

Observations on the validation process of Extractive Industries Transparency Initiative (EITI)

Presented by: Axel Müller (SNJP) and
Valéry Nodem (RELUFA)
Yaoundé, February 2009

1. Introduction

The Extractive Industries Transparency Initiative was launched by the British Prime Minister Tony Blair, in 2002. This initiative acknowledges the importance of transparency in Extractive Industries in the promotion of economic growth, stability and peace. EITI intends to increase transparency in payments made by extractive companies to governments and in revenues received by governments in this sector.

Cameroon joined EITI in March 2005 and since then it has produced two reconciliation reports. The first report covers the period 2001- 2004 and the second covers the year 2005. Reports from the year 2006 to 2008 are still expected.

During the EITI Board of Directors' meeting held in September 2007, Cameroon became a Candidate Country. This means that from the period that Cameroon accepted to adopt the Extractive Industries Transparency Initiative; it has complied with the four stipulated indicators before acquiring this status, and has two years to fulfil all the EITI requirements. The four criteria to be respected by a country in order to become a candidate country are as follows:

- A public and categorical declaration of the government of its intentions to implement Extractive Industries Transparent Initiative (EITI)
- The commitment to work with the civil society and companies in the implementation of EITI
- The appointment of an individual to lead the implementation of EITI
- The publication and wide dissemination of the country's work plan including an outline of all the costs as well as the visible objectives, an implementation timetable and the evaluation of constraints in terms of capacities.

While preparing to produce the third report, the Cameroon government is looking forward to the next phase which is the **validation process** as stipulated in the EITI implementation process. The objective of this validation is to assess the progress accomplished so far in the implementation of EITI. From this process, if the country has fully complied with the EITI requirements, it then becomes a compliant country. This means that it has fully adopted and implemented Extractive Industries Transparency Initiative. But before getting to this level, it must comply with all the validation criteria contained in the validation grid¹.

In September 2008, the Cameroon Coalition **Publish what you pay**, one of the parties involved in this initiative, organized **a test exercise workshop on the EITI validation process**, for its members and some other civil society organizations.

The objective of this workshop was to increase the understanding of coalition members on EITI validation process, to build the capacities of the coalition members and the

¹ See annexe 1 page 6

other civil society organizations in participating effectively and efficiently in the validation process which is still being prepared, to identify the difficulties, obstacles or some opened questions which are connected to the validation process, and to present them to other civil society organizations, to the government, to the EITI international board, to the Validator, etc.

During this workshop, a general discussion on how this initiative is being handled in Cameroon was carried out and the three national work plans (for the three years of the implementation of Extractive Industries Transparency Initiative) were analysed. A simulation of the validation exercise on the implementation of EITI in Cameroon was further carried out by the participants. The participants used the validation table and the indicator assessment tools of the document entitled “EITI Validation Guide” drawn up by the EITI international consultative group to actually focus on the validation process.

The report of this workshop is available, and copies can be requested to the Technical Secretary of Coalition, Mr Pierre Mboka (pwypcameroon@yahoo.fr)

This article doesn't reflect the views of the Cameroonian PWYP coalition, but only its authors.

2. General observations on the validation process:

The validation process that has been conceived for EITI has a lot of advantages in the sense that it “ascertains” the good implementation of Extractive Industries Transparency Initiative. But it equally has a certain number of opened questions that must be resolved. This article is focussed on some of these questions.

- **On the “ subjectivity” of this process**

The EITI validation grid contains 20 questions among which the first 18 questions must be answered by a “yes” or by a “no”; and by indicating in the different phases of the process whether the expected results were met or unmet. The answers to the last two questions (Was the EITI report made publicly available in a way that was: publicly accessible, comprehensive, and comprehensible, and what steps have been taken to act on lessons learnt, address discrepancies and ensure EITI implementation is sustainable?) will be given by the Validator and found in his narrative report.

With regards to the 18 first questions, the general feeling is that it is not easy to answer just by a “yes” or by a “no”. In fact, most of these questions cannot have precise answers and the processing and interpretation of answers given by those interviewed gives **a wide margin of interpretation and subjectivity to the Validator**, thus referring us to the symbol of a glass which is either half full or half empty. Most of these questions did not give the possibility of answering just by a yes or by a no, or by results “met” or “unmet”. For instance, during the exercise, the Cameroonian coalition gave the following answer to many questions: “yes but”, “no but”, “met but”, or “unmet but...”

Equally, the indicators and the means of justification connected to the questions on the table can equally be interpreted differently. The validation guide doesn't provide enough clear indicators of success, failure, absence or progress. A lot depends rather **on the subjective opinion of people interviewed.**

The Validator also relies on subjective answers given by the different groups of people questioned.

The report of the Validator is certainly presented to the multi stakeholder group (MSG), to the Government and to EITI Board, which analyse it and approve it or not. If the report is accepted, it is then published and the suggestions and recommendations of the Validator are therefore applied. In case they do not agree with the report, “Serious disagreements with regard to the validation process should be presented to the EITI Board and Chair, who will try to resolve them. The Board and Chair have the authority to reject complaints that they consider to be trivial, vexatious or unfounded.”². The negotiation margin and the subjectivity of the Validator will therefore be reduced by this final appraisal.

It's true that each party for sure has its part of subjectivity. It will therefore be necessary to look for a consensus, though “light” on the evaluation process in a given country.

- **What is the Validator measuring?**

The validation process is also not very clear on what the Validator is measuring. It is stipulated that for candidate countries, validation should measure progress in the implementation, while for compliant countries, validation should provide an absolute assessment of whether a country is or not compliant with EITI principles and criteria. In other words, we think that for compliant countries we must have the results, meanwhile **candidate countries seem to have only an obligation of means, which is not very clear**. We can in fact understand that for candidate countries, validation may mean that whenever the country makes some steps forward or makes some progress in applying the criteria or the principles of the initiative, it can therefore sail through the validation phase without any problems. The validation guide could have foreseen a minimum level of progress, which could have been for example to meet half of the key indicators of the validation grid.

It could have been more constraining and “measurable” for the process to define a minimum level that must be met by the candidate countries, so the expression progress should not be too “elastic” and as mentioned above give the Validator a very high margin of interpretation. What is considered as progress by the governments is not always seen as such by the civil society or by the companies and vice-versa. The guide could have provided more measurable indicators of progress.

- **On the decision process of the Validator**

The question here is to know how does the validator makes his decisions. Due to the lack of clear indicators and the high possibility to have different answers and opinions from all interested parties, how will the Validator proceed to reconcile the different

² See EITI Validation Guide page 9 :

answers and to consolidate them into one? **How will the Validator react if the same question is given different answers by the people questioned?** For instance, what will he do in the case of a “yes” of the government, a “no” of the civil society, and a “no” of the companies? To which of these groups is he going to rely on or rely more on? In his validation guide what will he mention in front of the said questions: “met” or “unmet”?

- **On the selection of a Validator**

Recently, the EITI international Board published on its website a list of approved Validators³. Countries that have to go through the validation process have to choose by themselves their Validator on the list of Validators provided. These Validators have their private and independent consulting firms, and are paid for the work they do. At this level the following question can be asked: what will happen if after a validator produces his report the government of a country that has to go through the validation process feels that the Validator was so strict? Certainly, the other candidate countries will choose a more flexible validation firm. The risk is to have validation firms being too “soft” if they want to have more “clients”.

In this context, isn't the validation process running the risk of being perceived at the end as a light and vague exercise, and not completely objective? The international Board might for instance put into place a mechanism that will consist on selecting automatically by random selection an available Validator on the list of Validators each time a country makes a request for one.

We must keep in mind that these validators are private and profit making firms. If they are too tough in their work, too critical on the process in a given country, this might possibly dissuade other countries from choosing the same firm. The risk therefore is for the firms to try to be “soft” in order to maintain a good relationship with the countries that are paying for the validation.

- **On the possibility of an overlap between the reconciliatory and the Validator**

On the list of Validators proposed by the international Board, at least one firm also makes reconciliation reports of figures and volumes in the framework of Extractive Industries Transparency Initiative. The question here is to know whether the Validator can be, for the same country, the same firm than the one that made the reconciliation. We didn't find any answer in the guide. We think that if this happens, the risk here is that he might validate or certify the information that he produced as reconciliator.

Conclusion and recommendations

In view of the validation that is calling on all the countries that joined EITI, it is important that Civil Society has a good understanding of this process as well as the roles of the

³ See <http://eitransparency.org/fr/node/569>

actors involved. In case of disagreement on the content of the Validator's report, Civil Society can oppose to the conclusions of the report and seize the board which has the right to conduct a final check on the work done.

It will equally help to:

- Define clear Terms of Reference for the Validator with regards to his negotiation margin, and put in place a control mechanism of his work and minimise the risk of manipulation or of excessive subjectivity.
- Review certain indicators and to improve on them in such a way that they can give room for a much reduced margin of interpretation.
- Review the mode of selection of the Validator by taking into consideration the divergent interest of the actors involved.
- Ensure that a conciliator does not carry out a validation process in the same country.

ANNEXE

5. The Validation Grid

EITI Criteria – Implementation of EITI must be consistent with the criteria below.	EITI Implementation				
	Sign up	Preparation	Disclosure	Dissemination	
<p>1. PUBLICATION: Regular publication of all material oil, gas and mining payments to governments ("payments") and all material revenues received by governments from oil, gas and mining companies ("revenues") to a wide audience in a publicly accessible, comprehensive and comprehensible manner.</p> <p>2. AUDIT: Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.</p> <p>3. RECONCILIATION: Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards, and with publication of the administrator's opinion regarding that reconciliation including any discrepancies, should be any be identified.</p> <p>4. SCOPE: This approach is extended to all companies including state owned companies.</p> <p>5. CIVIL SOCIETY: Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process, and contributes towards public debate.</p> <p>6. WORKPLAN: A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation and an assessment of potential capacity constraints.</p>	<p>1. Has the government issued an unequivocal public statement of its intention to implement EITI?</p> <p style="text-align: right;"><input type="checkbox"/></p>	<p>5. Has the government established a multi-stakeholder group to oversee EITI implementation?</p> <p>See IAT <input type="checkbox"/></p>	<p>10. Is the multistakeholder committee content with the organisation appointed to reconcile figures?</p> <p>See IAT <input type="checkbox"/></p>	<p>14. Were all material oil, gas and mining payments by companies to government ("payments") disclosed to the organisation contracted to reconcile figures and produce the EITI report?</p> <p style="text-align: right;"><input type="checkbox"/></p>	<p>18. Was the EITI report made publicly available in a way that was: – publicly accessible, – comprehensive, and – comprehensible?</p> <p>See IAT <input type="checkbox"/></p>
	<p>2. Has the government committed to work with civil society and companies on EITI implementation?</p> <p style="text-align: right;"><input type="checkbox"/></p>	<p>6. Is civil society engaged in the process?</p> <p>See IAT <input type="checkbox"/></p>	<p>11. Has the government ensured all companies will report?</p> <p>See IAT <input type="checkbox"/></p>	<p>15. Were all material oil, gas and mining revenues received by the government ("revenues") disclosed to the organisation contracted to reconcile figures and produce the EITI report?</p> <p style="text-align: right;"><input type="checkbox"/></p>	
	<p>3. Has the government appointed a senior individual to lead on EITI implementation?</p> <p style="text-align: right;"><input type="checkbox"/></p>	<p>7. Are companies engaged in the process?</p> <p>See IAT <input type="checkbox"/></p>	<p>12. Has the government ensured that company reports are based on audited accounts to international standards?</p> <p>See IAT <input type="checkbox"/></p>	<p>16. Was the multistakeholder group content that the organisation contracted to reconcile the company and government figures did so satisfactorily?</p> <p style="text-align: right;"><input type="checkbox"/></p>	
	<p>4. Has a fully costed workplan been published and made widely available, containing measurable targets, a timetable for implementation and an assessment of capacity constraints (gov., private sector and civil society)? See Indicator Assessment Tool (IAT) <input type="checkbox"/></p>	<p>8. Did the government remove any obstacles to EITI implementation?</p> <p>See IAT <input type="checkbox"/></p>	<p>13. Has the government ensured that gov. reports are based on audited accounts to international standards? See IAT <input type="checkbox"/></p>	<p>17. Did the EITI report identify discrepancies and make recommendations for actions to be taken?</p> <p style="text-align: right;"><input type="checkbox"/></p>	
		<p>9. Have reporting templates been agreed?</p> <p>See IAT <input type="checkbox"/></p>		<p>How have oil, gas and mining companies supported EITI implementation? See IAT <input type="checkbox"/></p>	<p>What steps have been taken to act on lessons learnt, address discrepancies and ensure EITI implementation is sustainable? See IAT <input type="checkbox"/></p>

Source: Extractive Industries Transparency Initiative (2006): Validation guide