



PNGEITI Subnational Payments Scoping Study: Terms of Reference

10th October 2017

1.0 Background

1.1 Extractive Industries Transparency Initiative

The Extractive Industries Transparency Initiative (**EITI**) is a global standard that promotes transparency and accountability in the oil, gas and mining sectors.

EITI implementation has two core components:

1. **Transparency:** oil, gas and mining companies disclose information about their operations, including payments to the government, and the government discloses its receipts and other relevant information on the industry. The figures are reconciled by an Independent Administrator (**IA**), and published annually alongside other information about the extractive industries in accordance with the EITI Standard.
2. **Accountability:** a multi-stakeholder group (**MSG**) comprising representatives from the government, companies and civil society oversee the process and communicate the findings of the EITI reporting, and promote the integration of EITI into broader transparency and accountability efforts in that country.

1.2 EITI in Papua New Guinea

The Papua New Guinea (**PNG**) Government signed up to implementing the EITI concept in 2013. PNG is currently a candidate country working towards being fully accredited as a compliant country in 2018.

The PNGEITI Multi-Stakeholder Group (**PNGEITI MSG**) published PNG's first report based on the FY2013 last year. PNG's second report for FY 2014 was published in February 2017. In addition to the ongoing work on historical reporting, PNGEITI is focusing on implementing EITI's beneficial ownership framework as well as the key issue of sub-national payments.

1.3 Precinct / PNGEITI Workshop 8-10 March, 2017

A joint initiative between the Pacific Leadership and Governance Precinct and PNGEITI, a three-day workshop was held on 'Leadership, data management and transparency in the extractives sector' in Port Moresby at the Laguna Hotel from 8th-10th March, 2017. A total of 50 delegates (including both participants, panellists and speakers) representing 8 government departments and agencies, 4 provincial governments, 8 extractive sector

companies and 11 civil society organisations attended the workshop. The workshop was the first in a series of three workshops based around an ‘action-learning’ model where participants carry out multi-stakeholder improvement projects in between workshops.

This first workshop focused on three themes:

- a) technical training to enhance understanding and competencies around EITI and extractives governance;
- b) multi-stakeholder improvement projects to enhance inter-agency and government-industry work flows and processes for extractives data collection, management, reporting and dissemination; and
- c) legislative dialogue to enhance understanding and competencies around sector legislation.

On Day three of the workshop, a session was run where participants identified the following key improvement projects required to address the issues and challenges raised in workshop discussions:

1. Legislative adjustments or introduction of stand-alone legislations.
- 2. *The inclusion of sub-national payments in EITI reporting.***
3. Curriculum development for transparency and extractive sector governance.
4. Improvement of inter-agency and industry-government work flows and processes for extractives data collection, management, reporting and dissemination; and
5. Improved community awareness and empowerment for extractives governance.

2.0 PNGEITI Subnational Payments Scoping Study

2.1 EITI Subnational Payments

The 2016 EITI Standard requires that EITI implementing countries report material subnational payments and transfers. This includes the reporting of material payments from extractive companies to subnational government entities (Requirement 4.6), as well as the reporting of material transfers of extractive revenues between national and subnational levels of government (Requirement 5.2).

In the same way that the implementation of EITI at the national level aims to promote revenue transparency at the national level, subnational reporting has the same objective: to ensure that local stakeholders have access to relevant information on extractive payments.

2.2 Subnational Payments in PNG

The issue of subnational payments is particularly important in PNG: local landowners, affected communities and provincial and local governments receive a broad range of payments and transfers including royalties, land rentals, community development and investment funds, and Special Support Grants, to name a few. Systematic reporting of material subnational payments through PNGEITI is an important step towards improved transparency and accountability for the extractive sector in PNG.

However, there are at least a few reasons why EITI implementation at the subnational level in PNG may prove to be challenging. First, there are different agreements and obligations in place for PNG’s extractive projects, each of which have different revenue streams and payment structures. Second, there are differing levels of capacity in place for subnational reporting in provinces where extractive activities take place.

Accordingly, the framework for EITI subnational implementation in PNG must be adaptable enough to accommodate different projects and provincial contexts. The agreed-upon framework for subnational reporting must also take into account key issues such as confidentiality and the practicalities of data collection and reporting.

Therefore, as the first step towards improving the reporting of subnational payments, the PNGEITI MSG and Secretariat have identified the need for a scoping study to review global best practice as well as the local context for subnational payments in PNG.

2.3 Scoping Study and Report

The *PNGEITI Subnational Payments Scoping Study* is being implemented as a partnership between the PNGEITI Secretariat and the Pacific Leadership and Governance Precinct.

The key objectives of the study are to:

- i. Understand and document stakeholder views on enhanced subnational reporting through PNGEITI.
- ii. Identify and map the subnational payments and transfers in PNG’s extractives sector.
- iii. Develop a reporting framework that could be used for PNGEITI subnational reporting.
- iv. Populate the reporting framework with case study examples.
- v. Identify strengths in the subnational reporting system, challenges for improving subnational reporting, and a high-level roadmap for implementing subnational reporting through PNGEITI.

Key tasks for the consultant include:

Phase 1	Initial Consultation. Initial stakeholder consultation for input from key government, industry and civil society stakeholders.	October– November 2017
Phase 2	Terms of Reference for Study Agreed Agree detailed ToR with PNGEITI Secretariat.	November 2017
Phase 3	Global Practice Review. Review of EITI subnational frameworks and experiences in other implementing countries.	November– December 2017
Phase 4	PNG Subnational Context. Review and analysis of subnational payments in PNG’s extractives sector, including legislative and statutory requirements, practical considerations at the provincial and project level, and mapping of subnational payments	November 2017– February 2018

	and transfers (including payment verification processes and capacity issues).	
Phase 5	Provincial Consultation. Provincial visits to discuss subnational reporting with key provincial stakeholders. Collection of data to populate proposed framework for case-study companies (Case study for Lihir (New Ireland), Ok Tedi (Western Province), LNG project (multiple) and KulaGold (Woodlark Island)).	February– March 2018
Phase 6	Validation of Subnational Reporting Framework. Validation of proposed PNGEITI subnational reporting framework with PNGEITI members and stakeholders.	April 2018
Phase 7	Presentation of Final Report. Presentation of report for Subnational Payments Scoping study to PNGEITI MSG.	April–June 2018

Key components to be addressed in the final report include:

1. Global practice in reporting sub-national payments with a discussion on subnational implementation in other countries.
2. PNG context including legislative framework and EITI structure.
3. Identification of subnational payments in PNG. These will include but not necessarily be limited to:
 - a. Royalty payments
 - b. Equity and dividends
 - c. Compensation payments
 - d. Development Levy
 - e. Special Support Grants
 - f. Infrastructure Development Grants
 - g. Business Development Grants
 - h. Public Investment Program
4. Case studies for Lihir, Ok Tedi, LNG and KulaGold including modelling of subnational reporting framework with real data.
5. Key issues
 - a. Discussion on the materiality of subnational payments
 - b. Regulations and laws for subnational payments and transfers
 - c. Identification of subnational entities that should be included in subnational implementation
 - d. Discussion on the functions of existing subnational reporting entities, including how to strengthen their capacity
6. Proposed payment architecture for sub-national payments in accordance with the EITI standard
7. Template for subnational reporting
8. Key recommendations including potential challenges and solutions
9. Key tasks and costs of subnational implementation

Key stakeholders to be consulted include:

Stakeholder Type	Stakeholder Name
<i>Government</i>	Dept. Of Provincial and Local Level Government Affairs
	Auditor General's Office
	MRA
	MRDC
	DPE
	CEPA
	IRC
	Finance
	State Solicitors Office
	National Economic & Fiscal Commission
<i>Industry</i>	PNG Chamber of Mines and Petroleum
	Kumul Consolidated Holdings Limited
	Exxon Mobil
	Total P&E Ltd
	Oil Search Limited
	Morobe Mining Joint Venture
	Barrick Niugini Ltd
	Newcrest Mining Ltd
	Ok Tedi Mining Limited
<i>Civil Society Organisations</i>	Transparency International PNG
	PNG Resource Governance Coalition, Consultative Implementation Monitoring Council (CIMC), Institute of National Affairs (INA)
<i>Independent Administrator</i>	Ernst & Young
<i>BO Roadmap Implementation Manager</i>	KPMG
<i>Provincial stakeholders</i>	To be identified separately in each province following initial provincial consultations, but likely to include the Provincial Administrator, Director of Mining, Provincial Finance, Mining Companies, Landowner Groups and Civil Society Organisations.