

Civil Society note to the EITI International Secretariat ahead of AEITI Validation

October 2017

Summary

Afghanistan has been an EITI candidate country for eight years, during which time the country has experienced serious turmoil, with limited government control across many rural areas because of an intense insurgency. However, many of the blocks to Afghanistan's EITI progress cannot be attributed to conflict. As civil society organizations within the Afghan EITI Multi-Stakeholder group (MSG), we are greatly concerned about a number of serious weaknesses in the Afghan EITI process, many of which have persisted since its beginnings.

Civil society are committed to making AEITI a success, and we acknowledge and warmly welcome areas in which there has been progress, including initial steps towards incorporating beneficial ownership transparency, and real improvements in the drafting of the last two reconciliation reports. The Afghan government has made welcome statements of intent on EITI compliance, and on the importance of the process. We especially appreciate the hard work of the Afghan EITI secretariat.

However, these developments are overshadowed by continued problems with low quality and missing data, poor information management, lack of data from particular companies, failure to implement past recommendations, and other issues. As credible agencies such as USAID have indicated,¹ even in Afghanistan's difficult circumstances, effective actions to support EITI compliance are within the grasp of the relevant agencies but are yet to be implemented, even if they are the subject of welcome reform plans and commitments. Given this, Afghanistan cannot rely on further extensions based on 'exceptional circumstances'.

Our concerns are heightened by announcements that new mining contracts are being considered by the Government before the serious accountability gaps highlighted by EITI reporting have been addressed, and before the government has implemented promised reforms to address the corruption and conflict which have so badly undermined the sector. We fully support the development of Afghan mining and accept the need for responsible international investment, but without better safeguards there is an unacceptable risk that new projects could simply result in further corruption and conflict. That would run directly against the government's own vision of its responsibilities, and its commitment to safeguard the resources that are the inheritance of all Afghans – as well as the spirit and purpose of the AEITI.

AEITI Civil Society MSG members believe Afghanistan's first validation against the 2016 EITI Standard must require Afghanistan to urgently address the gaps outlined below, and that the actions required to do so must be articulated through urgent, specific, measurable and time bound corrective actions that are assessed in a second validation to take place within a year. Significant new mining contracts should not be considered until this has taken place. We hope that validation can now prompt Afghanistan to seize the real and immediate opportunities to radically improve EITI disclosure – particularly through enacting promised transparency legislation by 2018 – to avoid EITI failure. The fact many of these reforms are already the subject of formal government commitments and plans, and in effect are part of their engagement on EITI, further strengthens the argument that they should be included in any remedial measures.

Finally, we understand the challenging environment faced by the government and other MSG members. However, we firmly oppose the idea of a postponement of the EITI process. The most important measures needed to improve Afghanistan's EITI performance are relatively basic and long overdue reforms, mainly to information management and regulations: the key obstacle in the past has been political will. Similarly, we fully understand the reasons for the

¹USAID, Afghanistan Extractive Industry Transparency Initiative Institutional Assessment, July 2017, Democracy International.

postponement of the summer 2017 validation mission. However, we also believe security concerns should not be allowed to cause further delay, as Kabul has long presented an element of risk and is likely to for the foreseeable future.

Gaps and challenges

1. Lack of progress on previous recommendations

Afghanistan produced its 5th reconciliation report early 2017. There remain major gaps and basic shortcomings in information management highlighted in the 4th reconciliation report, summarized in the table below.² These point to a lack of follow-through on recommendations (required by the standard in requirement 7.3 and 7.4) and a failure of annual work plans to guarantee effective action (required by 1.5.c). In order to maintain the credibility of the ETI process, it is imperative that the validation process requires from the MSG a clear and measurable plan of action with clear accountabilities in order to address these shortcomings within a short timeframe.

	Recommendation of the 4th report	Status
1	Improve record keeping	No action
2	LTO to collect all tax revenues	LTO is not assigned but the MoMP does not maintain list of all companies
3	MoF and MoMP maintain list of all major companies	Yet to be done
4	Complete cadastral record	It is yet to be completed
5	Strengthen Supreme Audit Office/training	The Supreme Audit office out of over 300 people still does not have even one qualified auditor
6	Legislation requiring mining companies to do annual audit	Nothing has happened

It is important to note that this forms part of a consistent pattern of weak implementation of some of the most critical recommendations in previous EITI reports. Perhaps the most important is the recommendation on the digitization of MoMP records, which has been a regular feature of EITI reports since AEITI was established. In the 1st Reconciliation Report in 2012, the auditors recommend “changing the principles of paper- based accounting to more effective accounting programs [i.e. digitization] which will cause to development of accounting system and transparent recording system.” Five years later, the 5th report stated that: “The computerization of the Cadaster has not been completed and generally, many of the systems used in government departments remain manual and cumbersome.”

Despite some positive commitments and signs of new political will, when one looks at the concrete and practical measures of system development and the political actions needed to overcome problems raised by auditors in regard to revenue collection, the government has been near to stagnation during the last seven years, including the two years of the National Unity Government when the last report was conducted. For civil society, this limited overall progress since 2012 creates extreme urgency to finally address these issues, or see AEITI lose credibility beyond repair.

2. Gaps in Afghanistan’s 5th Reconciliation Report

Afghanistan produced the 5th reconciliation report for the extractive industries as part of its commitment to implement EITI in the country on April 29th, 2017.³ We have concerns about the gaps in the report in terms of EITI requirements as follows:

²<http://aeiti.af/Content/Media/Documents/AEITIFourthReconciliationReport139113926220162496931553325325.pdf>

³http://aeiti.af/Content/Media/Documents/5thReconciliationFinalReport_1393-1394_2105201744057225553325325.pdf

Missing and low quality data

- The report found major gaps and inconsistencies in payment data.
- Production data was incomplete, inconsistent and of dubious quality.
- The report overall is weak in terms of quality assurance (requirement 4.9) and states that it is not sufficient in detecting material payments and revenues where these were omitted by both the government and companies, which significantly undermines its anti-corruption value.
- Very few companies appear to have been audited to international standards, raising fundamental concerns about the reliability of the data that underpins the report.

Non reporting companies

Civil Society has raised serious concerns about non-reporting companies. The report states that there were no contact details for four material companies that subsequently failed to respond to the requests for information (re requirement 4.1.c) and subsequently there has been insufficient explanation for how this could be (given these are active contracts), or for what action would be taken (re requirement 7.3 on follow-up to data gaps). A further four companies actively refused to submit information, and again explanations provided for this have been insufficient. For three of these companies the government failed to report on revenues received, leaving an even wider gap in explanation. Afghan law requires companies to adhere to the EITI process – but it is not clear what consequences if any there will be from the clear breach of this requirement. Normally, we would expect such a material breach of Afghan law to lead to suspension of a license.

CSOs also requested that as part of the 5th report the government be asked to provide an explanation for the companies with significant contracts but no production, or with production but no revenue, but this has not been included. One of these companies Shamsheer Zameer, gave an explanation that it cannot share data because of a legal dispute – this is not sufficient. Three other companies did not respond to requests to not reporting to the EITI process, with no adequate explanation provided. This is particularly concerning given that CSOs understand that the Ministry of Mines is considering extending the license of at least one of the companies, the Hashimi Group. Finally, the CSOs had concerns about some companies reporting very low production rates, or reporting production which was not registered by the government. In accordance with requirement 7.3 of the Standard, these discrepancies require urgent explanation,

Lack of explanation for gaps in reconciliation

- Unreconciled totals are not sufficiently explained.
- Discrepancies in payments and receipts are not adequately explained, particularly those in relation to amounts reported by MOF Customs and by companies.
- The MOMP data for royalties and production did not match up – there was production for companies for which no royalty was reported, and royalties received from companies for which no production was reported, with no attempt to explain the gap.

Customs and export data

- Export data is wholly missing, contrary to requirement 3.3.
- The customs department's declaration of receipts appears to be startlingly small and requires explanation.

License register

- An up-to-date and comprehensive license registry is absolutely fundamental in establishing the credibility of the EITI report. While there has been an improvement in the number of companies included in the 5th report

(compared to the 4th), the licensing system and the EITI reporting is not by any means capturing all the relevant companies and contracts in operation, contrary to requirement 2.2 and 2.3 of the EITI Standard, including contracts that have been subject to public scrutiny and corruption claims. Nor is the report clear about the status of licences, nor about licenses, contracts and payments at provincial levels, although credible reports exist of sub-national contracts and significant provincial revenue flows. The report also lacks information on licenses awarded in terms of bid criteria and the technical and financial basis for licenses awarded (contrary to requirement 2.2).

SOEs and companies collecting revenues for Government

- The ShairParwan and Afghan Emerald companies are confirmed in the report as collecting revenues on behalf of the Government, without an explanation of how these very unusual arrangements are agreed and on what basis. The 5th report contains no information about whether these companies are keeping or publishing data about production. Appendix 9.12 includes a copy of the agreement between ShairPawan and the MOMP, but the company offered no reporting on production or payments under this agreement.
- CSOs have received reports that state-owned Northern Coal Enterprise issued many contracts to private operators that in turn produce large amounts of coal every year. It is unclear if this production was included in the EITI data on the company or if any tax was paid. This requires urgent explanation. Records maintained by the MoF SOE department were not in good order, a major source of concern.

National budgets and social expenditures

- The report identifies serious deficits in government record keeping and in the relationship between extractive revenues and national budgets (as per EITI requirement 5). There is also a lack of explanation for why there were no mandatory social expenditures during the reporting period (re requirement 6). These deficits were identified in the previous reconciliation report, but have not been addressed.

Material sectors excluded

- Despite civil society concerns raised in the 4th AETI report and unaddressed in the 5th report, the AEITI reporting continues to exclude ASM revenues that may be material). The EITI process in Afghanistan must clarify whether there were material payments or production from this sector and what the size and contribution of the sector is (in accordance with requirement 4.1), and what plans there are for bringing it under regulation. A lack of any government estimate of revenues from the sector to date has meant its exclusion by default, but the AEITI process cannot credibly continue while excluding a potentially significant revenue stream from a sector highly prone to corruption.

Process management

- The circulation of the final draft of the report did not enable sufficient time (24 hours was given) for civil society stakeholders to review and approve it. This is an unacceptably short period.

Suggested actions required to address gaps

We believe that corrective actions should include the following measures, and progress against them must form the basis of assessment in a second validation within one year:

1. An effective register of contracts

In accordance with requirement 2.3a, the Afghan Government is required to maintain a publicly available register or cadaster system with timely and comprehensive information. It is currently not possible to access comprehensive, reliable information about which companies hold licenses (including sub-national licenses), nor

the status of these agreements. This is a significant obstacle to meaningful transparency in the country. We strongly suggest that, with MSG and partner support, the Afghan Government should be required create a single, effective, fully computerized public register within six months, linked directly to corresponding contracts that should be published in whole along with any related agreements. Progress in the implementation of this plan must be considered in subsequent validations.⁴

2. Improved provision and quality of data

In accordance with requirement 4.1.c, government and companies must redress the gaps in the reporting of payments and receipts. **A detailed plan to address disclosure gaps, including recommendations on improvements in Government and SOE record keeping and financial management systems** should be agreed, and progress against this plan should be a key factor in the subsequent validation. The plan should include specific technical reforms, such as those set out in the recent Democracy International report.⁵

We strongly believe this plan should **include legal reforms that mandate disclosure**. The weaknesses in the Afghan EITI process illustrates the pressing need for legal requirements for the publication of essential data. A lack of legal requirement to disclose data is a block to an effective EITI and must be addressed as per requirement 1.5.c.iii. Both legislative and procedural changes that would transform the quality of the AEITI process are already the subject of the government commitments from the 2016 Brussels Conference, with amendments due to be submitted to parliament by mid-2018. **Given they are already part of the government’s engagement on EITI, there is a strong argument that progress against these commitments should form part of AEITI’s second validation.**⁶

The detail of these amendments will be critical, but there are basic mechanisms which can make transparency near-automatic, greatly reduce the problem of refusals and gaps in disclosure, and help mainstream the EITI into resource governance in Afghanistan – with the overall effect of greatly improving prospects for EITI compliance, in accordance with Afghanistan’s aim to become compliant by 2019.

Afghan mining and hydrocarbon laws should include at a minimum the following measures, based on existing government commitments.⁷

- a) a legal requirement for the disclosure of all payments to the government and of production data, including from SOEs, according to international auditing standards and down to the level of individual projects (and with punitive measures for non-disclosure);
- b) a requirement for the use of a single transparent sub-account for all extractive sector revenues, as a condition of receipt of payments (based on the currently used model of customs sub-accounts, but automatically

⁵ The report by Democracy International for USAID usefully details what such a system should include and timelines for development See recommendations from USAID, Afghanistan Extractive Industry Transparency Initiative Institutional Assessment, July 2017, Democracy International.

⁶ Brussels Conference on Afghanistan: Self-Reliance Through Mutual Accountability Framework SMART Deliverables 2017-2018, Government of the Islamic Republic of Afghanistan, October 2016

http://mfa.gov.af/Content/Media/Documents/agreed_smaf_smart_deliverables_final26102016113033613553325325.pdf

⁷ See: Afghanistan National Strategy for Combatting Corruption, Government of the Islamic Republic of Afghanistan, October 2017; Brussels Conference on Afghanistan: Self-Reliance Through Mutual Accountability Framework SMART Deliverables 2017-2018, Government of the Islamic Republic of Afghanistan, October 2016

http://mfa.gov.af/Content/Media/Documents/agreed_smaf_smart_deliverables_final26102016113033613553325325.pdf; Anti-Corruption Summit – London 2016, Islamic Republic of Afghanistan Country Statement, Government of the United Kingdom, May 2016 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522697/Afghanistan.pdf

published along with necessary supporting information on the justification and origin of the payments, and with its use mandated by law);

- c) the publication of extractive contracts and related agreements, as a condition of their coming into force;
- d) the publication (and updating) of the beneficial owners of companies, as a condition for them to apply for or hold a license.
- e) additional to existing commitments, the Government should include a legal requirement for extractive companies, including all SOEs, to conduct audits of their accounts to an international standard and to make these public.

The Single Transparent Account is especially important here. In order to improve the revenue reporting required under 4.1.c, it is recommended that the Government installs a digital payment system that requires revenue payments to be made into a single transparent intermediary account, along with necessary supporting information on their justification and origin. It is also recommended that the government creates budget line items that enable these revenues to then be tracked into the national budget and provide an explanation of the allocation of any off-budget extractives revenues, in accordance with EITI Requirement 5.1

3. **Provide meaningful explanations for existing gaps**

In accordance with requirement 7.3 and the principles of accountability incorporated in the EITI Standard, the government must provide meaningful explanations for data gaps and time-bound and trackable commitments for publishing missing data. Progress in the implementation of these commitments must be considered in subsequent validations. Civil Society MSG members have highlighted serious data gaps in the 5th AEITI report, and areas where the data suggests inconsistencies that could be indicative of abuses.⁸ The Government must respond to the specific queries raised by civil society with adequate explanations or commitments to urgently investigate data gaps in order to create meaningful accountability.

4. **Include artisanal and small scale reporting**

In accordance with requirement 6.3.a, the MSG should address gaps in reporting on artisanal and small scale mining in future reports, following up on the recommendation of the 4th AEITI report that has not been addressed in the 5th report. This should include making every effort to identify of the size of the revenue stream from the sector and any material payments in accordance with 4.1.a. Progress in the implementation of this plan must be considered in subsequent validations.

5. **Disclose information on oil and mining licenses**

In accordance with requirement 2.2, it is required that the government discloses information regarding the oil and mining license awards and transfers made during the financial year covered by 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; and any non-trivial deviations in license transfers and awards. Beneficial owners of companies should also be declared as per (2) above. Progress in the implementation of this plan must be considered in subsequent validations and these reporting should be in place before any further mining contracts are agreed.

6. **Improve MSG management and governance**

In accordance with requirement 7.3, the MSG should consider the recommendations from EITI Reports and the USAID/Democracy International recommendations to improve **MSG management, strategies, plans and**

⁸See the MSG pre-validation self-assessment and assessment conducted with EITI International Secretariat, summaries of which were circulated 29th May 2017; plus 'Comments on 5th Report' from Civil Society MSG members, April 25, 2017).

governance; including revising three year frameworks and annual work plans to incorporate all AEITI related government commitments and recommendations from past AEITI reports and validations in order to make greater progress across the board, with particular reference to requirements 7.3 and 7.4. Specific tasks should be allocated to MSG members and formal working groups to ensure these are followed-up and reported on at every MSG meeting, and future validations must incorporate progress against these specific commitments and recommendations. Final reconciliation reports must enable stakeholders adequate review time.

7. **Stronger government engagement**

In accordance with requirement 1.1, **the Afghan government should improve its engagement in the AEITI process**. Despite welcome declarations of commitment to AEITI, government representation at AEITI meetings has sometimes been relatively junior, coordination and action across ministries has been weak, and there has inadequate response to (or explanation of) data gaps, as described above. The Government must ensure adequate high-level representation at MSG meetings, strengthen cross-government coordination, and aggressively implement previous AEITI recommendations.

8. **Include sub-national payments**

The MSG should assess the materiality of direct subnational payments and include a reconciliation of any material direct subnational payments in future EITI Reports.

Sincerely,

Members of Mining Watch Afghanistan,
Afzal “Sherzad” CSO MSG member,
Habiburahman “Nang” CSO MSG member,
Timory CSO MSG member,
And Global Witness.