important that companies disclose the objective of each project in order to measure outcomes and impact.

Other country illustrations

- Mongolia's 2010 EITI Report lists the value of company donations to non-government organisations (NGOs). The report discloses donations disbursed in cash and in kind, their purpose and the funds devoted to environmental protection. (<https://eiti.org/Mongolia/reports>)



- In view of rising mining prices, the Peruvian government signed a five-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 Programme (PMSP) agreed to devote a part of their direct social expenditure to voluntary funds. The agreement was preferred to a competing proposal to introduce a windfall profit tax on mining companies. Peru's 2008-10 EITI Reports contain information on the PMSP, participating companies, resources invested in regional and local funds and resources allocated for the Truth and Reconciliation Commission. (<https://eiti.org/Peru/reports>)
- In Brazil, the civil society organisation IBASE created a simple template on social expenditures that companies could complete and post on their websites. Companies that posted required information were then awarded IBASE's social audit stamp. The template provides a sense of scale by comparing the company's CSR efforts with net revenues and enables comparisons across time and between companies – all objectives that could be accomplished by effective EITI reporting in this area.



Revenue Allocation

DISTRIBUTION OF REVENUES §3.7 and §3.8

The EITI Standard encourages reports to include information on revenue management and expenditures. Disclosure of such information will be useful in promoting public understanding and debate on the benefits of and challenges posed by extractive industries.

From the 2013 EITI Standard

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 DISCLOSURE §3.7(b)

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

ENCOURAGED DISCLOSURE §3.8

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

ENCOURAGED DISCLOSURE §3.8(a)

‘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.’

ENCOURAGED DISCLOSURE §3.8(b)

‘A description of the country’s budget and audit processes and links to the publicly available information on budgeting, expenditures and audit reports.’

ENCOURAGED DISCLOSURE §3.8(c)

‘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.’



Assessment

The 5th LEITI report, on p. 71, refers to the 2009 PFM Act, which states that ‘the balances of all the public funds of Liberia are to be included in the Consolidated Fund’. Hence, all contributions from the extractive companies to the GoL, which are not earmarked through specific clauses, lose their identity once they are deposited into the Consolidated Fund.

As mentioned earlier, the report reconciles extractive resources earmarked for specific programmes and regions, e.g. SDF and forestry sector payments.

The 5th LEITI report does not include a description of the country budget and audit processes or links to the Central Bank of Liberia (CBL), MFDP and/or GAC. (www.cbl.lr; www.mfdp.gov.lr; www.gac.gov.lr) There is no information on how the public can obtain timely information from the GoL in order to promote debate on the fiscal contribution from the extractive sector to the national budget.

Discussions are ongoing between the LEITI Secretariat and the LRA regarding the classification of the revenue data for the electronic reporting template, using the Liberian Chart of Account coding for all separate revenue streams.

Recommendations

- a) The LEITI report must describe the distribution of revenues from the extractive industries. In this regard, the MSG is encouraged to make specific reference to the Liberian Chart of Accounts, and to international standards such as the IMF Government Finance Statistics Manual.
- b) The LEITI report should clearly indicate and explain which extractive industry revenues are recorded in the national budget and how these funds are allocated.²⁰ Where revenues are not recorded in the national budget, their allocation must be explained, with links provided to relevant financial reports as appropriate. A diagram could help to illustrate the distribution of funds and compare the size of the various flows.

In order to improve the comprehensiveness of reporting, we recommend:

- a) The report should describe any extractive revenues earmarked for specific programmes or geographic regions, such as the SDF. This should include a description of the methods for ensuring accountability and efficiency in their use.

²⁰ At present, all revenue except social in-kind contributions from contractual obligations goes through the Consolidated Fund.



- b) A description of Liberia’s budget and audit processes and links to the publicly available information on budgeting, expenditures, and audit reports.
- c) The LEITI could benefit from including detailed reporting on revenue forecasts and the assumptions behind them, as this could help to manage public expectations and enable informed discussions about sustainable spending policies.
- d) The LRA should code the revenue data for the electronic reporting template, using the Liberian Chart of Account for all separate revenue streams.

OTHER COUNTRY illustrations

- Kyrgyzstan’s EITI Reports indicate that the country allocates 11.7% of its receipts to social funds and includes a pie chart to show how revenues are distributed. (<https://eiti.org/KyrgyzRepublic/reports>)
- 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. (<https://www.mof.gov.tl/budget-spending/petroleum-fund/>) 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. (<https://www.mof.gov.tl/about-the-ministry/organisation-structure-roles-and-people/others-autonomous-bodies/consultative-council-on-financial-management/?lang=en>)



Electronic and Timely Reporting

ELECTRONIC AND TIMELY REPORTING §5.3(b) & §2.2 AND DATA CODING §6.2

If LEITI data is to be used by serious and analysts including policy-makers, civil servants, researchers, market analysts, investors and journalists, it needs to be available in an electronic form. The EITI requires timely publication of EITI Reports because reports are most useful and relevant when published regularly and the data is up to date.

From the 2013 EITI Standard

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.’

REQUIRED DISCLOSURE §2.2

‘EITI Reports must cover data no older than the second to last complete accounting period, e.g. an EITI Report published in calendar/financial year 2014 must be based on data no later than calendar/financial year 2012.’

ENCOURAGED DISCLOSURE §6.2

‘The multi-stakeholder group is encouraged...to code or tag EITI Reports and data files so that the information can be compared with other publicly available data.’

ENCOURAGED DISCLOSURE §2.2

‘Multi-stakeholder groups are encouraged to explore opportunities to publish EITI Reports as soon as practically possible.’

Assessment

The 5th LEITI report is made available only in pdf form, which severely limits its usefulness to the public, including policy-makers, civil servants, researchers, market analysts, investors, and journalists who could all make use of such information.

There is currently no coding of LEITI data and the LEITI reports are not machine-readable to allow for comparison with other publicly available data. There are plans for the LEITI Secretariat to establish an online electronic reporting platform, which can be accessed by all reporting entities. It is unlikely, however, that this platform will be ready in time for the 6th LEITI reporting period.



The 5th LEITI report was published in June 2014, and covered FY2011/12 data. In Liberia, data that is two years' old is of limited use.

Recommendations

- a) The LEITI online electronic reporting platform should be developed so that all data is provided in electronic format. These electronic files should be made available on the LEITI website in a read-only format.

In order to improve the comprehensiveness and relevance of reporting, we recommend:

- a) Since LEITI has produced data covering several years to date, from FY2008/09 to FY2011/12 with FY2012/13 soon to follow, to permit analysis across time, this valuable time-series data should be published electronically along with the data from the forthcoming LEITI report.
- b) The LEITI reports and data files should be coded or tagged to make them machine-readable so that the information can be compared with other publicly available data.
- c) Preparation of the forthcoming LEITI reports should commence as soon as practically possible following the end of the fiscal year. The GAC report on the LEITI could be prepared in parallel to the reconciliation process.

Other country illustrations

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



Impact and Funding

GOVERNMENT COMMITMENT AND OVERSIGHT §1.3 (a) (e) (f)

The EITI requires effective multi-stakeholder oversight including a functioning MSG that involves the government, companies, and the full, independent, active, and effective participation of civil society. This requirement encompasses government commitment and oversight.

From the 2013 EITI Standard:

REQUIRED DISCLOSURE §1.3

‘The government is required to commit to work with civil society and companies, and establish a multi-stakeholder group to oversee the implementation of the EITI.’

REQUIRED DISCLOSURE §1.3 (a)

‘The government, companies and civil society must be fully, actively and effectively engaged in the EITI process.’

REQUIRED DISCLOSURE §1.3 (e)

‘Stakeholders, including but not limited to members of the multi-stakeholder group must:

- ii. Be substantially engaged in the design, implementation, monitoring and evaluation of the EITI process, and ensure that it contributes to public debate.’

REQUIRED DISCLOSURE §1.3 (f)

‘In establishing the multi-stakeholder group, the government must:

- iii. Ensure that senior government officials are represented on the multi-stakeholder group.’

Assessment

Although government officials at ministerial level have been appointed to the LEITI MSG, representation has often been delegated to less senior representatives. Moreover, there has sometimes been a lack of substantive engagement in the LEITI process by ministerial representatives, particularly from the MFDP. This in turn has had negative effects on other stakeholders’ engagement and willingness to cooperate effectively in the reporting process.

Recommendations

In order to improve the effectiveness of the LEITI reporting process, we recommend:



- a) Ministerial-level appointees to the MSG should engage more visibly in the LEITI process and attend MSG meetings in person. To achieve this, the LEITI Secretariat is encouraged to contact the relevant ministers and agree on the mutual benefits of closer engagement by the appointees, both from the LEITI’s perspective and from that of the respective ministry as a stakeholder in the LEITI process.

PUBLIC DEBATE §6.1(d) and FUNDING §1.4(d)

Regular disclosure of natural resource revenue streams and payments from extractive companies is of little practical use without public awareness, understanding of what the figures mean, and public debate about how such revenues can be used effectively. This can be achieved only through a fully funded work plan, including any necessary technical assistance support, with clear objectives for EITI implementation.

From the 2013 EITI Standard

REQUIRED DISCLOSURE §6.1(d)

‘The multi-stakeholder group is required to: Ensure that outreach events, whether organised by government, civil society or companies, are undertaken to spread awareness of and facilitate dialogue about the EITI Report across the country.’

REQUIRED DISCLOSURE §1.4

The multi-stakeholder group is required to maintain a current work plan, fully costed and aligned with the reporting and Validation deadlines established by the EITI Board.

REQUIRED DISCLOSURE §1.4(d)

‘The work plan must: Identify domestic and external sources of funding and technical assistance where appropriate in order to ensure timely implementation of the agreed work plan.’

Assessment

With the new requirements under the EITI Standard, the LEITI reports are expected to become more useful to public debate. To encourage this debate, the reports must be promoted through various outreach activities and be widely accessible to the public. However, as the report expands in scope so there will be a rise in the cost of implementing the LEITI, which will also increase with greater outreach activities.

It continues to be difficult to obtain funding for the LEITI process in Liberia, which limits the scope of activities that can be actively promoted by the LEITI Secretariat.



Recommendations

In order to improve the comprehensiveness and relevance of reporting, we recommend:

- a) Efforts should be made to increase long-term funding for the LEITI process. Options may include approaching the private sector as well as increasing the awareness about the relevance of the LEITI among various stakeholders, including the GoL.