



A New Accountability Agenda

Human Rights and the Extractive Industries Transparency
Initiative



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Summary

The Extractive Industries Transparency Initiative (EITI) was founded in 2003 with the goal of strengthening governance by increasing transparency over revenues from the oil, gas, and mining sectors. EITI has contributed to much greater disclosures of information and helped spur dialogue in many countries. But EITI has not made progress toward its ultimate purpose of enhancing accountability in resource-rich countries. An independent evaluation commissioned by EITI in 2011 concluded, “EITI has not been a significant driver of change. While *transparency* has improved, *accountability* does not appear to have changed much.” The evaluation attributed this problem to the absence of a coherent strategic vision, explaining that without clarity on how publicizing credible data on natural resource revenues would lead to better governance, EITI would not be able to direct its efforts to where they would be most likely to deliver results.

Human Rights Watch believes that EITI should incorporate human rights in order to improve governance. Transparency alone does not improve governance. Real improvements require that the public be able to hold governments accountable for the decisions they make. For that reason, transparency can only truly help improve governance in an environment in which people can freely and openly access and assess government data, organize to contribute to public debate, press for policies that serve the public interest, scrutinize government decisions, and hold leaders responsible for the decisions made. In short, transparency can be transformative in an environment where fundamental freedoms are respected because the combination of the two is what provides for accountability.

The submission reviews EITI’s purpose, structure, and founding principles, including the central role of civil society in the initiative, and summarizes the strategic review process started in 2011 and its main conclusions. It then discusses EITI’s efforts to move beyond transparency to promote accountability and why the initiative’s current, limited approach to human rights is an obstacle to that goal. It draws on examples from a selection of countries at different stages of EITI implementation to illustrate the challenge facing EITI. It concludes that transparency in the absence of human rights does not advance the EITI’s worthy goals. In very repressive environments, transparency can offer little more than an

empty gesture that may even allow an abusive or corrupt government to act more brazenly and openly as it violates its citizens' rights or mismanages public funds.

Unless EITI explicitly addresses the human rights performance of governments it will not be a catalyst for greater public accountability in resource-rich countries that have serious human rights and governance problems. Since EITI is intended to address governance in such countries, it would be a lost opportunity to evolve in order to meet its own goals.

Background: EITI's Purpose, Structure, and Rules

In 2002 Tony Blair, then Prime Minister of the United Kingdom, first proposed the creation of an initiative that was established the following year as the Extractive Industries Transparency Initiative (EITI). Many countries were plagued by the so-called resource curse: the entrenched poverty, corruption, and misrule that characterize many countries with vast natural resources. A vexing aspect of this problem was that the governments who received the wealth earned from the extractive industries frequently and deliberately hid the amount and use of those funds from the public. This fuelled suspicions that funds could easily be stolen or squandered rather than being used wisely for public benefit. In several high profile cases such as Angola and Nigeria, those fears were confirmed.

EITI set out to help solve this problem by focusing on the accurate and public disclosure of natural resource revenues that accrue to governments. The initiative requires that governments in participating countries disclose revenues earned and that oil, gas and mining companies share data on payments made. These figures are then compared to discover any discrepancies, and the information made public as a way to foster public scrutiny and greater accountability over natural resource profits earned by governments.

Ten years after its founding, EITI is a multi-million dollar effort that has been embraced by governments, industry, civil society, and multilateral institutions such as the World Bank and International Monetary Fund. Thirty-seven countries participate in the initiative, accounting for over US\$1 trillion in total government revenue.¹

EITI's Founding Principles

The aim of EITI from the outset was to contribute to poverty alleviation, sustainable development, and improved governance. This aspiration is reflected in the EITI Principles, adopted in 2003, which EITI describes as the “cornerstone” of the initiative. These state in part:

¹ EITI, “EITI Countries,” undated, <http://eiti.org/countries> (accessed May 20, 2013).

- We share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts. (Principle 1)
- We affirm that management of natural resource wealth for the benefit of a country's citizens is in the domain of sovereign governments to be exercised in the interests of their national development. (Principle 2)
- We recognize that a public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development. (Principle 4)
- We underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability. (Principle 5)
- We believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure. (Principle 8)
- We are committed to encouraging high standards of transparency and accountability in public life, government operations and in business.² (Principle 9)

The EITI Principles were later supplemented by additional elements known as the EITI Criteria and EITI Requirements, as well as Policy Notes on various issues. Taken together, they became known as the EITI Rules and were updated in 2011.³ A further revision of the rules is scheduled for approval in May 2013.⁴

Structure of the Initiative

EITI is a coalition of governments, companies, and representatives of civil society that jointly participate in the oversight of the initiative. At the national level, representatives of all three parties form what are known as multistakeholder groups. At the international level, the tripartite structure is reflected in the composition of the EITI Board. The initiative

² EITI, "The EITI Principles and Criteria," June 2003, <http://eiti.org/eiti/principles> (accessed May 20, 2013).

³ EITI, "The 2011 Edition of the EITI Rules," February 2011, <http://eiti.org/news-events/2011-edition-eiti-rules> (accessed May 20, 2013). See also EITI, "EITI Rules, 2011 Edition," February 2011, http://eiti.org/files/2011-11-01_2011_EITI_RULES.pdf (accessed May 20, 2013).

⁴ See EITI, "EITI Rules," February 6, 2011, <http://eiti.org/document/rules> (accessed May 20, 2013).

is supported by a Secretariat, based in Oslo, Norway, and includes the World Bank among its list of partner organizations.⁵

Governments that wish to join EITI first have to meet the initiatives “sign-up” requirements, including the establishment of a multistakeholder group and a commitment to work with civil society. Once EITI’s Board agrees these have been met, the aspirant country is recognized as an EITI “candidate” and begins to implement the initiative. The government and companies operating in the extractives sector in the country each supply data that is compared and reconciled before being published in an annual report. The national stakeholder group oversees this process and may take up other initiatives, where the work plan is agreed by consensus.

Within two and a half years of becoming a candidate, each country must complete a compliance assessment process to confirm that it is adhering to EITI’s standards. This “validation” process is undertaken by independent external evaluators. National multistakeholder groups approve the validation reports prior to their submission to the EITI Secretariat. EITI’s Board reviews the reports and determines if the countries are “compliant.” Complaint countries are currently subject to validation every 5 years, or upon request from EITI’s Board. Countries that do not pass the validation process but are considered to be close to meeting EITI’s requirements are allowed to retain their candidate status. In cases where no meaningful progress has been achieved, candidate countries may be removed or “delisted” from EITI. Countries also can be suspended, subject to a deadline to address shortcomings.

As of May 2013, 37 countries participate in the initiative. All but four of them have published national reports disclosing government revenues earned from extractive industries. The membership includes 21 compliant countries members and 16 candidate countries, 6 of which have been temporarily suspended.⁶

⁵ See EITI, “EITI Stakeholders,” undated, <http://eiti.org/supporters> (accessed May 20, 2013).

⁶ EITI, “EITI Countries,” undated, <http://eiti.org/countries> (accessed May 20, 2013).

The Central Role of Civil Society Participation

Civil society participation is a central tenet of the initiative. Its importance is reflected in EITI's tripartite governance structure. It also is evident in EITI's requirements and the measures taken to uphold them.

Current Criteria

The improved 2011 EITI Rules address civil society participation at some length. The below reflects a selection of the provisions relating to conditions for civil society.⁷ Requirements 1-5 relate to aspirant countries (the "sign-up requirements"), while 6-20 apply to EITI candidates and compliant countries.

Applicants to join EITI must meet Requirement 2, which instructs that, among others, "government must ensure there are no obstacles to civil society and company participation in the process," "must ensure that there is an enabling framework for civil society organizations and companies, with regard to relevant laws, regulations, and administrative rules as well as actual practice in implementation of the EITI," and "must refrain from actions which result in narrowing or restricting public debate in relation to the implementation of the EITI." It also provides that "civil society and company representatives can speak freely on transparency and natural resource governance issues" and makes particular reference to civil society "including but not limited to members of the multi-stakeholder group."

EITI Requirement 4 provides that the civil society groups that participate as members of the multi-stakeholder group "must be operational, and, in policy terms, independent of government and/or companies" and "should be able to operate freely without restraint or coercion, including by liaising with their constituency groups."

The requirements applicable to EITI implementing countries partially overlap, but in notable respects are stronger. Under EITI Requirement 6, for example, the government must "ensure that civil society is fully, independently, actively and effectively engaged in the process." Requirement 6 also specifies that "the government must take effective actions to remove obstacles affecting civil society participation" and affirms the need for

⁷ EITI, "EITI Rules," February 6, 2011, <http://eiti.org/document/rules> (accessed May 20, 2013), pp. 15-28.

the civil society groups serving on the multi-stakeholder group to be independent of government.

In some of the strongest language of the initiative, Requirement 6 states unequivocally that “civil society groups, companies and their representatives must be free to express opinions about the EITI without restraint, coercion or reprisal” and that “civil society groups involved in the EITI must be free to engage in wider public debates on the EITI.” It adds that “the fundamental rights of civil society and company representatives substantively engaged in EITI—including, but not restricted to, members of the multi-stakeholder group—must be respected.”

EITI Requirement 8 further instructs that the government “is required to remove obstacles to the implementation of the EITI. Where legal, regulatory or other obstacles to EITI implementation exist, it is required that the government removes these.”

The provisions reflect important updates adopted in 2011, which were developed by an EITI working group (including Human Rights Watch as an external contributor). That group also drafted EITI Policy Note 6 (since renamed “the Civil Society Protocol”) on the participation of civil society representatives. It provides important guidance on the interpretation of the requirements.

Interpretive Guidance

The Civil Society Protocol stresses the importance EITI places on the “free, full, independent, active and effective participation of civil society” as a central component of the initiative and calls for strict implementation of the relevant requirements. It notes, for example, that obstacles to civil society engagement should be addressed at an early stage, and that the responsibility rests with governments to “ensure that adequate conditions exist.” It references various issues of concern, including “legal or regulatory impediments to civil society’s ability to participate freely and actively in the implementation of the EITI” and “whether or not civil society representatives substantively involved in the EITI process enjoy internationally-recognized fundamental rights outlined in the Universal Declaration of Human Rights.”⁸

⁸ EITI, “The EITI Standard,” “Protocol: Participation of Civil Society (hereafter ‘EITI Civil Society Protocol’),” May 22, 2013, <http://eiti.org/files/EITI%20STANDARD-screen-version.pdf> (accessed May 20, 2013), pp. 40-42.

By framing the issues in these terms, it helps root EITI in international human rights standards. Importantly, it avoids unduly limiting its scope to those civil society groups that are directly and formally engaged in EITI through participation in a national multistakeholder group. It makes clear that constraints on civil society more broadly defined are also relevant to EITI, while acknowledging that in practice this has been a frequent subject of contention within EITI itself.

Rapid Response Capability

EITI's rules on civil society participation have been tested on numerous occasions, including with dramatic developments such as the intimidation and arrest of civil society participants in EITI. EITI's Board recognized this serious problem and created a "Rapid Response Committee" in 2008 that could be activated when EITI needed to protect its civil society members who were threatened by governments. Its wider mandate is to help EITI address political developments, including the introduction of legislative or other obstacles that could impede the activities of NGOs and thus jeopardize EITI implementation processes.

Several of its earliest interventions concerned Gabon, where the government repeatedly harassed Marc Ona Essangui, the head of a Gabonese environmental NGO called Brainforest, who is very involved in resource revenue transparency as a member of the EITI Interest Group and coordinator of the Publish What You Pay (PWYP) coalition in Gabon. In January 2008, the government suspended Brainforest and 21 other NGOs (they were reinstated following an international outcry from EITI and others). Ona also was repeatedly refused permission to leave the country during the year.

On December 31, 2008, he was arrested along with four others and accused of propaganda and incitement of rebellion. He was released following international pressure that included interventions from EITI members, the Secretariat and the Board. He continued to face reprisals for his work thereafter, including an arrest in June 2012 and prosecution on slander charges in a case filed by the chief of staff to President Ali Bongo. Ona was convicted in that case in March of 2013 and given a six-month suspended sentence along with an order to pay \$10,000 in damages. EITI members have denounced the prosecution as politically-motivated.

EITI's Secretariat and Board, however, have not publicly addressed the matter. In a meeting in late 2012, EITI's Rapid Response Committee did not reach consensus to act in response to what it said was "unacceptable smear and threats" against Ona. A summary of their decision stated that that Ona is involved in other campaigns and the present harassment was "deemed not to be linked to the EITI," thus no reaction was appropriate.⁹

The Gabon example showcases the willingness of EITI to speak up in protest, including publicly, in some cases while declining to do so in others, even concerning the same individual. It is an example of the inadequacy of EITI's approach in another respect as well: Gabon became an EITI candidate in 2005 and remained an implementing country for many years, despite regularly attacking a key EITI participant. Gabon was expelled from EITI in February 2013 for unrelated reasons; it was delisted for failure to submit a validation report by the established deadline.¹⁰

The decision to intervene is always a sensitive one, and the Rapid Response Committee's work at times has been a flashpoint for disagreement. EITIs' Civil Society Protocol notes that on several occasions governments have argued that the incidents in question are not relevant to EITI.¹¹ The government of Gabon, for example, said in 2008 that Marc Ona was arrested on a matter unrelated to EITI.¹² EITI's Rapid Response Committee rejected that argument at the time. In 2012, as noted, the committee applied similar logic when declining to intervene on his behalf. The Civil Society Protocol acknowledges that "it can

⁹ EITI, "Minutes of the 7th EITI Board Meeting: Doha, Qatar, February 22, 2008," March 5, 2009, <http://eiti.org/files/Minutes%20of%20the%207th%20EITI%20Board%20Meeting%20Final.pdf> (accessed May 20, 2013). See also press releases issued by PWYP: PWYP, "PWYP Calls On Gabon To Drop All Charges Against Released Activists," January 16, 2009, <http://www.publishwhatyoupay.org/resources/pwyp-calls-gabon-drop-all-charges-against-released-activists> (accessed May 20, 2013), PWYP, "Publish What You Pay condemns the arrest of Marc Ona Essangui," June 8, 2012, <http://www.publishwhatyoupay.org/resources/publish-what-you-pay-condemns-arrest-marc-ona-essangui> (accessed May 2012). For background on Marc Ona, see Goldman Environmental Prize, "Marc Ona Essangui," 2009, <http://www.goldmanprize.org/2009/africa> (accessed May 20, 2013).

¹⁰ EITI, "Congo and Burkina Faso accepted as 'EITI compliant: Gabon 'delisted.' Sierra Leone, Mauritania and Yemen 'suspended'," February 28, 2013, <http://eiti.org/news/congo-and-burkina-faso-accepted-eiti-compliant> (accessed May 20, 2013).

¹¹ "In several cases, governments have argued that restrictions on civil society organizations were not linked to their involvement in the EITI." EITI, "EITI Civil Society Protocol," May 22, 2013, <http://eiti.org/files/EITI%20STANDARD-screen-version.pdf> (accessed May 20, 2013).

¹² EITI, "Minutes of the 7th EITI Board Meeting: Doha, Qatar, February 22, 2008," March 5, 2009, <http://eiti.org/files/Minutes%20of%20the%207th%20EITI%20Board%20Meeting%20Final.pdf> (accessed May 20, 2013).

be difficult to define to what extent certain actions by stakeholders and limitations to them were directly linked to and have hampered the implementation of the EITI,” but nevertheless stresses that “space for civil society engagement is a necessary ingredient for the EITI process to work.”¹³

EITI also has reacted in some cases involving legislation or other measures affecting civil society engagement. The most significant of these concerned Ethiopia, whose 2009-2010 bid to become an EITI candidate country was unsuccessful due to concerns about a highly restrictive environment for civil society. EITI declined to admit Ethiopia as a candidate, citing as the basis for its decision a 2009 NGO law (the Charities and Societies Proclamation) that is one of the most draconian laws regulating nongovernmental activity in the world. However, the decision was not without controversy, as some within EITI felt Ethiopia should have been admitted.¹⁴ (An annex to this submission provides further background.)

¹³ EITI, “EITI Civil Society Protocol,” May 22, 2013, <http://eiti.org/files/EITI%20STANDARD-screen-version.pdf> (accessed May 20, 2013).

¹⁴ D+C, “‘A lot to be done:’ Interview with Peter Eigen,” June 4, 2012, <http://www.dandc.eu/en/article/agenda-extractive-industries-transparency-initiative-remains-daunting> (accessed May 20, 2013).

Assessing EITI: The 2011-2013 Strategic Review

EITI's leadership, to its credit, has recognized the need to improve the initiative over time. Looking ahead to its ten-year anniversary this year, it set out to assess its own achievements and limitations, draw lessons, and seek to address key issues on which previously there had not been sufficient consensus. In 2011, it commissioned an independent evaluation of the initiative in 2011 that was followed by an open consultation period on proposals for changes.

EITI's Accomplishments

EITI has made a mark in several respects. EITI itself produces periodic progress reports reviewing positive developments. The 2011 independent evaluation also recognized some positive developments. This section addresses some of the initiative's achievements.

EITI has succeeded in becoming the internationally accepted standard for transparency in the oil, gas, and mining sector. It has led a growing number of governments to disclose their revenues from these sectors. The implementation of EITI processes has led to the disclosure of volumes of data that was previously hidden from the public. The audit process required under EITI to verify that payment figures provided by companies match revenues registered by the government, known as "reconciliation," has helped ensure a degree of quality control.

EITI also has helped give global prominence to the notion of resource revenue transparency, which has become a baseline expectation in resource-rich countries. Increasingly, transparency over extractive industry payments is becoming a legal mandate in the countries where many oil, gas, and mining companies are based.

Importantly, EITI has served as a platform for dialogue and attempts to build consensus. In part this is the result of its tripartite leadership structure, which includes companies and civil society alongside governments in decision-making, both at the international level on the Board and in the design and implementation of national-level processes. EITI has been the first—and in some cases only—multi-stakeholder process in some countries. In some countries where independent civil society activity is relatively new or otherwise

underdeveloped, the EITI process has helped legitimize the role of civil society, at least in one sphere, although that has not happened in all cases. The initiative has also helped link local civil society groups in some countries to international ones where such ties did not already exist.

The Limits of Transparency

The 2011 independent evaluation commissioned by EITI highlighted a longstanding problem: the gap between the principles underlying the initiative and actual practice under the EITI rules, which has been decidedly mixed. Strikingly, it concluded that no governance improvements could be attributed to the initiative:

EITI has not been a significant driver of change. While *transparency* has improved, *accountability* does not appear to have changed much, in part because necessary political, legal and institutional improvements have in most cases not been put in place.... There are thus few indications that EITI programs are so far having impact on dimensions such as governance, corruption, poverty reduction or other objectives stated in EITI's *Articles of Association* [EITI Principles].¹⁵

The lack of impact was traced to more basic problem: the absence of a coherent strategic vision, or “theory of change,” that could explain, much less help ensure, that the dissemination of data would catalyze better governance.¹⁶

The problem also arises in non-EITI countries, if they practice transparency only in the narrow sense of disclosing data and remain unresponsive to the public interest. Human Rights Watch's extensive reporting on Angola provides one example.¹⁷

¹⁵ Scanteam, “Achievements and Strategic Options: Evaluation of Extractive Industries Transparency Initiative,” May 2011, <http://eiti.org/files/2011-EITI-evaluation-report.pdf> (accessed May 20, 2013).

¹⁶ “A fundamental challenge is that EITI does not have a detailed theory of change (causality chain) that can explain how it is to contribute to societal transformations. [...] The selection of interventions supported by EITI were not identified based on the most probable contributions to such societal changes, but instead were agreed to as those operational interventions all the parties could agree to.” Ibid., p. 3.

¹⁷ Human Rights Watch, *Transparency and Accountability in Angola*, April 13, 2010, <http://www.hrw.org/reports/2010/04/13/transparency-and-accountability-angola-o>.

There is nothing about transparency alone that can serve to sustainable development or promote effective poverty-alleviation programs that prioritize basic needs, maximize the use of available resources, and promote the inclusion of marginalized and vulnerable populations. Rather it is a building block for better governance that also requires respect for human rights.

It should come as no surprise, then, that despite the veneer of “good governance” suggested by its commitment to transparency, a government’s policies and practices do not automatically change for the better.

EITI Commitment to Moving “Beyond Transparency”

EITI’s leadership has acknowledged that transparency alone does not suffice. In large measure, its strategic review process has been designed to identify areas of potential consensus to update its requirements to address shortcomings. The result has been a decision to require more and better disclosures while encouraging—without requiring—wider government reforms.

The 2013 EITI Standard

EITI’s strategic review and consultation process has resulted in a number of concrete proposals that are to be approved at the May 23-24 General Conference.¹⁸ The 2013 EITI Standard is expected to:

- Require additional disclosures, including to provide a breakdown of extractive industry payments by company, project, government agency and type of revenue; to identify the (nominal) owners of companies holding licenses; to disclose any social expenditures by companies that are contractually required; and to ensure greater transparency about inter-government transfers and direct spending by state-owned enterprises, as well as any ownership by such enterprises of extractive companies in the country;
- Encourage, without requiring, disclosure of extractive industry production contracts and the identity of the ultimate or “beneficial” owners of companies holding licenses (as opposed to the nominal owners, if the name on company registration documents does not accurately or fully reflect the true ownership structure);
- Improve quality controls, to ensure more frequent compliance assessments (verification) and better reliability of the data.
- Permit countries to tailor EITI implementation to address additional objectives agreed by the national stakeholder group, allowing—it is hoped—for innovation, greater policy relevance and linkages to wider reforms.
- Make the EITI reports more relevant and accessible by including background information, including production figures, a description of public financial

¹⁸ EITI, “The EITI Standard,” May 22, 2013 (available online in advance), <http://eiti.org/files/EITI%20STANDARD-screen-version.pdf> (accessed May 20, 2013).

- management processes, and an explanation of how revenues are allocated between state, local, and other accounts;
- Consolidate the initiative's rules, reducing them to the EITI Principles, seven EITI Requirements and the Civil Society Protocol.
 - Require re-validation every three years, rather than the current five.

These efforts are promising, but insufficient. For example, the disclosure of beneficial owners could help prevent the use of shell companies by government officials or their associates to siphon off public funds, but that is optional. Only information on nominal owners is required.

EITI also did not adopt NGO proposals that it expand to cover transparency over government expenditures (only social spending by companies required in the terms of their contracts). EITI's principles highlight the importance of good practices on expenditures. It has been identified as a major obstacle to reform in some EITI implementing countries. Yet no consensus was reached.

The new EITI Standard does not strengthen human rights criteria or directly address accountability. It will instead reduce the references to civil society participation, thus raising the possibility that the abbreviated text might be interpreted to imply a narrower standard. The fact that the 2011 Civil Society Protocol interpreting the requirements will be incorporated in full in the 2013 EITI Standard could help mitigate against that risk, as the protocol interpreting civil society requirements was prepared based on the more expansive 2011 Rules. Civil society groups have argued that the new standard should fully align with the pre-existing protocol to ensure that the criteria remain fully in effect.¹⁹

Upcoming Initiative on Civil Society Participation

EITI's Board announced that it intends to appoint a new working group on civil society participation in 2013. The terms of reference for this group are not yet available. Provisionally, however, it is proposed that the working group consider whether the

¹⁹ "Letter from PWYP-US and PWYP-Canada to EITI Head of Secretariat," April 5, 2013, http://eiti.org/files/PWYP%20US_PWYP%20Canada_EITI%20New%20Draft%20Comments_April2013.pdf (accessed May 20, 2013).

requirements regarding effective participation of civil society are applied consistently across countries.²⁰

It remains unclear what “consistency” would mean in this context. The 2011 Civil Society Protocol serves as guidance for the interpretation of the relevant provisions. With this as its starting point, the new working group could examine how to ensure that existing and future EITI countries are held to the newer, higher standard. However, some EITI background papers propose that the working group focus on examining how the criteria can be applied “fairly” across countries, which could suggest that applicants with records broadly consistent with those of existing members (who were admitted under earlier rules) should be permitted to join the initiative.²¹

EITI’s Accountability Gap

The forthcoming 2013 EITI Standard, despite improving the rules in several respects, does little to advance accountability. It does not provide the initiative with the strategic vision of a clear “theory of change.” Moreover, because the new standard does not take human rights into greater account, it misses a key element needed to help bring about meaningful, lasting societal change.

EITI’s leadership does not have the option to ignore human rights. The question of poor governance practices and active repression of civil society by governments will, if anything, demand more attention from EITI in the months and years to come. Various governments who were admitted as candidates and validated as “compliant” members of EITI under earlier rules, before the 2011 tightening of civil society criteria, will face re-validation

²⁰ EITI, “Minutes of 21st EITI Board Meeting, Lusaka, October 25-26, 2012,” November 21, 2012, <http://eiti.org/files/Minutes-from-the-21st-EITI-Board-meeting-Lusaka.pdf> (accessed May 20, 2013). The proposal was subsequently approved. See EITI, “Board Paper 22-9-A,” January 27, 2012, <http://eiti.org/files/buidling%20on%20achievements.pdf> (accessed May 20, 2013).

²¹ EITI records concerning the application of Ethiopia also lend support to this interpretation. For example, “[T]he government of Ethiopia’s commitment to work with civil society needs to be considered alongside practices so far by the Board related to the 35 implementing countries. ...Azerbaijan has a law regulating and limiting the space for civil society, as does Zambia and many others.” EITI, Board Paper 19-7, “Ethiopia—Secretariat assessment and mission report for discussion and possible decision,” January 30, 2011, http://eiti.org/files/Papers_for_the_19th_EITI_Board_Meeting_single_file.pdf (accessed May 20, 2013). The issue was raised even more clearly in a later paper: “recommendations should seek to establish whether civil society representatives in Ethiopia area are as able to engage in the process as freely as they are in implementing countries. ...This provides us with an opportunity to try to ensure that the EITI Rules are applied equitably to candidate and implementing countries.” EITI, “Ethiopia’s engagement with the EITI,” paper for the EITI Board, November 24, 2011, in EITI Board Circular Number 115, http://eiti.org/files/EITI%20Board%20Circular%20115_ENG.pdf (accessed May 20, 2013).

beginning in 2014. (It is presumed that a transition period will be allowed before countries are judged according to the new 2013 EITI Standard.) The first of these is Azerbaijan, whose record on civil society participation, corruption, and governance raises numerous serious concerns. (See Annex A.) Some newer EITI members, including Indonesia, that have not been considered controversial nevertheless have longstanding governance challenges that are relevant to their EITI validation processes, as these issues can impede implementation and undermine prospects for EITI to have a positive impact. (See Annex B.)

EITI's Board will also need to grapple with new applications from countries, such as Burma (also known as Myanmar), where governance of natural resources and civil society protections remain very poor. (Annex C.) In addition, the Board is likely to face an effort by Ethiopia, whose candidacy was indefinitely deferred in 2010 in light of severe restrictions on civil society, to revive its application for membership. (Annex D.) There is reason to believe that Equatorial Guinea, a country also marked by harsh repression and one of the first two countries to be ejected from EITI (the other was later readmitted), may present a new membership bid. (Annex E.)

Fundamental Human Rights Challenges

EITI has fundamental human rights challenges as it seeks to translate transparency into results. Our analysis is drawn from Human Rights Watch’s extensive research in countries where there is the large gap between revenue transparency and accountability to illustrate several of the ways in which human rights problems can undermine EITI’s goals:

- Cases in which individuals involved in EITI face threats or retaliation, even if addressed and resolved, can have a chilling effect on the climate for effective EITI implementation.
- In highly repressive environments, various human rights factors—not only conditions for civil society participation—greatly inhibit and may ultimately impede any chance that disclosures could lead to greater accountability;
- Where human rights abuses arise in connection with the extractive industry, such as in the context of forced evictions off land, it can point to wider problems with resource management that also need to be acknowledged and tackled to advance accountability.
- Entrenched corruption and abuses of power, which negatively impact the enjoyment of economic and social rights, likewise undercut EITI’s aims, in this case poverty alleviation as well as accountability.

Select country examples are cited to help illustrate these points. Each of these examples is reflected more fully in a case study in the Annexes to this submission. The selected cases reflect a variety of experiences. They cover the stages of participation in EITI: as aspirant, candidate, and full-fledged implementing country or “compliant” member.

Abuses Linked to EITI

EITI, as noted, has established procedures to deal with cases in which individuals are targeted if there is consensus by civil society, governments, and companies represented on the Rapid Response Committee that intervention is warranted. Even in cases where EITI’s Board acts and a resolution of a particular case is achieved, such as with the release of a detained activist, there can still be aftershocks to such an incident. For example, others may be intimidated and become less active or more cautious. The credibility of EITI

as a process that ostensibly opens up space for greater trust, improved dialogue and better governance may come into question at the national level.

The many cases on which EITI does not attempt to intervene also pose a challenge. When people languish in jail for their work to expose corruption or alleged mismanagement of public funds, it is difficult to sustain the premise that the government in question is committed to transparency, much less accountability. In Azerbaijan, for example, several individuals who have been arbitrarily arrested and are facing politically-motivated prosecutions, or have already been convicted on trumped-up charges, have been targeted in connection with anti-corruption work. For example, two representatives of Kur Civil Union were arrested in 2012, in apparent retribution for their work to protect flood victims in southern Azerbaijan and investigate alleged misappropriation of government funds tied to finances for flood damage repair. Both men have alleged ill-treatment in custody, which authorities have failed to effectively investigate.

The international Publish What You Pay coalition, as well as other prominent NGOs, denounced the arrest.²² The Azerbaijan affiliate of PWYP, the NGO Coalition for Improving Transparency in the Extractive Industries (also known as the Azerbaijan NGO Coalition for EITI) itself issued a statement of concern and petition. According to this coalition, the arrest “aims at threatening Azerbaijani human right defenders, and other active NGO activists striving for increasing transparency and struggling with corruption, and making them abstain from defending human rights and freedoms, and social initiatives in spending of oil revenues.”²³ EITI, however, accepted the conclusion that “the arrest does not appear to be directly related to Gulaliyev’s involvement in transparency related advocacy,” so did not activate its rapid response capability.²⁴

²² PWYP, “Azerbaijan: Publish What You Pay calls for the immediate release of transparency activist Mr. Ogtay Gulaliyev,” May 18, 2012, <http://www.publishwhatyoupay.org/resources/azerbaijan-publish-what-you-pay-calls-immediate-release-transparency-activist-mr-ogtay-gul> (accessed May 20, 2013).

²³ Azerbaijan NGO Coalition, “Azerbaijan NGO Coalition for EITI: Freedom to human rights activist Ogtay Gulaliyev,” undated, https://www.change.org/petitions/azerbaijan-ngo-coalition-for-eiti-freedom-to-human-rights-activist-ogtay-gulaliyev?utm_medium=email&utm_source=share_petition (accessed May 20, 2013).

²⁴ EITI, “EITI Implementation Progress Report—Online version,” April-May 2012, http://eiti.org/files/Online_%20IPR_AprilMay2012.pdf (accessed May 20, 2013). “The Secretariat is monitoring the situation closely and is in touch with diplomatic missions in Baku.”

Repressive Environments

In countries where there are severe shortcomings in respect for fundamental freedoms, the EITI process can be reduced to a technocratic exercise that creates only a limited space for dialogue among a limited number of actors on a limited set of issues with ultimately little if any positive result for society at large. That falls far short of EITI's own ambitions. Worse, it allows governments to associate themselves with a respected international initiative when their actions are in fact directly contrary to its aims.

For a repressive government, it is all too easy to engage in an empty form of transparency without risking that it might generate effective pressure for reform that could threaten its grip on power. After all, journalists can be censored or intimidated if they are too critical; independent civil society members can be restricted and harassed or in some cases co-opted into supporting the government; and the judiciary can be tightly controlled so it does not effectively constrain governmental abuses of power.

For example, Equatorial Guinea had the trappings of a functioning EITI process during its candidacy yet it showed no commitment to the process and was eventually de-listed when it failed to meet its 2010 validation deadline and was found to lack a compelling explanation for the delay, particularly given that it had shown slow progress and little commitment to EITI throughout its candidacy. Within a wider context of harsh repression that includes the virtual absence of a free press, civil society participation in the country was and is subject to serious obstacles, characterized, among others, by restrictive legislation, government harassment, and the risk of reprisals against critics.

Equatorial Guinea's multistakeholder group included several civil society representatives who lacked independence from the government. Alfredo Okenve, an independent civil society representative on the country's EITI multi-stakeholder group who worked as a professor, was terminated by the National University in retaliation for comments he made about the government's EITI and transparency record at a public event in Washington, DC, following the country's de-listing. Okenve has continued to face consequences for being mildly outspoken. In January 2012, government officials allegedly pressured a private company to rescind a job offer made to him.

The Equatorial Guinea example, along with those of Azerbaijan and Ethiopia, also illustrates how repressive rulers can further insulate themselves from any potential pressure for reform by controlling political processes. If conditions for political participation are so sharply restricted that the ruling party dominates political life, it need not confront a vocal political opposition. Legislative bodies can become a pro forma body to approve its decisions. Opposition leaders can be sidelined through arbitrarily arrest and unjust imprisonment or other tactics. Government oversight bodies, such as the audit authority, can be gutted or packed with loyal supporters. If needed, elections can be rigged so that there is no risk of being voted out of office.

The result, in such highly restrictive environments, is a government that may endorse EITI and even implement EITI's basic requirements but is not constrained in its use of natural resource revenues because there is really no effective oversight of the government.

Kleptocracy and EITI compliance can coexist. In Azerbaijan, it is widely alleged, the government's transparency over incoming revenues has not prevented spending of the profits in ways that fuel corruption and mismanagement on a grand scale.²⁵ According to investigative reporting, government spending on construction and other public contracts has served as a means to funnel money to well-connected companies that in many cases are alleged to be owned by senior officials or persons close to them.²⁶ The United States

²⁵ In 2012, President Ilham Aliyev was named the first corruption "Person of the Year" by the Organized Crime and Corruption Reporting Project (OCCRP) after a series of reports alleging his family had secretly taken large shares in lucrative industries including the telecom, minerals and construction industries, often through deals that were arranged by the government or had official support. OCCRP, "OCCRP Names Aliyev 'Person Of The Year,'" December 31, 2012, <https://reportingproject.net/en/ccwatch/cc-watch-indepth/1772-occrp-names-aliyev-qperson-of-the-year-q> (accessed May 20, 2013). A series of US diplomatic cables outlined the business interests of well-connected families, including the family of the president, alleging among other claims that they "collude, using government mechanisms, to keep out foreign competitors." See, for example, US Embassy (Baku), "Azerbaijan: Who Owns What? Part 1 – The First Lady's Family," diplomatic cable, January 27, 2010, printed in *The Guardian*, December 12, 2010, <http://www.guardian.co.uk/world/us-embassy-cables-documents/245758?intcmp=239> (accessed May 20, 2013). An investigation by the International Consortium of Investigative Journalists (ICIJ) focused attention on allegations that "a corporate mogul whose business empire has won building contracts worth billions of dollars amid Azerbaijani President Ilham Aliyev's massive construction spree is tied to the president's family through secretive offshore companies." Stefan Candea, ICIJ, "Offshore Companies Link Corporate Mogul, Azerbaijan's President," April 4, 2013, <http://www.icij.org/offshore/offshore-companies-provide-link-between-corporate-mogul-and-azerbaijans-president> (accessed May 20, 2013).

²⁶ See, for example, ICIJ report cited above and also reporting on alleged conflicts of interest by Radio Free Europe/Radio Liberty in cooperation with OCCRP. According to one investigation, a company secretly owned by the president's family helped build two high-priced projects for the government. Khadija Ismayilova, "Azerbaijani President's Family Benefits From Eurovision Hall Construction," RFE/RL, May 9, 2012,

(US) Department of State is among those who have alleged that corruption reaches “the top echelons of government” and that “[p]olitically connected businesses benefit from government regulatory and other decisions to achieve effective control over lucrative sectors of the economy.”²⁷ There is much speculation that some oil, gas and mining production or service contracts may also go to those with insider connections,²⁸ but it has been difficult to establish due to the lack of transparency over the companies involved—particularly after the Azerbaijani parliament adopted legislation in June 2012 that allowed Azerbaijani companies to withhold information pertaining to their registration, ownership structure, and shareholders. The legislation appeared to be a response to the publication of a series of articles that exposed the private business interests of President Ilham Aliyev’s family.²⁹ Parliament also granted the president and first lady lifetime immunity from criminal prosecution for acts during office.³⁰

Another aspect of repressive countries that impedes revenue transparency from leading to accountability is their generally poor record on public financial management. Large sums can be spent through discretionary accounts that are subject to even less control than other public spending and effectively serve as slush funds for government officials. Some elements of government, such as the highest level officials or senior members of the military apparatus, may have independent revenue streams that are not recorded in government accounts. Public funds also can be allocated to vanity projects that have little or no social value. Much spending may even bypass the formal budget process altogether.

http://www.rferl.org/content/azerbaijan_first_family_build_eurovision_arena/24575761.html (accessed May 20, 2013).

Another story alleged that a company that does business with the Ministry of Transport has ties to the minister’s family.

Nushabe Fatullayeva, “Mixing Government And Business In Azerbaijan,” RFE/RL, April 4, 2013,

<http://www.rferl.org/content/azerbaijan-transport-minister-corruption/24947711.html> (accessed May 20, 2013).

²⁷ The assessment also states, “Major private businesses are run by senior government officials or other politically connected individuals who wield inordinate influence on the market economy” and refers to “predatory behavior by politically connected monopolistic interests.” US Department of State, “2012 Investment Climate Statement – Azerbaijan,” June 2012, <http://www.state.gov/e/eb/rls/othr/ics/2012/191103.htm> (accessed May 20, 2013).

²⁸ Human Rights Watch interviews, Baku, Azerbaijan, April 2013. See also, Nushabe Fatullayeva and Khadija Ismayilova, RFE/RL, “Azerbaijani Government Awarded Gold-Field Rights To President’s Family,” May 3, 2012, http://www.rferl.org/content/azerbaijan_gold-field_contract_awarded_to_presidents_family/24569192.html (accessed May 20, 2013).

²⁹ See the above-referenced RFE/RL stories and also Khadija Ismayilova, “Azerbaijani President’s Daughters Tied To Fast-Rising Telecoms Firm,” June 27, 2011,

http://www.rferl.org/content/azerbaijan_president_aliyev_daughters_tied_to_telecoms_firm/24248340.html (accessed May 20, 2013).

³⁰ RFE/RL, “Azerbaijani Parliament Grants President Immunity,” June 12, 2012, <http://www.rferl.org/content/azerbaijani-parliament-grants-president-immunity/24612044.html> (accessed May 20, 2013).

This was the case for many years in Burma, which was under military rule until 2010. Burma's current government, composed of former generals and led by President Thein Sein, has pledged to join EITI later this year. There are credible allegations that the state oil and gas company's earnings were kept in secret offshore bank accounts controlled by well-placed individuals, yet there has been no indication that the Thein Sein government is seeking to identify or recover stolen assets.

In countries marked by severe limits on basic freedoms, the disclosures EITI requires have limited value. The non-governmental participants in EITI, wider civil society, the media, the political opposition, other social actors and the general public may gain access to information on resource revenue earned by the government, but they face obstacles to act on the information to mobilize for better stewardship of those resources. In Azerbaijan, for example, civil society faces difficulty accessing other, necessary information needed to scrutinize government decisions, such as sufficiently detailed government budget proposals and expenditure reports.

Depending on the country and how repression is exercised, civil society may also be impeded from freely and openly questioning government priorities, such as in Equatorial Guinea. Or they may be able to question and even critique the government's actions, at least within the limited sphere covered by EITI, but be blocked from organizing freely and mobilizing effectively to generate the sort of vigorous public debate and activism that could create momentum for genuine reform. They may find, as in Azerbaijan, that parliamentarians and other oversight bodies are uninterested or actively opposed to scrutinizing government accounts. In Azerbaijan, Ethiopia and Equatorial Guinea, the ruling party dominates political life and controls the parliament—in the latter two cases by very wide margins. Serious flaws have been noted in elections in all three countries, undermining further citizens' rights to participating fully in public life and their opportunity to hold leaders accountable for how they govern.

Abuses in the Extractive Industries

In order to advance accountability over management of natural resources, EITI also should consider how the initiative could seek to address the problem of human rights abuses that

arise in relation to oil, gas and mining projects. EITI should evaluate the risk of such abuses in applicant and implementing countries and the government's response.

The oil, gas and mining industries that are the focus of EITI are frequently associated with human rights abuses. Among others, these can include forced evictions to clear communities off land earmarked for a company's use, abusive armed conflicts between combatants eager to secure or maintain control over lucrative resources, exploitative and dangerous working conditions, and disputes over how resources are allocated. Whether and how governments respond to these human rights risks, including if they seek to prevent them or if instead they aggravate the situation, is relevant to EITI. It can serve as an indicator of the government's will and capacity to improve resource management and governance more broadly, consistent with EITI aims.

For example, exploitation of oil, gas, minerals and precious stones in Burma has been associated with abuses that have included allegations of forced labor, forced evictions, and environmental harm affecting the right to health, among others. Burma also suffers from a troubling lack of community consultation, consent, or benefit in government-approved projects, including those involving foreign investment. Local communities, especially women, in Burma have little or no say in how land and natural resources are used by businesses. Although these communities bear the costs of such projects, for example in terms of displacement and lost livelihoods, they have no effective means to secure adequate compensation or to advocate for the government to channel proceeds to promote socio-economic development and poverty alleviation.

In cases where they seek to draw attention to these unresolved grievances by protesting the projects in question, they can face a harsh response. Burma has seen a troubling pattern of government efforts to discourage dissent against major extractive industry or infrastructure-related projects since 2012. Despite professing commitment to good governance principles, including transparency, the government is using repressive laws to undermine peaceful social protests against projects that have major impacts on people's livelihoods and land. A recent example is the government's decision to prosecute peaceful protesters who on April 19, 2013, held a peaceful protest on Madaya Island in Burma's Western Arakan State against a natural gas project and construction of associated infrastructure.

Indonesia provides another example. Indonesia routinely violated the customary rights of indigenous peoples under domestic and international law by granting companies rights to exploit minerals and other natural resources on land claimed by local communities. The government has failed to address conflicting laws for the recognition of these local land rights. It has failed to ensure prior informed consent, adequate consultation, and compensation for local communities. This illegality and mismanagement coupled with a lack of oversight fuels land conflicts, sometimes violent, between companies and local communities.

Violent land disputes in Indonesia include many cases in which the police and military, acting as paid company security, have committed violence and abuses against local communities. In numerous cases, the security forces have had a direct economic incentive because they have a business interest in the community's land or the natural resources on it, such as with illegal mining and timber operations.

Corruption and its Human Rights Impact

High-level corruption connected to resource extraction presents another challenge. Entrenched corruption and abuses of power likewise undercut EITI's aims, in this case poverty alleviation as well as accountability. Natural resource revenues siphoned off by corruption can help entrench authoritarian governments and deprive the citizens of resource-rich countries the opportunity to benefit from their country's natural resources to improve the realization of their economic and social rights. The extent of corruption is often a constraint on reform. High-level corruption is also associated with violations of civil and political rights, as with the harassment of critics.

This is the case in Equatorial Guinea, where corruption, poverty, and repression go hand-in-hand. Vast oil revenues fund lavish lifestyles for the small elite surrounding the president, while most of the population lives in poverty. Those who question this disparity are branded "enemies." Foreign investigations into high levels of corruption involving President Teodoro Obiang Nguema Mbasogo and his close associates are underway in France, Spain, and the United States.³¹

³¹ Human Rights Watch et al, "Equatorial Guinea: DC Meeting Set as Corruption Details Emerge," joint press release, June 15, 2012, <http://www.hrw.org/news/2012/06/15/equatorial-guinea-dc-meeting-set-corruption-details-emerge>.

In Azerbaijan, the government displays little tolerance for independent voices that openly criticize high-level corruption in the country. Amidst an overall climate of repression on dissent, in which any critic might be targeted at any moment, individuals who raise sharp questions about government corruption and mismanagement are at particular risk of reprisal. Harassment and politically-motivated prosecutions frequently have been used to target civil society activists and journalists, among others, who dare challenge the government or senior figures on these topics. For example, freelance journalist Faramaz Novruzoglu is serving a four-and-a-half year sentence following his conviction in August 2012 on trumped up charges. Local activists believe his prosecution, which follows years of persecution in reprisal for his coverage of alleged government corruption, was in part the result of his reporting alleging high-level corruption in the export of Azerbaijani crude oil.

Human Rights and a New Accountability Agenda

Promoting transparency while ignoring human rights conditions undermines the goal of accountability and can lead to a host of problems. By the same token, taking account of human rights can help accomplish EITI's aims. This section explores the complementarity between the two, then proposes an approach to integrating them.

Respect for Human Rights Enables Reform

The central features of EITI, including the creation of a multi-stakeholder group in each country and publication of data on natural resource revenues, have the potential to be transformative—if there is a meaningful opportunity for citizens to engage, to act on the information and to have their voices heard. Respect for human rights helps create the conditions in which transparency can have a positive effect on society.

Human rights can be empowering by recognizing each individual as a rights-holder by virtue of her or his inherent dignity. Where rights are respected, it contributes to free, meaningful, and active participation, provides citizens with a voice in public affairs and gives importance to meeting social, economic, and cultural rights. Participatory decision making improves the process.

Where people can meaningfully exercise their right to information and to engage in public life, they can demand that natural resource revenues be used for public benefit. Where civil society can mobilize, it can contribute to a vibrant public debate on government management of natural resource revenues. Where the media is free, it can expose corruption and mismanagement that robs the public of funds from natural resources. Where credible and independent oversight institutions exist, these checks and balances can help ensure the responsible use of public funds.

Factoring in Human Rights

EITI was not designed to be a human rights mechanism and we do propose that it become one. But for EITI to achieve its potential, it needs to take account of human rights. Our modest proposal is that EITI acknowledge more fully that respect for certain fundamental

freedoms is a key factor in whether transparency can bring results and that the initiative begin to reflect how it can better build that recognition into its approach.

One prong of a human rights-aware approach to EITI would surely be more thorough screening of aspiring members. Conditions for civil society participation will remain crucial, but other factors such as freedom of the press and the right to peaceful assembly could also be considered. Access to information, including on government budgets and spending, would also be important. The level of respect for political rights and the existence of functioning and credible oversight institutions also are relevant.

To some degree, assessment of country conditions already happens within EITI, particularly at the sign-up stage. This process could be improved and regularized to more systematically assess the environment and prospects for reform with explicit consideration of relevant rights, weighing both the potential for EITI impact and the risks. It may be necessary to revise EITI's requirements to capture additional issues, but in the short-term a deeper assessment could take place based on existing requirements, if the initial civil society criterion is interpreted more broadly.³²

EITI could develop an approach that considers the country context, in practical terms as well as the legal, regulatory, and administrative climate, in order to assess the degree to which basic freedoms relevant to effective EITI implementation are respected. This assessment would include evaluating the environment for freedom of information, expression, association, and assembly, including whether repressive NGO laws exist or are about to be enacted, the degree to which civil society can operate freely, the extent to which public protests are allowed; the practice or risk of violence or government reprisals against protestors, those taking strike action, or critics; and the degree to which people whose rights are violated in connection with controversies related to extractive industries, revenue transparency, and the use to which resource revenues are put have access to justice.

³² See, Sign-up requirement 2: "The government is required to commit to work with civil society and companies on the implementation of the EITI."

Aspiring countries could be informed of what expectations are and encouraged to provide information on relevant issues as part of their application. In some cases, assessment trips may be necessary.

Where this review identifies areas of concern, EITI's Secretariat and Board should not hesitate to communicate those openly and should consider whether the initiative can be implemented effectively in that context, bearing in mind EITI's ultimate aims. If the initiative proceeds, EITI's Secretariat and Board should design additional measures as a safeguard, in dialog with the authorities and other stakeholders, such as more regular monitoring and review than is normally the case with EITI processes.

Several additional options could be considered for cases where the assessment finds that conditions are poor in one or more areas. Depending on the severity of the problems, EITI could decline to admit the country while clearly identifying the areas of concern so that it might seek to reapply after undertaking reforms. Alternatives in milder cases might be to consider inviting the country to participate as an observer in the process or grant it a trial period, noting where improvements would be needed and conducting a further review after a set time period. Countries could also be admitted conditionally, again with a clear plan for interim reviews.

Ongoing assessments are also needed, as conditions can deteriorate in a country and commitment to EITI can flag for candidate countries and those that have been validated. The 2013 EITI Standard will require more regular validations, which is a positive step, but it will be important that the validations themselves take fuller consideration of respect for human rights issues. This relates to the functioning of the multistakeholder group and also the wider context that shapes the potential for EITI impact.

Human rights abuses and restrictive government policies and practices, as argued above, can directly undermine the potential effectiveness of EITI. They also raise doubts about the credibility of EITI as an initiative that aims to advance accountability. Implementing countries that do not uphold core EITI principles should not benefit from the reputational advantages of their association with the initiative. EITI's leadership should therefore actively track credible reporting on the human rights situation in implementing countries. EITI also should ensure it has both the commitment and capacity to adequately react when conditions deteriorate.

It will be important for EITI to build on and institutionalize human right expertise within the initiative. At present, human rights issues are dealt with in a somewhat ad hoc fashion. For example, the Rapid Reaction Committee takes the lead in cases of harassment of individual activists and problematic political developments, and a Validation Committee assesses if the initiative's requirements have been fully met by candidates. EITI could consider different models to support their work, such as establishing a permanent working group to help prepare assessments of the enabling environment for reform in countries that are aspiring, candidate, and validated members of the initiative. Such a working group also could advise EITI on when and how it might be appropriate for the initiative to react to a given situation, in light of the actual or potential impact on EITI processes.

Conclusion

EITI has taken the important move to recognize that it is time to move beyond transparency to promote accountability. To advance accountability, we have argued, it is essential that EITI grapple with how to better address human rights.

EITI is not designed to be a human rights initiative and we do not expect it to become one, but it cannot afford to ignore the broader rights environment. It should take a conscious approach to rights by more fully acknowledging the realities of the environment, analyzing the risk and potential for impact, and then taking decisions that take the country context into account. It is not a matter of “naming and shaming” potential or current EITI member countries, but instead of “assessing and addressing” where human rights problems are an obstacle to those countries implementing EITI effectively, keeping in mind the initiative’s ultimate aims.

To begin, we propose that EITI launch a consultative process to explore the issues and identify options for action. The initiative is consensus-based and finding agreement between governments, companies and civil society on how to better incorporate human rights concerns is not likely to be easy. But we do feel it is necessary. If transparency is to unleash greater accountability, respect for human rights is absolutely essential.

Annexes: Country Case Studies

Annex A: Azerbaijan, EITI Compliant Country

Azerbaijan was among the first countries to join EITI and was the first to be designated as a fully compliant EITI member. It was granted compliant status in February 2009 on a conditional basis, as it had not yet met the requirement to form a multistakeholder working group, and it only did so the following year. Despite this inauspicious beginning, the then head of EITI gave Azerbaijan an “EITI Chairman’s Award” in 2009.

The government of Azerbaijan has taken an active role within EITI, including by serving on the EITI Board. It has not been a leader, however, in terms of adherence to EITI’s founding principles. Instead, Azerbaijan provides a telling example of the large gap between transparency, in the minimalist sense of disclosing revenue, and genuine accountability as would be reflected in improved governance. The country’s human rights record has been on a continual decline since it was deemed EITI compliant in 2009. Areas of concerns include new violations of civil and political rights that restrict civil society, indications of high-level corruption on a vast scale and the absence of effective checks and balances in the country.

Civil society participants have raised numerous concerns about Azerbaijan’s commitment to implementing EITI, at various times threatening to call for early re-validation when problems remained unresolved. Instead, the country is scheduled for review by February 2014 under EITI’s usual re-validation schedule. A key focus of re-validation will be on assessing conditions for the civil society groups that participate directly in EITI processes. Yet the government’s worsening performance on fundamental freedoms affects civil society as a whole, and those who challenge corruption face particular risk. In addition, Azerbaijan’s parliament has adopted several sets of legislative amendments over the past 6-month period that further restrict the space for civil society activity in the run up to the October 2013 presidential elections.

Troubling Legislation

In a six-month timespan, Azerbaijan's parliament has adopted amendments increasing penalties for unauthorized protests, expanding the application of criminal libel, restricting NGOs, and reducing transparency on corporate ownership.

Most recently, on May 14, 2013, the parliament voted to expand the definition of criminal insult and slander in the Criminal Code and increase by as much as fourfold short-term jail sentences for involvement in unauthorized public protests. The amendments expanded the definition of slander and insult, set out in articles 147 and 148 of the Criminal Code, respectively, specifically to include content "publicly expressed in internet resources." The sanction for slander and insult can be up to 480 hours of public service, after amendments adopted on April 30, 2013, doubled the maximum number of hours. The maximum prison sentence for slander, the more serious offense, is three years imprisonment.

Another set of amendments sharply increased prison terms for administrative, or misdemeanor offenses, including those the government frequently uses to punish people for involvement in peaceful, albeit unsanctioned, public protests. For example, the maximum jail sentence for violating rules for organizing, holding, or attending unauthorized assemblies would increase from 15 days to 2 months. President Ilham Aliyev is expected to sign these amendments.

In November 2012, the parliament had already increased sanctions for unauthorized protests, establishing fines of up to 1,000 AZN (\$1,274) for participation and 3,000 (\$3,822) for organizing. While the constitution stipulates that groups may peacefully assemble after notifying the relevant government body in advance, authorities interpret this provision as a requirement for prior permission. The Azerbaijani government routinely refuses to grant permit request for protests in central Baku and has used force to break up protests, detaining dozens.

In March 2013, President Aliyev signed into law a package of amendments to the Law on Nongovernmental Organisations, the Law on Grants, and the Code of Administrative Offenses, requiring local groups to inform the authorities of funding or donations above 200 manat (approximately US\$250) and sign a formal grant agreement with donors. A

failure to meet these and other onerous NGO reporting requirements could lead to confiscation of property and exorbitant fines.

On June 12, 2012, the Azerbaijani parliament adopted legislation that allowed Azerbaijani companies to withhold information pertaining to their registration, ownership structure, and shareholders. The legislation appeared to be a response to the publication of a series of articles that exposed the private business interests of President Aliyev's family. Parliament also granted the president and first lady lifetime immunity from criminal prosecution for acts during office.

Retaliation against Corruption Critics

Azerbaijan's government displays little tolerance for independent voices that openly critique high-level corruption in the country. Amidst an overall climate of repression on dissent in which critics are increasingly targeted, individuals who raise sharp questions about government corruption and mismanagement are at particular risk of reprisal. Harassment and politically-motivated prosecutions frequently have been used to target civil society activists and journalists, among others, who dare challenge the government or senior figures on these topics, as detailed below.

Civil Society

There are numerous recent cases involving the arbitrary arrest of activists working on corruption and other natural resource-related issues.

On February 27, 2013, a court sentenced Bakhtiyar Mammadov, a human rights lawyer, to eight years in prison following a trial that appears to have been politically motivated. Mammadov represented several residents who were forcibly evicted from their homes in the capital, Baku, in 2012. His clients had challenged the government compensation package, and Mammadov alleged corruption by a high-level official involved in the compensation funds. Mammadov has been in custody since his December 30, 2011, arrest.

On February 4, 2013, Baku's Nasimi District Court remanded Ilgar Mammadov, a political analyst who is chair of the opposition group "REAL" and Tofiq Yagublu, deputy chair of the opposition political party Musavat and a journalist with opposition daily Yeni Musavat, to two months' pretrial custody, which has been extended several times, through August.

Mammadov and Yagublu were charged with “organization of or participation in actions inciting social unrest” and “violence against an official” in connection with a January 24 protest in the provincial town of Ismayilli, where several clashes took place between law enforcement and protesters calling for the governor’s resignation. Mammadov and Yagublu had traveled to the town after the protests. In addition to his political role, Mammadov is a prominent anti-corruption activist who serves on the advisory board of the Revenue Watch Institute.

Ogtay Gulaliyev and Ilham Amiraslanov, two human rights defenders associated with the nongovernmental group Kur Civil Union, were arrested in April and June 2012 respectively, apparently in retribution for their work to protect flood victims in southern Azerbaijan and investigate alleged misappropriation of government funds. Gulaliyev was released pending investigation in June, while a court in September convicted and sentenced Amiraslanov to two years imprisonment on spurious charges of weapons possession. Both men have alleged ill-treatment in custody, which authorities have failed to effectively investigate.

In April 2012, a court convicted and sentenced Taleh Khasmammadov, a blogger and human rights activist from Goychay region, to a four-year prison term on charges of hooliganism and physically assaulting a public official. Khasmammadov investigated allegations of abuse and corruption by law enforcement officials.

Harassment, Prosecution, and Violence against Journalists

Dozens of journalists have been prosecuted and imprisoned or fined in recent years, often on politically motivated criminal defamation charges or fabricated drug-related charges in apparent retaliation for their critical or investigative journalism. Others are frequently subject to harassment, intimidation, and attacks. A selection of examples follows; there are more such cases.

Avaz Zeynalli, editor of *Khural*, was convicted and sentenced to nine years imprisonment on March 12, 2013 on dubious extortion charges brought by a member of parliament from the ruling party who recently resigned from her seat after being implicated in a corruption scandal. *Khural*, which regularly published allegations of government corruption, closed in October 2011, when a court ordered that bailiffs seize its property to pay fines imposed in three defamation cases.

In September 2012, a court sentenced Aydin Janiyev, a *Khural* newspaper correspondent, to three years in prison on hooliganism charges, apparently in retaliation for his articles criticizing the authorities. Janiyev was released in December 2012 following a presidential pardoning decree.

Faramaz Novruzoglu is a freelance journalist who has faced years of persecution in reprisal for his coverage of alleged government corruption, was sentenced on August 27, 2012 to four and a half years imprisonment on bogus charges of illegal border crossing and inciting mass disorder. Human rights activists believed that he was targeted in retaliation for critical articles he wrote alleging high-level corruption in the export of Azerbaijani crude oil and the import of Russian timber. He remains in prison at this writing.

Idrak Abbasov, a correspondent for the Azerbaijani media watchdog Institute of Reporters Freedom and Safety (IRFS) and for independent newspapers *Ayna* and *Zerkalo*, was severely beaten on April 2012 by some 20 policemen and security guards wearing jackets with insignia of the State Oil Company of Azerbaijan (SOCAR). The attack took place while Abbasov was filming the demolition by SOCAR of dozens of houses in his community.

In March 2012, unknown persons attempted to blackmail Khadija Ismailova, a Radio Liberty journalist, in retaliation for her investigation into the business holdings of the president's family and close associates. Ismailova continued to pursue her investigative work and on March 14, 2012 a secretly-recorded video of a personal nature of Ismailova was posted on the internet. The day before the video of Ismailova was posted, a pro-government newspaper ran a long article attacking the journalist and criticizing her personal life.

In March 2011 six masked men abducted and beat Seymur Haziyeu, a journalist for the opposition daily *Azadlig*, warning him to stop writing articles criticizing the authorities.

Impact on EITI Stakeholders

The tightening of restrictions on civil society in Azerbaijan has affected groups that participate in EITI in Azerbaijan. Several NGO representatives involved in EITI told Human Rights Watch that a recent upswing in attacks, harassment, arrests, and trumped-up

charges against activists and other civil society groups in 2013 has contributed to the emergence of a climate of fear. The sense that they could be targeted next was unsettling. Additionally, some NGO representatives involved in the EITI process or their organizations had been portrayed negatively in the media, as tools of foreign interests, in what they described as a smear campaign against independent civil society groups.

Several groups active in the EITI process also have found that their planned activities outside of the capital region, such as trainings on budget issues, have been blocked on orders of the government. These groups then were unable to rent meeting spaces in Baku. Although official permissions had previously been granted, these were subsequently revoked by officials. The NGO activists believe the government is concerned that independent NGO activity could be a potential trigger for protests or instability, following the protests in Ismayilli.

Another obstacle is that a large number of the CSOs that are members of the coalition in support of EITI and transparency in Azerbaijan are not formally registered, despite having sought registration. Under new legislation, their situation is very tenuous. Unregistered groups are not eligible to report to authorities on any outside funding, so they cannot comply with the new law. Failure to do so can bring substantial fines and confiscation of property. Some of the unregistered groups have had to suspend their activities.

The national EITI process has thus far been somewhat insulated from government repression, perhaps mainly because it is so narrowly defined in the Azerbaijan context. Several NGOs told Human Rights Watch that although they had spoken out against the arbitrary arrests of fellow activists and at times had done so through the NGO coalition for EITI, they had not raised these cases within Azerbaijan's multistakeholder group since they could foresee, based on past experience, that their concerns would be dismissed as outside the scope of that group.

Corruption and Lack of Oversight

Transparency International, which ranked Azerbaijan 139 of 176 countries in its 2012 Corruption Perceptions Index,³³ has noted that “despite its massive oil resources, ...

³³ Transparency International, “Corruption by Country: Azerbaijan,” <http://www.transparency.org/country#AZE> (accessed May 20, 2013).

Azerbaijan is plagued by endemic corruption that prevents ordinary Azerbaijanis from sharing in their country's natural wealth and is a significant barrier to Azerbaijan's development."³⁴ The US Department of State is among those who have alleged that corruption reaches "the top echelons of government" and that "[p]olitically connected businesses benefit from government regulatory and other decisions to achieve effective control over lucrative sectors of the economy."³⁵

A very large percentage of Azerbaijan's oil and gas earnings are funneled into spending on construction or other projects over which there is little oversight. The International Monetary Fund has criticized the high levels of public investment, and highlighted "concerns over resource waste" in these projects given "insufficient assurances of efficiency."³⁶ Numerous questions have been raised about the ownership of companies awarded contracts that benefit from government privatization deals and that have outsized shares of large segments of the economy.³⁷

The presidential family has amassed great wealth. In 2010, the *Washington Post* reported that US\$44 million in Dubai real estate had been purchased the previous year by three individuals whose names and ages correspond to those of President Aliyev's three children, one of whom was 11 years old at the time.³⁸ A series of investigative reports in 2012 and 2013 focused attention on evidence that President Aliyev and his immediate family have secret ownership stakes in many of the country's largest businesses, including banks, construction companies, gold mines, and phone companies, in several cases through offshore companies.³⁹

³⁴ Transparency International, "Azerbaijan: Out of Tune?," May 21, 2012, http://www.transparency.org/news/feature/azerbaijan_out_of_tune (accessed May 20, 2013).

³⁵ US Department of State, "2012 Investment Climate Statement – Azerbaijan."

³⁶ International Monetary Fund, "Republic of Azerbaijan—Concluding Statement of the 2013 Article IV Consultation Mission," March 12, 2013, <http://www.imf.org/external/np/ms/2013/031213.htm> (accessed May 20, 2013).

³⁷ "[C]orruption and predatory behavior by politically connected monopolistic and oligopolistic interests continue to hinder investment outside of the energy sector. Investment disputes can arise when a foreign investor or trader's success threatens well connected or favored local interests.... Major private businesses are run by senior government officials or other politically connected individuals who wield inordinate influence on the market economy." US Department of State, "2012 Investment Climate Statement – Azerbaijan." As noted above, a series of US diplomatic cables ("Who Owns What?") outlined the business interests of well-connected families.

³⁸ Andrew Higgins, "Pricey real estate deals in Dubai raise questions about Azerbaijan's president," March 10, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/04/AR2010030405390.html> (accessed May 20, 2013).

³⁹ Candea, "Offshore Companies Link Corporate Mogul, Azerbaijan's President;" Fatullayeva, "Mixing Government And Business In Azerbaijan;" Fatullayeva and Ismayilova, "Azerbaijani Government Awarded Gold-Field Rights To President's

Allegations of misappropriation of public funds are regularly made. For example, members of the Kura Civil Union organization criticized the lack of transparency in the appropriation of 460 million manat (\$578 million) for flood relief and investigated claims that the funds had been misappropriated.⁴⁰ NGO research and the work of investigative journalists have revealed poor quality construction, overpayments, insider, and no-bid contracts and other practices that indicate serious problems with management of public funds, including projects financed directly from oil revenues.⁴¹ Civil society is well mobilized on issues concerning the budget, but beyond difficulties accessing project-level information—particularly on expenditures—they have found that the parliament is unwilling or unable to take on an active oversight role.

Conclusion

Azerbaijan's government sees itself as a pioneer in EITI, as reflected in its publicity materials.⁴² It is perhaps fitting, then, that its forthcoming validation, due by February 2014, could prove a test case for EITI as it seeks to move from mere transparency to greater accountability. EITI's requirements for unfettered civic participation are at odds with the stepped-up campaign of repression happening in Azerbaijan. If the situation there does not improve considerably, EITI's leaders may be confronted with a stark choice: to uphold the initiative's rules and insist that one of its earliest members rise to a higher standard than was previously required, on penalty of ejection, or lower its standards to accommodate the government of Azerbaijan. It could be a defining moment for EITI, an opportunity to showcase if it will move "beyond transparency" to accountability with respect for human rights.

Family;" Ismayilova, "Azerbaijani President's Family Benefits From Eurovision Hall Construction;" Ismayilova, "Azerbaijani President's Daughters Tied To Fast-Rising Telecoms Firm."

⁴⁰ Mehman Aliyev, "The Kura Constriction [sic]," Kura-az English, March 15, 2011, http://www.kur-az.com/index.php?option=com_content&view=article&id=1230:the-kura-constriction&catid=115:kur-az-english&Itemid=486 (accessed May 20, 2013).

⁴¹ Hijran Hamidova, "Fate of megabucks-3: Almost half of means allotted by State Oil Fund for refugees has been siphoned off; Some houses, which have been dwelt for six months, are being repaired," Investigative Journalists Network (Azerbaijan), http://test.revenuewatch.org/revenuewatch/images/FateofMegabucks_azer_eng.pdf (accessed May 20, 2013).

⁴² See, for example, Government of Azerbaijan, *EITI Azerbaijan Annual Report 2011* ("Azerbaijan's membership in the International Board of EITI which is selected every two years proves the leading role of the country in the implementation of EITI") and *EITI Implementation in Azerbaijan*, undated ("By implementing EITI the government of Azerbaijan achieved full accountability and transparency of revenues in extractive sectors").

Annex B: Indonesia, EITI Candidate Country

Indonesia's 2009 bid to join EITI did not raise controversy, which is not surprising given that it has an outspoken civil society and vibrant media that routinely address such topics as corruption and environmental destruction, but there are a series of issues in the country that raise concern. Indonesia was accepted as a candidate in 2010 and is due to complete EITI Validation in May 2013, following a request for an extension. It finalized its first EITI report just ahead of the deadline. The report was notable for including considerable information beyond EITI's current requirements. Even if the EITI Board designates it a compliant member, Indonesia will need to confront serious governance challenges that affect resource management and public accountability. These include limits on access to information, legal restrictions on civil society, land rights issues affecting indigenous people, military abuses, and, in resource-rich Papua, repression of the population.

Access to Information

The government's notable EITI disclosures are not supported by a firm commitment to transparency. A much-anticipated Law on Transparency of Public Information was passed in 2008 and entered into force in 2010. More than two years later, implementation by government institutions is still poor and police fail to enforce court rulings requiring disclosure. (In addition, the State Intelligence Law passed in October 2011, addressed below, increased opacity by classifying important information from the natural resource sectors as exempt from disclosure requirements in order to protect the country's "national economic interest.")

While the passage of the access to information law should mark a significant shift toward government openness, assessments conducted in 2012 by the National Information Commission (*Komisi Informasi Pusat*, KIP) and Indonesian NGOs have found that state agencies regularly fail to acknowledge or otherwise delay responses to requests for information, and in many cases reject requests in an arbitrary and possibly illegal manner. Some of these problems are due to a lack of capacity in the government agencies, but the KIP and NGO reports claim the lack of response is also deliberate.

In addition to these implementation problems, the law contains vague provisions for criminal penalties for the undefined "unlawful use" of public information. Sanctions include up to one year in prison and could have a chilling effect on the right to freedom of

expression of civil society and the media that seek to investigate and publicize government misdeeds. Another troubling step backwards is the 2010 action by the Supreme Audit Body (*Badan Pemeriksa Keuangan* or BPK) to remove from their website all of their audits of state revenues. This is a significant loss to oversight of the management of natural resources as these audits regularly exposed the inadequate collection of required taxes.

The continued lack of effective access to public information is a significant factor affecting governance in Indonesia's extractive industries. The lack of transparency stands as a fundamental barrier to civilian oversight and fuels abuses such as land grabbing and associated violence, as well as undermining anti-corruption measures and the sound management of Indonesia's natural resources.

Civil Society

Civil society oversight is under threat from Indonesia's draconian defamation laws that in effect criminalize dissent. In addition, the National Parliament, with apparent approval from the executive, is attempting to clamp down on civil society through new legislation that exerts undue control over the funding and activities of civil society. Together, these laws impose criminal penalties for undefined "misuse" of public information, and provide government with broad powers to interfere with groups deemed to pose a danger to "national interest" including the national economy. They impede civic participation and threaten to silence those individuals or organizations who attempt to scrutinize and hold to account their government and corporations using the public's natural assets.

Legislation and Regulations on NGOs

In the latter half of 2011, the Indonesian government began revising the NGO Law, which was originally enacted under the repressive government of President Suharto to control and at times disband NGOs, particularly those deemed critical of the government. Some legislators and members of the current administration have used nationalist rhetoric to urge the reining in of the influence of "foreign" civil society organizations viewed as overly critical of government policy.

The draft NGO law contains provisions requiring that NGOs "shall have objectives to achieve the objectives of the state," and that NGOs "shall not be permitted to disrupt the

stability and unity” of the country or “disrupt diplomatic relationships.” The bill identifies sanctions for such activities that include disbanding of the organization. While the bill was being hotly debated in parliament, the Interior Ministry issued its own draconian regulation allowing not only the ministry but also the governor, *bupati* (district regent), or mayor to revoke an NGO’s permit for “disrupting stability and unity.”

State Intelligence Law

The State Intelligence Law goes even further by granting the National Intelligence Bureau (*Badan Intelijen Negara*, BIN) the authority to engage in efforts “to prevent and/or to fight any effort, work, intelligence activity, and/or opponents that may be harmful to national interests and national security.” Such efforts by BIN may include wiretapping, inspection of financial transactions, and other investigations of those who are deemed to pose a threat to national security, including to food, energy, natural resources, or the environment. A “threat” is very broadly defined as any activity, domestic or abroad, that is “judged to endanger the safety, security, sovereignty, or territorial integrity of the unitary state, or its national interests in all respects including ideology, politics, economics, sociology, culture, defense or security.” “Opponent” is likewise loosely defined as any “party from inside and outside the country engaged in effort, work, activities and action that may be detrimental to national interest and national stability.” These catch-all definitions and overreaching authority echo all too familiar tactics used in the time of Suharto’s “New Order” to surveil, harass, and arbitrarily detain students, political opponents, and human rights activists.

This law deals an additional blow to transparency and accountability with respect to access to information. In contrast to the Freedom of Information Law, which presumes information can be disclosed unless proven to be harmful, the State Intelligence Law lays out broad and undefined categories of “state intelligence” that may not be disclosed. These categories broadly include information that “causes harm to the national economy” and that reveals the value of the nation’s natural resources, a particular issue as it pertains to natural resource revenues. The law is vague, over-broad, and appears inconsistent with the Freedom of Information Law. This creates ambiguities that favor government secrecy. Moreover, the law criminalizes leaking information by “any person” and stipulates that whistleblowers may face up to 10 years in prison and a fine of up to US\$55,000. It does not provide for a public interest or whistleblower defense where what is leaked relates, for example, to human rights violations or corruption. This language

could be used to prosecute journalists and environmental or human rights activists who publish information about government abuses, a common state tactic under the New Order. At a minimum, the Indonesian government should ensure that EITI disclosures are not restricted under these laws. But more importantly, the laws themselves should be repealed or significantly revised.

Indigenous Rights

Indonesia has routinely violated the customary rights of indigenous peoples under domestic and international law by granting companies rights to exploit natural resources on land claimed by local communities. The government has failed to address conflicting laws for the recognition of these local land rights. And it has failed to ensure prior informed consent, adequate consultation, and sufficient compensation for local communities. This illegality and mismanagement coupled with a lack of oversight is fueling land conflicts, sometimes violent, between companies and local communities.

Papua/West Papua

Military forces have been deployed in Indonesia's easternmost provinces, Papua and West Papua, since 1963 to counter a long-simmering armed independence movement. Papuans advocating independence from Indonesia are motivated in part by longstanding grievances over the central government's control of the provinces' rich natural resources as well as human rights abuses associated with the exploitation of these resources. Those who peacefully express such views are often met with repression. Human rights problems in Papua include use of excess force by security forces responding to peaceful protests by Papuan separatists, impunity for these abuses, and restrictions on the rights to freedom of expression and peaceful assembly.

The Indonesian government sharply restricts access to Papua and West Papua by foreign journalists and human rights investigators. Foreigners are required to obtain a special permit to visit the areas. Such permits are routinely denied or the processing delayed, hampering efforts by the media and civil society groups to report on the human rights situation.

The Indonesian Criminal Code is used to prosecute individuals for treason for exercising their rights to peaceful protest protected under the Indonesian constitution and

international law. Human Rights Watch takes no position on claims to self-determination in Papua. Consistent with international law, however, Human Rights Watch supports the right of everyone, including independence supporters, to express their political views peacefully without fear of arrest or other forms of reprisal.

Military's Internal Security Role

The Indonesian government has since 2012 passed a flurry of legal instruments—laws, ministerial regulations, presidential decrees, and Memorandums of Understanding (MOUs)—that focus on broadening the scope of involvement of the military to contain vaguely defined “national security threats.” Given the long and well-documented record of human rights abuse by Indonesia’s military, this step is likely to increase violence and rights abuses rather than lessen them. The return to a “security approach” to addressing social conflict is also a step backward for military reforms establishing civilian oversight since the time of Suharto’s New Order. The timing of these retrograde measures is particularly worrying as the 2014 elections approach, and the pressure on candidates and political parties to raise money for campaigns through natural resource extraction may further increase land conflicts.

Violent land disputes in Indonesia include many cases in which the police and military, acting as paid company security, have committed violence and abuses against local communities. In numerous cases, the security forces have had a direct economic incentive because they have a business interest in the community’s land or the natural resources on it, such as with illegal mining and timber operations.

Annex C: Burma (Myanmar), Anticipated EITI Candidate

Burma's government under President Thein Sein has signaled its intention to apply to join EITI by the end of 2013. Burma is a resource-rich country that suffered decades of military misrule and is now opening up to new investment as international economic sanctions have been rolled back. As part of its reform efforts, the government says it is eager to participate in international initiatives to demonstrate a commitment to better governance.

An application from Burma will require EITI's leadership to evaluate whether the environment in the country is sufficiently open to allow the initiative to function in accordance with its requirements. While there have been positive changes in Burma that contribute to a more open climate for public debate, and improved prospects for accountability, serious restrictions remain on the rights to freedom of assembly, expression, and association—both in law and in practice. Additional human rights concerns relevant to EITI include abuses linked to extractive industries, controversies over the allocation of resource revenues in ethnic areas in particular, serious concerns about the quality of public financial management and level of corruption, and the weakness of oversight mechanisms.

Right to Peaceful Assembly

A troubling pattern of government efforts to discourage dissent against major extractive industry or infrastructure-related projects has emerged since 2012. At the same time that senior government officials publicly endorse the concepts of corporate social responsibility and pledge to deliver results from development for Burma's poor, the government is using repressive laws to undermine peaceful social protests against projects that have major impacts on people's livelihoods and land.

A recent example is the government's decision to prosecute peaceful protesters who on April 19, 2013, held a peaceful protest on Madaya Island in western Burma's Arakan State. The Madaya Island protest involved several hundred Arakanese villagers who sought to publicize and demand action on their grievances against a major project to extract natural gas from the Shweta fields off the coast of Burma, a deep-sea port, and pump it through overland oil and gas pipelines from Arakan State to Yunnan Province in China. The protesters asserted that they will disproportionately bear the costs of the project, which is slated to become operational this year, for little benefit. Police arrested 10 protesters for

violating section 18 of the Law Relating to Peaceful Assembly and Peaceful Procession of 2011, which requires a permit for demonstrations.

Numerous villagers on Maday Island and throughout the pipeline corridor to China have reportedly lost their land due to the project and have received either inadequate or no compensation, raising concerns about their long-term livelihoods in Burma's second poorest state. Most residents of Maday Island rely on farming and fishing for their livelihoods and have voiced concerns over potential environmental degradation associated with the industrial development projects. Local Arakanese told Human Rights Watch that they were concerned they would bear the brunt of the gas project's negative impacts and reap none of the benefits—since the end-users of the gas will be in Yunnan, China.

The Shwe gas project and overland oil and gas pipelines have long been the subject of domestic and international controversy and protests. The pipelines traverse through four states and regions in Burma, including Shan State where armed conflict continues between the Burmese army and the Kachin Independence Army (KIA).

Activists around the country face criminal charges for peacefully protesting various government policies and projects. Since September 2012, the authorities have arbitrarily denied public assembly applications in Rangoon and Sagaing Regions, violently cracked down on anti-mining protests near Monywa, Sagaing Region, and used the peaceful assembly law to prosecute 13 activists for their participation in peaceful demonstrations against the ongoing armed conflict between the Burmese government and the KIA. Burmese authorities have also arrested and prosecuted land rights activists using this law, which contains legal provisions that do not conform with international human rights standards.

Freedom of Expression

In August 2012, the government abolished pre-publication censorship of media and relaxed other media restrictions, but restrictive guidelines for journalists and many other laws historically used to imprison dissidents and repress rights such as freedom of expression remain in place. For example, journalists remain subject to post-publication review of published content. Guidelines issued to the media by the Ministry of Information

on the same day it ended pre-publication censorship are also very troublesome. Among other things, the guidelines prohibit negative criticism of the “economic policies of the state,” general government policies, and the state itself. Other guidelines restrict reporting on economic information and corruption unless “the source is reliable” (but the guidelines do not define what is “reliable” or who determines this). Similarly, the guidelines set out that “things that damage ties with other countries shall not be mentioned.” Not surprisingly, then, journalists and editors continue to self-censor in light of the risks they could face if their reporting is seen as overly critical or transgressing the ministry’s guidelines.

There are no independent television or radio broadcast media outlets in the country, the state owns all broadcast media with the exception of two joint venture agreements with two private entertainment outlets.

Left unchallenged, these continuing restrictions on media freedom raise troubling concerns about the government’s long-term commitment to openness for civil society, especially given the previous government’s decades-long reliance on severe censorship and the importance of a free press for enhancing the ability of the Burmese people to hold their government accountable.

Corruption and Financial Accountability

Burma is notorious for its high levels of corruption. The government has begun to try to improve public financial management practices, and to date, progress has been limited. For example, Myanma Oil and Gas Enterprise (MOGE) is the Burmese government’s main revenue earner. For many years, MOGE’s earnings bankrolled the country’s abusive military, including through off-budget spending on a huge scale. There are credible allegations that MOGE’s earnings were kept in secret offshore bank accounts controlled by well-placed individuals, thereby raising serious corruption concerns. Absent strong new safeguards, revenues for MOGE will risk fueling corruption, reinforcing the Burmese military’s independence from civilian authority and incentive to retain power, and depriving the public of access to much-needed government funds to alleviate poverty.

Burma’s petroleum proceeds will soar even higher as new oil and gas projects come on-line. Despite some notable improvements, including accounting for petroleum revenues in

the country's budget, reforms remain wholly inadequate. The military retains a disproportionately large budget, as well as access to off-budget income from a network of businesses and an unknown amount in a special slush fund established in 2011.

Abuses in the Extractives Sector

Exploitation of oil, gas, minerals and precious stones in Burma has long been associated with a litany of abuses. For example, MOGE is a required business partner for all oil and gas exploration and extraction projects and a shareholder in the joint ventures that build associated pipelines. MOGE shares in the responsibility for the human rights abuses attributed to the Burmese military in the context of operations to clear land and provide security for those projects or pipelines. Since the military continues to commit abuses in parts of the country to which outside monitors have no access, the risk of complicity in abuse remains high.

Burma's government-approved projects also suffer from a troubling lack of community consultation and consent, or assurances that local groups will benefit, and these problems also encompass projects involving foreign investment. Local communities, especially women, in Burma have little or no say in how land and natural resources are used by businesses. Although these communities bear the costs of such projects, for example in terms of displacement and lost livelihoods, they have no effective means to secure adequate compensation or to advocate for the government to channel proceeds to promote socio-economic development and poverty alleviation. This can lead to protests and, as seen in the case of the Shwe gas project, a heavy-handed response by security forces that brings more human rights abuses.

Absence of the Rule of Law

The judiciary in Burma lacks independence from the government and does not act impartially. For decades, it was strictly controlled by Burma's military government. The reform programs since the advent of a civilian-led government in 2011 have not included the courts. It will take some time, significant political commitment, and considerable training and capacity building efforts before the courts can serve as a credible means of assuring the rule of law, including human rights and other basic guarantees. This poses numerous risks for human rights in the context of the oil, gas and mining sectors. For example, there is inadequate domestic regulation and enforcement on key issues such as

environmental protection, resulting in business activity that has harmful consequences for human rights. Moreover, in the absence of legal reforms, those facing land confiscations for extractive industry projects do not have an effective legal means to contest such seizures. The absence of the rule of law is a further risk factor when weighing the prospects for EITI implementation to advance accountability over resource management in Burma.

Annex D: Ethiopia, Aspiring EITI Candidate

Ethiopia's 2009-2010 bid to become an EITI candidate country was unsuccessful due to concerns about a highly restrictive environment for civil society. The Ethiopian government, since September 2012 headed by Prime Minister Hailemariam Desalegn following the death of Meles Zenawi, has publicly indicated that it intends to revive its candidacy. It has actively sought to enlist support for a renewed membership bid. Diplomatic sources have told Human Rights Watch that Ethiopia may seek reconsideration of its application in 2013. However, conditions in Ethiopia have not improved: the underlying factors and notably legislation that have led to the destruction of independent civil society remain intact and the government continues to clamp down on all forms and expressions of dissent. In fact, space for civil society, press freedom, and peaceful protest in Ethiopia has continued to shrink since 2010. Ethiopia does not meet the basic requirements for candidacy in EITI.

Whereas a central tenet of EITI is the free, active, and meaningful participation of civil society, in Ethiopia a once vibrant civil society has been largely dismantled. The government has coupled two repressive 2009 laws, the Charities and Societies Proclamation (CSO law) and the Anti-Terrorism Proclamation, with widespread and persistent harassment, threats, politically motivated prosecutions, and intimidation of civil society activists, journalists, and others who speak out on political issues or express views critical of government policy. The CSO law is one of the most draconian laws regulating nongovernmental activity in the world. It sharply restricts independent civil society activity and advocacy in the areas of human rights and governance, among others, and organizations and individuals who violate the law may be subject to criminal liability.

The Anti-Terrorism law also is being used to close down free speech and avenues for public debate, including press freedom and peaceful assembly. To date, 11 journalists have been convicted and sentenced under that law while doing their work as journalists; 2 other journalists are currently in detention, charged under the law. In addition, the government has intensified its surveillance of telecommunications, censorship of internet and jamming of radio broadcasting in recent years. The government has weakened the independence of core institutions such as the judiciary that could have served as important oversight bodies and kept government policy and practices in check. Instead, courts have colluded in the government's crackdown on independent voices, permitted serious violations of due

process in politically motivated and sensitive cases, and failed to respond to credible allegations by detainees of torture and mistreatment.

These measures have had the predictable and intended result of sharply curtailing the number of independent voices and the ability of existing civil society organizations to carry out even basic monitoring, reporting and advocacy. The EITI process is contingent on active and full civil society participation, which is not possible in such a context.

2010 Board Decision: An Important Precedent

In 2009, the government of Ethiopia applied to join EITI. One of the required five “sign-up indicators” for admission as a candidate is the willingness to work with civil society to implement the initiative. This was far from evident in Ethiopia, where the government had already begun to clamp down on fundamental freedoms. Most notably, in 2009 it adopted the CSO law, which imposed severe restrictions on the activities of civil society.

Sensitive to the challenge posed by Ethiopia’s candidacy in view of such restrictions, EITI’s Board took various steps to assess whether civil society would be able to engage effectively in the initiative before deciding how to proceed. As reflected in the minutes of EITI Board meetings and other records published on EITI’s websites, many Board members were concerned that Ethiopia’s harsh legal rules would restrict the activities of civil society groups who engaged in the EITI process. The Board sent a delegation to the country in early 2010 to gather more information and consult with various stakeholders. That mission concluded that the climate for civil society in Ethiopia was restrictive, as feared. It also reported that national stakeholders with whom they met in Ethiopia, including some civil society members, nevertheless supported the country’s application. The team that carried out the mission recommended that the Board defer a decision on Ethiopia’s application pending assurances from the government that it would specifically exempt from the law those civil society activities involving EITI. (As will be discussed, other Ethiopian and international organizations had sought such assurances but they have failed in practice.)

At the Board meeting in February 2010, some members argued in favor of granting Ethiopia’s candidacy, on the theory that involving the Ethiopian government in EITI might serve to open up more space for civil society, and the country’s application had the support of national stakeholders. Others expressed serious reservations: not only would it

be impossible, in the absence of a binding mechanism, to guarantee protections for the civil society groups inside the Ethiopian EITI multi-stakeholder group, they argued, but EITI standards also require that other civil society groups also be able to actively participate in the EITI process. Given these concerns, the Board deferred a decision on Ethiopia's candidacy "in effect, until the Proclamation on Charities and Society Law is no longer in place."

The result was that, for the first time in its history, EITI had rebuffed a candidate expressly on human rights grounds. The initiative had made clear in this case that active and meaningful participation of independent civil society was a non-negotiable membership condition. Human Rights Watch acknowledged at the time the significance of the decision and urged that it set a precedent for all governments involved in EITI.

Sustained Government Commitment to Joining EITI

Ethiopia's government, although disappointed by the rejection, proceeded with its own process in parallel to EITI. It launched the Ethiopia Revenue Transparency Initiative (ERTI) with a multi-stakeholder group and announced plans to produce an "EITI-like" report on revenues, initially envisioned for release by early 2012.

The government also remained determined to join EITI and expressed early interest in reviving its candidacy. At the invitation of the Ethiopia multi-stakeholder group, the EITI Secretariat visited the country in December 2011. The Secretariat's aim in visiting, it explained in a note to the Board, was to assess conditions in Ethiopia in order to be able to make recommendations as to whether Ethiopia's candidacy merited reconsideration. In a letter to the Board ahead of the trip, EITI's Chair, Clare Short, proposed that the mission "seek to establish whether civil society representatives in Ethiopia are as able to engage in the process as freely as they are in implementing countries."

The delegation's assessment report was conveyed to the Board. The records show, however, that a scheduled discussion at the subsequent Board meeting on the Ethiopia assessment was dropped from the agenda. The most recent public notice from the Secretariat, updated in mid-2012, indicates that "Ethiopia is expected to renew its Candidature application once their ERTI report is completed." Ethiopia's mining minister

was quoted in the media in October 2012 expressing the government's continued desire to join EITI.

In 2012 and again in early 2013, diplomatic and other sources informed Human Rights Watch that the Ethiopian government had indicated that it may make changes to the civil society law to secure their admission to EITI. One possibility mentioned was an exemption to permit groups directly involved in the EITI process to access foreign funding, including from the EITI Multi Donor Trust Funds. According to these sources, Ethiopia's government had succeeded in gaining support for its EITI candidacy from some governments and others on this basis. While Ethiopia has not formally petitioned to be reconsidered, to Human Rights Watch's knowledge, it may do so in 2013.

Worsening Repression

Governmental repression of civil society in Ethiopia is far-reaching. The primary vehicles have been restrictions on the rights to freedom of association and expression, but other key rights affecting civil society are also under attack, and institutions that might act as a check on abuses of power have been gravely weakened.

Freedom of Association: Severe Restrictions on Civil Society

The 2009 CSO law delivered a terrible blow to independent civil society in Ethiopia. It forbids "Ethiopian" organizations from receiving more than 10 percent of their funds from foreign donors if they engage in broadly defined human rights, advocacy, conflict resolution, or governance activities. The law permits organizations to carry out technical service delivery activities as part of development projects without constraint, but bars them from activities that pertain to state policy, functioning, and accountability. It also imposes broad criminal liability on organizations and individuals for certain breaches. The law also established a regulatory body, the Charities and Societies Agency (CSA), to oversee the work of charities and societies. The law provides the CSA with broad discretion to arbitrarily cancel NGO registration and penalize organizations with both fines and criminal charges for administrative errors.

Recognizing the serious potential for the CSO law to be used to restrict nongovernmental activity, numerous foreign governments, as well as international organizations involved in development activities in the country, urged Ethiopia's government to revise the

proclamation prior to its adoption. After the law was promulgated, the Netherlands and some other donors threatened to withdraw their support. The Ethiopian government responded to concerns by providing written assurances to the World Bank that the law would not affect social accountability activities that are part of the development projects they fund. That promise has not been kept, however, showcasing the risks of trying to carve out a safe space in an environment where independent civil society as a whole is under threat. Any effort by EITI to secure specific exemptions from the restrictive legal framework within which civil society is operating could not adequately protect organizations involved in the EITI process (both those within and outside the multi-stakeholder group) from the more generalized clampdown on dissent, of which the CSO law is only one part. A number of governments, independent experts and the African Commission on Human and Peoples' Rights have unsuccessfully sought the repeal or substantial amendment of the law, citing its violation of fundamental guarantees on freedom of association.

The law has had a chilling effect. As the UN High Commissioner for Human Rights said in July 2012, "The once vibrant civil society in Ethiopia has been whittled away as the space for them to operate freely has rapidly shrunk since the 2009 Charities and Societies Proclamation was passed into law." Ethiopia's most important human rights groups have been compelled to dramatically scale down operations or remove human rights activities from their mandates, and an unknown number of organizations have closed entirely. Several of the country's most experienced and reputable civil society activists have fled the country due to threats. Furthermore, in December 2009 the director of the Charities and Societies Agency arbitrarily froze the bank accounts of two of the country's most prominent civil society organizations, despite having no such authority, forcing them to slash their budgets, staff, and operations. The accounts remain frozen at this writing, and, in a ruling that underscores the judiciary's lack of independence, in October 2012, the Supreme Court rejected their appeal.

Freedom of Expression: Politically Motivated Prosecutions

The environment for freedom of expression in Ethiopia is dire. Ethiopia's 2009 Anti-Terrorism Proclamation, among other highly problematic provisions, includes an overly broad definition of "terrorist acts" that can include acts of peaceful protest that result in the "disruption of any public services." The law also includes vague provisions on support

for, or encouragement of, terrorism, which can include reporting on banned terrorist groups, or others perceived by the government to fall into this category. The government has overwhelmingly used the law to detain and convict journalists, political opposition supporters, and peaceful protesters, rather than suspected terrorists. Thirty-four people, including 11 journalists and at least 4 opposition supporters, are known to have been sentenced under the law between late 2011 and mid-2012 in apparently politically motivated trials. Dozens of journalists and others have fled Ethiopia in the past years in fear of becoming targets of such repression. Forty-nine journalists fled Ethiopia in the past five years alone, a number only exceeded by those fleeing Somalia and Iran, according to the Committee to Protect Journalists. All independent media houses have been forced to close or stop functioning.

In addition, the government has gradually tightened its surveillance and control over telecommunications, Internet and radio broadcasting over the past few years. Internet censorship and the jamming of radio broadcasts have become routine. A new telecommunications law deepens control over Internet service and satellite phone services. The climate of fear created by real or perceived government surveillance—on the ground but also of Internet and telephone communications—is so pervasive that it poses enormous challenges to even collecting information, much less expressing concerns or frustrations over government policy.

Other Fundamental Freedoms: Peaceful Assembly Under Attack

Additional government abuses in Ethiopia also raise concerns. Violations of the rights to peaceful assembly and to personal security since 2011 have been committed against members of the political opposition and the country's Muslim minority. These abuses further weaken independent voices in society.

The Ethiopian government has responded sharply to unprecedented public demonstrations by elements of the Muslim community, which makes up at least 30 percent of the country's population. In July 2012, Ethiopian security forces harassed, assaulted, and detained hundreds of protesters at the Awalia mosque. Numerous protesters and journalists were arbitrarily detained and beaten. According to credible sources, up to 1,000 people may have been detained in July alone. In the wake of the crackdown, 29 prominent Muslim leaders, activists, and others have been prosecuted

under Ethiopia's repressive anti-terrorism law. Their trial has been fraught with due process concerns. Some defendants have alleged ill-treatment in pre-trial detention. Since January 22, 2013, the High Court has closed the hearings to the public, including the media, diplomats, and family members of defendants.

Lack of Oversight Institutions

Effective accountability mechanisms do not exist in Ethiopia. In the current climate any meaningful criticism of the government—including by civil servants—could result in severe consequences to the career or liberty of the persons involved. As long as this climate persists, no government institutions can exercise effective oversight.

Institutional checks and balances have been deliberately undermined by the ruling party. For example, the courts have been weakened and have often been used as a tool of the government, particularly in political trials. In all of the recent high-profile anti-terrorism trials, courts have convicted defendants despite serious due process violations. Since the ruling party's 99.6 percent victory in 2010, it has complete control over parliament. The Ombudsman and the Ethiopian Human Rights Commission also lack independence from the government, an essential criterion in the Paris Principles, which set out basic standards for national human rights institutions.

Conclusion

EITI took an important stand in 2010 when it declined to admit Ethiopia as a candidate. At that time, EITI's Board concluded that the severe legal restrictions imposed on civil society called into question whether EITI could function in such an environment. Three years later, there is a clear record of how the government has implemented this and other repressive laws to intimidate and muzzle independent voices. It is also clearer than ever that an exemption to the CSO Law for EITI activities would not afford any meaningful relief, in view of the many other tools used to silence dissent. Moreover, admitting Ethiopia as a candidate in the present circumstances would send a terrible signal about EITI's commitment to core principles espousing the centrality of civil society participation to EITI.

Annex E: Equatorial Guinea, Former Candidate

Corruption, poverty, and repression plague Equatorial Guinea under President Teodoro Obiang Nguema Mbasogo, who has been in power since 1979. Vast oil revenues fund lavish lifestyles for the small elite surrounding the president, while most of the population lives in poverty. Those who question this disparity are branded “enemies.” Freedom of expression, assembly, and association are curtailed. This has severely hampered the growth of a domestic civil society capable of monitoring and challenging government action.

The country’s EITI candidacy ended in de-listing from the initiative in 2010 after it failed to meet the deadline for validation. A request for an extension was denied, as the EITI Board found that the government lacked a compelling explanation for the delay. Although serious concerns about civil society participation were not the basis for the rejection, they formed a backdrop for the determination that the government had shown little commitment to EITI throughout its candidacy. It is Human Rights Watch’s understanding that the government of Equatorial Guinea seeks to reapply to EITI, despite having made no improvements since 2010.

Civil Society

Within a wider context of harsh repression that includes the virtual absence of a free press, civil society participation in Equatorial Guinea is subject to serious obstacles, characterized, among others, by restrictive legislation, government harassment, and the risk of reprisals against critics.

Equatorial Guinea's government has not permitted a single independent human rights group to obtain legal registration and it harshly suppresses any domestic criticism. Equatorial Guinea’s EITI multistakeholder group included several civil society representatives who lacked independence from the government.

The few local activists who seek to address sensitive issues related to human rights or corruption are vulnerable to intimidation, harassment, and reprisals. For example, Alfredo Okenve, an independent civil society representative on the country’s EITI multi-stakeholder group who worked as a professor, was terminated by the National University in retaliation for comments he made about the government’s EITI and transparency record at a public

event in Washington, DC, following the country's de-listing. Okenve has continued to face consequences for being mildly outspoken. In January 2012, government officials allegedly pressured a private company to rescind a job offer made to him.

Freedom of Expression and Association

Equatorial Guinea remains notorious for its lack of press freedom. Journalists from state-owned media outlets remain unable to criticize the government without risk of censorship or reprisal. The few private media outlets that exist are generally owned by persons close to President Obiang; self-censorship is common. The editor of an infrequently-published private newspaper is simultaneously a Ministry of Information official. Foreign news is available to those with access to satellite broadcasts and the internet, which is a small minority of the population; others have access only to limited foreign radio programming.

Public Funds and Corruption

The government has undertaken a massive building spree, financed by oil revenues, which raises questions about its spending priorities. Beyond infrastructure such as roads and power plants, much of the construction is for the enjoyment of the country's tiny elite and foreign guests. Projects include a new city being built in a remote rainforest and a planned \$77 million presidential guesthouse.

Foreign investigations into high levels of corruption involving President Obiang and his close associates are underway in France, Spain, and the United States. In June 2012, a legal filing in the US government's asset seizure case alleged extortion and embezzlement of public funds on a grand scale by Obiang's eldest son. The complaint details more than \$300 million in spending from 2000 to 2011, including on art by master painters and mansions on four continents, allegedly with the use of illicitly obtained funds. In July, after a French judge issued an arrest warrant against Teodorín, French authorities also seized his luxurious Paris mansion, whose contents they had earlier claimed.

Absence of Accountability

Equatoguineans have no way to hold their government officials accountable for their actions. Reliable information on government spending is largely unavailable. There is little

meaningful or effective political opposition or independent press. Presidential and legislative elections have been marred by serious flaws.

The ruling Democratic Party of Equatorial Guinea (PDGE) maintains a monopoly over the country's political life. It orchestrated a constitutional referendum that was approved in November 2011 with 97.7 percent approval in a vote marred by irregularities. The opposition was deterred from observing the voting and protested efforts to prevent some opposition members from monitoring the polling places and from speaking out against voting fraud.

Arbitrary arrest and detention is common. The judiciary lacks independence and there are no effective oversight bodies. President Obiang is to name or approve the heads of new "independent" institutions to be set up in accordance with the 2011 constitution. The president declared that new presidential term limits would not apply retroactively.