IMPLEMENTING EITI IN PAPUA NEW GUINEA

EITI SCOPING STUDY

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REPORT

On April 19, 2006, the UK Department For International Development (DFID) engaged Ghislain Pastrë to assist the Government of Papua New Guinea (PNG) in determining whether and how to implement the Extractive Industries Transparency Initiative (EITI) which seeks to ensure the transparency of payments by extracting (oil, gas and mining) companies to governments, and on revenues received by the government from these companies. The main output of the assignment was to prepare a scoping study to identify the key technical, process and political issues that could shape EITI implementation in PNG. This report describes the main findings of the in-country consultations conducted by the consultant under the auspices and with the assistance of the PNG Department of Treasury from April 24 to May 1st, 2006 and includes recommendations on the scope and means of implementation of the EITI principles and criteria to ensure the ownership and sustainability of the initiative in PNG. Additional stakeholder input was obtained at a workshop held on July 19, 2006 and was incorporated into this report.

I. CONTEXT AND BACKGROUND

A. Context leading the PNG Government to consider implementing EITI.

The PNG Government has requested the Asian Development Bank (ADB) to consider participating in the funding of the Government's equity participation in the "PNG Gas Project" which aims to develop natural gas from certain oil & gas fields within the Highlands region and transport gas via an international export pipeline to customers in Australia. As part of the conditions for providing a sovereign loan and a partial credit guarantee to the PNG Government, ADB is considering requesting the Government to endorse and implement EITI. It is in this context that the PNG Department of Treasury sought the assistance of DFID to assess in advance concerns and opportunities around EITI implementation in PNG.

B. The EITI process and its basic requirements.

EITI seeks to encourage greater transparency and accountability in countries dependant on the revenues from oil, gas and mining, to mitigate the potential negative impacts of mismanaged revenues and ensure that these revenues can instead become an important engine for long-term economic growth that contributes to sustainable development and poverty reduction.

From its inception, EITI has enjoyed wide international support[1]. Benefits for implementing countries are mainly realized as part of, or as an entry point to,

[1] Azerbaijan, Congo, Ghana, the Kyrgyz Republic, Nigeria, Sao Tome e Principe, Timor Leste and Trinidad **&** Tobago started implementing the EITI principles in 2005, and were joined in the last two

> broader efforts to improve governance. Increasing transparency and knowledge of revenues will empower citizens and institutions to hold governments to account. Improved governance will allow better management of those resources and should promote better economic and political stability. This in turn can help to prevent conflict based around the oil, mining and gas sectors. Implementation will also contribute to an improved investment climate by providing a clear signal to investors and the international financial institutions that the government is committed to greater transparency.

By endorsing EITI, a government states its belief in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure, and recognizes that this requires a workable process of disclosure of payments and revenues and the participation of all relevant stakeholders in disseminating and discussing the reported revenues.

Having chosen to participate in EITI, a country is required to develop its own implementation model consistent with the following criteria[2]:

1. Regular publication of all material oil, gas and mining payments by companies to governments ("payments") and all material revenues received by governments from oil, gas and mining companies ("revenues") to a wide audience in a publicly accessible, comprehensive and comprehensible manner.

2. Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.

3. Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards, and with publication of the administrator's opinion regarding that reconciliation, including discrepancies, should any be identified.

4. This approach is extended to all companies including state-owned enterprises.

5. Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.

6. A public, financially sustainable work plan for all of the above is developed by the host government, with the assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

C. Specific objectives of the scoping study.

In order to capture any concern, challenges and opportunities that may arise in relation to EITI implementation by PNG, the consultant was asked to:

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years by the following countries : Gabon, Kazakhstan, Peru, Cameroun, Guinea, Mongolia and Mauritania. Nigeria and Azerbaijan are the two only countries to have completed a full reporting cycle

[2] Quoted from the EITI Source Book reproduced in www.eitransparency.org.

(a) Identify the main technical, content and process issues related to EITI, in particular the following:

1. Background issues: main revenue streams from the El sector; main companies operating in the PNG El sector; main civil society organisations involved/interested in El transparency and accountability issues and their main concerns; main donors and international financial institutions in PNG and their interest in and possible support of EITI; main legislation covering the El sector and main types of contracts used; options for treating payments to sub-national governments and beneficiary organisations.

2. Process concerns: experiences and possible overlap of similar processes/initiatives on transparency, governance, accountability and participatory decision-making in the PNG El sector; current state of corporate and government reporting on El revenue streams; stakeholders' interest for and concerns about reporting and publishing El revenue figures; other political issues which could undermine EITI in PNG; workable coordinating mechanisms at the national and sub-national level and in relation to other beneficiary organisations to ensure that the relevant actors can be brought into the process.

(b) Identify the level of support for EITI implementation in PNG among key PNG stakeholders and recommend the feasibility of, and options for, EITI implementation in PNG, noting the extent to which challenges and concerns around sustainability and government ownership of the process could hinder support of the process.

(c) Arrange and conduct in Port Moresby, a workshop for EITI stakeholders to examine the findings of the scoping study and identify next steps.

(d) Assist the preparation of assurance documentation in relation to the policy dialogue between the Government of PNG and the Asian Development Bank

D. Interviews conducted in Port Moresby from April 24 to May 1, 2006.

22 interviews were conducted over the period in question with representatives of various government agencies, of the extractive industries and of NGOs, international donors and other stakeholders. A list of the interviewees and a summary of their opinions on EITI implementation is attached hereto as Annex 1.

E. Stakeholder workshop held in Port Moresby on July 19, 2006.

An EITI workshop was held at the Crowne Plaza Hotel in Port Moresby on July 19, 2006 to present the findings of the draft report to a wide audience representing the government institutions, the extracting industry and the civil society and to seek their views on the desirability and challenges of implementing EITI in PNG. The agenda and attendees' list is attached hereto as Annex 2, and a presentation by the executive director of the Chamber of Mines and Petroleum on the industry perspective is attached as Annex 3.

II. EXECUTIVE SUMMARY

1. Whilst all key stakeholders recognise the need for greater transparency and improved civil society involvement in the management of natural resource revenues in PNG, as well as the potential contribution of an EITI-type process in achieving such benefits, they believe that an essential condition for the sustainability of such a process will be to move beyond the EITI principles and criteria. An EITI implementation that would be restricted to the validation and reconciliation of company-to-government payments which is the current scope of the EITI mandate, while likely to be relatively simple, would have limited value and would consequently put the sustainability of such implementation at risk. This is mainly because the need for transparency and accountability is perceived to exist mostly, if not exclusively, at the level of re-distribution of sector revenues.

2. There appears to be some significant transparency and revenue mismanagement issues in relation to the receipt, use and distribution of benefits received from the national government and from Mineral Resources Development Company (MRDC) by the provincial governments and by the associations of landowners. However, an EITI-type validation/consolidation/reporting process of such intra-government transfers would present complex implementation issues, both in terms of conducting the required validations and reconciliations, and of securing the participation of the relevant stakeholders. The complexity would be particularly acute in respect of the distribution of benefits by the incorporated land groups (ILGs) to the landowners, which is where many of the fund diversion and mismanagement issues arise. Various voluntary initiatives are being implemented by the operators in conjunction with the local authorities and MRDC at the local level to ensure that the funds are received by the rightful beneficiaries. It is only at that level, and on a field by field basis, that this long-standing issue can be efficiently tackled, and any extension of the EITI process to ILG - individual landowner's transfers can be seriously questioned.

3. A possible approach that the PNG EITI stakeholder working group may, in due course, consider for EITI implementation in PNG, aimed at ensuring its sustainability, would consist in complementing an EITI validation/ reconciliation/reporting process in respect of company-to-national government transfers, by a data gathering and reporting process of the aggregate revenues transferred by the national government and by MRDC to the next level of beneficiaries. A working group could be set-up to conduct a feasibility study on such an extension, and possibly also on extending the reporting to the in-kind benefits (infrastructure tax credits, training and other local CSR initiatives) provided by the companies to the local communities. A staged implementation may be necessary and the stakeholder-working group may consider the conduct of a pilot project with one affected province to extend the validation/reconciliation process to all payments made by the companies, by the national government and by MRDC to the province in question.

Such an approach is consistent with EITI which is intended to provide a flexible framework and which encourages governments to move beyond the ElTl principles and criteria. It would go a long way towards ensuring the local ownership and *sustainability of EITI implementation in PNG because it will respond to where the transparency issues really are.*

4. In order to ensure active stakeholder participation and the overall sustainability of the initiative, the following steps should be considered:

> *(i) The appointment of a senior government official to lead the EITI implementation and who should report to the National Executive Council (the Cabinet) to secure the collaboration of all relevant ministries and agencies,*
>
> *(ii) The establishment, by a decision of the National Executive Council, of a national EITI stakeholder working group chaired by the above government appointee and composed of representatives of the three stakeholder groups,*
>
> *(iii) The appointment of an ElTI focal point in each relevant ministry, department or agency, at no less than First Assistant Secretary level, to secure the full and timely fulfilment of the tasks required from the ministry, department or agency in question in the EITI data collection process, and*
>
> *(iv) The active participation, and funding (in an initial phase) of the initiative, of some international donors to ensure the momentum in the implementation.*

5. The engagement of civil society in a PNG EITI process, which is an essential EITI requirement, and an appropriate representation of this group in the local EITI governance structure to achieve a balance of stakeholder interests, will present some challenges in view of the currently existing limited number of local organisations representing that stakeholder group and having the capacity to positively contribute to the process. Some civil society awareness-raising and capacity-building programmes will be required.

6. The required resources and the costs associated with EITI implementation should be found reasonable in regard to the benefits expected to be derived from such implementation, particularly if international donor funding is available in the first years.

III. NATURAL RESOURCES BENEFIT STREAMS IN PNG

A. BENEFIT STREAMS IN THE OIL & GAS SECTOR

1. The regulatory framework and the revenues received from petroleum companies.

Oil and gas exploration, development and production activities in PNG are governed by the Oil and Gas Act 1998 (as amended). Licences are granted by the Minister for Petroleum and Energy, and the Department of Petroleum and Energy is responsible for the administration of the Act. The grant of Petroleum Prospecting Licences (PPLs) and Petroleum Development Licences (PDLs) is subject to application fees and annual fees. The fee rates are specified by the Act range from K1000 to K10.000 in relation to a PPL, and from K50.000 to

K100.000 in relation to a PDL. There are no signature or production bonuses. A Petroleum Agreement governing the rights and obligations of the parties may be executed between the State and the licensee(s), concurrently with the grant of the PPL.

Pursuant to the Oil and Gas Act, the State has the right, but not the obligation, to acquire from the licensees up to a 22.5% interest in any petroleum project, at a price equal to the elected percentage of the sunk costs. The Petroleum Agreements provide that this option may be exercised at the time of grant of a PDL. The interest is acquired either directly by the State or by Mineral Resources Development Company (MRDC), a state-owned entity. As explained in the following paragraph, a portion of the interest so acquired is transferred to a separate MRDC subsidiary acting as trustee for affected communities. Having sold its previously acquired direct participating interests in successive privatisations, the only current equity interest owned by the State for its own benefit is a 20.5% interest held by Eda Oil, a MRDC subsidiary, in the Moran oil field which lies within PDL No *5*. It is envisaged that the State will acquire a 10.1% participating interest in the PNG Gas Project. That interest will be held by Petromin PNG Gas Company, a wholly owned special purpose subsidiary of Petromin, which in turn will be owned by the State.

In addition to the participation benefits described above, the following payments are levied on the revenues from a PDL:

1. Income tax at the rate of 50%[3] on any oil project and 30% on any gas project, pursuant to the provisions of the Income Tax Act 1959 (as amended). The tax is assessed on a project basis and on an individual company basis for each company holding a participating interest in a PDL.

2. Royalties at the rate of 2% of the wellhead value of petroleum pursuant to the Oil and Gas Act 1998 (as amended). The Act stipulates that for all new projects and in cases where an existing PDL is varied, the State will make a corresponding royalty benefit grant to be shared between the project area landowners, the affected local-level governments and the affected provincial governments of the project in proportions agreed between them in a development agreement.

3. Development levies of 2% of the wellhead value of petroleum pursuant to the Oil and Gas Act 1998 (as amended) and which is payable to the project affected provincial government(s) via a Government trust account from which the provincial government(s) may make budget appropriations.

[3] As a result of the 2000 tax review recommendation, the income tax rate of 50% on oil projects was reduced to 45% for any new PDL granted prior to January 1, 2003. Under a new fiscal incentive introduced in 2003, the rate was further reduced from 45% to 30% for new PPLs granted between January 1, 2003 and December 31st, 2007 and new PDLs evolving from these PPLs, granted on or before December 3l, 2017.

2. The regulatory framework relating to the distribution of benefits to affected communities.

PNG has a regulatory framework which is probably one of the most advanced in developing countries in terms of mechanisms aimed at ensuring that communities affected by a petroleum project are sharing and receiving a substantial portion[4] of the benefits from the exploitation of natural resources.

Pursuant to Part IV of the Oil and Gas Act, a portion of the State equity entitlement is required to be granted to the project area landowners and the affected local-level governments of any petroleum project, and the royalty benefit is allocated to the affected landowners, local level governments and provincial governments. Both benefits are to be shared between them in proportions agreed by them in a development agreement. The landowner beneficiaries are recognized by ministerial determination after considering, amongst other information, the results of social mapping and landowner identification studies and may be either "incorporated land groups[5]" (ILGs) or other representative entities or individuals. Both benefits are to be received and held upon trust for the designated beneficiaries by a wholly owned subsidiary of MRDC, acting as corporate trustee.

For instance, Petroleum Resources Kutubu Ltd holds a 6.75% interest in the Kutubu PDL as a trustee for and on behalf of the beneficiaries which are the Southern Highlands Provincial Government (23.30%), the Southern Highlands landowners (33.30%), the Gulf Provincial Government (16.70%) and the Gulf landowners (26.70%).

In respect of landowners' benefits, the sharing and use of the trust assets and income are governed by a trust deed of the MRDC trustee subsidiary, and MRD' s management services and fees are set out in a management agreement between MRDC and the subsidiary in question. A minimum of 30% of the trust income of each MRDC Trustee Company must be held for future generations, and another 30% must be invested in health, welfare, education and other community projects in the area of the petroleum project. In respect of local-level and provincial government benefits, similar trust arrangements are required.

The Oil & Gas Act provides that all monies held on behalf of affected provincial and local-level governments can only be spent in accordance with development plans submitted by the relevant governments and approved by an " expenditure implementation committee[6]" responsible for monitoring budgets and expenditures of monies and composed of representatives of the national government, the provincial and local-level governments and the operator.

[4] Up to 20% of the total net benefits to the State from each petroleum project. (Section 174 of the Oil & Gas Act).

[5] Under the Land Groups Incorporation Act, persons with a common attachment to land may incorporate a group which may the carry on certain transactions in relation to the underlying land.

[6] Although established by legislation, the EIC has only met occasionally and has not performed its assigned functions. See Paragraph IV.B below.

3. Payment flows and revenue management procedures.

Each of the companies holding a participating interest in a PDL is individually liable to income tax obligations on the income derived from its participating interest is a company registered in PNG, and is required under the Company Act to file audited financial statements. All of the other State benefit entitlements are paid by the operating company on behalf of all the PDL participants.

As between the oil & gas companies and the government entities, the benefit flows are therefore as follows:

BENEFIT	PAYER	PAYEE	COLLECTOR	ACCOUNT
Income tax	Each participating company in PDL	State	IRC	Consolidated Revenue Fund
Royalty	PDL operator on behalf of companies participating in PDL	State	DPE	Trust Fund of relevant MRJJC trustee company.
Production entitlement in PDL *5*	PDL operator	Eda Oil	MRDC	Eda Oil
Production entitlement in Gas Project[7]	Gas Project operator	Petromin PNG Gas Company		Petromin PNG Gas Company
Equity benefit for communities	PDL operator	MRDC as trustee for designated beneficiaries	MRDC	Trust Fund of relevant MRDC trustee company
Development levies	PDL operator	State as trustee for Provincial Governments	DPE	Development Levy Trust Fund of relevant Provincial Government

The management of monies received by the government, including those relating to provincial and local- level governments, is regulated by the Public Finance (Management) Act 1995, which sets out responsibilities and detailed rules to ensure

[7] After PNG gas Project production start-up

that the monies are properly deposited, accounted for, invested and disbursed. Such monies are accounted for either in the Consolidated Revenue Fund or in the Trust Fund which includes Trust Accounts established to, inter-alia, receive moneys held by the State as trustee. The raising and expenditure of finance by the national government is subject to authorisation and control by Parliament and all financial accounts must be submitted to the Auditor-General. The Act establishes a parliamentary "Public Accounts Committee" in charge of examining the accounts of the receipts and expenditures of the Public Account and the reports of the Auditor-General, and to report to the Parliament on any issues identified. The Committee has extensive powers of investigations. It may impose surcharges on government officials for improper use or accounting of public monies, and may refer cases of non-compliance to the Ombudsman Commission or to the Public Prosecutor.

4. Government reporting of oil & gas revenues

Pursuant to Article 34 B of the Public Finances (Management) Act, the Minister of Finance reports each year in Volume One of the National Budget[8] the revenue which is expected to accrue to the Government during the next five years from (i) designated mining enterprises, (ii) designated petroleum enterprises, and (iii) persons associated with mining or petroleum activities, and the assumptions underlying the government's opinions on these revenues. Such reporting provides aggregate figures for tax revenue, divided into mining and petroleum dividends and mining and petroleum revenues and non-tax receipts (such as infrastructure tax credits)[9]. National government grants and transfers to provincial governments and local-level governments are also reported and indicate the fiscal revenues per province on account of mining and petroleum royalties.[10] The Budget also contains details of all of the trust accounts, indicating for each account the trust code, the trust name, the administering department, the purpose and the source of funds.[11]

The Bank of PNG also publishes information on corporate tax payments in its Quarterly Economic Bulletin.

The Department of Petroleum and Energy prepares a yearly report detailing the amount of royalties paid to beneficiaries, but such reporting is currently two years behind.

There is consequently a general consensus amongst stakeholders that a more systematic, detailed and timely reporting of oil & gas revenues is needed.

Because of the confidentiality restrictions of the Income Tax Act, the government is not entitled to publish individual tax information, unless it obtains an express waiver of confidentiality from the taxpayer.

[8]See 2006 Budget. Volume 1. "Economic and development policies".
[9]Table 3.8 of Appendix 3 to Volume 1
[10]Table 2.1 and 2.2 of Appendix 2 to Volume 1.
11Part IV of volume 2.Part 2.

5. Main oil companies operating in the oil & gas sector

While there are currently about 60 companies holding an interest in PPLs, there are only 21 companies having interests in PDLs[12]. There are only two companies acting as operator of PDLs, namely Oil Search Ltd and Esso Highlands Ltd[13].

The Government, through IPBC, a State holding company, holds 17.8% of the share capital of Oil Search Ltd which is quoted on the Australian stock exchange, and accordingly receives dividends from that interest.

Esso Highlands Ltd is the operator of the Hides PDL and will act as operator for the PNG Gas Project. As previously mentioned, equity interests are held in all PDLs in trust by MRDC subsidiaries set up for each PDL for community beneficiaries[14] or for the State[15].

6. Benefit streams in the oil & gas sector under the EITI definition.

The scope of EITI is the validation, reconciliation and publication of payments from the extractive industries to the Government[16]. The payments to be covered by such process include payments at the national, regional and local levels of Government, but do not currently include the assignment of revenues collected at the national level and then shared downwards to sub-national (regional and local) levels.

Based on the current EITI mandate, the oil & gas related payments and revenues that an EITI process would cover in the PNG context are as follows:

1. Income tax paid by the companies to the Internal Revenue Commission.

2. Royalties paid by the operators to the State for the trust accounts of the MRDC subsidiaries.

3. Development levies paid by the operators to the State for the trust account of the relevant provincial government(s).

4. Production entitlement delivered by the operator to Eda Oil and, in the future, to Petromin.

5. Equity benefits paid by the operators to MRDC for the trust accounts of the relevant MRDC subsidiaries.

6. Dividends paid by Eda Oil and, in the future, by Petromin, to their respective parent companies.

[12] 12 Source: Internal Revenue Commission
[13] Because of the tax ring-fencing rules, both companies generally act as operator and hold their interest in each PDL through a specific subsidiary.
[14] Petroleum Resources Moran; Petroleum Resources Kutubu; Petroleum Resources Gobe; and, in the future Petroleum Resources Hides.
[15] Eda Oil, a subsidiary of MRDC, holds the State 20.5% interest in PDL5 (Moran).
[16] EITI criteria 1 and 3.

7. Income tax paid by the MRDC subsidiaries to the Internal Revenue Commission.

Under the EITI mandate, the following benefit streams would be excluded from the validation/reconciliation/reporting process:

1. Expenditures and grants made by the Government out of the Consolidated Revenue Account (in which the income tax is deposited)[17].

2. Dividends paid by each MRDC subsidiary to the relevant trust beneficiaries (landowners and provincial government(s)) and investments made by the MRDC subsidiary with the trust funds[18].

3. Distributions made by the Government or by MRDC subsidiaries to individual landowners or to incorporated landowner groups, and payments made by the latter to individual landowners[19].

4. In-kind benefits paid or incurred by the operators for the benefit of the local communities (infrastructure tax credits[20], other voluntary contributions)[21].

5. Dividends paid by Oil Search to IPBC[22].

6. Possibly licence fees if their amounts are determined to be immaterial.

7. Current benefits reporting practices of oil and gas companies.

Some oil and gas operators in PNG are publishing community magazines, newsletters or other documents reporting on the payments made to the government and of on benefits in cash or in kind granted to the local communities, but such reports are neither comprehensive, nor published in a systematic manner. The Chamber of Mines and Petroleum conducts an annual survey of producing members and consolidates the figures showing the benefits accruing to non-industry stakeholders, including taxes and amounts spent on compensation to affected landowners, law and order, employment and training, business development, social welfare and infrastructure.

[17] 17 As being intra-government transfers.
[18] As being intra-government transfers
[19] As being transfers from a government entity to a non-government entity.
[20] A tax credit scheme whereby project developers may spend up to *0.75%* of their assessable income in infrastructure project, the costs incurred in such projects being treated as income tax paid.
[21] The reporting of in-kind benefits is not envisaged by the EITI reporting guidelines Under the definition of "benefit streams" at page 4 of the EITI draft Reporting Guidelines, "Indirect economic benefits like construction of infrastructure and employment of local personnel are not considered for the purposes of these reporting guidelines to be Benefit Streams".
[22] Oil Search Ltd is not a "state-owned company" as defined in the EITI Source book, and would therefore not required to report such payments. As an extracting company, it would however be required to report all oil& gas payments and revenues covered by the EITI mandate (income tax, royalties, development levies, etc).

B. BENEFIT STREAMS IN THE MINING SECTOR

1. The regulatory framework and the revenues received from mining companies by the government and the affected communities.

Mining activities in PNG are governed by the Mining Act 1992 (as amended) and by Mining Regulations. The act sets out the procedure whereby the State Minister for Mining can issue various types of leases or licences to interested companies to enable them to engage in exploration and mining activities. Fees at rates set out in the Mining Regulations are payable in relation to the granting or renewal of mineral exploration Licences ("EL"). Mining exploitation activities are carried out under a "mining lease" ("ML") or a "special mining lease" ("SIVEL")" for large scale operations. A "Mining Development Contract" ("MDC") is entered between the State and the licensee in conjunction with a ML or SML. Before the grant of a SML, the Minister is required to convene a "mine development forum" to consider the views of those persons who may be affected by the lease (landowners and affected provincial governments). The licensees are also subject to an obligation to compensate the landowners from any damage suffered by them from the mining operations.

The State and MRDC have the right to acquire a participating interest in any mining project, either in the SML or in the operating company holding the SML, in accordance with an option agreement. It is the current Government policy to set aside some of the interest so acquired for landowners and the affected Provincial Government. Such interests are then generally acquired by MRDC subsidiaries and held in trust for the benefit of the designated beneficiaries.[23]

In addition to the State equity benefits, the licensees are subject to:

1. Income tax at the rate of 30%.
2. Dividend withholding tax at the rate of 10%.
3. Royalties at the rate of 2% of the net proceeds of the sale of minerals, 20% of which is distributed to the landowners of the project area and the remainder being spent in the mine impact area and the province in which the project is located in accordance with approved community sustainable development plans.

[23]For instance, Mineral Resources Enga Ltd, a subsidiary of MRDC acting as trustee for the Enga provincial government and for the affected landowners, holds a 5% interest in the Porgera gold mine, the remaining interests being held by Placer Dome PNG Ltd and Emporer Mines Ltd. In the Ramu nickel cobalt mine, two MRDC subsidiaries, Mineral Resources Ramu Ltd and Mineral Resources Madang Ltd are holding an interest of respectively 3.94% for the province and *2.50%* for the landowners. In the Ok Tedi mine, the interests are held in the company holding the SML, i.e. Ok Tedi Mining Ltd, rather than in the SML itself.

2. Payment flows and revenue management procedures.

All of the State and community benefits other than the income taxes and dividend withholding taxes are paid by the operating company on behalf of all the participants in the Mining Licence. For Ok Tedi, the taxes are paid by Ok Tedi Mining Ltd and the equity benefits are paid in the form of dividends received by the State and by two MRDC subsidiaries as shareholders in Ok Tedi Mining Ltd[24].

As between the mining companies and the government entities, the payment flows are as follows:

3. Government reporting of mining revenues.

The reporting requirements applicable to oil and gas revenues also apply to mining[25].

4. Main companies operating in the mining sector

BENEFIT	PAYER	PAYEE	COLLECTOR	ACCOUNT
Income tax	Each participating company in ML	State	IRC	Consolidated Revenue Fund
Dividend withholding tax	Each participating company in ML	State	IRC	Consolidated Revenue Fund
Royalty. 1	ML operator	Provincial Govt.	Prov. Govt	Prov. Govt General Revenue Fund or Trust fund.
Royalty.2	ML operator, acting as agent for the State	Landowners	Landowners	NA
State equity benefit (share of *N* revenues or dividend from JV cie)	ML operator	State	Dept of Treasury	Consolidated Revenue Fund
Equity benefit for communities (share of JV revenues or dividend from *N* cie)	ML operator	MRDC subsidiary as trustee for designated beneficiaries	MRDC	Trust Fund of relevant MRDC trustee company

[24] Mineral Resources Star Mountains (as trustee for registered landowners groups) and Mineral Resources Ok Tedi Ltd (as trustee for the Fly River provincial government)
[25] See Paragraph III.A.4 above.

There are 72 companies holding an equity interest in ELs or MLs, either directly or through shares in a mining operating company holding an EL or ML, but there are only 16 companies generating taxable income from direct or indirect participations in MLs or SMLs covering 6 mines. (Kainantu, Panguna[26], Porgera, Tolukuma, Lihir and Ok Tedi). The operators are Bougainville Copper Ltd, Placer Dome PNG Ltd, Emperor Mines Ltd, Highlands Pacific Ltd, Lihir Gold Ltd and Ok Tedi Mining Ltd.

As previously mentioned, equity interests are held in all SMLs in trust by MRJJC subsidiaries set up for each PDL for community beneficiaries[27].

5. Benefit streams in the mining sector under the EITI definition

Based on the current EITI mandate, the payments and revenues from the mining sector that an EITI process would cover in the PNG context are as follows:

1. Income tax paid by the companies to the Internal Revenue Commission.

2. Dividend withholding tax by the companies to the Internal Revenue Commission.

3. Royalties paid by the operators to (i) the national government Trust Fund and (ii) the provincial government General Revenue Fund or Trust Account.

5. Dividends/equity benefits paid by the operators to the Government and to the MRDC subsidiaries. (Ok Tedi).

6. Equity benefits paid by the operators to MRDC for the trust accounts of the relevant MRDC subsidiaries. (MLs other than Ok Tedi).

7. Taxes paid by the MRDC subsidiaries to the Internal Revenue Commission.

Under the EITI mandate, the following would be excluded from the validation/reconciliation/reporting process:

1. Expenditures and grants made by the Government out of the Consolidated Revenue Fund (in which the income tax and the dividend withholding tax are deposited)[28].

2. Dividends paid by each MRDC company to the relevant trust beneficiaries and investments made by the MRDC subsidiary with the trust hinds[29].

3. Royalty distributions made by the operator to landowners[30].

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[26] While the Panguna gold mine in Bougainville ceased operations in 1989, it still holds the interest in the mine and pays income tax on investment income.
[27] Mineral Resources Enga, Mineral Resources Star Mountain, Mineral Resources Lihir and Mineral Resources Ok Tedi.
[28]As being intra-government transfers
[29] As being intra-government transfers
[30] As being transfers to private (non-government) entities

4. Distributions made by the Government or by MRDC subsidiaries to individual landowners or to incorporated landowner groups, and payments made by the latter to individual landowners[31].

5. In-kind benefits paid or incurred by the operators for the benefit of the local communities (infrastructure tax credits, other voluntary contributions)[32].

6. Possibly licence fees if their amounts are determined to be immaterial.

7. Current benefits reporting practices of the mining companies.

Acknowledging their corporate social responsibility and the need to support their "licence to operate", most mining operators are voluntarily issuing detailed reports on all revenues and benefits which the national, provincial and local-level governments and the communities affected by the mining project, are obtaining from them.

For instance, Placer Dome, the operator of the Porgera gold mine, is issuing an annual report containing the following data: (i) annual production, (ii) taxes and duties (including wage withholding tax, custom duties, withholding tax, and income tax), (iii) royalties (including royalty payments to provincial Government, future generation trust fund, landowners), (iv) compensation and occupation fees, (v) amounts spent on education and training, (vi) amounts spent on infrastructure development (Schools, health centers and infrastructure), and (vii) mine-related projects (such as agriculture rehabilitation).

Similarly, Ok Tedi Ltd is issuing an "Historical annual statistical report" including (i) financial data, (ii) tax payments, (iii) dividends paid to the State, Mineral Resources Ok Tedi, the provincial government and the landowners, (iv) royalty payments to the State, the provincial government, the provincial government project trust, and the landowners, (v) amounts spent on education and training, (vi) other benefits and compensation payments, and (vii) infrastructure expenditure.

IV. TRANSPARENCY AND ACCOUNTABILITY ASSESSMENT OF COMPANY-TO-GOVERNMENT BENEFIT STREAMS, AND EITI APPLICATION TO SUCH STREAMS.

No significant concern was expressed in the interviews in respect of the receipt and accounting of the payments made by the petroleum and mining operators to the State or MRDC. Such payments are made either by cheque payable to the State of PNG handed to the Treasury which deposits the funds in the relevant public account, or by wire transfer to the designated public account. Such accounts are subject to comprehensive controls and reporting, as described in part III above, which substantially reduces risk of mismanagement.

[31] As being transfers to private (non-government) entities
[32] As being transfers of benefits in kind. See footnote 21.

The addition of an ETTI-type process of validation and reconciliation which would apply solely to payments made by the extracting industries to the Government is therefore perceived as having limited value from the standpoint of preventing or disclosing mismanagement of revenues, other than a prophylactic role in the event of deterioration of the situation.

From a reporting standpoint however, it is recognized that both the ultimate beneficiaries of sector revenue payments and the general public would benefit from a more institutionalised, systematic, detailed and timely reporting system than what is currently practiced. The reporting of aggregate figures by revenue stream in the National Budget and the voluntary reporting by petroleum and mining operators does not provide an adequate level of disclosure from the standpoint of the relevance, reliability and availability of information. An ETTI-type reporting process would significantly enhance transparency through dissemination of the information to a wider audience[33] and through the presentation of disaggregated figures on a petroleum development licence/mining lease basis. Although not required by ETTI, such a presentation, which could be accompanied by a breakdown by category of payments and beneficiaries, would clearly be useful for the local communities. The involvement of civil society representatives in a stakeholder working group that will participate in the design, monitoring and evaluation of this process, is also recognized as a benefit of an ETTI mechanism, even if limited to company-to-government payments.

Most of the extracting producing companies would see a significant value to the scope of the reporting being extended to all benefits in cash or in kind, which they pay to or spend for the benefit of local communities in the project area, such as the infrastructure expenditures under the tax credit scheme or the amounts the companies spend on education, health and training. The ETTI process would then serve as a means to publicize to a wider audience the information set out in reports that they currently prepare and make available to support their “licence to operate”.

A validation, reconciliation and reporting process limited to company-to-government payments would be relatively easy to implement: While the number of companies having a participating interest in oil & gas licences or being a shareholder in a company holding mining leases may be in excess of *150*, there are only 21 companies in the oil & gas sector, and 16 companies in the mining sector that are making material payments to the Government. (Companies at the exploration stage would be excluded from the process, their payments being immaterial). All of these companies would be required to individually report their income tax and dividend withholding tax payments, while all of the other payments made either to the national government or to the provincial government or to the trustee subsidiaries of MRDC would be reported by the operator on behalf of all of the companies participating in the petroleum development licence or being a shareholder in a mining company holding a mining lease. Since all of these companies have audited financial statements, as required by the Companies Act, they will, easily and for a minimal cost, be able to

[33] The Budget is issued in 500 copies only, but is otherwise available to the public at large via the Treasury website.

secure from their auditors a certification that the information contained in their ETTI payment reporting is consistent with their financial statements.

On the Government side, reporting templates will have to be prepared and filed with the selected conciliator by (i) the Internal Revenue Commission (in respect of tax receipts), (ii) MRDC (in respect of all payments received by MRDC trustee subsidiaries), and (iii) the Treasury (in respect of all other receipts). For IRC to file the company tax information, it will have to secure from each company a waiver of confidentiality with respect to the information required to implement EITI. MRDC would have to secure from the auditors of each subsidiary a certification that the information contained in its reporting template is consistent with the financial statements of the subsidiary in question.

There will clearly be a timing challenge arising from the fact that the audited financial statements are often not finalised for some time following the close of the fiscal year, which is likely to significantly reduce the value of the report.

The selection of the auditor in charge of the reconciliation of payments and revenue reporting could present some conflict of interest issues as the three international accounting firms active in PNG are all acting for several extracting companies and for MRJJC. However, some smaller auditing firms exist which may not have these conflicts. If it is decided to cover benefits in kind in the reporting, the figures reported by the companies would be simply subject to certification by their auditors, since no reconciliation of those figures is feasible.

As the EITI Source Book points out, the levels of commitment, ownership and credibility that a country attaches to the EITI will be strongly influenced by the extent to which the key stakeholders are content with the benefits and timeliness of the initiative. Whilst a validation/reconciliation process following the current EITI mandate is generally perceived by relevant stakeholders in PNG has having some value and as raising no insurmountable problems, the sustainability of the initiative, if limited to company-to-government payments, has been questioned by many interviewees, mainly because the need for transparency and accountability is perceived to exist mostly, if not exclusively, at the level of re-distribution of sector revenues.

V. TRANSPARENCY AND ACCOUNTABILITY ASSESSMENT OF GOVERNMENT-TO- LOCAL COMMUNITIES BENEFIT DISTRIBUTIONS, AND EITI RELEVANCE.

It is common knowledge that there are transparency and revenue mismanagement issues in relation to the receipt, use and distribution of benefits received from the national government and from MRDC by the provincial governments and by the associations of landowners.

A. Payments to Provincial governments.

As mentioned in Part III, the Provincial Governments are entitled to receive: (i) out of oil & gas revenues, a share of equity benefits which is held in trust by MRDC subsidiaries and a share of the development levies which is held in trust by the State, and (ii) out of mining revenues, a share of equity benefits which is held in trust by MRDC subsidiaries and a share of the royalty directly from the mining operator. It is widely thought that there are significant revenue management issues in the collection, accounting and use of such benefits by the Provincial authorities and many cases of embezzlement for individual purposes. These malpractices are typically not restricted to revenues received on account of natural resource benefits: they often extend to the use of all government grants to the Provinces.

Budget processes and accounting and expenditure monitoring systems at the provincial level are weak. This has been a long-standing concern of all key stakeholders, in particular international development organisations. AusAID has an ongoing assistance program in two provinces to strengthen provincial revenue budgeting and financial management.

B. Payments to landowners.

As mentioned in Part III, the affected landowners in the project area are entitled to receive (i) out of oil & gas revenues, a share of equity benefits and a share of royalty benefits which are held in trust by a MRDC subsidiary, and (ii) out of mining revenues, a share of the equity benefits which is held in trust by a MRDC subsidiary and a share of the royalty. The equity distribution is in the form of a dividend declared by the MRDC subsidiary and payable to the beneficiaries in proportion to their shareholding and in accordance with the relevant trust deed. The Department of Petroleum and Energy is entrusted with the responsibility to distribute the funds to the beneficiaries and MRDC remits the necessary amounts in cash.

The distribution is marred by all sorts of abuses on the part of the chairmen (often based in Port Moresby) of the relevant ILGs and generates numerous complaints from frustrated landowners who have been deprived of their benefits or believe they have not received their proper share. This sometimes leads to violent action and disruption of operations.

In respect of the benefits accorded to the local-level and provincial governments, the involvement of a "Expenditure Implementation Committee" which is the consultation mechanisms foreseen in the Oil & Gas Act to involve them, together with other stakeholders, in the monitoring of budgets and the expenditure of moneys, has failed to produce satisfactory results, largely because of delays and lack of commitment to making such committees functional.

A number of mining and oil & gas operators, recognizing the need to address revenue distribution and transparency issues in respect of landowners and local level governments, have embarked into ad hoc consultation and decision making mechanisms involving all relevant stakeholders (DPE, MRDC, ILGs, landowner leaders and NGOs). They also conduct training and awareness programmes on landowners benefits and their delivery mechanisms.

Various voluntary initiatives have been implemented to ensure that the funds are received by the rightful ultimate beneficiaries in the field. The current practice is for a MRDC representative to make the cash payouts in the villages, in the presence of representatives of DPE, the operator and the police. DPE is proposing that the oil operators should make the payments on its behalf and as agent for the State, but the oil operators are reluctant to assume that role. The mining royalty cash payments to landowners, which used to be handled by the Department of Mining, are now carried by the mining operators as agent for the State, and observed and verified by Department of Mining Liaison Officers on site.

The Government is considering replacing payments to ILG's by more direct forms of payments to individuals.

C. EITI relevance.

The focus of EITI is on the validation, reconciliation and publication of payments from the extractive industries to the Government[34]. Whilst the payments covered by such process include payments made by the companies to the national, regional and local levels of Government, the assignment of revenues collected at the national level and then shared downwards to sub-national (regional and local) levels is not covered by EITI's current mandate.

However, EITI is intended to provide a flexible framework and encourages Governments to move beyond the EITI principles and criteria. Therefore, a country may well envisage complementing an EITI process by additional processes aimed at validating and reporting intra-government assignments of natural resource revenues. A recent study of the Overseas Development Institute commissioned by the EITI Secretariat recognises the complexity of such an extension, due in particular to (a) the sheer number of validations and reconciliations that may need to be carried out, (b) the progressively poor quality of fiscal records at the lower levels, and (c) the highly complex web of civil society interests at the sub-national level, with potentially less capacity to actively participate or to comprehend the true financial implications of the published results[35].

All three concerns would arise in a sub-national implementation of EITI in PNG.

(a) Validations and reconciliations of transfers from the MRDC subsidiaries to the landowners would present the greatest challenge because of the number of recipients: There are more than 500 ILGs in PNG and the distributions are increasingly made to individual landowners whose number could reach many thousands, spread across vast and inaccessible areas. In addition, many of the mismanagement issues are occurring in connection with the distribution of cash by the ILGs to their members and MRDC has no control over such subsequent distribution. The actions initiated by the DPE, MRDC and the operators in the field to ensure that the funds are received by the

[34] See the 1st and 3rd EITI criteria reproduced in Part I.B above.
[35] <<Sub-National Implementation of EITI- Issue Paper>> March 2006, Overseas Development Institute.

rightful beneficiaries appear to be the right approach to handle a problem that can be tackled only locally. An EITI process which, by definition, occurs at the national level and involves a national structure of stakeholders would bring little value, if any, to the transparency and accountability of payments to landowners who have no representation at the national level and who, in many cases, are unlikely to consider the ILG chairmen as their legitimate representatives.

(b) Validations and reconciliations of transfers from the MRDC subsidiaries to the local level governments (districts) and to the provincial governments would present less, but still substantial, challenges. While it will be relatively easy to validate the amounts disbursed by the MRDC subsidiary to each beneficiary organisation on the basis of its audited financial statements[36], the corresponding receipts by the provincial or local-level government may be more difficult to track because of the poor quality of their financial records. In any event, audited statements at both ends may not be available before several years[37], which may render the validation exercise somewhat meaningless.

(c) A concern expressed by some interviewees and which is difficult to assess is the possible negative impact of implementing greater transparency: for some, it may aggravate tensions between producing and non-producing regions in relation to the sharing of natural resources revenues. It may ignite power struggles not only between competing groups of landowners in the field, but also with the peripheral communities which are not receiving any benefits, and could lead to violent actions and interruptions of operations: a side effect of what others call the "enclave development" issue.[38]

It should be noted that all of the countries which are currently implementing EITI are doing so on the basis of the EITI criteria, and, other than Peru[39], are not considering moving beyond such criteria.

VI. A SUGGESTED APPROACH FOR EITI IMPLEMENTATION IN PNG

In deciding whether to endorse EITI, a country must assess its obligations incident to such an endorsement on the basis of the EITI principles and criteria as they currently stand. As is the case of any international commitment, no country can be expected to assume an open-ended commitment to abide by any future modification of the EITI mandate. Specifically, if the PNG Government were to endorse EITI, it would do so

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[36] As an example, the 2004 financial statements of Petroleum Resources Kutubu Ltd, audited by KPMG, shows that 13.610.040 Kina was paid to the beneficiaries, shared as follows: Southern Highlands Provincial Government:23.30%, Southern Highlands Landowners : 33.30%, Gulf Provincial Government. 16.70% and Gulf landowners: 27.70%.

[37] MRDC last audited statements relate to the year 2004.

[38] See Annex 1 under Department of Mining, Oil Search, Highlands Pacific and AusAid.

[39] In Peru, the extractive companies are paying to the central Government royalties which are partially transferred to the producing region. Because the local people do not have access to information on the amounts and on the uses of these funds, the action plan adopted by the Peruvian EITI working group has set-up a working group to conduct a pilot project with the provincial authorities of the Cuzco region to consider the feasibility of reporting the amounts received by the provincial government on account of the royalties and how such amounts are used. This pilot project was put on hold, pending the enactment of a government decree to approve the establishment of the EITI working group. It is intended to resume shortly, as this decree has now been issued.

on the basis of the current scope which is limited to the validation, reconciliation and reporting of company-to- government payments, to the exclusion of intra-government transfers.

As the EITI Source book expressly provides, national implementation is a government-led initiative. It is for the national stakeholder working group, once appointed, to decide, and specify in its action plan (on which consensus must be reached), how it wishes to implement EITI taking into account the country's specific circumstances. The discretion of the stakeholder-working group on the scope, timing and means of implementation beyond the EITI criteria is an essential condition to ensure the ownership, credibility and sustainability of an EITI in-country process.

A possible approach that the PNG EITI stakeholder working group may, in due course, consider for EITI implementation in PNG, aimed at ensuring its sustainability, would consist of complementing an EITI validation/reconciliation/reporting process in respect of company-to-national government transfers,[40] by a data gathering and reporting process of the aggregate revenues transferred by the national government and by MRDC out of trust accounts to the next level of beneficiaries.[41]

Such a process would go a long way towards ensuring the local ownership and sustainability of EITI implementation because it will respond to where the transparency issues are perceived to be. As mentioned by one commentator[42], *"there is achievable transparency at the top, or source of payment, and at the bottom, money in the hand of the landowner, but the connections in-between are neither clear to GoPNG reporting systems, nor to the general public. It is the transparency of the intermediary processes that is at issue. Making such intermediary stages more transparent is very much in the interest of all Papua New Guineans, and I would expect a well-designed EITI system to work towards this objective".*

This additional process in respect of disbursements to the "next level down" would cover:

1. The moneys transferred by the national government to the affected provinces out of (i) the mining royalty trust accounts, and (ii) the petroleum development levy trust accounts.

2. The moneys transferred or paid by each MRDC subsidiary, as dividends, to the affected province(s), local- level government and landowners out of the petroleum royalty and equity benefit (petroleum and mining) trust accounts.

[40] The validation! reconciliation process would apply on a petroleum development licence/mining lease basis to all payments made by the operator (royalties, development levies, equity benefits to the Government and to MRDC) and by the participating companies (income tax and dividend withholding tax).
[41] Excluding the transfer of moneys deposited in the national government Consolidated Revenue Fund.
[42] John Rivers. See Annex 1 under ADB.

In order to be meaningful, the reporting would be done on a licence/lease basis, and would show aggregate figures for each group of beneficiaries. In addition to the disbursements, the EITI working group may consider reporting the amounts retained by said subsidiaries for future generations and for investment in projects. The MRDC independent auditors would be asked to confirm the consistency of the reported figures with the financial statements of the relevant MRDC subsidiary[43]. Some sort of validation of the moneys received by the provincial governments should also be considered.

Due consideration should be given to availability of financial information to ensure that the reporting covers data that remains relevant at the time the report is issued.

It would however be strongly advisable to consider implementing such a reporting system only after the completion of a full reporting cycle on company-to-government transfers. A working group could be set-up prior thereto to conduct a feasibility study on such a process, and possibly also on extending the reporting to the in- kind benefits (infrastructure tax credits, training and other local CSR initiatives) provided by the companies to the local communities[44]. A staged implementation may be necessary and the stakeholder-working group may consider the conduct of a pilot project with one affected province to extend the validation/reconciliation process to all payments made by the companies and by the national government to the province in question. Consideration may be given to conduct such a pilot project in respect of the gas project in the Southern Highlands Province since the “Gas Project and Cooperation Sharing Agreement” is likely to include transparency and audit commitments aligned with the EITI objectives.

VII. EITI STAKEHOLDERS ASSESSMENT IN PNG.

Any EITI in-country implementation must involve three main groups of stakeholders which are the government, the extracting industries and the civil society. Within each group, a stakeholders assessment should be conducted on the basis of the EITI definition of a “stakeholder”, which is *“an individual, community, group or organisation with an interest in the outcome of the EITI, including both those who are affected by it (positively or negatively) and those who are able to influence it (in a positive or negative way)”.*[45]

The following is an initial list of potential participants in a national EITI stakeholder-working group that should be set up to design, monitor and evaluate the EITI process in PNG.

[43] As an extension of their current mandate on the audit of said companies’ financial statements
[44] The above data would have to be assessed and reported on a production licence/ mining lease basis to ensure its relevance to the local stakeholders
[45] EITI Source book, page 5.

PUBLIC INSTITUTIONS

(i) Executive agencies

<u>- Department of Treasury:</u>
(As the authority responsible for the collection and management of the largest portion of natural resources revenues, the Department of Treasury would be the primary government institution in the initiation, implementation and review of a PNG ETTI process).

<u>- Internal Revenue Commission.</u>
(As the authority in charge of collection and validation of tax revenues (income tax and withholding tax))

<u>- Department of Petroleum and Energy</u>
(As the authority in charge of overall supervision of oil & gas activities and ensuring the collection of the royalty and development levies).

<u>- Department of Mining</u>
(As the authority in charge of overall supervision of mining activities and ensuring the payment of royalties to designated beneficiaries).

<u>- Department of Provincial and Local Level Government</u>
(Its role in respect of provincial governments' receipts and management of revenues remains to be determined)

<u>- Mineral Resources Development Company (MRDC)</u>
(As the parent company and managing agent of the resource trustee companies)

<u>- Department of National Planning and Rural Development</u>
(Role to de determined in respect of EITI relevance)

<u>- National Economic and Fiscal Commission</u>
(Role to be determined in respect of EITI relevance).

- Affected Provincial Governments.

(ii) Parliament

The Parliament of PNG should be a natural stakeholder through its Public Accounts Committee, although the role and efficacy of that Committee is open to question.

(iii) The Ombudsman Commission

The Ombudsman Commission was established by the PNG Constitution to guard against the abuse of power by persons in the public sector, assist such persons to do their jobs efficiently and fairly, impose accountability on them, and guard against discriminatory practices. It consists of a Chief Ombudsman and two Ombudsmen appointed by the Prime Minister on the advice of an appointment committee. It has wide investigative powers. It has a staff of 125 that receives and investigates complaints, and refers them to the relevant government authorities. It issues an annual report on the Commission's work. The Commission receives numerous complaints from aggrieved landowners alleging non-receipt or improper calculation of their benefit entitlements, but acknowledges that it is ill-equipped to handle such complaints. Based on its assigned mission and impartiality, the Commission appears to be a logical candidate for participation in an EITI stakeholder group.

(iv) The Office of the Auditor-General
(As the oversight agency responsible for auditing government's financial statements)

PRIVATE SECTOR (EXTRACTIVE INDUSTRIES)

(i) Chamber of Mines and Petroleum

(ii) Oil & Gas Operators
- Esso Highlands Ltd (ExxonMobil)
- Oil Search Ltd

(iii) Mining operators
- OK Tedi Mining Ltd (Ok Tedi mine)
- Lihir Gold Ltd (Lihir mine)
- Placer Dome PNG Ltd (Porgera mine)
- Highlands Pacific Ltd (Kainantu Mine)
- Emperor Mines Ltd (Tolukuma Mine)
- MCC Ramunico Ltd (Ramu nickel/cobalt mine)
- Harmony Gold Ltd (Morobe gold project. Under construction)
- Allied Gold Ltd (Simberi gold project. Under construction).

2. CIVIL SOCIETY

(i) Transparency International

The TI PNG chapter is a natural candidate for membership to an EITI work group because of its membership to the initiative at the international level and its proactive role in fighting corruption, raising corruption awareness and lobbying for greater transparency.[46]

(ii) The National Council of Churches

The Council of Churches has been consistently mentioned as one of the main organisations active in the fight against corruption and the promotion of public accountability and which, because of its extensive local reach, could bring significant value to an EITI process.

[46] See www.transparencypng.org.pg.

(iii) CIMC

The Consultative Implementation and Monitoring Council (CIMC) is an independent organisation which was established by the National Executive Council in 1998 to ensure that dialogue, through ongoing consultation processes, is sustained between the government, the private sector and the community at large, and that recommendations made to the Government are being implemented. It includes civil society (churches, NGOs, unions, women's groups, youth groups and concerned individuals), as well as the formal and informal business sector and senior public servants. It is chaired by the Minister for Planning. It includes sector committees and working groups (including a mining and petroleum committee) which meet on a regular basis and offer advice and criticism on subjects within their own sector. One of the main tasks of CIMC is to organise each year regional and national development forums, and to oversee and coordinate implementation of the recommendations endorsed by the forums.

CIMC is clearly one of the organisations that could play an active role in local EITI working group. It has expressed willingness to play an active role in the implementation of EITI, which fits quite well with its objectives and current activities.

(iv) Other organisations for consideration.

Other than the organisations listed above, there appears to be very few non-government organisations in PNG that have the mandate and/or the capacity to represent the PNG civil society. There is no national organisation representing the ILGs or the landowners who are clearly one of the key stakeholders in an EITI process. There are a large number of NGOs, but they appear to either be composed of the same individuals as those previously cited, or be a coalition of the organisations previously cited (e.g. the Community Coalition against Corruption), or have very limited objectives (environment, women, students) which are not ETTI relevant. Generally in PNG, the interest and capacity to act for the civil society appears to reside with individuals rather than with the organisations they represent. The following organisations were mentioned, but their ETTI-related interests and competencies have not been checked:

- Institute of National affairs (NA)
- National Council of Women
- Media Council of PNG
- Community Coalition against Corruption
- PNG Law Society
- Center for Environment Law and Community Rights (CELCOR)
- Center for Environment Research and Development
- Community Development Initiative (CDI): CDI conducts capacity building programs for local-level governments in relation to the oil development projects, with core funding from the oil industry.
- OXFAM
- Melanesian Foundation

- National Research Institute
- Institute of Accountants.

VIII. SUMMARY OF STAKEHOLDER VIEWS CONCERNING EITI IMPLEMENTATION IN PNG.

Based on the interviews conducted in April, as well as comments made at the stakeholder workshop on July 19th, it appears that there is a broad consensus across all stakeholder groups — Government agencies, industry and civil society- that EITI is a mechanism that could significantly improve governance in the natural resources sector in PNG, particularly if it includes some validation and reporting on the redistribution of revenues by the State and MRDC to the next level. EITI is seen as a tool to enhance citizen interest and involvement in the management of public moneys. It is also seen as a tool for companies to report on their investment's contribution to PNG in a credible manner and to a large audience, and thereby help reduce the perceived public mistrust of government and companies. It will also give a signal to the international community about the Government's commitment to transparency and a signal to new investors that "malfeasance is not on the cards". If some concerns were expressed, none of them were said to be of such serious nature to outweigh the benefits of EITI implementation. The following concerns and challenges were mentioned:

1. The effects increased transparency may have in (1) aggravating tensions between producing and non- producing regions, (2) generating unrealistic expectations of landowners, and (3) putting the spotlight on the extractive industries while other sectors may be marred with equally or more serious revenue mismanagement issues.

2. Capacity constraints of both government personnel to meet their EITI related obligations, and civil society organisations to actively participate in the EITI process;

3. The increase of government bureaucracy and the creation of an additional administrative burden on both companies and government agencies.

4. The likely level of commitment of government agencies in dedicating the resources and attention to EITI implementation, and the sustainability of their commitment in light of certain past failures to sustain certain international obligations;

5. The funding of the costs associated with EITI implementation.

It would seem that the issues identified in point 1 should best handled through measures addressing their root cause (in the non-producing regions or in the other sector), rather than in the non-disclosure of information. With respect to landowners' expectations, the EITI report should contain clear explanations on how the beneficiaries are determined and what are the principles governing their entitlements and the distributions, and may need to be accompanied by capacity-building programs and information campaigns in the field.

The following paragraph contains a number of suggestions in response to the issues described in points 2 to *5* above.

IX. RECOMMENDED EITI FRAMEWORK, RESOURCES AND TIMING FOR IMPLEMENTATION.

A. Recommended framework

In order to ensure active stakeholder participation and the overall sustainability of the initiative (which is of some concern), the following steps should be considered:

1. The appointment of a senior government official to lead the EITI implementation and which should report to the National Executive Council (the Cabinet) to secure the collaboration of all relevant ministries and agencies.

2. The establishment, by Decision of the National Executive Council, of a national EITI stakeholder-working group chaired by the above government appointee and composed of representatives of the three stakeholder groups. A legislative endorsement of the Initiative would further provide a clear signal to the international community and to all national stakeholders that the Government is firmly committed to greater transparency, and would enhance the participation and compliance of all relevant stakeholders in the process.

3. The appointment of an EITI focal point in each ministry, department or agency, with an appropriate seniority level (no less than First Assistant Secretary) to secure the full and timely fulfilment of the tasks required from the ministry, department or agency in question in the EITI data collection process; and

4. The active support and funding (in an initial phase) of the initiative, of the main international donors to ensure the momentum in the implementation. AusAID, ADB and the EU have indicated that they may consider funding EITI implementation in PNG. The availability of assistance from the EITI trust fund may also be investigated.

B Timetable for implementation.

Once the PNG Government has decided to participate in EITI and has so advised the EITI Secretariat, it will need to move to the initiation stage by establishing the governance structures and securing the funding for implementation in accordance with the principles set out in Paragraph A above. A further assessment of the relevant organisations and individuals who will be asked to join the stakeholder working group will have to be conducted to ensure a balanced representation of the three stakeholder groups and to ensure that the selected representatives will have the interest, commitment, expertise and availability to actively participate and positively contribute to the EITI process.

The first tasks of the stakeholder working group will be to (1) adopt rules of procedure including the designation and replacement of members, the calling and holding of meetings, and the form of minutes of meetings, and (2) appoint a sub-committee composed of a limited number of representatives of each stakeholder group and entrusted with the task of preparing an action plan for EITI implementation.

The action plan will typically include:

(1) Capacity building of government, industry and local NGO's (awareness raising programs and workshops);

(2) The establishment of an EITI national website so that all stakeholders are aware in advance of the actions planned and the general public can access the EITI national reports and other information about the activities of the working group;

(3) A determination of the scope of the validation/reconciliation process, with a detailed assessment of the revenue streams by sector, the materiality level and a list of the extractive enterprises which will be required to submit revenue information;

(4) A determination of the accounting periods and of the period to be covered by the first report;

(5) The preparation of reporting templates for both the reporting enterprises and the Government, together with the accounting principles applicable thereto (cash or accrual basis, reporting currency, etc);

(6) The selection of the accounting firm entrusted with the task of finalising the templates, collecting and evaluating the revenue data, and preparing the ETTI national report; and

(7) The format, content and means of dissemination of the national ETTI report.

Assuming that the first reporting process will be limited to company-to-government payments and will cover the year 2005, a realistic timeframe for the ETTI initiation stage in PNG would include a period of two to three months from the date of the decision to participate, to set up the working group and secure the funding. This would be followed by a period of two to four months for the actions (1) to *(5)* above. This initiation stage would lead to the appointment of the conciliator and be followed by a first cycle implementation stage of two to three months. Assuming an October 2006 sign-up date, the first national report could therefore be expected to be released by August/September 2007.

C. Required resources

Based on the experience of ETTI implementation in other countries, it is expected that the ETTI stakeholder-working group will hold between 3 to 6 meetings a year, while the bulk of the work will be done by the subcommittee. The workload will necessarily vary over time, peaking in connection with the first reporting cycle and thereafter substantially decreasing as a result of the experience gained in the first cycle.

The chairmanship of the ETTI working group should require no more than 10% of the time of the person appointed to that position provided he has the adequate level of staff support. That support may consist, at the initiation stage, of one full time person with knowledge of the petroleum and mining industries and the applicable legal and fiscal framework. An ETTI dedicated office and secretarial support may be required.

Whilst it is recommended that the ETTI governance structure be independent from any existing organisation, significant cost savings and ease of implementation may be achieved if the ETTI secretariat was assumed by an organisation such as CIMC which has the competencies and interest in playing an active role in ETTI implementation.

Ghislain Pastrë. July 25, 2006.

Annex 1. Stakeholder views
Annex 2. Workshop agenda and attendees' list
Annex 3. "An industry perspective of the EITI in PNG" by Greg Anderson, Executive Director of CMP.

ANNEX 1 TO EITI REPORT

STAKEHOLDERS' VIEWS

INSTITUTION	NAME OF INTERVIEWEES	INTEREST AND VIEWS
1. GOVERNMENT		
Department of Treasury	Mark Slade, Economic Adviser Murray Edwards, Senior Adviser Paul McNamara, ECP Adviser-Budget Division Mick Danaher - Budget Division Tony McDonald, Adviser Forecasting - Economic Policy Division Juliana Kubak, First Assistant Secretary. Planning Laurence Chandy, Senior Economist, Policy Division. Planning	Treasury believes that the existing national budget framework is conducive to transparency of revenue streams accruing to the Government from resource development. The government derives its financial benefits via a relatively limited number of mechanisms which do not include the types that in other countries have been the most open to abuse. For instance PNG does not have signature or production bonuses. The only significant sources of revenue are the income tax, royalties (which are passed on to local communities), and dividends from government's investments in the mining and petroleum sectors. All tax and dividend returns are currently reported in the National Budget. The Public Finances Management Act requires the Treasury to publish in Volume 1 of the National Budget estimates of the revenue that is expected to accrue to the Government from mining and petroleum operations as well as the assumptions underlying these estimates. At the national level, transparency of oil and gas and mining revenues (contrary to fisheries and forestry revenues) is not an issue. All moneys are in the consolidated public accounts which are audited by the Auditor-General and reviewed by the Parliamentary Public Accounts Committee. There are robust systems to track revenues. Efforts have been made to open up the budget process through the regional and national development forums organised by CIMC and involving various government sectors (incl. planning and treasury), the private sector and NGOs. The

		problem is at the provincial level and in connection with the distribution of benefits to landowners. Issues of mismanagement and diversion of monies also arise in connection with expenditures, particularly in respect of public procurement. But is EITI the right process to tackle such issues? Whilst some Treasury advisers have expressed concerns that the EITI process will be adding an extra bureaucratic burden with limited value in view of the alleged efficiency of existing control processes, the more common view is that an EITI process if applied to the intermediary levels of distribution of natural resource revenues such as the disbursements of MRDC will respond to real public informational needs.
Department of Petroleum and Energy	Roger Avinaga, Assistant Director, Policy Branch, Rendle Rimua, acting Deputy Secretary, Kila Gare, Economist, Policy Branch Francis Lola, Legal Adviser	DPE acts as collector of the royalties and of the development levy. DPE receives the cheque from the operator, takes it to Treasury which credits the proceeds to the relevant trust account. DPE also acts as the distributor of moneys to landowners. It also acts as a coordinator between the State and landowners, disseminating information and negotiating development agreements and MOAs. An important objective advisor is to get the benefits to the ultimate beneficiaries in the field, rather than to the chairmen of ILGs who are based in Port Moresby and often do not transfer the moneys further. DPE has proposed that the oil companies handle the distribution in the field, acting as agent for the State. It doubts that this proposal will be approved. Reporting: Currently the public has very little information on what is paid out on a field basis. DPE issues annual reports on how much royalties are being paid, but this reporting is currently 2 years behind. An EITI report that would indicate how much the companies have paid in royalties and development levies on a licence basis would have some value. DPE could disseminate such reports locally through their field offices. The National Council of Churches is being trusted

		by people and is present at the local level. Its participation in EITI to represent the civil society should be considered. DPE has a “positive appetite” for EITI implementation, especially if its scope extends to the local level.
Department of Mining	Nellie James, Acting Director, Mining Division	The DM acknowledges weaknesses in reporting of mining revenues and would welcome an EITI validation and reporting process. DM is concerned that greater transparency may aggravate tensions between producing and on-producing regions in relation to the sharing of mining revenues.
Internal Revenue Commission	David Castiglione, Tax Adviser. Resource Monitoring Unit Iru V. Loi, Assistant Commissioner	Every company holding an interest in petroleum or mining licence must be incorporated as a PNG company, have its financial statements audited under the Company Act, and file income tax returns. Out of 200 extractive companies filing tax returns, 25 to 30 are currently paying income taxes. IRC has an ongoing audit program since 3 years. The 1st audit was completed and resulted in a substantial refund to the government. The 2nd audit just started. Taxes are paid in 3 instalments over the year, on an advance payment system, with an adjustment at year’s end. Taxes are paid in US dollars from offshore to a New York bank account of the Central Bank of PNG, which in turn transfers the kina equivalent to the Consolidated Revenue Fund. In the future, payments will be made in PNG in Kina. IRC sees value in the publication of income tax data, as an inducement for investment in PNG. Each company will have to waive the confidentiality requirement established by law in respect of individual tax data. IRC is concerned that the timeframe suggested in the Report for EITI implementation is too short.
PNG Gas Project	Joseph Gabut, PNG Gas Project Coordinator	EITI, although of limited value in respect of accounting for company payments, would serve to consolidate and publicize revenue data that is currently contained in various reports, often outdated. Data must be presented in a comprehensible manner so that people can use it as an input. Perceived value

		and ownership is critical to the success of the initiative. EITI is a good first step. “A foundation for subsequent transparency at the next level down”. Challenges: the expected level of commitment of departments and agencies involved in the implementation and the sustainability of the secretariat. The ETTI leader should be located in the Prime Minister department. The approval of ETTI and the set-up of its governance structure by way of an act of Parliament may enhance the commitment and stakeholder participation and compliance.
Mineral Resources Development Company	Arun Basu, General Manager - Corporate Service	MRDC acts as a holding company for the State interests in COMPANY services licences, and as a management company for its subsidiaries holding interests in licences as trustees for provincial governments and ILGs. All MRDC companies have their respective boards, file statutory returns and their financial statements are audited by independent auditors (currently KPMG and Deloitte). They declare a dividend which is paid to the beneficiaries on the basis of a list prepared by DPE. Cash is taken to the site and given to the beneficiaries in the presence of the operator, DPE representatives and the police. Royalties are now distributed to landowners in the same manner as dividends, on the basis of a DPE prepared spreadsheet. While MRDC is generally supportive of ETTI, it has some concerns about a too extended reporting system which could create false expectations from landowners and generate tensions which could outweigh the expected benefits of ETTI.
Ombudsman Commission of PNG	Peter Masi, Ombudsman Gabe Hekoi, Internal Auditor	An independent agency set up by the Constitution. The OC Gabe Hekoi, internal often receive landowner complaints that they have not auditor received their money, or that the amount was not correct, or that the government officials did not give them their full entitlement, or that the moneys were

		given to a competing landowners group. The Commission does not have the capacity to handle such complaints. It provides the Government with reports of such complaints. Publication of revenues under EITI would be useful as it would help breaking the existing distrust of government institutions at the grass roots.
2. EXTRACTIVE INDUSTRIES		
PNG Chamber of Mines & Petroleum	Greg Anderson, Executive Director	The transparency and revenue management issues are at the local level. There would be value in showing what went to the provinces and what went to the communities. To be of greatest benefit to PNG, the EITI system would need to be adapted to incorporate the transactions at the lower level. However, the further down the system goes, the harder it will be to manage the process. In the mining sector, the mining companies are handling the distribution to the clan leaders, acting as agents for the State. In the Oil & gas sector, these distributions are made by MRDC. The development levy is sometimes paid by check to the governor, allowing the moneys to be diverted. The Chamber is concerned that EITI will create an administrative burden. But it sees value as the process will make more transparent what the petroleum and mining companies are contributing to the government, and even more so to the provinces and to the local levels. The EITI process will also be invaluable to government organisations and others as a central data source on the industry. A further advantage is that the data will be consistent, which is not the case at present because industry information used by various arms of government is frequently drawn from sources which are unreliable or second-hand. Subject to board approval, the Chamber would be agreeable to participate in an ETTI implementing structure. See Greg Anderson's presentation at the ETTI workshop in Annex 3 to the Report.

Esso Highlands Ltd(ExxonMobi)	Namon Mawason, Public Affairs Manager, PNG Gas Project, David Byers	ExxonMobil which is a member of ETTI at the international level will be very supportive of an ETTI process in PNG. Adequate precautions will have to be taken to protect the confidentiality of proprietary information.
Oil Search Ltd	Gerea Aopi, General Manager PNG Phil Caldwell, PNG Asset Manager	Transparency and accountability is a problem at the local level in terms of the benefits being passed to the local communities, and being spent on infrastructure, health or education. Oil operators are reluctantly becoming a quasi government at the local level. An ETTI type reporting would bring some value but it should not create additional bureaucracy. Reporting should not be limited to payments. It should extend to all benefits in kind (health, education, infrastructure law and order) that the operators bring to the communities, but which cannot be audited. The publicising should be done at the community/village level, where the information is most useful, not in POM. It is unfortunate that the "Expenditure Implementation Committees" which are required to be set-up by the Oil and Gas Act are not working properly. OSL is concerned that an increased transparency at the local level could potentially ignite some power struggles in the field, but also with the peripheral communities which are not recovering any benefits, and could lead to violent actions and interruption of operations.
Placer Dome (Barrick Gold)	Dr Ila Temu, PNG Manager	The big issue in PNG is the transparency of the use of revenues at the provincial and local levels. There is a general lack trust of the communities in the Government. We should improve the ability of the communities to ensure that the benefits go to the people who are entitled thereto. We should get away from cash handouts and take example of the revenue distribution processes in Canada. Placer would support an approach brought down to the community level. Limiting the process to the national level would erode its significance pretty quickly, as it would not add any value to existing processes. The

		Council of Churches is a good candidate for EITI participation because of its great reach across the country. A concern that EITI may raise is that it puts in the spot light the extractive industries which are relatively law compliant compared with some other sectors such as fisheries. What message would EITI implementation give about these other sectors which are marred with problems?
Lihir Gold Ltd	Borone Isana, Manager Government Liaison Community & Environment Division	People are suspicious of companies. They want to know what the mines bring, how the royalty payments are received by the provinces actually spent, and whether they are spent to develop the region. The companies prepare reports but have not found ways of efficient dissemination. EITI would have value in bringing more information to the public. Lihir would support the implementation of EITI.
Highlands Pacific Ltd (Kainantu gold mine)	Rob Guest, Mine Manager	Would support EITI, but is concerned that transparency may exacerbate disputes amongst provinces and between project area and non-project area communities, as well as between project area communities (with discrepancies of levels of benefits from the extractive companies).
3. NGOs, DONORS AND OTHER STAKEHOLDERS		
Institute of National Affairs	Paul J. Barker, Director	Same as TI. See below
Transparency International	Marcus Pelto, Executive Officer Emily George Taule, Executive Director Mike Manning	EITI is part of TI's strategic plan. There is no connection between the State and its citizens because the latter are not paying taxes. TI is involved in a budget transparency initiative, with the message "public money is my money" and citizens should therefore care about how it is spent. TI is a member of the "Community Coalition against Corruption". While TI recognises that there is no real concern about company payments, it believes EITI would give new entrants "the signal that malfeasance is not on the cards". The issue is mostly at the re-distribution level. EITI implementation will have a cost. Given the

		choice, TI would rather see the money being spent on reforming the ILG system of distribution of benefits. Civil society representation is still weak in PNG, although some strong advocacy on environment and forestry is emerging. The Council of Churches is currently the best umbrella of non-state actors. Other potential stakeholders: CELCO (but focusing on forestry), CIMC, Public Accounts Parliamentary Committee, the Media Council, the Law Society (?) and the Institute of Accountants (?). TI supports EITI and would participate.
Consultative Implementation & Monitoring Council (CIMC)	Alois Francis, Senior Project Officer Tim Anderson, Executive Officer	CIMC was set up by NEC to act as conduit for information between the government, civil society and business. It believes that a simple validation and reporting of company- to-government payments would have limited value. The issue is at the provincial level. EITI should be complemented by processes to hold people to account at the local level and ensure a proper an equitable distribution of benefits. There is no peak representative body for the landowners and it will be impossible to identify and get some meaningful dialogue with this stakeholder group at the national level. CIMC would be happy to play an active role in EITI implementation, which fits quite well with what it currently does. CIMC cautions about the time that will be required to implement such an initiative. It takes about a year to develop relationships, and a whole education process needs to be gone through. CIMC suggests that the EITI Committee be composed of a core group of 4/6 members who would then invite other people to participate.
Asian Development Bank	Steven Van Der Tak, PNG Country Director Michael McWalter, Consultant Oil &	MMcW: ADB appreciates that the revenue collection Michael Mc Walter, systems are robust. EITI can provide some openness in consultant oil & gas respect of information that is already available but not easily sector accessible to the public. There is no reporting on a field by Barry Reid, financial field basis. Income tax revenue reporting is limited due to

	Gas Sector Barry Reid, Financial Management Specialist (by telephone) Adam Bruun, Private Sector Development Specialist (by telephone) John Rivers (email comments)	the management specialist confidentiality attached by law to taxpayers' individual data. (by telephone) EITI can prompt the government to certain standards and Adam Bruun, private discipline that does not always come from within. It will give sector development a signal to the international community and give credibility specialist (By about the government's intention to adhere high transparency telephone) and accountability standards. While there are endemic John Rivers (email problems in intra-government transfers, an EITI validation comments). process would be quite complex and may not be the most adequate process to tackle these problems. The distribution of benefits to landowners is a serious and long-standing problem, but the proliferation of Incorporated Land Groups (there are more than 500 ILGs going down sometimes to the family level, 65 on the Kutubu field) would make any validation process at that level almost impossible. Also, the further you go down, the more it becomes a political issue. Transparency at that level could bring civil disorders. EITI implementation may involve also a reputational risk if the benefits of the process are not clearly understood and if there is insufficient commitment. In that case, compliance may collapse, as in some other cases of the government failing in the past to meet its international commitments. Government Reporting: The Government is required to identify in the Budget the moneys it expects to receive from mining and petroleum, but there are only 500 copies issued and very few people can access the website on which it is also published. PNG should not go further than what EITI requires. Audit: The quality of the audit performed by the Auditor-general is not great, due to capacity constraints. Political events: The elections next year could have dramatic effects on the quality of parliament. Another potential problem is the threat of part of the Southern Highlands Province to break away as a new province ("no Hela province, no gas").

		John Rivers (email comments on draft report Executive Summary): 1. Industry has clearly demonstrated a willingness to "publish what it pays", but there is a general perception that it does not publish all payments. This is probably due to a lack of an institutionalised system publishing up to date and cumulative records of petroleum industry derived payments, broken down by category, project and licence area. 2. There is little public awareness of the fact that MRDC not only receives income in respect of landowner trust equity holdings, but also in respect of the Government project equity participation. There is a national interest in reporting and monitoring of petroleum revenues and the scope of EITI implementation should not be limited to project representation of project licence area peoples only. 3. The primary purpose of implementing EITI in PNG should be to build institutions that meet public informational needs for detailed, cumulative and disaggregate sector payment information. 4. There is achievable transparency at the top, or source of payment, and at the bottom-money in hand of landowners, but the connections in-between are neither clear to existing Government reporting systems, nor to the general public. It is the transparency of intermediary processes that is at issue. Making these intermediary processes more transparent is in the interest of all PNG people, and a well-designed EITI system should work towards these objectives. Generally, ADB acknowledges that the concerns in PNG are not on the revenue collection side, but on the expenditure side. It looks to EITI has a signal to the outside world on PNG's commitment to transparency and accountability. It looks to an EITI implementation extending beyond the national level, possibly with a staged approach and a

		sub-national pilot project for a specific province.
International Monetary Fund	Ebrima Faal, Resident Representative	In 2000, the IMF conducted an assessment of fiscal transparency practices in PNG. The ROSC concluded that PNG has a generally transparent framework for the conduct of fiscal policy. The problems tend to be mostly on the expenditure side. Fairly good systems are in place to collect taxes and revenues at the national level and IMF consultants have never questioned the transparency of mineral revenues. There are some major areas for improvement at the provincial level (where the use of royalties is almost "a black box"), and in the interface between the central government and the local governments' accounting systems. EITI would bring value, even if limited to a company-to-government reconciliation system. It would also enhance PNG's credit rating: a commitment to transparency will help Kina denominated bond offerings. But the more you go down, the greater value the reconciliation will bring. Reconciliation at the landowners' level would be almost impossible.
World Bank	Benson Ateng, Resident Representative	The Bank would welcome EITI implementation in PNG. There is general government mistrust. Transparency should go all the way down to the grassroots level. The Bank would provide financial support to EITI implementation only if funding was not available from other donors.
AusAID	Mark Bailey, Counsellor	Governance and transparency are key issues in the Ausaid aid program in PNG. AusAid is now starting to focus on the sub- national level. Have staff in the administration of 2 provinces in the last 12 months. There is a complete failure in the delivery of services. One of the key areas they will be looking at is the provincial revenue budgeting and financial management. There are leakage problems: Not at the level of the payments from the extractive companies to the central government, but in relation to the distribution of revenues, before they reach landowners. Another concern is "enclave development",

		particularly in the Highlands, around mine sites where very good services are available to the local communities, while there is an absolute breakdown of services outside the area. AusAid looks at partnering with the mines to extend their services beyond the site area. Value of ETTI: a simple reconciliation of company-to-government payments can be of some value. One value of endorsing ETTI is the signal it can send about PNG's commitment about good governance. The engagement of the civil society is important, but it will be a long-term effort to develop the capacity of civil society organisations to understand and actively engage in the initiative. Need to identify key stakeholders who are likely to be individuals rather than organisations. The Council of Churches and CIMC are also good choices. Ownership of the initiative is crucial. AusAid is very interested in ETTI implementation in PNG and may consider its funding.

ANNEX 2

EITI REPORT

Stakeholder Workshop

Crowne Plaza

Wednesday 19 July 2006
lOam to 1.3Opm

<u>Agenda</u>

10.00 Tea and coffee on arrival

10.15 Opening remarks — Mr. Murray Edwards, Department of Treasury

10.20 Presentation by Mr. Ghislain Pastré, Oil & Gas Legal Consultant *“An Introduction to the EIT]”*

10.35 Presentation by Mr. Michael McWalter, Oil & Gas Sector Specialist, Asian Development Bank
“The Benefits of Transparency in Extractive Industries”

10.55 Presentation by Mr. Greg Anderson, Executive Director, Chamber of Mines and Petroleum
“An Industry Perspective of the EITI in PNG”

11.15 Presentation by Mr. Ghislain Pastré
“Implementing EITI in PNG”

12.00 Group discussion of stakeholder views regarding EITI Chaired by Mr. Murray Edwards

13.00 Closing remarks — Mr. Murray Edwards

13.15 Sandwich lunch served

Attendees' list

No	Names	Organisation
I	Yasap Popoitai	National Planning
2	Mike Manning	Transparency International
3	Emily Taule	Transparency International
4	Richard Kassman	Transparency International
5	Vere Arava	PNG Sustainable Development
6	Robin Moaina	Ok Tedi Mining
7	John Nero	Ombudsman Commission
8	Chauka Chakumai	MRDC
9	Arun Basu	MRDC
10	David Tau-Loi	MRDC
11	Glenn Nash	Esso
12	David Byres	Esso
13	Namon Mawason	Esso
14	Helen Sutch	World Bank
15	Borone Isana	Lihir Gold
16	Iru Loi	IRC
17	David Castiglione	IRC
18	Kevork Baboyan	IRC
19	Ebrima Faal	IMF
20	Greg Anderson	Chamber of Mines & Petroleum
21	Tim Anderson	CIMC
22	Dr Ila Temu	Barrick PNG
23	Mark Bailey	AusAID

24	Sarah Gadiad	AusAID
25	Stephen Howes	AusAID
26	Steven Van der Tak	ADB
27	Barry Reid	ADB
28	Mick McWalter	ADB
29	John Rivers	ADB
30	Laurie Bragge	Oil Search
31	Louis ToRobert	Oil Search
32	Brian Rapson	Oil Search
33	Zanie Theron	Deloitte
34	Arthur Sam	Deloitte
35	Richard Kuna	KPMG
36	Hohora Suve	EU
37	Jacob Ekinye	NEFC
38	Pmago Kawa	Auditor General
39	Andy Vui	Auditor General
40	Singar Prathban	Auditor General
41	Airi Kopi	Auditor General
42	Ekip Kop	Auditor General
43	Clement Kote	Dept of Treasury
44	Murray Edwards	Dept of Treasury
45	Mark Slade	Dept of Treasury
46	John Tuaim	Dept of Treasury

ANNEX 3 TO EITI REPORT

Chamber view on implementing EITI in PNG

Chamber/Industry View of EITI

Whilst there has been insufficient time to canvass the views of all relevant Chamber members, there is broad support in the mining and petroleum industry for greater transparency in regards to monetary payments between the different stakeholders involved. The Chamber believes that from a general perspective it is in the interest of all parties to publish details of the contribution that the resource industry makes to the Nation in a form readily available to the public. Indeed, one of the mandates of the organisation is to inform the public of the contribution of the mining and petroleum industry.

One hears time and time again the complaint from individual Papua New Guineans words to the effect "we are told over and over again that we are a resource rich country so why are we so poor and why do we see no benefits?" Sometimes this is a plea, sometimes it is an accusation that in some way the industry is lying or is hiding something. It is a sad fact that it is industry, or the Chamber as its representative body, that bears the brunt of these accusations, not the governments or landowner representatives which are responsible for mismanaging the finances.

There are many specific examples of this situation but one that comes to mind relates to Southern Highlands Province. Some of the Huh people that I know in Port Moresby constantly complain to me that their people have received nothing from the Hides Gas project or the hydrocarbon sector in general. This criticism is levelled at the industry and not at their own provincial government, past or present, which has been the recipient of hundreds of millions of kina of oil benefits.

If information on the level of benefits paid by the industry is readily available from an independent source it will definitely assist the Chamber and the industry to demonstrate to the government and the public at large the very significant contribution that is made by the mining and petroleum industry. It will also demonstrate to the International Agencies, financiers and bankers, and potential investors in the industry that the country is willing to embrace this internationally recognised process of governance and transparency.

The EITI process will also be invaluable to government organisations and others as a central data source on the industry. A further advantage is that the data will be consistent. This is often not the case at present because information on the industry used by various arms of Government is frequently drawn from sources which are unreliable or second-hand

Current Information on Industry Contribution

Public information from Government relevant to the EITI process is presently limited to the National Budget documents, which only provides revenue figures in an aggregated form, and the Quarterly Economic Bulletin produced by the Bank of PNG which provides information on corporate tax payments that were formerly parked in the Mineral Resources Stabilisation Fund (company tax, DWT, dividends). Both these sources have limited information and are certainly not readily available to the general public.

There are good sources of information generated by the industry relevant to the EITI process but these are also limited in their distribution and availability in PNG terms. Individual members regularly publish documents showing their contributions in many areas. The historical annual statistical reports produced by most projects are very comprehensive and include information on production, taxes and duties, dividends, royalties, compensation, education, TCS and other infrastructure, business development, and employment. Every project has a community magazine or newsletter which regularly contains articles on particular benefit streams but rarely in a comprehensive or systematic manner.

The Chamber conducts an Annual Survey of producing members and consolidates the figures to show the benefits accruing to non industry stakeholders including contributions to taxes, compensation, law and order, employment and training, business development, social welfare and infrastructure. This information is published in our Bulletin magazine and incorporated in various public presentations. This is addition to the general information normally available in the respective company annual reports. OTIVEL which is a private company does not produce an Annual Report, but in lieu of this the company publishes an Annual Review, which has a similar format to an Annual Report. This document includes detailed financial statements and key statistics which demonstrate the company's overall contributions to the State and the affected communities.

The EITI Process in PNG

To be of greatest benefit to PNG the ETTI system will need to be adapted and extended to incorporate as much as possible of the transactions at the lower levels or tiers of the benefit stream system. The misuse of the Provincial and landowner benefit streams is legendary and constitutes some of the greatest financial travesties in PNG. However, the further down the system one goes the harder it will be to manage the process and the ETTI would come face to face with many of the administrative, political and corruption issues that the industry is facing every day in dealing with benefit streams to PGs and landowner groups, particularly in the petroleum sector.

This is the real challenge of implementing a comprehensive ETTI system because it is enhanced governance and transparency at the lower levels of the benefit distribution system is where the greatest inherent value lies in adopting the Initiative.

The first tier of payments would be the easiest to facilitate but it would still require the cooperation of a number of Government departments. It would provide regular audited information by an independent group of the exact contribution of the industry on a company by company basis. It would primarily show all the direct developer contributions to the National Government and to MRDC companies (equity) but could also include direct cash (e.g. compensation) and non-cash benefits provided to the host communities (education, health, employment, infrastructure etc). Direct payments to the National Government include company tax, State equity dividends (Oil Search), lease payments, DWT (mining only), mining levy (mining only, being phased out), customs duties and personal taxes.

Public disclosure of these first tier payments in a readily available format would be a big start and in itself of great benefit. For example, many National Government departments do not understand the scale and complexity of the industry benefit streams and this would provide a ready access to such data.

Furthermore, individuals in these departments do not seem to know where to access the information that is currently available in the private sector, or even the Government sector.

Whilst extending the EITI system to the other tiers of the benefit distribution system would provide exponentially greater rewards achieving, this first tier disclosure would be a significant achievement from the Chamber's perspective as we are acutely aware of the lack of information in the Government and broader public domain.

Auditing of second tier transactions would require the close cooperation of all levels of government and MRDC. It would incorporate all the direct payments by the National Government to Provincial Governments (PGs), Local Level Governments (LLG5) and landowners (royalties, project grants, TCS, petroleum development levy) and to MRDC on behalf of these beneficiaries (some petroleum royalties).

The political and administrative challenges that would be faced in extending the EITI to this second level is demonstrated in the failure of the Expenditure Implementation Committee (EIC) to meet its task which is to provide real governance and accountability for benefits received by affected LLGs and Provincial Governments in the petroleum sector.

The complexity of auditing this second tier of the benefit stream is demonstrated by the distribution formula for the royalties in the new Kainantu gold mine demonstrated below:

	BENEFICIARY	% OF ROYALTY
Provincial Government (30%)	EHPG Five Year Provincial Government Development Plan	15
	Kainantu Rural LLG Five Year District Development Plan	9
	Kainantu Urban Local Level Government	4.5
	Public Infrastructure Trust Fund (Project Area)	1.5
Mining Lease Landowners (60%)	Cash Distribution	30
	Landowner Association	5
	Bilimoia Community. Sustainable Development. Program Trust	10
	Future Generation's Trust for Mining Lease Landowners	5
	Church Grant Trust Fund	10
Associated Landowners (10%)	Associated Landowners Association	1.5
	Community Sustainable Development Program Trust	3.5
	Future Generation's Trust for Associated Landowners	5

We envisage that the third tier of payments would be those coming from MRDC trust accounts to the PGs, LLGs and the landowner groups, namely mineral and petroleum equity dividends and some petroleum royalties. This would be a complex and onerous task if the auditing process required validation of each individual payment to the various levels of governments or the landowner groups (associations, clans, ILGs etc), rather than on an aggregated basis. If the validation process included verification that the monies were accredited to the appropriate Government account, or paid to the appropriate person(s) on behalf of the landowner beneficiaries (e.g. ILG chairman) and distributed by such persons then it becomes an almost impossible task.

The complexity of the whole process is indicated in the table below for management of petroleum benefit streams:

Management of Benefits Distribution as Per Oil and Gas Act for Projects Approved After Amendments Certified April, 2002

BENEFICIARY	BENEFIT	MRDC TRUST	EIC	OTHER[1]
AFFECTECD LANDOWNERS	Equity Royalty	X X	- -	- -
AFFECTED LLGs	Equity Royalty Project Grants TCS Development Levy	X X - - -	X X X X -	- - - - X
AFFECTED PGs	Royalty Project Grants TCS Development Levy	X - - -	X X X -	- - - X

So the fundamental question is where to make the cut-off which will have to be a trade-off between pragmatism and providing data that contributes in the most meaningful way to strengthening governance and transparency.

Issues and Challenges

Issues and challenges that will arise with implementing the system are:

1. To determine what level or tier the PNG EITI will extend to — practicality versus increasing transparency.

2. To ensure that the reporting process for the tiers incorporated into the PNG system includes all the benefit streams as the system in PNG is complex and there are many variations on a project-by-project basis. For example the distribution formula for landowner royalty is different for every project.

3. To ensure that the EITI office functions as required. The government already has great difficulty maintaining and reporting statistics. We need to be sure that we are not just setting up another government institution that does not do the job. EITI should not become a rationale for growing another government bureaucracy which does not perform. Perhaps the Secretariat could be placed in an independent body such as CIMC, INA or TI.

4. To ensure sustainability the EITI process will require the cooperation of many government bodies including Departments of Treasury, Finance, National

[1] Public Finance Management Act Trust Fund and Appropriation Approved by Parliament (Treasury).

Planning and Monitoring, Mining, Petroleum and Energy, and IRC as well as MRDC and its associated landowner companies. There has to be a genuine commitment and an ability within these groups to meet their respective obligations to the process.

5. IRC sometimes does not complete final processing of company tax returns for some years. This will delay the process unless provisional tax payments are used in the initial assessment and progressively updated as assessments are finalised.

6. Member companies of the Chamber will object to an onerous EITI process. They already report to a wide range of government departments including the Quarterly Reviews which consume a lot of time and effort. It is not unusual for a developer to receive requests for the same data from many government departments because they do not consult or share with each other. The EITI process should be kept simple and should conform as much as possible to existing reporting processes to avoid additional burden on the projects.

7. To ensure that the results are widely distributed and freely available to everyone at all levels, from National Government Departments to the provincial administrations, to the public at large and the affected communities.

Greg Anderson
Executive Director