

 GAP ANALYSIS

PARTICIPATION OF LOCAL ACTORS IN UKRAINE'S EITI

Civil society in Ukraine is the driving force behind implementation of the Extractive Industries Transparency Initiative (EITI) and promotion of reforms in the energy sector. The key role in promoting the EITI Standard is played by civil society institutes of national level. Participation of local stakeholders in this process is so far low. Despite the existence of numerous civil society institutes in regions of high extractive activity, interests of local communities and regions are still underrepresented in the EITI Multi-Stakeholder Group (MSG).

INTRODUCTION

EITI implementation and dialogue within the EITI MSG framework represent a convenient platform for the discussion of challenges faced by Ukraine's extractive sector and continuing implementation of reforms. With the passage of the Law of Ukraine on Transparency of Extractive Industries in September 2018, the EITI MSG includes five civil society representatives, three of which represent extractive regions.

In the context of promoting EITI, efforts aimed at developing and enhancing institutional capabilities of CSOs in regions, increasing regional coverage of EITI promotion projects, improving the effectiveness of spending proceeds from rent payments at local level, starting from defining financing priorities and ending with effective control over the utilization of financial allocations, are presently important for Ukraine. In the context of updated EITI Standard, the today's agenda addresses environmental issues in extractive regions, gender equality and transparency of contractual relationships. In addition, other

extractable raw materials covered by the Ukraine EITI Report, such as coal, metal ores, clays and sands require more thorough discussion of the transparency of their extraction.

The issues of ecology, unemployment and the state of transportation infrastructure are common for the overwhelming majority of areas where extraction operations take place. Intensive production and the use of heavy machinery badly affect public roads, which quickly crumble and the repair of which becomes an unbearable burden for local budgets. Because of the way budget law is written, local councils are unable to allocate as they deem fit a portion of rent payments they receive to solve these problems, thus having to request additional resources.

This gap analysis is aimed to outline in general terms the involvement of local stakeholders in the implementation of the EITI Standard in Ukraine. It will focus mainly on the existing forms in which bodies of local self-government, extractive companies and civil society institutes participate in the EITI in order

to define instruments of accommodating, in the most efficient way, interests of local communities in whose territory extractive companies operate.

GOVERNANCE STRUCTURE IN UKRAINE'S EITI

The implementation of EITI in Ukraine is overseen by the EITI MSG comprising government agencies, extractive companies and CSOs. Before the last changes in the Ukrainian government took place, government agencies having one representative in the EITI MSG each included: Ministry of Ecology and Natural Resources of Ukraine, State Service of Ukraine for Geology and Extractable Resources, State Fiscal Service of Ukraine and State Customs Service of Ukraine. The EITI MSG is chaired by the Minister of Energy and Coal Industry of Ukraine (the Ministry has been recently reorganized into the Ministry of Energy and Environmental Protection). According to Ukrainian law, the Ministry is responsible for the implementation of EITI, preparation of the national EITI Report, and creation and coordination of the EITI MSG. In addition, the EITI National Secretariat continues to coordinate EITI implementation processes and liaise with the EITI International Secretariat and donors. Until recently, members of the EITI MSG representing civil society were nominated by the Energy Transparency Association, but it is quite possible that with the adoption of a new EITI MSG membership procedure the procedure of delegating civil society representatives to the MSG will change as well.

Presently, civil society is represented in the MSG by two actors based in Kyiv, DiXi Group and International Renaissance Foundation, and three members from extractive regions: New Energy (Kharkiv), Bureau of Development, Innovations and Technologies (Ivano-Frankivsk), and Agency for Development and Cooperation (Lviv).

Involvement of bodies of local self-government (BLSs) and local executive authorities in the EITI

Ukraine received the status of EITI candidate country back in October 2013, but until presently, BLSs have not been directly represented in the EITI MSG. The involvement of BLSs in the dialogue and public discussions of EITI and the extractive sector in general is very important, because the establishment

of this contact would help expand the competence of BLS officials by gaining new knowledge and skills in budget planning, preparation of investment projects and co-financing. Thanks to the participation of BLSs in the EITI and communication with extractive companies, local communities in the areas where raw materials are extracted will receive an additional motivation for transparency in the budgeting process and spending proceeds from rent payments, and for the involvement of local population in the decision making process.

Local executive authorities play an important role in the functioning and development of extractive industries in regions. In particular, they are vested with a number of controlling and authorization functions (endorsement of special extraction permits, adoption of decisions on planned activity) and the powers to redistribute remittances from extractive companies operating in the region. Bodies of local self-government include elected local (regional, city, city district, district, village) councils and their executive bodies (first of all, executive committees of local councils).

Thanks to the support provided by the International Renaissance Foundation and the German government via Efficient Management of Public Finances project implemented by the German Corporation for International Cooperation (GIZ GmbH), numerous events were held in extractive regions with participation of local public authorities. For example, over 60 events took place in Ukraine's regions during 2018 with the support from the aforementioned donors, held in the format of round tables, trainings and public discussions focused upon sustainable development of communities and popularization of the EITI Report. These events were organized and held by a number of CSOs, such as New Energy, Poltava branch of the Social Service of Ukraine and Agency for Development and Cooperation.

Even though after adoption of amendments to the Budget Code concerning decentralization of rent BLSs received a substantial resource guaranteed by law (5% of the amount of rent payments on every site, disbursed among local budgets), the participation of local councils and their associations in promoting EITI in Ukraine is limited to communication with extractive companies operating in the areas under jurisdiction of these councils.

With the adoption of rent decentralization law, social partnership agreements were expected to lose their importance for local authorities, giving way to rent payments to councils of various levels. However, certain regional councils (especially when election campaigns kick off) begin blackmailing extractive companies into signing social partnership agreements with predetermined (desirable or of priority importance for local authorities) areas of spending to show how they care about voters.

There is a difference in the attitude of local authorities toward state-owned and private extractive companies. State companies operate within legislative confinements as regards the possible areas of spending funds under social partnership agreements, and therefore, they often become hostages of unfounded demands from local authorities and cannot receive special extraction permits. In some regions, there is a practice of not disclosing details of social partnership agreements (SPAs). As a result, the procedure of spending proceeds from SPAs by extractive companies, specific areas of spending, and projects on which moneys were spent under SPAs remain undisclosed and unknown to the broad public. Therefore, the effectiveness of social partnership agreements in their present form is very questionable, because the existence of the institute of social agreements allows local authorities to pressure companies, thus obstructing open competition, and the results of SPAs achieved by public authorities are not reported to and not controlled by the public.

At the same time, the process of administering rent payments for extraction of raw materials of local significance (sand, clay) needs to be improved, because the shadow component of this process continues to deprive communities, especially in rural areas, of additional revenues.

Local involvement at industry level

The EITI Report Ukraine covers the following sectors: extraction of coal, oil, natural gas; iron, titanium and manganese ores; fire-resistant and refractory clays, and quartz sand; transmission of oil and natural gas. In its present configuration, the EITI MSG includes representatives of state-owned (Naftogaz of Ukraine NJSC, Ukrgezvydobuvannia JSC, Ukrtransgaz JSC)

and private (Naftogazvydobuvannia PrJSC, Poltava Gas and Oil Company JV, UMG Invest LLC, Cub Energy Inc., DTEK Energo LLC) companies.

According to 2016 data¹, main natural gas producing regions were the Kharkiv (46.7%), Poltava (41.4%), Lviv (3.1%), Dnipropetrovsk (2.7%), Sumy (2.1%) and Ivano-Frankivsk (2%) Oblasts. Major gas production companies include Ukrgezvydobuvannia JSC, Naftogazvydobuvannia PrJSC, Ukrnafta PJSC, Smart Energy, Poltava Gas and Oil Company JV. Ukrgezvydobuvannia JSC is responsible for 73% of the nation's total gas production output.

Ukraine's main oil producing regions include the Sumy (44.3%), Chernihiv (17.2%), Ivano-Frankivsk (17.1%), Poltava (9.8%) and Lviv (8.2%) Oblasts. Among major oil producing companies are Ukrnafta PJSC, Ukrgezvydobuvannia JSC, Poltava Gas and Oil Company JV. Ukrnafta PJSC is responsible for 90% of the nation's total oil production output.

Coal is extracted in the Dnipropetrovsk (42.7%), Donetsk (33.6%), Luhansk (19.8%), Lviv (3.7%) and Volhynian (0.3%) Oblasts. Major coal mining companies include DTEK Pavlohraduvhilia PrJSC, Pokrovske Mining Department PJSC and DTEK Dobropilliavuhillia LLC.

Iron ore is produced in the Dnipropetrovsk (68.9%), Poltava (24.9%), Kirovohrad (3.5%) and Zaporizhia (2.7%) Oblasts. Major iron ore production enterprises include Poltava Mining and Beneficiation Complex PrJSC, Inhulets Mining and Beneficiation Complex PrJSC, and Southern Mining and Beneficiation Complex PJSC.

Extractive companies are actively involved in events taking place in EITI implementation regions. Thus, during events organized by donors in extraction areas, companies' representatives tell local communities about themselves, explain the EITI Standard, reveal their production plans and social projects they are going to implement, explain features of decentralization reform, and outline possible investment programs in regions. Some of these events address various aspects of social partnership on location; companies often become co-organizers of local artistic and entertainment events. Companies

¹ Information presented in this section was taken from the short version of the 2016 EITI Report // <https://issuu.com/uaeiti/docs/3>

like DTEK, Ukrgazvydobuvannia, Smart Energy and Poltava Gas and Oil Company, and also the Association of Gas Production Companies of Ukraine actively promote EITI in social networks.

Most extractive companies operating in regions are national or international companies, which means that they have a quite centralized management model. Therefore, most public inquiries are forwarded to head offices, making communication of local residents with extractive businesses a complex and protracted process. It complicates the participation of companies in EITI at local level when a certain decision or information from the company in a region is required. In turn, extractive companies belonging to large, vertically integrated holding companies prefer centralized influence over decision makers (government, parliament) by lobbying draft laws they could benefit from or directly infiltrating their top managers to high offices in public administration.

Local involvement at civil society level

Civil society institutes actively participate in the implementation of the EITI Standard in Ukraine at both central and local levels. Publish What You Pay, Transparency International, Natural Resource Governance Institute, Open Society Foundations, Global Witness, Oxfam and other organizations are actively involved in the EITI at international level. These organizations provide regular grants and expert support to Ukrainian CSOs promoting the EITI in Ukraine.

The Energy Transparency Association was established in Ukraine in July 2009. Until recently, the Association was delegating its members to the EITI MSG, but presently, discussions are held as to whether the format of delegating civil society representatives to the EITI MSG should be changed. The Association's mission is to promote sustainable development by increasing transparency of natural resource management. Presently, the Association comprises eight NGOs – five full and three associate members.

The Association's full members:

- ▶ Poltava branch of the Social Service of Ukraine (Poltava);
- ▶ Dixi Group (Kyiv);
- ▶ New Energy (Kharkiv);

- ▶ Agency for Development and Cooperation (Lviv);
- ▶ Bureau of Development, Innovations and Technologies (Ivano-Frankivsk)

Associate members:

- ▶ Agency for Local Economic Development of the Yavoriv Region (Yavoriv, Lviv Oblast);
- ▶ Institute of Regional and Youth Initiatives (Chutove, Poltava Oblast);
- ▶ Institute of Reforms and Informatization of the Society (Sumy).

To join the Association, a CSO must submit an application and its constitutional documents. Beginning from 2009, numerous events (in particular, round tables) discussing rent decentralization and the use of rent revenues to finance sustainable development of communities, explaining the importance of the EITI Standard for all stakeholders, and popularizing the EITI Report were held in extractive regions with participation of the Association's members.

Members of the Association are financed mostly by international donors, such as the International Renaissance Foundation or the United States Agency for International Development (USAID), or directly by foreign governments. In particular, the German government is implementing a large-scale project in Ukraine, Efficient Management of Public Finances via the German Corporation for International Cooperation (GIZ GmbH). The Association works closely with the Natural Resource Governance Institute and other international organizations, and in 2016 the Association confirmed its membership in Publish What You Pay, a global network enabling its members to share experience and study international practices of civil society activities in various countries.

During Ukraine's validation by the EITI International Secretariat in 2017, Ukraine received high scores in the "civil society" and "activity of civil society in regions" areas.

However, despite high praise of the civil society's efforts to promote the EITI in Ukraine, there are only a few organizations that could demonstrate substantial accomplishments in representation of the common interests of communities and regions, and in some extractive regions, serious players

representing civil society are altogether nonexistent. This situation can be partially explained by weak institutional development of the majority of regional CSOs, and partially by limited financial resources available to regional CSOs desirous of promoting the EITI at local level. After all, these organizations are ineligible for government financing, and budgets of systemic donors financing the Ukrainian part of EITI – World Bank, USAID, GIZ, IRF – are focused upon maintaining the necessary attention of government agencies to the EITI and are disbursed mostly at central level.

Local involvement in the EITI MSG

The recently adopted Law of Ukraine on Transparency of Extractive Industries regulates the number of members representing the government, the public and businesses in the EITI MSG. The EITI MSG will have the total of fifteen members – five from each group. If a stakeholder is not an MSG member but is desirous of attending the multi-stakeholder group's meetings, the said person may participate in the discussions as a guest. This practice is quite popular among civil society representatives from Kyiv, and unfortunately, representatives of regions do not take advantage of this opportunity due to lack of financing. Presently, talks with donors are underway as regards the expediency of creating local multi-stakeholder groups to ensure greater involvement in discussions of local population in extractive regions.

LOCAL CSO STAKEHOLDER MAPPING

Local initiatives in favor of raw material extraction

Considering the extremely high degree of monopolizing the extraction of most important raw materials of national significance (oil, gas, power station-grade and coking coal) generating the bulk of rent payments to budgets of various levels, the initiative of establishing a benevolent relationship with local communities comes, unsurprisingly, from the biggest state- and privately-owned extractive companies and charitable foundations they created. As part of these initiatives, extractive companies sign

social partnership agreements with BLSs in extractive regions, invest in construction and maintenance of social infrastructure and public roads.

In 2008, for example, the private company DTEK initiated the Declaration of Social Partnership, which 22 cities and 10 districts in 8 regions of Ukraine have joined as of today. In 2012, DTEK began developing three-year Strategies of Social Partnership with every area of the company's presence, prepared by working groups established in every city and district. These working groups included representatives of public authorities, businesses, CSOs and active citizens².

Pursuant to principles of the UN Global Compact, state-owned Ukrgezvydobuvannia has developed and adopted a policy on corporate social responsibility. The policy's priority areas include environmental protection, healthcare, promotion of socioeconomic development and wellbeing of Ukraine's regions where the company operates. In 2015, Ukrgezvydobuvannia signed cooperation agreements with Kharkiv, Poltava and Lviv Oblast State Administrations; according to these agreements, the company repaired roads and housing stock in small towns and villages and helped educational and medical institutions. During 2016-2018, the company financed 329 projects for the total of over UAH 180 million under social agreements and as part of charitable assistance³.

Thanks to substantial investments in infrastructure and implementation of major social projects in extractive regions, companies win loyalty of the local population and build their unshakable reputation of major employers and budget donors.

Local initiatives against raw material extraction

Today, there are no local CSOs in Ukraine openly opposing extractive operations in regions. Most often, what could be heard at round tables and discussions are the complaints from local population about broken roads, bad quality of water and environmental problems caused by extractive companies operating in their regions.

² https://energo.dtek.com/sustainable_development/social_responsibility/

³ <http://ugv.com.ua/en/page/socialna-vidpovidalnist-2>

However, the period of 2013-2015 saw active protests of CSOs in the west and east of Ukraine against production of shale gas by Shell and Chevron. These protest rallies were more of political nature than the expression by civil society of its views. In Western Ukraine, active protests against shale gas extraction were led by the All-Ukrainian Union «Svoboda», while in the country's east, the main driving force behind public protests were pro-Russian political organizations and movements, in particular, Ukrainian Choice and the Communist Party of Ukraine which pursued, first of all, economic interests of Russia in general and Gazprom in particular, because the coming to Ukraine of such global giants as Shell and Chevron with their shale gas production technologies could potentially spell the loss of a huge gas market for Russia. With the eruption of Euromaidan protests the movement against shale gas has rapidly marginalized and the Western companies lost interest in the development of shale gas fields in Ukraine due to a visible lasting trend of declining global prices for natural gas and the increasing supply of LNG.

Transregional cooperation

The problems and questions from people living in extractive regions are very similar. They mostly concern ecology, infrastructure, rent remittances to local budgets as part of decentralization reform and control over their spending. But today, except for Energy Transparency Association, Ukraine does not have influential, recognizable trans- and supra-regional initiatives or organizations which could be authoritative actors promoting the EITI Standard at local level. The existence of an umbrella organization bringing together CSOs from various regions and helping accumulate expert experience in various aspects of extractive business could become an important aspect of transregional cooperation. The Energy Transparency Association is expected to perform this function in the future, serving as a platform for cooperation between CSOs working in various extractive regions.

Integration of local actors into the EITI process in Ukraine

The process of engaging local actors into promotion of EITI in Ukraine requires greater efforts on part of existing civil society institutes of central and regional levels, as well as public authorities which

must conduct dialogue with regional CSOs capable of identifying, combining and defending common interests of local communities and regions where extractive companies operate.

Firstly, organizations that have the potential for growth and inclusion to the EITI process must be identified in regions not covered by existing EITI projects. If such organizations could not be found in all extractive regions, resources should be allocated to open branches of civil society institutes operating in other regions or nationwide.

Secondly, it is important for local CSOs to highlight for advocating purpose the points of national agenda which hitherto haven't been a subject of substantive discussions at national level, such as, for example, the transparency of payment and spending of rent for extraction of local-significance raw materials.

Thirdly, the key factor for a successful implementation of EITI at local level is the ability of civil society institutes to form coalitions on location, communicate with extractive companies and develop a common agenda featuring, on the one hand, matters of priority interest for extractive communities, and on the other hand, matters left without attention of organizations at central level.

Fourthly, local civil society institutes can act as agents informing the public about the EITI or as resource centers disseminating printed and handout materials about the Initiative along people living in extractive communities and regions. In addition, local organizations can be used to gather information about the attitude of the locals toward particular aspects of extractive operations in regions and communicate it to the national level.

Expanding cooperation between civil society institutes at central level and local CSOs in extractive regions and the elevation of this cooperation to institutional level is an important step toward implementation of the EITI in Ukraine. The foregoing can be achieved by establishing local EITI MSGs, finding opportunities for participation of the greater number of people from regions in Kyiv's MSG, or organizing sectoral working groups within the MSG featuring representatives of local civil society institutes, which would allow to form the necessary reserve of cadres for the EITI in regions and develop the practice of adopting joint decisions by representatives of national and local levels. The

idea of establishing regional MSGs was conceived several years ago after studying the experience of other countries, particularly Mongolia, and it became widely discussed after the adoption of rent decentralization-related amendments to the Budget Code, but the practical realization of this idea has not begun yet.

CONCLUDING REMARKS

Today, CSOs in Ukraine are becoming more active in extractive regions. The achievements in this respect have also been noted by the EITI International Secretariat during Ukraine's validation. At the same time, work conducted in extractive regions should be intensified in the following areas: expanding the activities of CSOs onto all extractive regions, enhancing institutional capabilities of

these organizations, covering the entire range of extractable raw materials included to the EITI Report with public debates. It is also worth noting that today, the engagement of local public authorities in the promotion of EITI in Ukraine takes place mostly in regions where systemic donors are active, even though according to law, local authorities play a significant role in the country's extractive sector. Because of the centralized structure of most extractive companies, communication with them in extractive regions requires coordination of decisions with the head office, which bureaucratizes the process and wastes time. It should also be expected that in the nearest future, the increasing percentage of rent payments to local community budgets will stimulate local self-government to put the extraction business in order and gradually suppress illegal extraction of raw materials, first of all, of local significance.

Further information

1. 2016 EITI Report
(<http://eiti.org.ua/documents/tretij-zvit-ipvh/>)
2. Public opportunities
(<http://eiti.org.ua/documents/ipvh-mozhlyvosti-dlia-hromadian-2017>)
3. Ukraine Validation Report
(https://eiti.org/sites/default/files/documents/ukrainian_final_asi_validation_report_ukraine.pdf)

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