

VALIDATION OF THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE

GUATEMALA



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DISCLAIMER

This is a Validation Report and is not intended to be a comprehensive legal analysis, title opinion, or evaluation of permitting, environmental impact assessment, or other requirements, nor does this report constitute environmental, social, or economic development guidance on compliance with any domestic laws of Guatemala or any other state, nor with international standards other than with the requirements of the Extractive Industries Transparency Initiative pursuant to its Rules and Validation Guide of 2011.

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GLOSSARY

| TERM | SPANISH | ENGLISH |
|-------------------------------|---|---|
| Government Resolution 96-2012 | Acuerdo Gubernativo Número 96-2012, que conforma legalmente la Comisión Nacional de Trabajo de la EITI-GUA | Government Resolution Number 96-2012 Creating the National Working Commission to implement EITI-GUA |
| Cerro Blanco | - | Project owned by Entre Mares de Guatemala, Inc., a subsidiary of Goldcorp |
| CGN | Compañía Guatemalteca de Niquel | Guatemalan Nickel Company |
| CODEDES | Consejos Departamentales de Desarrollo | Departmental Development Councils |
| Commission (also CNT) | Comisión Nacional de Trabajo de la EITI-GUA | National Working Commission to implement EITI-GUA |
| CONAP | Consejo Nacional de Áreas Protegidas | National Council of Protected Areas |
| COPRET | Comision Presidencial de Transparencia y Gobierno Electronico | Presidential Commision on Transparency & Electronic Government |
| CSO | - | Civil Society Organizations |
| EITI | - | Extractive Industries Transparency Initiative |
| EITI-GUA | - | Extractive Industries Transparency Initiative – Guatemala |
| FONPETROL | Fondo para el Desarrollo Económico de la Nación | National Economic Development Fund |
| GIZ | - | Deutsche Gesellschaft für Internationale Zusammenarbeit – German Aid Agency |
| GREMIEXT | Gremial de Industrias Extractivas | Extractive Industries Association |
| GTQ | Quetzales Guatemaltecos | Quetzales – Guatemalan Currency |
| ILO 169 | Convenio Internacional del Trabajo 169 - Convenio Sobre Pueblos Indígenas y Tribales | International Labor Organization Convention No. 169 - Indigenous and Tribal Peoples Convention |
| ISO | Impuesto de Solidaridad | Solidarity Tax |
| ISR | Impuesto Sobre la Renta | Income Tax |
| ITF | Impuesto de Timbres Fiscales | Stamp Tax |
| MARN | Ministerio de Ambiente y Recursos Naturales | Ministry of Enviroment and Natural Resources |
| MEM | Ministerio de Energía y Minas | Ministry of Energy and Mines |
| MINFIN | Ministerio de Finanzas Públicas | Ministry of Public Finance |
| Montana | Montana Exploradora de Guatemala, S. A. | Montana Exploration Company of Guatemala, Inc. |
| MSG | - | Multi-Stakeholder Group |
| Perenco | Perenco Guatemala Limited | Perenco Guatemala Limited |
| Reconciliation Report | Informe de Conciliación de la EITI-GUA para los años 2010 Y 2011, Mayo 2013 | EITI-GUA Reconciliation Report for 2010 and 2011, May 2013 |
| SAT | Superintendencia de Administración Tributaria | National Tax Authority |
| SCEP | Secretaría de Coordinación Ejecutiva de la Presidencia | Executive Coordination Secretariat for the Presidency |
| SECYT | Secretaria de Control y Transparencia | Secretariat for Control & Transparency |
| Tahoe | - | Tahoe Resources Inc. |
| TOR | - | Terms of Reference |
| USGS | - | United States Geological Survey |
| The World Bank Report | Informe Preliminar de Alcance de La Conciliación de los Pagos e Ingresos de los Sectores Minero Y de Hidrocarburos, fecha 30 Diciembre 2011 | Preliminary Report on the Scope of the Reconciliation of Payments and Receipts in the Mining and Hydrocarbon Sectors, dated December 30, 2011 |

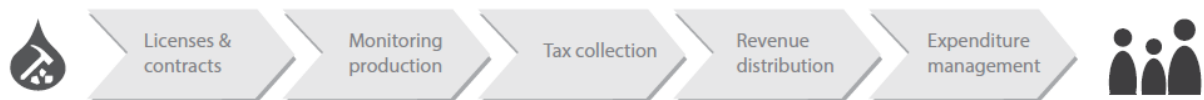
1. Introduction

1.1. The Extractive Industries Transparency Initiative (EITI)

Our growing world population and the desire for a higher standard of living have created an unprecedented demand for minerals and energy. At the same time, the increasing number of people in the world makes it harder to find places where these resources can be developed without impacting communities and critical environments. Mining and oil and gas development is increasingly taking place in remote and often rural areas, inhabited by communities unfamiliar with large-scale development activities.

The challenge of ensuring that extractive industries result in genuine development for a country and affected communities – instead of conflict or inequity – is one of **governance**. It is clear that achieving development on a sustainable path requires more effective structures of governance, which can balance and integrate economic progress, equity and an improved standard of living, and environmental sustainability.

Good and effective governance of extractive industries involves greater transparency and accountability with respect to critical decisions and activities – from determining whether to open an area for exploration, deciding whether to extract resources, negotiating terms of contracts, to ensuring that revenue received from production is used properly. The figure below illustrates the principal stages of the process of creating genuine value from the development of extractive industries.



EITI Fact Sheet 2013

The Extractive Industries Transparency Initiative (EITI) is the global standard for extractive industries to improve transparency, accountability, and governance in resource-rich countries through the verification, reconciliation, and publication of company payments and government revenues from oil, gas, and mining. The EITI process must be overseen and implemented in a transparent manner by a multi-stakeholder group.

EITI is thus the most significant and leading international effort to improve transparency in extractive industries, particularly in the third stage above involving the generation, payment, and receipt of resource revenues. While it will be challenging for any one initiative to provide a comprehensive resolution for transparency issues in all these stages, EITI is the most important advancement in this direction given its multi-stakeholder approach and its stringent reporting and compliance requirements.

Participation in the EITI begins with a country first attaining “candidate” status through compliance with initial sign-up requirements. Once a candidate, a country has 30 months to continue implementation, toward the end of which time the process needs to be validated to assess compliance with 20 requirements. A positive validation will move the country’s status from EITI-candidate to EITI-“compliant.”

1.2. The EITI Validation Process

Validation is an essential feature of the EITI compliance process. It is critical to ensuring that the EITI process delivers the desired results. The goal of EITI validation is to conduct an independent evaluation of whether a country is compliant with EITI requirements. This process also supports genuine stakeholder engagement and future EITI implementation.

For Guatemala, the validation process follows the 2011 Edition of the EITI Rules. Through an analysis of 20 complex EITI requirements, validation aims to provide stakeholders with an objective and impartial assessment of EITI implementation and whether it is consistent with EITI principles and criteria. This process thus serves to safeguard the EITI brand by holding all implementing countries to the same global standard.

Validation is not, however, about developing a static output or report through a mechanical process. Validation itself is a valuable learning process through meaningful engagement and consultations with a broad range of stakeholders to assess progress in the implementation of EITI in the country. An equally important and critical objective of EITI validation is to promote further dialogue and learning among stakeholders through the documentation and sharing of lessons learned and formulation of recommendations for future EITI implementation.

In view of these objectives, the validating entity must consist of reputable, credible, neutral, and objective individuals with expertise in extractive industries, stakeholder engagement, and analysis of EITI reports. Validation is undertaken by an organization selected from a list of Validator firms accredited by the EITI International Board. The implementing country contracts the Validator through a selective tender procurement process with guidance from the EITI International Secretariat.

1.3. The Validation Methodology and Activities

The methodological framework for validation is set forth in the EITI Rules and Validation Guide. This combines the following approaches:

- *Review of relevant documentation*
- *Meetings and consultations with the multi-stakeholder group and other stakeholders*
- *Collection of self-assessment forms by companies*
- *Analysis of data and EITI Compliance*
- *Development of interim and final reports*

A list of stakeholders consulted may be found in Annex E.

The Validation team for EITI-GUA consists of Sustainable Development Strategies Group (SDSG) in association with Amory Gonzalez CPA, a Guatemalan affiliate of DFK Consulting. The Field Visit team consisted of *M. Cecilia G. Dalupan, Charles Bruce, Jr., Kristi Disney, and Rafael Santos*. The team was supported by SDSG interns Felipe Correa, Lauren Hammond, and Heidi Ruckriegle. The report was internally reviewed by Tutu Alicante, SDSG Board Director, and the firm of Amory Gonzalez.

At the request of the EITI-GUA National Working Commission and Francisco Paris, the Regional Director of the EITI International Secretariat, Validation Team Leader Cecilia Dalupan travelled to Guatemala for preliminary stakeholder meetings on July 22 and 23, 2013. The Validation team then conducted its comprehensive field visit from August 7 to 17, 2013. This included meetings in Guatemala City, La Libertad, San Rafael, and San Jose del Golfo.

The preliminary Validation report was reviewed by the Validation Committee of the international EITI Secretariat and the EITI-GUA National Working Commission. Upon receipt of their comments, the Validation team prepared this final Validation Report. The decision on compliance rests solely with the EITI Board.

2. Overview of the Extractive Sector in Guatemala

The extractives sector – mining and oil and gas – currently accounts for less than 3% of GDP. Increased mining investments in the last decade, combined with higher commodity prices in the last few years, have led to a steady expansion of the mining industry. Similarly, the government hopes that greater emphasis on oil exploration and investments will lead to significant increases in production and revenue.

The expansion of extractive industries necessarily brings with it a range of issues - economic benefits and community engagement being among the leading concerns. EITI strives to help address these concerns, but an evaluation of EITI implementation in Guatemala is not possible without considering the country's unique historical, social, political, and economic factors that provide the context for issues relating to extractive industries and stakeholder engagement.

2.1. General Context

With a total area of almost 109,000 square kilometers, the Central American state of Guatemala hosts many unique and important ecosystems. With Mexico and the Pacific Ocean to the northwest, it is bordered on the southeast by El Salvador, Honduras, the Gulf of Honduras, and Belize.



<http://www.state.gov/p/wha/ci/gt/>

Almost 60% of the country's 15 million people are under the age of 25. Their 2001 census states that about 60% are of mixed descent (Amerindian-Spanish and European) while almost 40% are indigenous peoples, including K'iche, Kaqchikel, Mam, Q'eqchi', and Mayans. Its official languages are Spanish and 22 other indigenous languages, including Q'eqchi', Cakchiquel, Kekchi, Mam, Garifuna, and Xinca.

Guatemala gained independence from Spain in 1821, after almost three centuries of colonial rule. The country went through a number of civilian and military governments, until forces carried out an armed insurrection beginning in 1960. Peace accords were signed in 1996, ending the 36-year internal conflict that claimed the lives of about 200,000 people and resulted in the displacement of an estimated million more. Displacement affected the indigenous Maya population and rural communities the most.

Conflict-related displacement, land disputes, drug-related violence, crime, corruption, human rights issues, poverty, and access to basic services continue to be serious challenges for the Guatemalan people and government.

2.1.1 Political Framework

Pursuant to the country's 1985 Constitution (amended in 1993), the government of Guatemala is a multiparty and democratic republic. The country consists of 22 administrative divisions or departments: Alta Verapaz, Baja Verapaz,

Chimaltenango, Chiquimula, El Progreso, Escuintla, Guatemala, Huehuetenango, Izabal, Jalapa, Jutiapa, Peten, Quetzaltenango, Quiche, Retalhuleu, Sacatepequez, San Marcos, Santa Rosa, Solola, Suchitepequez, Totonicapan, and Zacapa. These departments then consist of various municipalities.

The country's executive branch is currently led by President Otto Perez Molina and Vice President Ingrid Roxana Baldetti Elias, both of whom were elected in November 2011 and whose single, non-renewable four-year terms began in January 2012. The country's legislature is a unicameral body consisting of 158 congressional members elected through a party list proportional representation system. The next elections will be held in September 2015.

The highest court is the Supreme Court of Justice (Corte Suprema de Justicia), which consists of 13 justices, including the court president. These magistrates serve renewable five-year terms and are elected by Congress from candidates identified by an independent body of law school deans, law association representatives, and judges. There is also a Constitutional Court (Corte de Constitucionalidad) consisting of five judges and five alternates, as well as trial and appellate courts throughout the country.

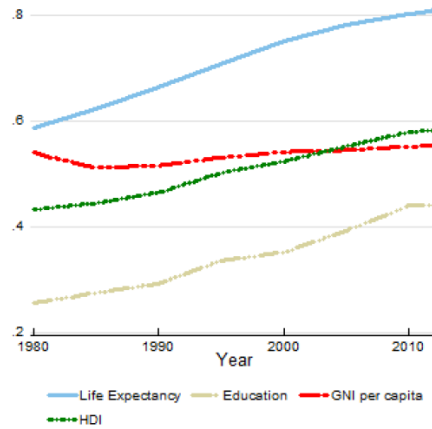
2.1.2 Human Development Indicators

The leading sector of Guatemala's economy consists of services, followed by industry (including petroleum and mining) and agriculture. According to 2012 data from the Bank of Guatemala and National Institute of Statistics, the country's GDP was about \$51 billion and the growth rate was 3%.

There have been other indicators of progress despite the country's history of conflict, according to the 2012 Human Development Index (HDI) of the United Nations. Unlike GDP, which is limited to purely economic indicators, HDI offers a more holistic assessment of long-term progress, using three main components: life expectancy, education, and standard of living. Between 1980 and 2012, modest increases were noted in all three dimensions:

| | Life expectancy at birth | Expected years of schooling | Mean years of schooling | GNI per capita (2005 PPP\$) | HDI value |
|------|--------------------------|-----------------------------|-------------------------|-----------------------------|-----------|
| 1980 | 57.3 | 6 | 2.4 | 3,854 | 0.432 |
| 1985 | 59.6 | 6.1 | 2.8 | 3,183 | 0.444 |
| 1990 | 62.2 | 6.2 | 3.1 | 3,268 | 0.464 |
| 1995 | 64.9 | 7.3 | 3.5 | 3,626 | 0.501 |
| 2000 | 67.8 | 7.3 | 3.8 | 3,911 | 0.523 |
| 2005 | 69.7 | 9.6 | 3.6 | 3,990 | 0.551 |
| 2010 | 70.9 | 10.7 | 4.1 | 4,172 | 0.579 |
| 2011 | 71.2 | 10.7 | 4.1 | 4,210 | 0.580 |
| 2012 | 71.4 | 10.7 | 4.1 | 4,235 | 0.581 |

UN Human Development Report 2013 (Guatemala Section)



UN Human Development Report 2013 (Guatemala Section)

It should be noted, however, that Guatemala lags behind in the region in terms of these indices of human development. The country’s per capita income is less than half that of the average for Latin America and the Caribbean.

| | HDI value | HDI rank | Life expectancy at birth | Expected years of schooling | Mean years of schooling | GNI per capita (PPP US\$) |
|---------------------------------|-----------|----------|--------------------------|-----------------------------|-------------------------|---------------------------|
| Guatemala | 0.581 | 133 | 71.4 | 10.7 | 4.1 | 4,235 |
| Nicaragua | 0.599 | 129 | 74.3 | 10.8 | 5.8 | 2,551 |
| Honduras | 0.632 | 120 | 73.4 | 11.4 | 6.5 | 3,426 |
| Latin America and the Caribbean | 0.741 | — | 74.7 | 13.7 | 7.8 | 10,300 |
| Medium HDI | 0.64 | — | 69.9 | 11.4 | 6.3 | 5,428 |

UN Human Development Report 2013(Guatemala Section)

Income distribution continues to be a major issue in Guatemala, with 20% of the population accounting for more than half of overall consumption. About 54% of the Guatemalan population is identified as living below the poverty line, 13% of which are considered to be in extreme poverty. Indigenous groups are most severely affected, with 73% identified as living below the poverty line, 28% of which are living in extreme poverty. Chronic malnutrition is prevalent among young children, affecting almost half of those under five years of age.

One of the ways in which the Guatemalan government seeks to improve economic conditions is through the promotion of increased investments in a broad range of economic activities. These include the development of natural resources such as minerals and oil and gas.

2.1.3 Ownership of Natural Resources

The Guatemalan Constitution provides that public lands and “the subsoil, hydrocarbon and mineral deposits, as well as any other organic or inorganic substances of the subsoil” are owned by the State (Art. 121), and that it is the State’s

obligation to use natural resources “to increase wealth, and to try to achieve full employment and the equitable distribution of the national income.” (Art. 118).

Furthermore, the technical and rational exploitation of hydrocarbons, minerals, and other non-renewable natural resources is declared to be of public utility and need. The State will establish conditions for the exploration, exploitation, and commercialization of mineral, petroleum, and other non-renewable resources. (Art. 125).

Reflecting the continuing issues over benefits from extraction, President Molina introduced proposed reforms to the Constitution in 2012, including an amendment of Article 125 to include equity participation or ownership by the government of up to 40% in new mining and oil and gas concessions. These proposals were later withdrawn.

2.2. The Mining Sector

2.2.1. Legal Framework and Current Developments

Guatemala is a resource rich country with considerable deposits of gold, silver, copper, nickel, lead, zinc, limestone and other minerals. Despite this resource potential, the mining sector has not historically been a significant contributor to the national economy, accounting for less than 1% of GDP.

Following the Peace Accords signed in 1996, substantial changes were made to the mining law designed to attract investments in the sector. Decree No. 48-97 was approved on January 7, 1997, and its implementing regulations were issued on January 12, 1998 under Government Regulation No. 8-98.

These legal changes included a decrease in the royalties paid to the State from 6% to 1% of the national market or international stock exchange value, split equally between the national and municipal governments. Foreign institutions were allowed to own up to 100% percent of the concession. The requirement for import taxes to be paid for machinery, equipment and production goods for mining was also eliminated. These legal changes facilitated an expansion in mining development by foreign companies.

The principal components of the mining fiscal regime are taxes, royalties, and private funds (*fondos privados*). Applicable taxes include corporate income tax, value added tax, and the single property tax. The summary of the mining fiscal regime below was prepared in December 2011 as part of a preliminary report on the scope of EITI reconciliation.

| | MINING LAW (DECREE 48-97) REGULATION (AG 176-2001) AND FISCAL REGIME | REFERENCES |
|---|--|---|
| Royalty | 1% deductible for tax purposes. (0.5% to central Government; 0.5% to municipalities). | Law: Art 61-65 Regulation: Art. 33 |
| Canon | <ul style="list-style-type: none"> ▪ Mining rights: Q. 1,300. ▪ Reconnaissance license: Q. 120/km². ▪ Exploration license: 3 units/km² year; 6 units/km² each year - first extension; 9 units/km² each year - second extension*. ▪ Exploitation license: 12 units/km² year. ▪ Transfer of exploration and exploitation licenses: 3 and 5 units/km², respectively. | Art. 66-67 Law |
| Corporate Income Tax* | General: 5% fixed on the gross income. Optional: 31% on the net income. | Income Tax Law* Decree 26-92. Art 44 & 72 |
| Deductions made from the salaries of the residents | Income tax on the employees' income minus personal deductions. | Income Tax Law* Decree 26-92. Art. 63 & 67 |
| Deductions for non-resident payments | <ul style="list-style-type: none"> ▪ 10% on personal services (salaries), interests, etc. ▪ 31% on other services payments. | Idem* |
| Value added tax | 12% on local goods and services; sales, rents and imports of goods and services are exempt of VAT. | Decree Law 27-92 Maquila Law |
| Stamp duty | 3% applied to civil and commercial contracts value, receipts that document cash or dividend payments. | Decree 37-92 |
| Import Tariffs | Exempt if the company is under the Maquila regime. Otherwise, the rate is between 0% and 15%. | Law: Art. 86 |
| Single Property Tax | <ul style="list-style-type: none"> ▪ Value Q. 0 – Q.2000: exempt. ▪ Value Q.2001 – Q.20.000: 0.2% rate. ▪ Value Q.20.001 – Q.70.000: 0.6% rate. ▪ Value more than Q.70.000: 0.9% rate. | |

From The World Bank Report, December 2011

**Congress approved Decrees 4-2012 and 10-2012 introducing several reforms to the Guatemalan tax system, including amendments to the Tax Code. Under Decree 10-2012, a new Income Tax Law entered into force, establishing new conditions for deductions, tax rates and payments, among other changes.*

Mining licenses are granted by the Ministry of Energy and Mines (MEM) to any individual or entity for three (3) types of mining activities: survey (reconnaissance); exploration, and exploitation. These are summarized in the table below:

| LICENSE | SCOPE | TERM | AREA |
|--------------------------|--|--|--|
| Reconnaissance | Exclusive right to identify and locate potential areas for exploration | 6 months Renewable once for the same period | Closed polygon between 500 to 3000 square km. |
| Exploration | Exclusive right to locate, study, analyze and evaluate the sites | 3 years Extendible for up to two additional periods of two years each | Closed polygon no more than 100 square km.; area must be reduced by 50% in case of extension |
| Exploitation (Operating) | Exclusive right to exploit the deposits | 25 years Extendible for 25 years | Closed polygon no more than 20 square km. |

Applicants for reconnaissance and exploration licenses must submit an

environmental mitigation study. Applicants for exploitation licenses must submit a more comprehensive environmental impact study (EIS) to the Ministry of Environment and Natural Resources (MARN). Mining agreements- which would typically contain more exhaustive rights and obligations of parties, environmental, dispute resolution, and other clauses - are not required. The EIS must also be submitted CONAP if the project is located in a protected area.

As of August 2013, there were 85 Exploration Licenses and 284 Exploitation Licenses authorized. A total of 444 exploration licenses and 150 exploitation licenses are pending.

**ACCORDING TO MINERAL CATEGORY
August 1st 2013**

| | Reconnaissance | Exploration | Exploitation | Total |
|------------------------|----------------|-------------|--------------|-------|
| Authorized licenses | | | | |
| Construction materials | 0 | 4 | 113 | 117 |
| Metallic minerals | 0 | 74 | 34 | 108 |
| Non-metallic minerals | 0 | 7 | 137 | 144 |
| TOTAL | 0 | 85 | 284 | 369 |
| Pending licenses | | | | |
| Construction materials | 0 | 69 | 94 | 163 |
| Metallic minerals | 7 | 333 | 17 | 357 |
| Non-metallic minerals | 0 | 42 | 39 | 81 |
| TOTAL | 7 | 444 | 150 | 601 |

<http://www.mem.gob.gt/viceministerio-de-mineria-e-hidrocarburos-2/estadisticas-mineras/>

In 2008, the Constitutional Court declared invalid seven articles of the mining law related to environmental concerns and the issuance of licenses. The following year, the government imposed a moratorium on the issuance of new licenses. This moratorium and the contentious issues surrounding mining stemmed from a variety of factors: opposition to the 1% royalty rate; questions regarding economic benefits and environmental impacts; allegations of corruption in the grant of licenses; and legal challenges by civil society organizations to the mining law specifically on the grounds that it does not protect indigenous communities pursuant to International Labour Organization Convention 169 on Indigenous and Tribal Peoples (ILO 169). ILO 169 was ratified by the Guatemalan government during the Peace Accords in 1996, but Congress has yet to enact a corresponding law.

A legal action was filed in 2012 to declare the mining law unconstitutional, based on the alleged failure of the government to abide by the terms of ILO169. This was rejected by the Supreme Court which upheld the constitutionality of the mining law.

The previous moratorium was lifted by the current administration. In January of 2012, the association of mining companies signed a voluntary agreement with the

government to pay higher royalties. Under this agreement, industrial minerals are not affected, but gold and silver companies pay 4% and base metals pay 3%.

There has been conflict surrounding a number of mines, including GoldCorp’s Marlin Mine in the western highlands and Tahoe Resources’ Escobal Project in southeast Guatemala. In the latter case, President Molina declared a regional state of emergency in the departments of Santa Rosa and Jalapa when violence erupted there earlier in 2013. In July of 2013, an Ontario Superior Court ruled that lawsuits against Hudbay Minerals regarding alleged crimes at its former mine in El Estor, Guatemala, can proceed to trial.

The government has proposed reforms to the mining law that attempt to address social, economic, and environmental issues. These reforms include mandating what are now voluntary higher royalty rates, establishing a mining fund to distribute royalties to local governments, requiring community consultation, and addressing environmental concerns and mine closure issues. In July of 2013, President Molina proposed another two-year moratorium on the granting of new mining licenses for the stated purpose of allowing the government to pass reforms to the mining law.

2.2.2. Industry Profile and Relevant Statistics

The relatively recent discovery of new metal deposits and previously high gold prices led to an increase in mine exploration and development in the past decade. The leading commodity is gold, with production in 2011 of 400,000 ounces, followed by silver, which constituted only a quarter of gold sales. Other exports include antimony, iron, and lead. The majority of the non-metal production such as basalt, calcite, and silica are for domestic use.

The structure of the mining industry according to the most recent report of the U.S. Geological Survey (USGS) can be seen below:

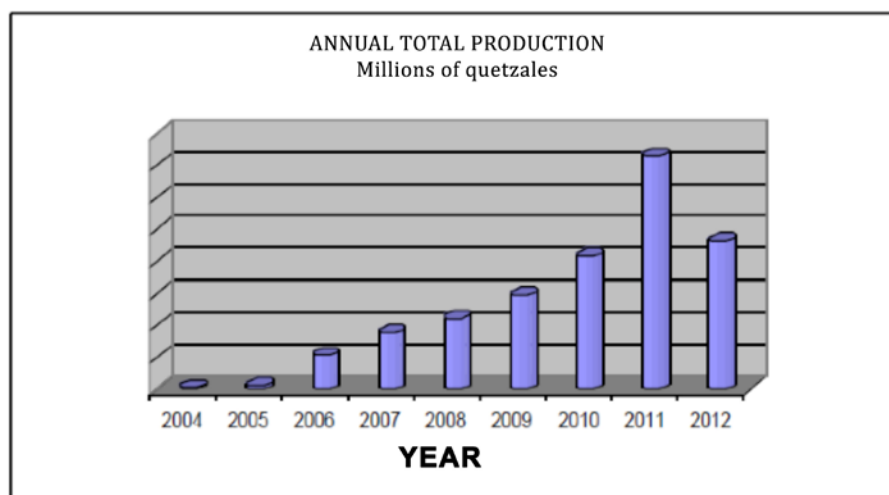
| GUATEMALA: STRUCTURE OF THE MINERAL INDUSTRY IN 2010 | | | | |
|---|--------------|---|---|------------------|
| (Thousand metric tons unless otherwise specified) | | | | |
| Commodity | | Major operating companies and major equity owners | Location of main facilities | Annual Capacity* |
| Antimony | Metric tones | Minas de Guatemala S.A. (private 100%) | Clavito, La Florida and Los Lirios Mines, Ixtahuacan, Huehuetenango Department. | 1.000 |
| Cement | | Cementos Progreso S.A (Holcim Ltd. 20% and other private 80%) | San Miguel plant, Sanarate, El Progreso Department, and La Pedrera plant, Guatemala City. | 3.000 |
| Gold | Kilograms | Montana Exploradora de Guatemala S.A (Goldcorp Inc., 100%) | Marlin Mine, near municipalities of San Miguel Ixtahuacan and Sipakapa, Department of San Marcos. | 9.500 |
| | | Argonaut Gold Inc., 50% and Rocas El Tambor S.A., 50% | El Sastre Mine, near San Antonio la Paz, El Progreso Department. | 200 |
| Lead, run of mine | | Tenango Mining Company S.A., 100% | Caquipec Mine, Alta Verapaz Department. | NA |

| | | | | |
|---|------------------|---|---|---------|
| Lime | | HORCALSA S.A (Cementos Progreso S.A., 100%) | San Miguel Plant, Samarate, El Progreso Department. | 180 |
| Silver | Kilograms | Montana Exploradora de Guatemala S.A (Goldcorp Inc., 100%) | Marlin Mine, near municipalities of San Miguel Ixtahuacan and Sipakapa, Department of San Marcos. | 200.000 |
| Steel | Crude | Siderúrgica de Guatemala S.A. (SIDEQUA) (Corporación Aceros de Guatemala S.A [Corporación Centroamericana del Acero S.A (Gerdau S.A., 30% and other private, 70%) 100%] 100%) | Electric arc furnace, near City of Escuintla, Escuintla Department. | 500 |
| | Semimanufactures | Indeta S.A. (INDETA) (Corporación Aceros de Guatemala S.A [Corporación Centroamericana del Acero S.A (Gerdau S.A., 30% and others, 70%) 100%] 100%) | Rolling mill at Colonia San Ignacio, Mixco, near Guatemala City. | 250 |
| | | Industria Galvanizadora S.A. (INGASA) (Industrias Monterrey S.A. de C.V. 100%) | Plant near Guatemala City. | 74 |
| Zinc, run of mine | | Tenango Mining Company S.A. | Caquipec Mine, Atla Verapaz Department, and Esperanza Mine, Huehuetenango Department. | NA |
| *Estimated: estimated data are rounded to no more than three significant digits. NA: Not Available. | | | | |

USGS Minerals Yearbook (2010)

According to the figure below which represents data from MEM, mining production steadily increased from 2004 to 2011. This was due almost entirely to gold production from the Marlin Mine in San Marcos. Production reached a high in 2011 of approximately US\$934 million, over 74% from the previous year, but then decreased by 35% in 2012 due to depletion of the mineral from open pit mining and the transition to the slower process of underground mining at the Marlin Mine.

Annual National Mining Production (millions of quetzales)



2012 Annual Mining Statistics, MEM

Despite this drop in 2012, the government anticipates that international mining companies will bring in more than US\$3.8 billion between 2013-2015 for the projects, Escobal, Cerro Blanco, FeNix, Mayaniquel, Montufar y San Juan Sacatepéquez.

| RECENT INVESTMENTS | | | | | | |
|---|---------------------------|--|------------------------|------------------------|--|-------------------------------------|
| Project and owner company | Exploited Minerals | Estimated Investment (US\$ million) | Type of license | Current stage | Start of operations (estimated) | Value of production (annual) |
| Escobal (Tahoe Resources) | Silver | 350 | Exploration | Construction of tunnel | 2014 | US\$ 600 million. |
| Cerro Blanco (Goldcorp) | Gold and silver | 250 | Exploitation | Construction of tunnel | 2013 | US\$ 300 million |
| FeNix (Solway Investment Group) | Nickel | 1.200 | Exploitation | Modernization of plant | 2014 | US\$ 500 million |
| Mayaniquel (Mayaniquel S.A.) | Nickel | 1,200 | Exploration | Exploration | 2015 | US\$ 380 million |
| Montúfar (Goldcorp) | Nickel | 100 | Exploration | Drilling | 2013 | US\$ 200 million |
| San Juan Sacatepéquez (Cementos Progreso) | Cement | 700 | Exploitation | Construction | 2014 | US\$ 50 million |

Ministry of Energy and Mines – MEM- and invest in Guatemala

2.2.3 Data Available through the MEM

Our Validation Team reviewed the MEM website for general statistics regarding mining in Guatemala and identified the following:

- “Mining Statistical Yearbook,” <http://www.mem.gob.gt/wp-content/uploads/2012/05/ANUARIO-ESTADÍSTICO-MINERO-2012.pdf>. This document lists 2012 exploration and production licenses; provides annual production statistics by year, categories of minerals, and major products; and presents information regarding government revenues generated by mining activities, with annual comparisons from 2009 – 2012.
- Additional general mining production statistics are available at <http://www.mem.gob.gt/viceministerio-de-mineria-e-hidrocarburos-2/estadisticas-mineras/>.
- Maps of Exploration and Exploitation Areas are available at: <http://www.mem.gob.gt/viceministerio-de-mineria-e-hidrocarburos-2/exploracion-y-explotacion/>.

Additional data on subjects such as employment are available through company websites and annual reports, such as those of Goldcorp, Inc.

2.3. The Oil and Gas Sector (Hydrocarbons)

2.3.1. Legal Framework and Current Developments

The principal laws and regulations specific to the oil and gas sector include:

- Hydrocarbons Law (Decree 109-83) and its Regulations (Government Regulation 1034-1083)
- Government Agreement 190-2005, establishing a Model Production Sharing Agreement (Contrato de Participacion en la Produccion)
- Ley del Fondo para el Desarrollo Económico de la Nación establishing the Fondo del Petroleo (Decree 71-2008)
- Law for Commercialization of Hydrocarbons (Decree 109-97)
- Law on Regulation for Invitations to Submit Offers to Conclude Oil Exploration and Exploitation Contracts (Government Regulation 764-92)

A contract under these laws covers both exploration and exploitation, and may be granted for 25 years, extendible for no more than 15 years. The exploration phase can be granted for up to six years, and the contractor is required to drill a well annually in the development phase. Petroleum exploitation contracts are typically production-sharing agreements granted through a public tender process.

The fiscal regime for the hydrocarbon sector can be seen in the table below. With respect to royalties, the Hydrocarbons Law provides for a minimum rate for all oil companies of 5%, depending on the average American Petroleum Institute (API) gravities of production. Oil produced in Guatemala is typically categorized as heavy crude oil (with API gravities between 10 and 22.3) and with sulphur percentages greater than 1%. The reference point is an API gravity of 30°, for which the royalty rate is 20%. Any deviation by 1% above or below this results in a corresponding reduction or addition to the royalty rate.

| | HYDROCARBONS EXPLORATION AND EXPLOITATION CONTRACT MODEL (AG 190-2005), HYDROCARBONS LAW (DECREE 109-83) AND GENERAL REGULATION (GOVERNMENT REGULATION 1034-83) | ARTICLES |
|-----------------------------------|--|---|
| Term of the contract | Up to 25 years, and MEM may approve a 15 years extension (Decree 71-2008 FONPETROL Law) ▪ Exploration phase - up to 6 years: first year is considered as an evaluation period extended an additional year, plus 4 years of exploration. ▪ Exploitation phase - starts with the establishment of a commercial field and can be extended an additional year. | Contract: Art 4.1 Clauses V & VI Fonpetrol Decree: Art. 12. |
| Relinquishment of the area | After the exploration phase, the Contractor can only retain the exploitation areas. Before the end of the sixth year, the Contractor will return the total original area except the exploitation areas. For every commercial field, the Contractor will be able to retain an area no higher than 10.000 ha, except capital cases. | Contract: Clause V |

| | | |
|--|---|--|
| Working commitment | The number of wells drilled by the Contractor during the first 6 years is negotiable. The Contractor is obliged to drill annually at least a well by every commercial field, until the field development is completed in conformity with the programme of work. | Contract: Art. 7.3.1.3 Art 7.3.2 Art 8.5 |
| Royalty | 20% over the value of the crude oil's net production at 30° API gravity. The ratio increases or decreases 1% for every API grade superior or inferior to 30°. In no case it will be inferior to 5%. | Contract: Art. 10.2 Law, Art. 61 |
| Recoverable Costs | Recoverable costs include all the expenses in capital costs in exploration, exploitation and development, operation costs and administrative costs in the exploration and exploitation phases. The costs related with dry-wells or non-economic wells are recoverable at a rate of least 70%. | Regulation AG 1034-83: Art. 219 Contract: Art 11.2, Art. 12.1 |
| Compatible Hydrocarbons | They represent the net production of hydrocarbons minus the hydrocarbon volume corresponding for royalties and recoverable costs in every contract area. The State participates in the production of at least 30%, and this rate may increase according to a scale based on the daily production levels: 42% in case that the daily production is 1-10,000 barrels of oil, and up to 70% in case production exceeds 50,000 barrels of oil. | Contract: Art 12.2 Law: Art. 66, 73g, 212, 225, 229, 231, 232. |
| Domestic market Supply | The Contractor is obliged to sell to the State a quantity equivalent to the recoverable costs and/or its payment up to 55% of the total hydrocarbons produced in the country. | Contract: Art 14.1 |
| Income tax and other payments | The Income Tax is calculated on the net value of production, after deducting all costs and expenses of exploration, development and production; and any other costs and expenses related with petroleum operations. In addition, up to 33% of the investments will be deducted to ensure the welfare and social assistance of the workers, families and population near the contract area. | Contract: Art 19.1 Law: Art. 34 y 66 |
| Import Tariffs | The importation of consumables or machinery, equipment, replacements and accessories necessary for the petroleum operations were tariff free. Now, it is necessary to pay import tariffs. The "temporal import" is the only one remaining. | Law: Art. 25 Contract: Art. 3.1.5 |
| Contributions to the community development in the contract area | 0.5% of the fiscal value of the previous production year is allocated for this purpose. This is considered as operational costs and the Contractor will recover 100% of the annual contribution. | Contract: Art. 23.3 |
| Exclusive Funds | Exclusive Income: <ul style="list-style-type: none"> ▪ Administrative charges. ▪ Service charge of Q. 50,000, or the quantity decided in every approved exploitation area. ▪ The annual fees per hectare, included in every exploration or exploitation contract adjusted for inflation: <ul style="list-style-type: none"> ○ US\$ 0.25 for every h. included in the production area. ○ US\$ 0.50 for every h. in the evaluation phase area. ○ US\$ 5.00 for every h. included in the exploitation area. Training funds: established in the petroleum contracts to finance training programs for Guatemalan staff. | Law: Art. 45 Regulation: Chapter V Contract: Art 19.3 Law: Art 34/35 Regulation: Art. 261-2 Law: Art. 21, 50 (ii), 74 Regulation: Art. 48-50 |

The law also provides for stock participation by the State in all oil projects, based on production levels. This is calculated over the net production after deducting royalties and other costs of operation.

Congress issued Decree No. 71-2008, the National Economic Development Fund (*Ley del Fondo para el Desarrollo Económico de la Nación* or FONPETROL) to require the allocation of royalties from petroleum operations. Specifically, 20% of royalties are allocated to the Development Councils (*Consejos Departamentales de Desarrollo* or CODEDES) in all departments where the oil operations are located, 3% to CONAP, 5% to other departments, and 72% to a common fund.

2.3.2. Industry Profile and Relevant Statistics

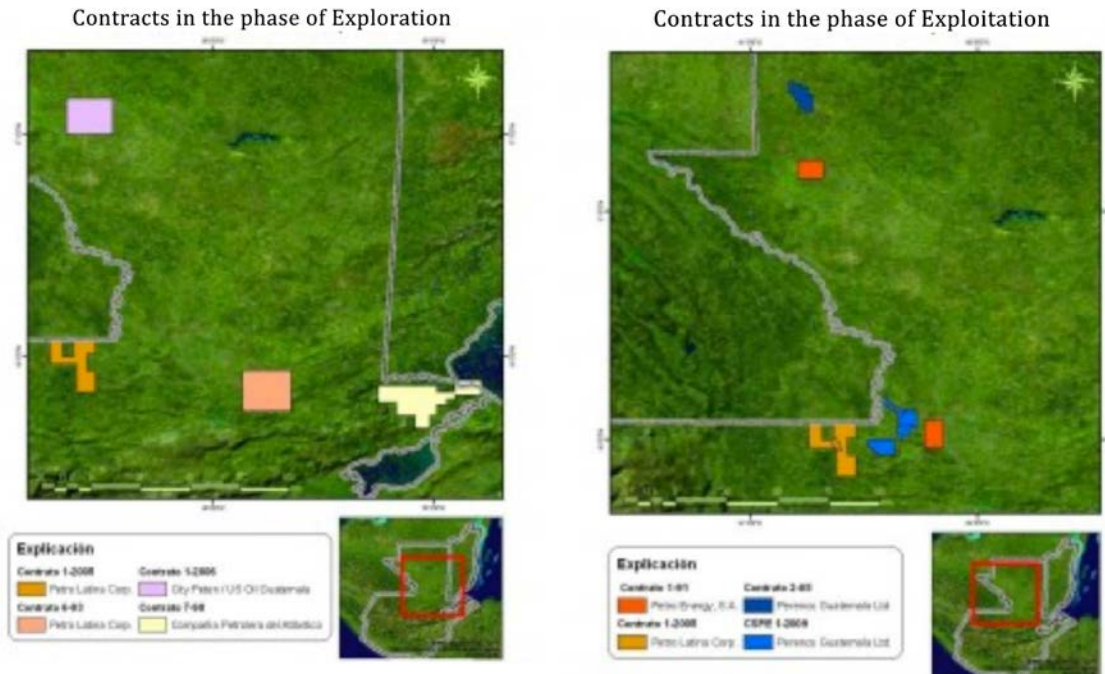
The structure of the hydrocarbon industry in Guatemala is currently limited to a few companies. As of the beginning of 2012, there were four operating or producing companies and three companies in exploration. Operating companies include: Perenco Guatemala Limited (Xan field) the Isthmus Oil Company, SA (Rubelsanto fields, Chinajá West, Caribbean and Tierra Blanca), Petro Energy, SA (Chocop and Yalmemech fields) and PetroLatina Corporation (Atzam field). Companies in the exploration stage include: PetroLatina (Las Casas / Huapan, Alta Verapaz) Atlantic Petroleum Company (Izabal) and City Petén, S. of RL (Petén).

In 2011, the country produced 3.7 million barrels of oil, and also attracted over US\$330 million in foreign investment. This amount constitutes over 30% of 2011 FDI.

| | |
|----------------------------------|---|
| Total Revenue | OIL 10,945 barrels per day ELECTRICITY 8m927 GwH |
| Production Potential | Oil reserves up to 750 million barrels 5.000 MW of power in hydroelectric plants |
| Exports (2012) | OIL 3,272.14 million barrels ELECTRICITY 324.32 MW |
| Foreign Investment (2011) | US\$ 330,7 millions |
| Main Companies | Perenco, Pacific Rubiales, MQuest, AEI, Empresas Públicas de Medellín, Actis, Enel |

Invest in Guatemala. Source: Bank of Guatemala, Ministry of Energy and Mines, National Commission of Electric Energy

As of 2013, 147 oil wells have been drilled. The Guatemalan government aims to attract more investment and expand oil production by increasing drilling of known reserves in Peten (estimated to last 20 years) and increasing production there to 100,000 barrels a day. It also plans to promote investments in new oil exploration; it has already made nine onshore and three offshore blocks available for tender in two regions, hoping to bring in almost \$250 million in additional investments.



<http://www.mem.gob.gt/viceministerio-de-mineria-e-hidrocarburos-2/exploracion-y-explotacion/>

2.3.3 Data Available through MEM

Our Validation Team reviewed the MEM website for general statistics regarding the hydrocarbon sector in Guatemala and identified the following:

- “Hydrocarbon Statistics: Year 2012,” http://www.mem.gob.gt/wp-content/uploads/2012/05/REV-EST_2012.pdf. This document provides a list of 2012 petroleum contracts, production statistics (general statistics, as well as by company and by major products); information regarding the prices of petroleum exports over the years 2011 – 2012; and tables presenting the value of petroleum exports compared to other major Guatemalan exports.
- Map of Exploration and Exploitation Areas available on the MEM website: <http://www.mem.gob.gt/viceministerio-de-mineria-e-hidrocarburos-2/exploracion-y-explotacion/>.
- An annual report on royalties and other payments from the hydrocarbons sector, as well as information on distribution of these funds through FONPETROL, is available at <http://www.mem.gob.gt/viceministerio-de-mineria-e-hidrocarburos-2/direccion-general-de-hidrocarburos/estadisticas/petroleo-crudo-nacional/>.
- Additional statistics regarding annual revenue, production, prices and exportation of petroleum is available at <http://www.mem.gob.gt/viceministerio-de-mineria-e-hidrocarburos-2/direccion-general-de-hidrocarburos/estadisticas/petroleo-crudo->

- nacional/.
- MEM made available, through the Commission, a list of petroleum exploration licenses, available as an appendix to this report.

Additional data is available through company websites, including the Perenco and Perenco Guatemala websites.

2.4 Institutional Framework

2.4.1 Ministry of Energy and Mines (MEM)

The extractive sector is overseen and regulated by MEM which was established through Decree No. 106-83 of 1983. MEM focuses on the development of the oil and mining sectors as well as on nuclear energy and renewable energy. Its strategic objectives for 2006-2015 include satisfying energy and mining requirements throughout the country and creating the right conditions to promote investment and foreign capital in the energy and mining sectors.

MEM has three (3) Vice-Ministries with the following principal functions:

- Energy and Mines

| Department of Mines | Directorate General of Hydrocarbons |
|--|--|
| <ul style="list-style-type: none"> • Monitors compliance with the Mining Act • Oversees development of small-scale mining in areas of extreme poverty • Studies mineral reserves in parts of the country where there are no mineral rights • Collects and publishes data on mineral resources • Prepares implementing regulations • Promotes community participation in the development of mining projects | <ul style="list-style-type: none"> • Provides recommendations on the country's oil policy and operations • Monitors firms that operate in the sector • Enforces relevant laws, regulations, and contractual provisions • Regulates petroleum operations, including production volume and quality • Monitors oil prices • Monitors and verifies the calculation of royalties and production sharing |

Based on information from <http://www.mem.gob.gt>

- The Energy Areas Department monitors and supervises the use of energy in accordance with Decree No. 57-78 creating MEM and other relevant laws. It monitors compliance with energy laws and formulates energy policies.
- The Vice-Ministry for Sustainable Development was created in 2007 by Government Regulation 631-2007 to incorporate *sustainable development* in the different activities of MEM. This office is responsible for promoting socio-environmental responsibility in the implementation of projects in the mining, petroleum, and energy sectors. Recognizing the social conflicts that exist relevant to extractive industries, this office is responsible for

promoting dialogue and coordinating with different stakeholders in order to find collaborative solutions.

The Control Unit (Unidad de Fiscalización / Departamento de Tesorería) of MEM is tasked with reviewing the production reports, expenditure budgets, and affidavits submitted by companies.

2.4.2 The Ministry of Public Finance (MINFIN)

MINFIN was established in 1971 by Decree 106-71. Its responsibilities include formulating and proposing rules for SAT to decentralize tax collection, coordinating with SAT on the programming of revenues from tax collection, and transferring the resources allocated in the budget to State agencies and entities. MINFIN is also responsible for budget recommendations as well as fiscal and financial policy, including policies for the selection of investment projects and social programs which may be undertaken with domestic funds, loans, or foreign aid.

The National Treasury (Tesorería Nacional) in MINFIN is specifically responsible for the accounting schedule and management of income and expenditures of the State. It centralizes revenues and expenditures of the state budget in the National Single Common Fund Account. The Account Management Department (Departamento de Administración de Cuentas) is responsible for keeping records of deposits and accounts to manage the resources of the General Budget of Revenues and Expenditures.

2.4.3 Superintendencia de Administración Tributaria (SAT)

SAT is the national tax administration authority that was established in 1998 by Tax Administration Decree No. 1-98. It has functional autonomy and is exclusively responsible for enforcing tax collection, monitoring all internal taxes and all taxes levied on foreign trade to be paid to the State, except those legally administered and collected by municipalities.

Pursuant to the Constitution and other laws, SAT may disclose general balances but is prohibited from disclosing specific information regarding the amount of taxes paid, earnings, losses, expenses, and any other data referring to accounts of individuals or entities.

2.4.4 Presidential Commission on Transparency and Electronic Government (COPRET)

COPRET is a Presidential Commission that was established in December 2012 by Government Regulation No. 360-2012. Its aim is to support the actions of the different government ministries and institutions to implement transparency and anti-corruption measures pursuant to national laws and international conventions.

Its responsibilities include promoting actions to support implementation of the Law on Access to Public Information. It is also the lead government agency in the Commission responsible for implementing EITI-GUA.

2.4.5 Executive Coordination Secretariat of the Presidency (SCEP)

SCEP is the public entity responsible for working with the President in the coordination, management and strengthening of the CODEDES and the Decentralization Executive Agency. It is tasked with providing technical support, administrative, legal and financial support to the Development Councils at the national, regional and departmental levels. SCEP performs the calculation of the distribution of funds as provided under the FONPETROL law.

2.4.6 Ministry of Environment and Natural Resources (MARN)

MARN is the government entity tasked with the evaluation of environmental impact statements, issuance of environmental permits, and monitoring of compliance with environmental regulations. It was created by Decree 90-2000 of the Congress in December 2000 and implements the Law of Protection and Improvement of the Environment (Decree 68-86) and other environmental laws. Extractive companies are required to submit a full environmental impact statement to MARN prior to exploitation.

2.4.7 National Council of Protected Areas (CONAP)

The Guatemalan System of Protected Areas (*Sistema Guatemalteco de Áreas Protegidas* or **SIGAP**) consists of over 150 parks, monuments, forest reserves, and other areas designated as protected. CONAP is the government agency created under Decree 4-89 responsible for the conservation, rehabilitation, and protection of these protected areas. Applicants for exploitation licenses that would impact protected areas must submit a more comprehensive environmental impact study not only to MARN but also to CONAP.

There are other institutions, policies, and laws relevant to revenue transparency in the extractive sector. Of special importance for EITI-GUA are:

- The Fondo del Petróleo or FONPETROL Act was enacted as Decree No. 71-2008 of Congress. This law aims to regulate the collection and administration of royalties generated from the extraction and sale of hydrocarbons. Pursuant thereto, 20% of royalties from the extraction and sale of oil is intended for development projects of oil producing departments, 5% for non-producing communities, and 3% for public bodies engaged in environmental protection. MEM, SCEP, and MINFIN all have important roles

in the administration, distribution, and settlement of these royalty percentages.

- Decree 57-2008, the Law on Access to Public Information, was passed by Congress in September 2008 and aims to enable citizens to request and be given access to information concerning public institutions and any individual or legal person, public or private, domestic or foreign, government institution, entity, agency or any other kind that handles, administers or executes public resources, assets of the government, or acts of public administration.

3. Progress Against EITI Requirements

3.1. EITI Requirement 1

THE GOVERNMENT IS REQUIRED TO ISSUE AN UNEQUIVOCAL PUBLIC STATEMENT OF ITS INTENTION TO IMPLEMENT THE EITI.

Progress

In March of 2010, then Vice-President Rafael Espada sent a formal communication to the EITI Chair regarding the Guatemalan government's commitment to implement the EITI. As noted in the assessment of the country's EITI candidacy, the intention to implement the EITI was later included in the Vice-President's 2010 Annual Report. This provided details on the initial organizational steps, including consultations with stakeholders.

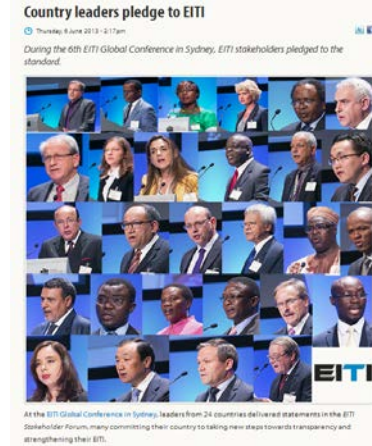
In February of 2011, Mr. Espada held a press conference to announce the candidacy application and to reiterate the government's commitment to EITI. The political campaign and elections later that year caused delays, however, in the implementation of the EITI.

In 2012, Government Resolution 96-2012 was issued, creating the National Working Commission to implement the EITI (the "Commission"). The Commission is led by the Vice President and includes as members the following agencies of government: MINFIN, MEM, MARN, and COPRET (previously the Secretary of Control and Transparency or SECYT).

This issuance promotes engagement with civil society and companies, and requires the Commission to formulate measure, actions, and reports. It provides the basis to ensure sustained high-level political support. The legal formation of this Commission and its mandate to implement the EITI are very clear evidence supporting this requirement.

The Government continues to publicly and unequivocally demonstrate its intention to implement the EITI in other ways as well.

In May 2013, for example, MEM Vice-Minister for Sustainable Development Ivanova Ancheta (seen on the lower left corner) delivered a statement on behalf of the Government at the Sixth EITI Global Conference in Sydney which was attended by 1200 participants from 96 countries. This statement was part of a Pledging Forum where the Vice-Minister conveyed Guatemala's continuing commitment to implementing the EITI and expanding the EITI process in the country and region.



Country leaders pledge to EITI
 During the 6th EITI Global Conference in Sydney, EITI stakeholders pledged to the standard
<http://eiti.org/news/country-leaders-pledge-eiti>



The MEM website hosts the detailed web pages dedicated to EITI-GUA at <http://www.mem.gob.gt/viceministerio-de-desarrollo-sostenible/eiti/>. This site contains a growing number of documents related to EITI implementation.

The websites of other key agencies likewise contain sections on EITI implementation, for example, the websites of COPRET and MINFIN. See <http://transparencia.gob.gt> and <http://www.minfin.gob.gt>.

Stakeholder Views

There is no disagreement among stakeholders that the Government has publicly and unequivocally stated, and continues to manifest, its intention to implement the EITI. In this regard, stakeholder concerns have more to do with the level of commitment of the Commission leadership under COPRET, the impact of political developments on the EITI process (ex: administration and personnel changes), and the efficiency of inter-agency coordination.

Validators' Assessment

Guatemala is in compliance with Requirement 1.

3.2 EITI Requirement 2

| |
|---|
| THE GOVERNMENT IS REQUIRED TO COMMIT TO WORK WITH CIVIL SOCIETY AND COMPANIES ON THE IMPLEMENTATION OF EITI. |
|---|

Progress

Leading up to the EITI candidacy application of Guatemala, then Vice-President Espada noted in his 2010 Annual Report that the Government consulted stakeholders from industry and civil society on the formation of a multi-stakeholder group (MSG) to oversee EITI implementation. The Government also consulted civil society organizations and companies to formulate the first Work Plan in 2011. These consultations were led by then Secretary of the Transparency and Anti-Corruption Commission and EITI Focal point, Silvio Gramajo, and undertaken with the technical and consultancy support of the World Bank.

The first Work Plan was endorsed during a stakeholder forum on February 9, 2011. This forum was attended by Francisco Paris from the EITI Secretariat, who also met with civil society organizations to provide guidance on stakeholder representation and the EITI process. He confirmed that civil society and companies were involved and consulted in the preparation of the first Work Plan.

The Commission was organized in 2011 and operated as the MSG to oversee EITI-GUA implementation. Civil society and industry representatives participated in the Commission, which held seven meetings in 2011. The minutes of these meetings present summaries of the broad range of topics and EITI-GUA tasks discussed by the different stakeholders.

The Commission continued to meet in 2012, with the first quarter being a transitional period and orientation particularly for the government representatives of the new administration. The Control and Transparency Secretariat was established through Government Resolution 37-2012. This body was tasked to Chair the Commission, which was legally constituted as such in May 2012 through Government Resolution 96-2012.

Government Resolution 96-2012 formally constituting the Commission identifies only representatives of government agencies as members, and does not include civil society and company representatives as members. The Government asserts that it was not legally possible to mandate the participation of private citizens or entities in a governmental commission.

The stakeholders recognized the inadequacy of the decree in this respect, and formulated internal regulations that provide for the participation of civil society and company representatives on the Commission. The practice of the Commission now

has civil society with two principal and two alternate representatives, mining companies with two principal and two alternate representatives, and oil companies with one principal and one alternate representative.

The regulation establishing the Control and Transparency Secretariat was challenged and declared unconstitutional in 2012. This legal process resulted in delays in EITI-GUA implementation and affected the Commission's ability to make decisions. Nevertheless, the Commission did continue to meet throughout 2012. COPRET was established in late 2012 and assumed the Chair of the Commission thereafter.

Since 2011 and until the present time, the representatives of civil society and companies on the Commission have been active participants in their meetings, as well as in technical working groups that have been organized for specific purposes.

In a reflection of the multi-stakeholder character of the Commission, Guatemala's delegation to the Sixth EITI Conference in May 2013 likewise consisted of representatives of government, civil society, and companies.

Stakeholder Views

The civil society and company representatives on the Commission generally agree that the Government is committed to work with civil society and extractive industries on the implementation of EITI-GUA. Representatives of international organizations supporting the process likewise agree.

In general, government representatives consulted did not see any major obstacles to civil society and company participation in the EITI-GUA process. They believe that the inadequacy of Government Resolution 96-2012 has been addressed by the Commission's internal rules that provide for the participation of the other sectors.

The sufficiency of Government Resolution 96-2012 will be discussed in greater detail under Requirements 6 and 8, particularly with regard to its effectiveness in ensuring the participation of civil society and companies.

One obstacle conveyed by some civil society representatives is the lack of financial capacity. These representatives have to travel four to five hours to attend a Commission meeting in Guatemala City. The time and expense to participate, together with lost income, are significant costs. Unlike company and government representatives whose participation is part of their work, the costs of participation for civil society representatives are typically not covered by their organizations. While this is a real challenge, the participation of the civil society representatives in the Commission has been consistent and active.

There were comments received from some in the Commission that because members represent their sector (i.e. government, industry, or civil society) and generally wish to take a common or consensus position for their sector, discussions can be challenging when there are differences of opinion within a sector. In those cases, individuals may sometimes feel constrained about voicing an opinion or position contrary to their colleagues.

In general, however, civil society and company representatives on the Commission feel that they can speak freely on transparency and natural resource governance issues. No constraints were reported regarding their ability to communicate with each other or with other relevant actors. The Validation team has also observed that the Secretariat is very responsive in cases where stakeholders need information or assistance related to EITI implementation.

Some stakeholders believe that the Government, particularly in the early stages of the process from 2011 to 2012, had not engaged civil society organizations that are opposed to mining or who were perceived as possibly disruptive to the process. Regardless of the accuracy of that belief, the general consensus of all these stakeholders is that the EITI-GUA process is now more established, and the Government needs to lead and sustain further outreach efforts to both companies and civil society organizations to increase awareness of and participation in EITI-GUA.

In this regard, we understand from Executive Coordinator and Vice-Minister Ancheta that she is in the process of inviting or conducting meetings with a broader range of civil society organizations, including representatives of 44 environmental non-government organizations (NGOs).

A number of civil society organizations we interviewed who are not members of the Commission but who are involved in environmental or human rights work have heard about EITI-GUA but, to their knowledge, have never been invited to meetings or stakeholder forums about it. Several of them indicated they would want to find out more but would not know who to contact and how.

Others would not be inclined to support EITI-GUA given either their distrust of the government, their opposition to extractive industries, or both. For some in this group, transparency issues related to revenue generation and receipts cannot be dealt with separately from what they consider inadequacies in the mining law, transparency issues in the permitting process, or human rights and environmental impacts of extractive industries.

Validators' Assessment

Guatemala is in substantial compliance with Requirement 2. The Government has demonstrated its commitment to work with civil society and companies in the

implementation of EITI-GUA, although it needs to continue its efforts to broaden its outreach and to ensure that any barriers to continued and expanded participation are removed.

These barriers include financial obstacles, capacity constraints, communication barriers, and legal obstacles. Regarding financial obstacles, for example, many civil society organizations, including those represented in the Commission, are based hours away from Guatemala City. The time, travel costs, and lost earnings as a result of participation in EITI-GUA meetings are significant. The capacity of companies and civil society organizations to participate, especially those smaller entities or those less familiar with EITI, is also a challenge.

The Government has demonstrated its commitment to removing these through, among others, collaborating with funding agencies to address financial, capacity, and communication constraints. A significant number of training and capacity-building events have been held, pursuant to the EITI-GUA Work Plan. The EITI-GUA Executive Coordinator has also renewed efforts to engage a greater number of civil society organizations.

The Government has also established an enabling framework for civil society organizations and companies to participate in EITI-GUA, particularly through Government Resolution 96-2012 which encourages their participation, and through the internal rules of the Commission. Within this framework, both civil society and companies are represented on the Commission and actively participate in the development, implementation, and monitoring of the EITI-GUA Work Plan.

There are legal and regulatory issues concerning participation, however, which can become serious obstacles if not addressed by the Government. These issues arise out of the inadequacies of Government Resolution 96-2012, specifically with respect to the structure, composition, and term of the Commission.

Barriers also exist with respect to the ability of companies and government entities to participate through the sharing of tax and revenue information. While these barriers may be more manageable to overcome through voluntary arrangements when the structure of the industry is relatively small and simple, this will not likely be the case if the industry significantly expands.

Legal, regulatory, and other barriers to EITI-GUA implementation in general are discussed more fully under Requirement 8. Challenges to the participation of civil society and companies are also discussed under Requirements 6 and 7, respectively. Communication and information barriers are discussed further under Requirement 18.

Despite the inadequacy of Government Resolution 96-2012, there is evidence that shows that the Government is committed to working with civil society and companies on EITI-GUA issues. This evidence consists of the Commission's internal

rules providing for multi-stakeholder representation, as well as the detailed minutes of the Commission meetings from 2011 to the present where the participation of civil society and company representatives has been consistent and clear. Moreover, interviews with various stakeholders on the Commission largely confirm that the Government has been committed to working with civil society and companies.

The Government is criticized, however, particularly by civil society organizations that were originally more active in the process as well as those that have never been supportive of the process. The criticisms will be dealt with further under other requirements, but these relate more to the larger issues of the government's credibility in dealing with corruption and the ways in which they reach out to civil society.

The records of Commission meetings confirm that the civil society and company representatives have, in general, actively participated in planning and monitoring the EITI process. This would include, for example, the development of TOR for the reconciliation process, the validation process, and the communication strategy.

Notwithstanding this progress, the Government should embark on demonstrating genuine commitment to reach out to an even broader group of civil society organizations and companies that are currently not participating or supporting EITI-GUA. Failure to demonstrate such commitment through sustained outreach efforts will tend to restrict the public debate in relation to EITI.

3.3 EITI Requirement 3

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| THE GOVERNMENT IS REQUIRED TO APPOINT A SENIOR INDIVIDUAL TO LEAD ON THE IMPLEMENTATION OF THE EITI. |
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Progress

In 2010, the Secretary of the Transparency and Anti-Corruption Commission in the Vice-Presidency, Silvio Gramajo, was appointed as Focal Point to lead the EITI candidacy process. After the country achieved candidacy status in March 2011, Mr. Gramajo led the National Working Committee that was formed as the MSG to oversee the implementation of EITI-GUA.

Records of the Committee show that its first meeting took place on April 14, 2011, with representatives from various government agencies, companies, civil society organizations, and international organizations. The Committee held a total of seven meetings throughout 2011 under the leadership of Mr. Gramajo.

The Committee discussed, among others, the legal basis and form of the committee. With the elections in November 2011 ushering in new government leadership in 2012, the Committee also discussed the transition to the new administration.

Government Resolution 96-2012 was issued in May 2012 establishing the EITI National Working Commission. This clearly serves as the public announcement of the titular role of the Vice-President as the champion of EITI-GUA and President (Chair) of the Commission, a responsibility delegated to the Department of Control and Transparency (SECYT) which was later succeeded by the Presidential Commission on Transparency and E-Government (COPRET). The Presidential Commissioner of COPRET is Veronica Taracena Gil.

To oversee the day-to-day implementation of EITI in Guatemala, the members of the Commission unanimously agreed in July 2012 to appoint the MEM as Executive Coordinator of the Commission. The specific office under MEM that serves as Executive Coordinator is the Vice-Minister for Sustainable Development, which is responsible for the technical and administrative aspects of the Commission and the implementation of the country's Work Plan.

The Executive Coordinator in 2012 was MEM Vice-Minister Ekaterina Parrilla. Upon moving to another government post, she was succeeded by current Vice-Minister for Sustainable Development, Ivanova Ancheta.

COPRET and MEM are both key institutions that are critical to the EITI. COPRET is the lead agency that coordinates the different transparency and anti-corruption

initiatives of the Government, while MEM oversees extractive industries in the country.

With respect to resources, funding support for different activities under the Work Plan originates from international donors or from the national treasury. In either case, funds for the implementation of EITI activities are channeled through MINFIN. While this does not prevent the Chair or Executive Coordinator from mobilizing resources for EITI implementation, it does impact efficiency.

Stakeholder Views

Stakeholders agree that the Government has appointed senior officials to lead on the implementation of the EITI-GUA process. Some gave particular recognition to the role of former MEM Vice-Minister Parrilla in steering the Commission through the transitional period in 2012 when the current administration was still fairly new and while the status of SECYT was uncertain.

There is likewise general satisfaction and confidence among stakeholders in the Commission that Executive Coordinator and Vice-Minister Ancheta and the MEM Secretariat are dedicated to leading EITI-GUA implementation, and are working intensively to meet Work Plan targets and deadlines. Stakeholders recognize that these have been even more challenging given the delays that occurred in 2012 due to the constitutional challenge to SECYT.

While there is general recognition of the accessibility and responsiveness of the COPRET staff, as well as recognition of the responsibilities of the Chair, a number of stakeholders commented on the increasing absence and apparent lack of involvement of the Chair from various EITI meetings and events.

Stakeholders also commented on delays that can occur due to the fact that contracts to implement different aspects of the Work Plan must be made with MINFIN rather than with MEM directly.

Finally, some stakeholders who work on extractive industry issues with communities but who are currently not involved in the Commission or in the EITI process have questions regarding the objectivity of MEM. These stakeholders have the impression that a number of key MEM authorities had previously worked for companies and that this impacts their impartiality when dealing with difficult issues.

Validators' Assessment

Guatemala is in substantial compliance with this requirement.

The role and effectiveness of the Executive Coordinator and other key agencies should be strengthened, however. The Government should consider various options to increase the efficiency of their leadership and perhaps even streamline their governance structure. They can consider, for example, inter-agency mechanisms or memoranda of understanding to improve collaboration among ministries or offices. Stakeholder outreach should also be expanded to increase awareness about the EITI process, its scope, and to hopefully address sources of distrust by openly discussing any assumptions or perceptions that may prevent or affect genuine dialogue.

3.4 EITI Requirement 4

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| THE GOVERNMENT IS REQUIRED TO ESTABLISH A MULTI-STAKEHOLDER GROUP TO OVERSEE THE IMPLEMENTATION OF THE EITI. |
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Progress

A multi-stakeholder group was formed following Guatemala's EITI candidacy in 2011, as evidenced by the minutes of meetings held during that year. Throughout that year, preparations were being made to establish a legal basis for the formal organization of the multi-stakeholder group.

The World Bank Report in 2011 included a review of mining and petroleum companies in Guatemala, as well as a review of relevant government institutions. A similar assessment of civil society organizations does not appear to have been carried out.

In May 2012, Government Resolution 96-2012 was issued. This provided the legal basis for formally constituting a Commission to oversee implementation of EITI-GUA. The decree lists the following senior government officials as members of the Commission:

- Vice President (Chair)
- Minister of Finance
- Minister of Energy and Mines
- Minister of Environment and Natural Resources
- The Secretary of Control and Transparency (SECYT)

In the same month, the Vice-President announced that the Presidency of the Commission was to be exercised by SECYT. The law creating SECYT, however, was later declared unconstitutional. The President then established COPRET which later assumed leadership of the Commission.

In July 2012, the Commission unanimously designated MEM as the National Executive Coordinator of EITI-GUA.

The resolution does not list civil society and company representatives as members on the basis of the Government's position that it cannot legally require the participation of private citizens in a publicly created Commission.

The resolution does state that the Commission shall issue internal rules appropriate for its operations, and shall promote dialogue with representatives of extractive industries and civil society. It provides that the Commission, through the Executive Coordinator, may invite representatives of the private sector, academia, civil society

organizations, and international organizations to participate in Commission meetings provided that they participate voluntarily and without a right to vote.

In contrast, Article 2 of the Commission's internal rules expressly provide that representatives of civil society and companies shall be the Commission's permanent special guests and shall enjoy full participation with the rights to speak and vote. Pursuant to these rules, civil society and company representatives are thus granted decision-making powers. The clear inconsistency between Government Resolution 96-2012 and these internal rules is problematic, however, and will be further discussed under Requirement 8.

These internal rules of the Commission were approved on August 22, 2012, through Agreement No. 01-2012 signed by the different members of the multi-stakeholder group. The Commission also approved the TOR for the following:

- Conciliator to prepare the EITI report;
- Consultant to provide technical support to the Executive Coordinator
- Specialist in Procurement and Contracting for technical support
- Procurement plan for consulting services and local supplies

This agreement was signed by: senior government officials of the government led by Vice-President Baldetti, together with Veronica Taracena Gil of the then Secretariat for Control & Transparency, MEM Vice-Minister Ekaterina Parrilla, MINFIN Minister Pavel Centeno, MARN Vice-Minister Sergio Ruano, and SAT Superintendent Leonel Jimenez; civil society representatives consisting of Kab'awil General Coordinator Francisco Raymundo Hernandez, Marvin Leonel Flores of Accion Ciudadana, and Grupo Kaybal Coordinator Pedro Bal Cumes; company representatives Jean Louis Rux and Fredy Gudiel from Perenco, and Mario Marroquin representing GREMIEXT; and World Bank representative Oscar Avale.

Currently, the Commission is led by COPRET, with MINFIN, MEM, and MARN as representatives of the government. The mining sector has two principal and two alternate representatives; the petroleum sector has one principal and one alternate representative, and civil society has two principal and two alternate representatives. Representatives of the World Bank and GIZ are invited as observers.

Stakeholder Views

There is no disagreement among stakeholders that the government has established a multi-stakeholder group to oversee implementation of EITI-GUA. This multi-stakeholder group is in the form of the Commission established by Government Resolution 96-2012. Stakeholders also agree that the key government agencies that should be represented in the Commission are generally participating.

Various stakeholders commented that the Commission should take steps to involve more companies and civil society organizations directly. While company and civil society representatives on the Commission are there through their respective selection processes, as provided for in the internal rules, some stakeholders expressed that the Commission should ensure that every stakeholder group has clear processes for the identification or substitution of representatives.

There were no issues raised by stakeholders with respect to the appropriateness of company representation on the Commission. The mining sector is represented by the association, GREMIEXT. The same applies to the hydrocarbon sector – Perenco’s size in terms of production and operations makes it a logical representative and this is unquestioned.

The company and civil society representatives on the Commission maintain their independence, both from each other and the government. The civil society representatives shared their process of selection, which was through a national assembly of different organizations representing various regions. The current representatives were selected through a vote in this assembly.

Some civil society organizations that are not involved or are no longer active in EITI-GUA are critical of the current civil society representatives, asserting that they are not well known and come from very small organizations. Their criticism is even stronger against what they consider the failure and lack of credibility on the part of the government to work with civil society.

Other organizations have been more vocal in their antagonism. There have been a number of occasions where the civil society representatives on the Commission have been publicly denounced for their participation in EITI-GUA, accused of being traitors and capitulating with the government and companies. They themselves maintain that they remain independent of both companies and the government, and that their focus is on revenue transparency to be able to ensure the proper allocation and use of this revenue.

While the company and civil society representatives on the Commission generally feel that they can freely communicate their perspectives and positions, some expressed that there are some decisions made without sufficient consultation or consensus, for example, in the hiring of specific consultants. Other stakeholders expressed that some processes are too tedious and lengthy, which discourages participation. One example cited is the review and approval of TORs.

Validators’ Assessment

There is clear evidence that a multi-stakeholder group has been formed and is operational as the Commission, pursuant to Government Resolution 96-2012. Senior

government officials are represented and participating in the Commission, namely, the vice-ministers of MEM, MINFIN, and MARN, as well as the head of COPRET.

It should be noted that the World Bank Report included what may be considered a general assessment of stakeholders from industry and the government. There appears to have been no thorough stakeholder assessment with respect to civil society organizations. A comprehensive and thoughtful assessment would be a valuable undertaking that may help deepen the outreach process of EITI-GUA.

Nevertheless, there are currently active representatives on the Commission from both companies and civil society. A number of them have been active since 2011. The Commission, through its internal rules, has provided for their representation and participation in decision-making despite their exclusion in Government Resolution 96-2012. As previously noted, this inconsistency is legally problematic and will be discussed further under Requirement 8.

The internal rules and other agreements adopted by the Commission in August 2012 through its Agreement 1-2012 substantially comply with the terms of reference for the MSG, pursuant to Requirement 4(g). The Commission's Agreement 1-2012 provides, among others:

- Governance rules and procedures, including provisions on:
 - recognition of all the members' right to speak and vote
 - decision-making procedures
 - quorum and meeting requirements
 - documentation requirements (ex: minutes; reports)
 - renunciation or abandonment of membership
 - responsibilities of the President and Executive Coordinator of the Commission
- Procedures and TOR for choosing an organisation to undertake the reconciliation

While these internal rules and other TOR do not include specific provisions on endorsement or revisions to the Work Plan, these would be covered by the general provisions regarding decision-making, planning, and implementation of EITI-GUA. In Guatemala's case and as reflected in various Commission minutes and reports, their initial Work Plan for 2011-2012 was approved by the multi-stakeholder group in February of 2012 and later revised to cover 2013. The Work Plan thus pre-dated the agreement on the internal rules and is actually referred to a number of times therein.

The different minutes of Commission meetings, voluminous email communications between the representatives and the Technical Secretariat, and numerous reports

on workshops since 2011 provide evidence that the company and civil society representatives on the Commission are operationally and, in policy terms, independent of each other and of the government.

Moreover, there is evidence from the different minutes of Commission meetings that the sectors represented on the MSG are treated as partners particularly with respect to voting and decision-making. In general, decision-making processes have been inclusive, for example, with respect to approving the TOR for the reconciliation process, and for approving the Reconciliation Report.

The civil society organizations and companies have the right to appoint their representatives according to their own mechanisms, as provided for in the Commission's internal rules. There are no term limits or specific procedures agreed upon by the Commission for the designation or succession of these representatives. At present, these sectors have their own separate procedures for designating their representatives.

In the case of civil society, there is an expanded group of organizations representing various regions of the country which regularly holds a national assembly. The current representatives were selected through a vote in this assembly.

With respect to companies, there is no formal selection process given that two companies dominate, at present, mining and petroleum production. These are Goldcorp and Perenco. The head of Goldcorp also leads the mining sector association, GRMIEXT. Given the small and simple structure of the extractive industry at present, these companies would understandably be logical choices to represent the industry. Company representation will need to be revisited, however, especially if the industry expands and if its structure becomes more complex.

Going forward, and regardless of the structure of the industry and of the civil society organizations, the Commission should agree on a process for the selection and succession of its members, consistent with Requirement 4(h)(iv). This will be important in ensuring the credibility and transparency of the Commission's processes.

With respect to voluntariness of participation, there is no evidence of undue influence or coercion of any of the members, although the civil society representatives have been the subject of such strong and public denunciation that these may have a coercive effect on their participation. This does not appear to be the case, however, and civil society representatives continue to freely participate in Commission meetings and other events.

With respect to capacity building, this is a clear and continuing need for all the stakeholders. The Work Plan and support of both the World Bank and GIZ concentrate almost entirely on building civil society capacity in various areas, and this should continue to be a major focus. It is also important, however, to improve

the capacity of government and companies to become more knowledgeable about EITI and to engage with both civil society and with each other.

Guatemala is in compliance with this requirement, although further steps should be taken to strengthen both the participation in, and effectiveness of, the Commission.

3.5 EITI Requirement 5

THE MULTI-STAKEHOLDER GROUP, IN CONSULTATION WITH KEY EITI STAKEHOLDERS, SHOULD AGREE AND PUBLISH A FULLY COSTED WORK PLAN, CONTAINING MEASUREABLE TARGETS, AND A TIMETABLE FOR IMPLEMENTATION AND INCORPORATING AN ASSESSMENT OF CAPACITY CONSTRAINTS.

Progress

- **2011 – 2012 Work Plan**

The Commission has completed two comprehensive Work Plans: the 2011 – 2012 Work Plan and an updated 2011 – 2013 Work Plan. The 2011 – 2012 Work Plan included funding for forming a MSG; capacity building of members of the Commission, particularly civil society; and a series of seminars and field visits to mining and oil and gas production regions. It also provided for funding for preparation of the Reconciliation Report, a communications strategy, and the Validation process. This Work Plan did not include funding for removal of barriers or for outreach.

The Work Plan provided an overview of the importance of EITI to Guatemala and a review of the legal framework in Guatemala. Each part of the Work Plan included objectives, actions, dates, outcomes/indicators, and identified the person(s) responsible for completing the actions. The timeline provided that the first Reconciliation report would be produced in less than 18 months.

The Work Plan did not include a list of all operating oil and gas and mining companies. Nevertheless, the plan was endorsed by interested parties representing government, industry and civil society. Our Validation Team identified lists of relevant 2012 contracts in the Ministry of Energy and Mines “Mining Statistical Yearbook,” <http://www.mem.gob.gt/wp-content/uploads/2012/05/ANUARIO-ESTADÍSTICO-MINERO-2012.pdf> and Ministry of Energy and Mines “Hydrocarbon Statistics: Year 2012,” http://www.mem.gob.gt/wp-content/uploads/2012/05/REV-EST_2012.pdf.

Domestic funding as well as technical and financial assistance from international donors was included in the 2011 – 2012 Work Plan. The plan did not appear to take into consideration the lead time needed to mobilize funding from external sources, which later became a cause for delay.

The Commission missed several of its deadlines under this Work Plan, e.g. establishing an independent website domain for EITI by March 2011 and contracting with a validator by July 2012. These deadlines were reconsidered in the 2011 – 2013 Work Plan.

- ***Updated 2011 – 2013 Work Plan***

In September 2012, the Commission completed a revised Work Plan for the period 2011 – 2013. This Work Plan is available online through the Ministry of Mines website at <http://www.mem.gob.gt/wp-content/uploads/2013/03/7.-Plan-de-Trabajo-2011-2013-CNT-EITI-GUA-descriptivo.pdf> and through the EITI international website at <http://eiti.org/Guatemala/implementation>.

The review of the Work Plan responded to delays caused by a change of government, among other reasons, and to enable compliance with a grant from the World Bank. The plan also responded to the needs and interests of Commission members, with the objective of strengthening participation, particularly participation from civil society.

The plan covers eight strategic objectives, including:

1. Achieving Guatemala's compliance with EITI;
2. Creating a multi-stakeholder group to implement EITI in Guatemala;
3. Removing obstacles to the implementation of the Workplan;
4. Strengthening the capacity of EITI Commission members;
5. Preparing the first Reconciliation Report;
6. Disseminating the Reconciliation Report;
7. Implementing an EITI communication strategy; and
8. Presenting the Validation Report to the EITI International Secretariat.

The 2012 – 2013 Work Plan is funded by a US\$300,000 grant from the World Bank, as administrator for the EITI Multi-Donor Fund; a budgeted US\$150,000 from the Government of Guatemala; and plans to secure additional funds from donors such as GIZ to cover additional activities. The Work Plan dedicates the available funding to implementation of the training/capacity building plan; preparation of the Reconciliation Report, including a scoping exercise; a communication strategy, including dissemination of the Reconciliation Report to urban and rural sectors; and completion of the Validation Report.

The Work Plan does not include a list of all operating oil and gas and mining companies. However, the Commission provided our Validation Team with a list of companies with active mining and oil and gas licenses in Guatemala in 2013, made available through MEM. The 2013 list is included as an Appendix to this report.

The Work Plan followed the format of the 2011 – 2012 Work Plan, including an overview of Guatemala's legal framework and outlining clear objectives, actions, dates, outcomes and indicators, and identified person(s) responsible for completing each action. The plan includes assessment of needs for capacity building, and plans to respond to these needs through training and technical assistance. The Work Plan states that it was approved by all members of the National Working Commission.

Among the important deadlines listed in the Work Plan are completion of the first Reconciliation Report by December 2012 and completion of the first Validation Report by August 2013.

Guatemala has found it difficult to meet the deadlines set out in this Work Plan. In particular, the Commission was unable to meet the August 28, 2013 deadline for filing its Validation report with the EITI International Secretariat, and submitted a request to extend the deadline to January 28, 2014. On October 9, 2013, the EITI Board decided to grant a three-month extension to Guatemala's validation deadline, setting the new deadline of November 28, 2013.

Some of the reasons for delay, detailed in the request to extend the Validation Report deadline, included conflict in the extractive industry sectors, legal and operational difficulties in processes of selection and recruitment of consultants for the Reconciliation and Validation Reports, and time needed to build capacity within the multi-stakeholder group. In particular, the leaders of the EITI Initiative in Guatemala experienced considerable difficulty establishing the multi-stakeholder group. The group was originally established as a Secretariat, which was found by Guatemala's Supreme Court to be unconstitutional and was subsequently declared void. The group then re-established itself as the National Working Commission. Due to these challenges, the process of establishing the multi-stakeholder group alone took over 18 months.

Guatemala also experienced an earthquake last year that affected the country's western region, resulting in a State of Emergency from November 2012 – June 2013, and consuming the energy and attention of the government and other stakeholders in the Commission.

General issues with trust resulting from the sociopolitical context of Guatemala's recovery from 36 years of internal armed conflict were also cited as a cause for delays, particularly as conflicts continue over extractive activities and a post-conflict environment leaves the trustworthiness and credibility of participatory processes in question.

The Commission has made a great deal of progress towards completing the actions and objectives listed in its Work Plan. The extension request letter highlights the following achievements:

- February 2011, Guatemala issues and published its unequivocal declaration and intention to implement EITI in the country, having met the requirements for application in compliance with the Norm under the 2011 EITI Rules;

- March 2011, Guatemala is accepted as an EITI Candidate Country as confirmed by the Board of Directors of the EITI;
- December 2011, Guatemala prepared the preliminary scope for the Reconciliation Report of the payments and revenues from the mining and hydrocarbon sector for the years 2009 and 2010, with World Bank support, including legal and fiscal frameworks sectors and forms for the figures;
- February 2012, the Commission developed and validated the first Work Plan for the years 2011 to 2012 to meet the requirements of EITI to reach validation;
- May 2012, Agreement 90-2012 created the National Working Commission for the implementation of EITI-GUA, which allows the formation of the MSG (representatives of the extractive industries, civil society organizations and government);
- Over 14 sessions of the Commission have been held to date to define actions in a participatory manner with the stakeholders concerning the implementation of EITI;
- May 2012, the Vice-President of the Republic delegated the Presidency of the SECYT, today the COPRET. Similarly, the Commission fully designated the Executive Coordination to MEM through the Vice Ministry of Sustainable Development.
- August 2012, the internal rules of the Commission were approved through Agreement Number 01-2012 approved by the Vice President of the Republic, respecting inclusive, open, and transparent participation of the multi-stakeholders;
- August 2012, approving the TOR to the Commission for the Reconciliation study for the years 2010 and 2011, through the agreement Number 01-2012 by the Vice-President of the Republic;
- August 2012, Donation Convention No. TF010050 was signed between the International Bank for Reconstruction and Development (IBRD) and MINFIN, for the amount of Three hundred thousand U.S. Dollars (US\$300,000) plus counterpart of one hundred fifty thousand (US\$150,000);
- September 2012, extractive industry companies became aware of EITI-GUA and joined the process of the Reconciliation Report, achieving involvement of companies most representing the contribution to the national production in the country;

- September 2012, through consensus of the Commission, the Work Plan 2011-2013 was reviewed and updated in order to carry out appropriately the actions responding to the adjustment of institutional dynamics derived from change of government in early 2012. This also complied with the Donation Agreement No. TF010050;
- October 2012, the Technical Secretariat is hired to support the Executive Coordination commission of which MEM is in charge;
- October 2012, in support of the organization and participation of Civil Society within the Commission, the Executive Coordinator in communication with the World Bank, supported technical meetings with leaders of indigenous organizations. The main results were:
 - Selection of representatives to the Commission;
 - Communication materials were prepared by the World Bank, consisting of:
 - Brochure on EITI-GUA
 - Scoping summary for Reconciling Payments and Receipts of Extractive Activities in Guatemala
 - Video for dissemination to media and radio spots
 - Recognition on the legal validity of Government Resolution 90-2012 regarding the participation of Civil Society.
 - May to November 2012, the program is executed with direct support to civil society to strengthen the participation of the sector as fully independent and effective, with World Bank financial support and contributions of experience and knowledge from the Peruvian Catholic University; performing capacity building activities by the following modules, which were held in 2012:
 - First Module "Implementation of EITI Guatemala (May 2012);
 - Second Module "The Extractive Industry in Latin America" (July 2012); and
 - Third Module "Benefits of Extractive Industries" (November 2012);
- December 2012, approving the Contingency Plan as an evaluation of the possible limitations in the capacity to implement the plan, enabling the visualization of possible solutions;
- January 2013, confidentiality agreements were signed with companies participating in the Reconciliation Report, in order to obtain disaggregated data to be used for the aforementioned report;

- August 2012 – February 2013, communication activities are carried on about the EITI according to the *Program of Direct Support to Civil Society*, financed by the World Bank, which included: production of printed and audio-visual materials; three workshops with different stakeholders in the country, and recommendations for creating a center of EITI-GUA documentation;
- March 2013, Commission approved the TOR for Validation as evidenced in the Minutes (Actas) of the Commission, session No. 3;
- March 2013, the national budget is allocated to meet counterpart funding committed under the TF010050 Donation/Grant Agreement;
- April 2013, a Letter of Understanding was subscribed between MINFIN and MEM, with the object of enabling execution of the TF Grant Agreement 010050;
- April 2013, the results of the Reconciliation Report of EITI-GUA for 2010 and 2011 are presented publicly to the National Working Commission representatives of participating companies, as well as State agencies that provided data – 7 mining companies, 2 oil companies; SAT, MEM, MIN FIN, SCEP and CONAP;
- May 2013, a meeting was held in Coban, Alta Verapaz, with the Expanded Group of Civil Society (25 organizations) to validate and approve the Reconciliation Report, and to continue with the actions of capacity building and information dissemination to strengthen them;
- May 2013, participation in the Sixth Global Conference and National Expo of the EITI in Sydney, Australia, with country representation formed by the MSG, making Guatemala visible and generating networking to exchange experiences in the implementation of EITI in other countries;
- May 2013, the Commission approved the Reconciliation Report for 2010 and 2011, which states that materiality of the mining companies participating was 96.24% for 2010 and 97.52% for 2011; and in the Hydrocarbons Sector, the participation in production was 98.51% for 2010 and 98.22% in 2011;
- June 2013, the Reconciliation Report for 2010 and 2011 was published and sent to the International EITI Secretariat and, the final version was properly approved by the National Working Commission;
- June 12 2013, the contract with the specialist in communication was signed, and the communication strategy and plan of EITI-GUA presented to the Commission, including the Expanded Group of Civil Society;

- June 2013, approaches are made with representatives of social organizations, to invite them to participate in the process of EITI implementation;
- June 18, 2013, the contract with the Validation company was ratified by the Board of Directors of the EITI, from a bidding process;
- June 2013, an agreement is finalized with the Latin American Organization of Energy (OLADE) to support EITI-GUA in its national communication campaign;
- June 2013, a modification is proposed to Government Resolution 96-2012 with reference to expanding participation in the MSG, especially civil society and extractive companies;
- June 2013, the summary of the 2010-2011 Reconciliation Report results is prepared, to share this with a wider audience;
- June 2013, an Informative Documentary is produced about EITI-GUA and its implementation in Guatemala and the results of the 2010 and 2011 Reconciliation Report; and
- 2012 and 2013, GIZ supports different actions principally to strengthen civil society participation in EITI.

Following review of the preliminary Validation Report, the Commission shared with our Validation Team additional plans that respond to recommendations therein, including the following:

| No. | Aspects to Address | Actions to Implement | Dates / Periods |
|-----|----------------------------------|---|-----------------|
| 1 | Institutionalization of EITI-GUA | <p>1. Changes to Government Resolution 96-2012 that have been proposed by the Commission:</p> <ul style="list-style-type: none"> • Replacing SECYT with COPRET • Inclusion of civil society organizations and companies with voice and vote • Extending the term of the resolution to four years from the approval of the modified instrument (from 2013 to 2017) • Extension to three representatives each from civil society and companies • Rotation of the Commission presidency among other agencies of government (one year period) • Expanding functions of the Commission in favor of financial sustainability, responding to recommendations in reconciliation reports, and application of the new Standard of EITI. <p>The Commission will hold consultations on the amended resolution, consult with the General Secretariat of the Presidency, and undertake relevant administrative arrangements for its approval and publication, ideally before November 28, 2013.</p> | July-Dec 2013 |

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| 2 | Greater involvement and retention of CSOs and extractive companies | 1. Invitation to CSO for inclusion, based on the communication strategy implemented through which information and expressions of interest to participate were collected and followed up. | August-October 2013 |
| | | 2. Invitation to organizations interested in joining FUNDAECO, which have expressed interest in participating in EITI-GUA implementation | October 2013 |
| | | 3. Tracking the interests of social organizations involved with EITI-GUA, the Commission is working to agree on a date for a meeting with the NGO Coordinator of Alta Verapaz -CONGAV, as well as with the National Coordinator of Indigenous Land Rights (EARTH-CPN) (verbal communication). | June-Oct 2013 |
| | | 4. Strengthened relationships with companies in the mining sector, through formal communications and coordination with representative Mario Marroquin. A lunch meeting was held with the new Board of Directors of GREMIEXT and the full Commission, in order to encourage joint efforts and participation of all companies. GREMIEXT emphasized their commitment to EITI to participate in future reconciliation reports. | October 2013 |
| 3 | Provide long-term financial resources | 1. The Ministry of Energy and Mines has estimated a budget of approximately U.S.\$115,000 as part of the Vice Ministry for Sustainable Development in 2014. This will be used to provide technical support to the Executive Coordinator, prepare the reconciliation report for 2012 and 2013, training, and document reproduction, among others. | August 2013 |
| | | 2. Coordination has begun with World Bank for another donation of \$30,000.00, to be executed by MEM. | Sept 2013 |
| | | 3. The Commission included as a proposed amendment to Government Resolution 96-2012 budget availability and management for the Commission, to ensure effective implementation and compliance with EITI national plans. | July 2013 |
| 4 | Strengthen multi-stakeholder participation | 1. Expedite capacity building and training activities for civil society organizations, including the Expanded Group, with the support of GIZ. | |
| | | 2. Negotiation with MINFIN is on-going on the TORs for the hiring of consultants to inform and educate a wide audience that does not participate in the EITI, as well as training activities for the Expanded Group and other organizations interested in joining the Initiative | |
| | | 3. During the luncheon meeting held with the new Board of GREMIEXT, the Commission made a presentation on the EITI principles and objectives in Guatemala, its current status, the findings of the preliminary Validation Report, and future actions. | October 2013 |
| 5 | Transparency of EITI-GUA Information | 1. Creation of the website under the domain www.eitiguatemala.org.gt is planned, relying on a draft currently under review. The structure allows for comprehensive and orderly implementation, communicating the structure and operation of the Commission. It also contains a section to facilitate contact and communication between the general population and the EITI-GUA. | |
| | | 2. There is a Reconciliation Report page on www.transparencia.gob.gt , www.mem.gob.gt and www.eitiguatemala.org.gt , in order to guide and enable its accessibility to the general public, and for easy location of the report and EITI contact information. | October 2013 |
| 6 | Continue communication and information sharing, including | 1. Informative meetings including civil society organizations, interested public participants, as well as local authorities in three departments of Guatemala, surpassing the expectation of participation, as shown in the Progress Report of the implementation of the communication strategy. | Aug-Oct 2013 |

| | | | |
|---|------------------------------|---|---------------|
| | Mayan languages | | |
| | | 2. Radio and local TV spots have been aired in several communities in three departments of Guatemala in the languages Q'eqchi', Mopan, Mam, Garifuna and Spanish. A translation of the brochure with an overview of the EITI-GUA is also in process with the Academy of Mayan Languages. | Aug-Oct 2013 |
| | | 3. As part of the communications products for effective awareness of EITI in Guatemala, the Communication expected the following in late October 2013: a local Communication Plan, targeting civil society organizations involved in EITI, a long-term communication plan (five years) for the Commission, the continuity of communication actions, and a center of documentation / information on EITI-GUA, initiating the coordination with local authorities in order to form alliances. | October 2013 |
| | | 4. The Commission has distributed more than 500 public information CDs to different departments. The CDs contain EITI-GUA information and the Reconciliation Report 2010 and 2011. Distribution will continue after further developing a list of organizations and other interested entities. | Aug-Oct 2013 |
| | | 5. The following are under layout and design, for later printing and wide distribution: the Reconciliation Report 2010 and 2011 (50), Executive Summary (2000), Brochure with results of the Reconciliation Report (2000) and Brochure with an overview of EITI-GUA (2000) . | Sept-Nov 2013 |
| 7 | Long-term strategic planning | 1. In the meeting between GREMIEXT and the Commission in October 2013, the beginning of the strategic planning for EITI-GUA was announced, to cover the change of government and implementation of the new EITI standard. | October 2013 |

Stakeholder Views

Stakeholders have generally expressed confidence in the Commission's efforts to update and comply with the Work Plan, despite the different challenges and delays encountered. In particular, stakeholders have commented that the Technical Secretariat under Vice-Minister Ancheta, and particularly through Carmen Yolanda Magzul López, is very attentive to the timeline presented in the 2011 – 2013 Work Plan and is working hard to follow the timeline closely while effectively coordinating activities. Stakeholders also acknowledge that the initiative has fallen behind schedule and has found it difficult to meet deadlines.

Members of the Commission agree that they created the 2011 – 2013 Work Plan together and that it was approved by all Commission members, including civil society representatives.

Validators' Assessment

Guatemala is in compliance with this requirement.

Recommendations include working towards a more fully funded work plan, securing a higher level of domestic funding, and, while there are certainly exceptions to be made in the case of natural disasters and other emergencies, closer

monitoring and implementation of the agreed timetable. The Commission should build into its Work Plan a detailed transition plan, led in particular by industry and civil society stakeholders, which would help the Commission avoid delays and continue to make progress on the EITI during changes of government.

Our Validation Team also notes the absence of a work plan for 2014, including the absence of a detailed plan for producing a 2013 EITI Reconciliation Report, and recommends that the Commission develop these work plans promptly, taking into consideration the recommendations provided in this Validation Report.

3.6 EITI Requirement 6

THE GOVERNMENT IS REQUIRED TO ENSURE THAT CIVIL SOCIETY IS FULLY, INDEPENDENTLY, ACTIVELY, AND EFFECTIVELY ENGAGED IN THE PROCESS.

Progress

The government has sought to engage civil society since the beginning of the EITI-GUA process in 2010. The following are illustrative examples of these efforts to ensure the engagement of civil society:

- The EITI Secretariat and the World Bank supported Guatemala's preparations for EITI candidacy, including consultancy support for the development of a work plan and a stakeholder forum. EITI Regional Representative Francisco Paris participated in stakeholder meetings in February 2009 where the Work Plan was endorsed and where he was able to provide further guidance to civil society regarding the EITI process.
- Civil society representatives at that time included Accion Ciudadana (TI Chapter), indigenous (Mayan) organizations including Defensoria y Procuraduria del Pueblo Maya, Fundacion Maya de Educacion Superior, Asociacion Palineca Jawal Tinimit, Guia Espiritual de Quiche-Tradiciones Maya de Guatemala and Asociacion de Indigenas para el Desarrollo integral, Foro Centro de Unidad para la Democracia, Observatorio del Gasto Publico, Instituto de Agricultura, Recursos naturales y Ambiente of Landivar University and the Centroamerican Institute of Fiscal Studies (ICEFI).
- The World Bank and GIZ have provided support to the government and the Commission specifically for a range of activities designed to strengthen civil society participation in EITI-GUA. This has included training, workshops, meetings, and expert resources. Experts from Peru, for example, have facilitated training workshops.
- At various workshops in May and August of 2011, significant topics and developments include:
 - Then EITI-GUA focal point Silvio Gramajo explained at that time that civil society, like industry, should choose their representatives according to their own processes. Francisco Raymundo Hernandez, representative of DEPROMAYA and current civil society representative on the Commission, emphasized the importance of communication and channeling of information to avoid misinformation, particularly because communities and languages in the country can be very different. Thus, he stressed the need for a long-term, decentralized plan, and also noted the importance of youth representation.

Other issues discussed included FONPETROL, utilizing the access to information law, the role of women, and the need for a stakeholder assessment.

- Efforts were also made to identify a focus group to monitor the work of the EITI multi-stakeholder group. Attendees at another workshop numbered over 60 and represented a wide range of civil society organizations and advocacy areas, including education, environment, agriculture, indigenous peoples, women’s rights, transparency, and media. Two major priorities were identified: capacity building (knowledge on extractive industries, EITI reconciliation and requirements, etc.) and communication and information dissemination. Kab'awil expressed interest in leading the implementation of the action plan.
- In the August workshop, 25 representatives of 15 civil society organizations attended, including individuals from mineral and petroleum project areas (ex: departments of Izabal and Alta Verapaz) and four young professionals from the Maya University Students Association. Most of the representatives were selected by the Indian Convergence Kab'awil (currently represented on the Commission).
- The Commission was formally constituted through Government Resolution 96-2012 in May 2012. The terms of this act exclude civil society as members, provide that they may be invited as guests, and do not allow them the right to vote.

The Commission has adopted internal rules and practices to provide for representation and voting. Currently, the Commission has four representatives from civil society, two principals and two alternates, representing 28 civil society organizations from various regions of the country.

| | Name | Organization | Coverage Area |
|---|-------------------------------|--------------------------|--|
| 1 | Otto Cú Cucul | Convergen-cia Tezulutlán | Área Norte / Cobán. Delegado Titular |
| 2 | Francisco Raymundo Hernández, | DEPRO-MAYA- Kabawil | Área Occidente (Ixil) Delegado Titular |
| 3 | Julio César Chacón Paz | Unidos en la Paz | Área Norte. San Agustín Acasaguas-tlán, El Progreso. / Delegado Suplente |
| 4 | Daniel Tucux Coyoy | Red INFOMAYA | Área Occidente. (Kiche’) Delegado Suplente. |

Presentation of the Civil Society Representatives, July 2013

Civil society representatives participate regularly in Commission meetings where they discuss and make decisions on a range of implementation issues. This includes approval of various TORs and communication materials.

- The World Bank funds a program for direct support to civil society, involving support for meetings and workshops.
 - Several training modules were held in 2012: Implementing EITI in Guatemala; Extractive Industries in Latin America; and Benefits of Extractive Industries.
 - A regional workshop for EITI was held on December 1, 2012, in Coban, Alta Verapaz. This was attended by 26 civil society representatives from the northern region of the country. A balanced number of men and women attended. Three main topics were discussed: principles of transparency and the right to information; the principles and criteria of the EITI; and civil society participation in implementing EITI –GUA. They recommended, among others, that materials be translated in different Mayan languages.
- Two representatives of civil society traveled to Peru in 2012 to witness its endorsement as a compliant country of EITI.
- The World Bank and GIZ provided support for the Expanded Group of Civil Society organizations (Grupo Ampliado de Sociedad Civil) in October 2012. Leaders of over 25 indigenous organizations met to discuss EITI-GUA implementation issues, including:
 - Non-recognition of civil society in Government Resolution 96-2012 and impact on their participation
 - Electing the representatives of the organizations to the Commission
 - Strengthening the representation of indigenous organizations on the Commission
 - Weakness in civil society participation and exclusion from several processes, such as the definition of TOR for the Technical Secretariat
 - How to address negative impacts of extractive industries, which are the main interests of civil society (for example, through improving conditions and incorporating EITI principles in contracts with companies)
 - Lack of policy on consultation pursuant to ILO 169
 - Lack of state institutions linked to the EITI
 - Need for financial support for representatives on Commission
 - Review of the communication materials and strategy prepared by the World Bank
 - Recommendations for criteria for organizations in the expanded group, including:
 - Interest in issues of transparency, in learning about the EITI, and in disseminating such information

- Leadership and management skills
 - Commitment to teamwork and collective benefits
 - Relevant academic background and/or extensive experience
 - Interest in extractive industries and challenges
 - Commitment to sustainable community development
 - Vision toward building a conflict-free country
 - Support for the participation of civil society in projects that promote benefits for communities
 - Work on transparency, environmental issues, and revenue from extractive industries
- The World Bank and GIZ also provided support for a workshop in Coban in May 2013 to discuss and validate the Reconciliation Report.
 - One representative of civil society joined the Guatemalan delegation to the 6th Global EITI Conference in Sydney, Australia.
 - Various workshops and events have been held and are still planned with civil society, as part of the communication strategy to disseminate information about the Reconciliation Report. These are discussed in more detail under Requirement 18.

Stakeholder Views

The Validation Team had the opportunity to meet with a fairly wide range of civil society representatives who:

- Support EITI-GUA, including all the civil society representatives on the Commission;
- Were previously more active with EITI-GUA but are presently less or not engaged;
- Are not involved with EITI-GUA but are neither opposed nor supportive; and
- Do not support EITI-GUA given their opposition to specific extractive projects, or to extractive industries in general.

Stakeholders from government, companies, and international organizations also had a great deal of feedback on civil society participation in EITI-GUA. The following are illustrative comments from the different stakeholders:

Reasons for Civil Society to Support EITI-GUA

- To improve transparency in what companies pay and what government receives, so that communities can find out how the revenue is being used
- To promote social and economic development in communities
- To promote dialogue and decentralized participation of civil society

- To support sustainable development
- Because constructive participation must prevail over conflict and negative positions

Reasons for Non-Participation in EITI-GUA

- EITI does not address fundamental issues such as:
 - Lack of transparency and corruption in the licensing process;
 - Human rights issues in extractive industries;
 - Environmental impacts of extractive industries; and
 - Lack of government credibility in transparency issues.
- Government leadership is weak and the process is poorly managed.
- The organizations supporting EITI-GUA are very small and not well known. The government is not reaching out more broadly to other organizations.
- There is so much corruption in the government that it has no credibility to lead.
- Support for EITI-GUA may bring animosity and even harassment from other entities.
- Organizations often lack resources to participate.
- Organizations do not know who to contact in the Commission, how to contact them, and how to become involved.
- Some organizations are unfamiliar with EITI.

Recommendations to Strengthen Civil Society Engagement

- Provide for the necessary changes to the regulation to clearly allow for civil society representation on the Commission
- Develop a more comprehensive, long-term strategic plan and improve the Commission's internal regulations
- Broaden civil society participation by approaching other groups, for example, those associated with the Catholic Church
- Develop an Alternative Report on Extractive Industries in Guatemala, with data on economic, social, and environmental impacts
- Facilitate exchange of experiences with civil society organizations in other countries, such as Peru, Trinidad and Tobago, and Honduras
- Amend the Mining Law to incorporate consultation and consensus with affected communities
- Create a resource center or a team of individuals and entities highly specialized on technical and political issues in the extractive industries that can be available to civil society organizations
- Promote inter-institutional coordination among government, companies, and civil society to focus on social conflicts around extractive industries
- Provide more information seminars aimed at local organizations on EITI, transparency, social audits, and accountability
- Develop affirmative proposals to address existing social conflicts surrounding mining

- Create the foundation for real and extensive dialogue with community leaders. The rights and duties between civil society and the government should be clearly established.
- Strengthen the government's leadership of EITI-GUA and work with civil society throughout the whole process to build confidence, communication, respect, and understanding. Civil society and government can work together, for example, in workshops and other activities.

After the Commission reviewed the preliminary Validation Report, they provided additional information on current and future plans aimed at expanding civil society involvement. They reported that they have extended invitations and initiated discussions with various organizations, for example, the NGO Coordinator of Alta Verapaz-CONGAV and the National Coordinator on Land Rights of Indigenous-EARTH-CPN. They also provided documentation on planned information, education, capacity building, and training activities for civil society organizations, including those that are not presently participating in EITI.

In general, government and company stakeholders view the representatives of civil society on the Commission as very active and constructive in their participation. According to these civil society representatives, they have been denounced and intimidated by other organizations for supporting EITI-GUA and accused of cooperating with companies that will further exploit the country's natural resources to the detriment of indigenous communities. They provided documentation, for example, of a public protest in 2011 in Alta Verapaz, where their effigies as well as those of other civil society leaders supportive of EITI were publicly burned.

They believe that a number of other civil society organizations have withdrawn from the EITI process due to the extreme polarization of views and information. At the same time, they also share that there are other organizations that would want to support EITI, but that more information and culturally sensitive approaches are needed to engage them. They suggest outreach to a broader range of organizations, even beyond those focused on the environment or natural resources.

All members of the Commission interviewed agree in principle that EITI can provide space for communication among government, civil society, and industry, which is very important given Guatemala's history of conflict and the contentious issues around extractive industries. They view EITI as one way to increase understanding and credibility among the stakeholders.

Validators' Assessment

Based on the records of workshops and meetings held since Guatemala became a candidate country of EITI, as well as on stakeholder interviews, it is apparent that

civil society organizations represented in the Commission operate independently of the government and companies, and are actively engaged in the process.

The government has, with the support of international organizations and civil society organizations themselves, carried out a significant number of workshops, training events, and meetings that focus on civil society participation in EITI-GUA.

Outreach activities have been undertaken and communication materials have been prepared. A sustained program to raise awareness and disseminate information on a broader level to civil society organizations will be necessary, however, for long-term effectiveness of the EITI process.

The civil society representatives on the Commission were generally satisfied with the work and responsiveness of the Executive Coordinator and the Technical Secretariat. The Commission's internal rules require advance notice of meetings and timely access to documents. Because the civil society representatives have to travel long distances for several hours to attend Commission meetings, it is very important that these meetings be held as scheduled. Sudden cancellation of a meeting after the civil society representatives had already travelled to Guatemala City – which actually occurred while the Validation Team was there – can discourage civil society participation.

The civil society representatives on the Commission operate by consensus; hence, they typically wish to hold common positions on any decisions or votes. This may possibly constrain individual opinions, but there is nothing in the Commission's rules or practices that prevent them from expressing different positions. The representatives had different opinions, for example, on recent decisions regarding the hiring of consultants, and these are documented.

There have been some decisions where the civil society representatives do not appear to have been consulted, for example, in the hiring of specific consultants, resource persons, or secretariat support staff. It does not seem clear as to whether this particular issue needs input from the Commission, therefore, the scope of decision-making on the part of Commission members should be clarified.

There are also clear examples of the civil society representatives' involvement in important decisions of the Commission. This includes review and approval of various TORs, and review and approval of the Reconciliation Report.

As previously noted, there have been instances where the civil society representatives on the Commission have been subjected to public denunciation by other civil society organizations for their support for EITI-GUA. While these circumstances can have a silencing or constraining impact, these do not appear to have substantively affected their ability to participate in the implementation of EITI-GUA.

Based on the documents reviewed for this report and stakeholder interviews, three clear areas that can be strengthened with respect to civil society are: outreach to women and women's groups; outreach to youth groups and representatives; and outreach to a broader group of organizations, including those historically opposed to extractive industries. More outreach, consideration, and inclusion of these sectors will certainly contribute to the public debate.

The remaining question of whether the government has removed obstacles affecting civil society participation and ensured that civil society is **fully** engaged is a difficult one. The government has undertaken significant actions through outreach and training activities to address capacity constraints.

In relation to Requirement 8, however, the potential obstacles posed by the inadequacies of Government Resolution 96-2012 are too serious and glaring to ignore. Thus far, the inadequacies in the regulation have not been obstacles in practice to the participation of civil society and company representatives on the Commission. The Commission's internal rules and current practices recognize the non-government members as having representation and participation equal to that of the government representatives.

However, the fact that Government Resolution 96-2012 excludes civil society representatives from the membership of the Commission and prohibits them from voting is directly contradictory to full engagement and to the objective of providing an enabling framework for multi-stakeholder participation. While the Commission has adopted internal rules and practices to grant civil society membership and voting rights, these are inconsistent with the express terms of the regulation and are subject to challenge at any time, thus resulting in a lack of certainty and security in their participation, and in the validity of votes they may have taken.

After the Commission reviewed the preliminary version of this Validation Report, it provided our Validation Team information on their plans to revise Government Resolution 96-2012 to expressly include and increase civil society and company membership in the Commission with the right to participate and vote. The Commission's goal is to have these and other amendments in place by the end of 2013.

These proposed amendments are positive developments aimed at institutionalizing the participation of both civil society and companies in the EITI process. Until these changes are effective, however, the full engagement of civil society is uncertain and open to challenge. Guatemala is thus not yet in compliance with this requirement, but it is demonstrating meaningful progress.

3.7 EITI Requirement 7

THE GOVERNMENT IS REQUIRED TO ENGAGE COMPANIES IN THE IMPLEMENTATION OF THE EITI.

Progress

The structure of the extractive industries in Guatemala is relatively simple at the present time, with only a few operating mines and oil companies. As the Reconciliation Report for 2010-2011 shows, only two companies – Perenco and Goldcorp – account for the overwhelming percentage of production in that period.

Following the EITI candidacy of Guatemala, the government invited companies and other stakeholders in April 2011 to participate in a multiparty dialogue table on EITI. Both Perenco and Goldcorp have been actively engaged in EITI-GUA since the earlier days of implementation.

Government Resolution 96-2012 establishing the Commission states that it shall promote dialogue with representatives of extractive industries and civil society. The Commission's internal rules and practices provide for company representation by principal and alternate representatives. Mining companies have two principal and two alternate representatives on the Commission, while oil companies have one principal and one alternate representative.

The different minutes, resolutions, and other records of the Commission's activities show that these company representatives are engaged in discussions and agreements regarding EITI implementation. Agreement 01-2012 of the Commission approving the TOR for the reconciliation process and other decisions, for example, was confirmed and signed by representatives of Perenco and GREMIEXT.

In September of 2012, the Commission sent out a broader invitation for oil and mining companies to inform them about EITI and to participate in the reconciliation study. In a letter to MEM, GREMIEXT confirmed in late October that the following companies would participate in the reconciliation report and provide the necessary information:

- Montana Exploradora de Guatemala, S.A.
- Guatemarmol, S.A.
- Minera San Rafael, S.A.
- Compania Guatemalteca de Niquel, S.A.
- Mayaniquel, S.A.
- Exploraciones Mineras de Guatemala, S.A.
- Entre Mares de Guatemala, S.A.

Two oil companies also confirmed their voluntary participation in the report:

- Perenco Guatemala Limited
- Empresa Petrolera del Istmo (EPI)

Except for Exploraciones Mineras de Guatemala, S.A., which did not ultimately contribute to the Reconciliation Report, the other companies did provide the necessary information to the conciliator.

To reflect the multi-stakeholder nature of the Commission and the participation of companies, GREMIEXT President and Goldcorp Executive Director Mario Marroquin joined the Guatemalan delegation to the Sixth Global EITI Conference in Sydney in May 2013, together with civil society representative Julio Cesar Chaco, EITI-GUA Executive Coordinator and Vice-Minister Ancheta, and other government representatives.

With respect to capacity of extractive companies to participate in EITI-GUA, a report on the World Bank's Direct Support Program for Civil Society in Guatemala reviewed various workshops and meetings held from 2011 to 2012. This report noted that the participation of industry advocates is weak and that only the government can promote their increased participation. At a capacity building workshop focusing on extractive industries, for example, neither mining nor oil companies were present and thus were not able to provide their input or perspectives on their contractual obligations and payments to the State. The lack of engagement of companies was particularly noted. According to the Commission, the lack of company participation was due to miscommunication and lack of coordination among the meeting organizers.

A sub-sector of the extractive industries that does not appear to have received a great deal of focus has to do with small-scale mining, which is often carried out illegally. The unauthorized extraction of gravel, sand, and minerals – especially jade – has become a serious problem that carries with it negative social and economic consequences.

Stakeholder Views

A number of stakeholders expressed their opinion that company participation in EITI-GUA should be strengthened. One government official observed that civil society participation is quite active, and suggested that it would be better if more companies participated directly in the Commission rather than always through one or two association representatives.

In many cases, company participation consisted only of providing information for the reconciliation report. There was otherwise fairly limited knowledge about EITI-GUA except among the principal company representatives on the Commission.

Within the companies themselves, only a few designated individuals were familiar with EITI-GUA and dissemination of information was weak.

According to some stakeholders, there are well over 20 company members of GREMIEXT, including medium or smaller companies. Most of these have not participated in EITI-GUA for various reasons, including possibly lack of information on the benefits of participation, or lack of capacity with respect to providing the information required for a reconciliation report.

Other stakeholders echoed the need and importance for more companies to become involved, particularly cement companies. The general perception of stakeholders is that the companies that are active have been consistent supporters of EITI over the last few years, but that the government has been weak in its outreach and efforts to encourage participation from other companies.

After the Commission reviewed the preliminary version of this Validation Report, it provided our Validation Team information on current efforts to strengthen outreach and relationships with the extractive companies. A meeting was held in October 2013 with the new Board of Directors of GREMIEXT and the Commission to discuss joint efforts to involve more companies. According to the additional documentation provided, GREMIEXT reiterated its commitment to the EITI process and its participation in future reconciliation reports.

Validators' Assessment

Guatemala is in compliance with this requirement, though it has met only the very minimum standards under this section.

The Government has sought to engage companies in EITI implementation since its application for candidacy, but the outreach appears to be fairly limited. The 2011-2013 Work Plan expressly states that one of the strategic objectives of EITI-GUA is the strengthening of capacities of the different members of the Commission. As described more fully under Requirements 5 and 18, the outreach, capacity building, and communication activities are directed principally at civil society. The funding from GIZ and the World Bank are focused on these programs.

The Work Plan documents that a broader group of mining and oil companies was invited to two meetings in September 2012 for a general presentation on EITI-GUA and to explain the objectives of the Reconciliation Report. Only a minority of extractive companies participated, however, and contributed to the reconciliation report for 2010 and 2011.

There has thus far been little evidence to show sustained and meaningful outreach to companies, informing them of their central role in the EITI process and the benefits of participation. Moreover, there has been little evidence to show that

capacity constraints of companies have been analyzed and addressed through a comprehensive and strategic program of action.

The recent efforts of the Government to engage companies are a positive development. These and similar efforts should be incorporated in the Work Plan. More focus should also be placed by the government on outreach to medium and smaller entities, including those involved in small-scale mining.

3.8 EITI Requirement 8

THE GOVERNMENT IS REQUIRED TO REMOVE ANY OBSTACLES TO THE IMPLEMENTATION OF THE EITI.

Progress

Obstacles to EITI implementation can present themselves in a variety of ways. For EITI-GUA, a number of legal, technical, and financial obstacles have been observed which the Government has addressed to varying degrees.

- **Legal and Regulatory Barriers**

(1) In establishing the legal basis for the Commission through Government Resolution 96-2012, the Government excluded extractive companies and civil society from the membership on the basis that private citizens or entities cannot be required to participate in a government commission. The regulation provides that companies and civil society may be invited as guests but will not have voting rights.

The terms of this regulation, by themselves, are a clear obstacle to participation of companies and civil society, and thus to EITI implementation which requires such participation. The Government, through the Commission, has tried to address this obstacle by formulating internal rules that allow for representation and voting rights for civil society and companies on the Commission, pursuant to international EITI requirements. In practice, these internal rules have thus far allowed the Commission to operate with the active participation of the civil society and company representatives.

It cannot be ignored, however, that the internal rules conflict, however, with the express terms of the regulation with respect to the grant of voting rights to civil society and company representatives. This may potentially render the Commission's internal rules and practices vulnerable to a legal challenge. For the effective implementation of EITI-GUA, there should be legal security in the composition and structure of the Commission.

(2) Government Resolution 96-2012 provides that the Control and Transparency Secretariat presides over the Commission. The regulation creating this body was, however, legally challenged and declared void in 2012. These events served and may continue to serve as obstacles in the following ways, and in potentially creating legal uncertainty which would be counter-productive for EITI-GUA implementation.

- The work and decisions of the Commission in implementing the EITI-GUA Work Plan were delayed due to this legal challenge and the uncertainty in the Commission's leadership. This issue appears to have been resolved by the

creation of COPRET which assumed the leadership of the Commission in 2012. The Government has since tried to overcome the delays through intensifying the work under the day-to-day management of the Executive Coordinator and the Technical Secretariat at MEM. The completion of the 2010-2011 Reconciliation Report and the on-going validation, despite the previous delays, are evidence of the intensified focus and pace of the Commission's work.

- Government Resolution 96-2012 has not been amended to substitute SECYT with COPRET. With SECYT declared void, it had no legal personality and it thus remains questionable that another entity can succeed it without an express regulation to that effect.
- COPRET was established with the same ranking as the Secretariat. While COPRET has been fully functioning according to its mandate to oversee a range of transparency and anti-corruption initiatives, it was created by administrative regulation (and not by Congress) and thus may be subject to legal issues similar to its predecessor.
- Government Resolution 96-2012 provides that the term of the Commission shall be three years from the date of the Act, or until May 2015. The short-term nature of this Commission does not provide the stability needed for EITI-GUA implementation over the long term. It will be especially challenging as 2015 is an election year and there should ideally be continuity to at least ensure the institutional structure of the Commission from one administration to the next.

(3) As described under Requirement 3, the governance structure for EITI-GUA implementation involves COPRET, MEM, and MINFIN with significant roles in the Commission. COPRET was designated by the Vice-President to be the Commission's Chair; MEM serves as its Executive Coordinator responsible for day-to-day operations; and MINFIN is the entity through which contracts to fund Work Plan components are typically made.

This triangular governance structure has led to some delays in contracting. For example, the recruitment process for Validation services was delayed when the call for proposals was first posted by MEM, and then later withdrawn and reposted by MINFIN. Approvals for some work products, particularly those that require payment pursuant to contracts with MINFIN, also pass through multiple layers of endorsements and signatures by the Commission, MEM, COPRET, or MINFIN.

(4) The World Bank Report included a review of the legal, regulatory, and institutional framework relevant to EITI-GUA. The report noted that there are three provisions of law prohibiting the disclosure of tax information to third parties, such as the conciliator:

- Article 24 of the Constitution makes it punishable to disclose the amount of taxes paid, profits, losses, costs and any other information relating to accounting or legal persons.
- The Organic Act of SAT (Decree No. 1-98) provides in Article 44 that SAT is forbidden from disclosing information, documents, amount of taxes paid, lost profits, costs, and any other information relating to taxpayers.
- The Tax Code (Código Tributario, Decree No. 6-91) provides in Article 101a that public servants involved in the implementation, fund control, and control of taxes, can only reveal such information to their superiors or by order of the courts.

As will be discussed in later sections, these barriers were at least temporarily overcome for purposes of the Reconciliation Report by Ernst & Young by obtaining information separately from companies, SAT, and MINFIN and employing a circuitous approach to reconciling amounts paid by the companies with amounts received by the government.

However, no waivers of confidentiality, memoranda of understanding, or other protocols were established to at least set a more stable precedent for future reports. As noted under Requirement 11, there is no current effort to effectively remove these legal impediments to mandatory reporting.

- **Political Barriers**

The entry of the new administration at the beginning of 2012 necessarily resulted in a transitional period involving changes in government leaders and personnel, and additional time needed to orient them. The international EITI Secretariat was informed about the Commission's new leadership only in June of 2012, or almost six months after the new administration began. These factors resulted in delays in the Commission's actions and decisions.

The role played by companies, civil society, and international organizations like the World Bank was critical in providing continuity. These entities were already committed to EITI-GUA and helped in orienting new government personnel and in maintaining momentum for the initiative. The Government also addressed the challenges associated with the change in administration by working with these individuals and entities.

- **Financial Barriers**

Sustaining a comprehensive, effective, and long-term process for EITI-GUA requires financial resources for a multiplicity of activities, particularly those designed to strengthen the capacities of government, civil society, and companies. The

Government has many pressing priority programs to fund, and ensuring financial resources is always a challenge and potentially an obstacle for moving forward.

The Government has addressed the need for financial resources for EITI-GUA by working with international donors and through dedicating a significant amount of counterpart funds for implementing EITI-GUA activities from 2011-2013. The international organizations that are supporting the implementation of EITI-GUA are the World Bank and GIZ. Activities funded include workshops and training for civil society and other stakeholders, operational support to the Secretariat, reasonable transportation and accommodation costs to civil society members of the Commission not resident in Guatemala City, data collection, and report preparation and production.

The Government has also shown a significant degree of determination and political will by allocating US\$150,000 in public funds as counterpart funding for the validation of EITI-GUA and the implementation of other activities.

- **Capacity Constraints**

EITI implementation requires building a range of capacities among relevant government agencies, civil society, and companies. The Government has sought to address capacity constraints primarily by working with international donors, civil society, and companies on the Commission to design and implement capacity building and training programs.

The World Bank supported, for example, training to strengthen the capacity of the Commission through three modules in 2012 on the Implementation of EITI in Guatemala (May 2012), Extractive Industries in Latin America (July 2012), and Benefits from Extractive Industries (November 2012). World Bank assistance funded the preparation of templates for EITI data reporting, the hiring of the reconciler, and the preparation of the first national EITI report. Their assistance is also on-going for operational support to Secretariat, reasonable transportation and accommodation costs to allow civil society representatives in the Commission to participate in Commission meetings, data collection and report preparation. GIZ has provided a range of support as well for capacity building, including bringing experts from Peru in August 2011 to provide training at workshops, and financing different meetings for civil society organizations.

The technical support and resources for the EITI Executive Coordinator and MEM Vice-Minister for Sustainable Development have recently been strengthened with the hiring of professionals for the Technical Secretariat to focus on organizational development, coordination, planning, and implementation of activities on a day-to-day basis. Plans are also underway to recruit administrative and financial consulting support.

The Commission also recognizes the need for a contingency plan to deal with capacity constraints and obstacles specifically affecting civil society participation, particularly through access to training and resources.

- **Communication and Information Barriers**

Given the history of conflict in Guatemala, the volatile social atmosphere surrounding mining operations, and the language differences in different parts of the country, it is important that communication and information barriers are addressed in ways that provide opportunities for genuine dialogue. These and related barriers will be discussed more comprehensively under Requirement 18.

Stakeholder Views

Regarding ***legal barriers***, the inadequacies and potential confusion created by Government Resolution 96-2012 were pointed out by a number of stakeholders from all sectors. While all agreed that the Commission was functioning under the internal rules and through the coordination of the Technical Secretariat, there continues to be discussion regarding the exclusion of civil society and company representatives in the language of the regulation.

Some stakeholders pointed out that Decree No. 4-89 creating CONAP expressly provides for both government and non-government representatives on the Council. They raised the question of whether a similar law was possible for EITI-GUA.

With regard to the governance structure for EITI-GUA implementation involving COPRET, MEM, and MINFIN, stakeholders have indicated that while these may have caused some delays and resulted in less efficient implementation, these have not presented actual obstacles to implementation.

As for the legal obstacles to mandatory reporting of tax-related information, stakeholders reported that these barriers were overcome for purposes of the 2010-2011 Reconciliation Report by Ernst & Young obtaining information from SAT, MINFIN, and from companies that voluntarily cooperated in the process.

Regarding ***political barriers***, a number of stakeholders noted that the transfer of information and motivation to continue EITI is a challenge during the transition from one government to the next. Documents and files are lost in the transition, leadership changes create delays and even a leadership vacuum, time is lost as the new administration requires more preparation to continue the work of the last administration which may not even be receptive to assisting the new administration.

The transition from one administration to another was identified as a difficult issue. Some noted that the EITI leadership today is very good and working very hard to

move EITI-GUA ahead, particularly at the implementation level of MEM and the Secretariat. There is some uncertainty associated with a different administration in the future, and how to ensure the continuity and progress of EITI-GUA through such changes.

Other stakeholders were certain that EITI-GUA would continue despite changes in leadership in the future. They pointed out that the sustainability of EITI-GUA lies not only in the Government but in the strong collaboration and support of companies and civil society. This is why it is important for them to make all the work and information of the Commission transparent – on the website, for example – so that the institutional and programmatic history is available to the public and accessible despite administration changes. Wide dissemination of information and governance of the Commission are crucial, so that the multi-stakeholder group can sustain the EITI from one administration to the next even when officials change.

After their review of the preliminary Validation Report, the Commission informed our Validation Team about plans announced in October 2013 to initiate strategic planning with respect to future changes in administration, as well as for the transition to the 2013 EITI Standard.

With respect to financial sustainability, the Commission reported that the Government is in discussions with the World Bank for another grant of US\$30,000. Stakeholders expressed that the Government must also lead in ensuring financial sustainability through the allocation of national funds for the process.

In this regard, the Commission also informed our Validation Team that MEM has allocated approximately US\$115,000 in 2014 for technical support to the Executive Coordinator and preparation of the 2012-2013 Reconciliation Report, among others.

Key government officials believe that the successful validation of EITI-GUA and its acceptance as a compliant country will provide greater stability and sustainability for the process.

Moreover, the structure of representation on the Commission is generally a source of confusion. Stakeholders suggested that it would be helpful to have more information and a diagram of the structure on the website. Stakeholders noted that it is important to have a website that is easy to find and easy to understand.

Stakeholders also noted that the people of Guatemala are overcoming 36 years of conflict. It is therefore not easy for different sectors to dialogue, and sometimes these tensions carry over into day-to-day work and the ability to promote collaborative multi-stakeholder efforts.

Validators' Assessment

The Government has addressed many obstacles to EITI-GUA implementation. Despite difficult delays and a change in administration, the Commission has managed to meet a number of critical milestones and retain the active participation of the civil society and company members. It has done these through collaborative engagements with civil society and companies, and through the focused leadership of the Executive Coordinator and the Technical Secretariat.

While the triangular governance structure involving COPRET, MEM, and MINFIN has not been an obstacle to EITI-GUA implementation, it has resulted at times in less efficiency and unnecessarily layers of bureaucracy. As recommended under Requirement 3, the Government should consider various options to increase the efficiency of their leadership and streamline their governance structure.

The Commission has largely addressed financial barriers, particularly from 2011 to 2013. As will be discussed further under Requirement 18, it is currently implementing a communication plan to help address information and engagement barriers.

With respect to other legal issues, however, significant questions remain. For the efficient development of reconciliation reports, the government must lead in developing a more consistent and stable way to address the barriers on disclosure of tax information. It should also explore ways to establish a framework to not only encourage, but to require reporting by companies that have made material payments.

For the 2010-2011 Reconciliation Report, the legal impediments to mandatory reporting did not present an obstacle to EITI reporting. This is due to: the present state of the extractive industry in Guatemala which is fairly small and simple; the fact that the industry is presently dominated by two companies responsible for well over 90% of mineral and oil production and thus for payments deemed material; and the fact that these companies voluntarily cooperated in providing the necessary information to Ernst and Young.

Going forward, however, the Government anticipates that other companies will increase their share of mineral or oil production. The impediments to mandatory reporting will need to be addressed in the context of a more complex industry structure where reliance on voluntary initiatives may likely affect the integrity and comprehensiveness of EITI reporting.

Significant legal issues remain about the long-term legal stability of the Commission due to the exclusion of civil society and companies. Legal and political issues also delayed the implementation of EITI-GUA in 2012 when SECYT was legally challenged and later declared void. The three-year term of the Commission means that its legal existence will hang in the balance during the next election year.

After their review of the preliminary Validation Report, the Commission informed our Validation Team that efforts are underway to amend Government Resolution 96-2012 before the end of 2013 to address legal issues by:

- Replacing SECYT with COPRET;
- Including three (3) representatives each for civil society and companies, with the right to participate and vote;
- Extending the term of the Commission to four years, from 2013-2017;
- Rotating the leadership of the Commission among government agencies; and
- Expanding functions of the Commission to strengthen budget management and ensure financial sustainability.

These efforts, provided they are undertaken in a consultative manner, are positive steps toward eliminating legal and other barriers to create a stronger enabling framework for EITI implementation. Because these barriers still exist, Guatemala is not yet in compliance with this requirement, but it has made meaningful progress.

3.9 EITI Requirement 9

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| THE MULTI-STAKEHOLDER GROUP IS REQUIRED TO AGREE A DEFINITION OF MATERIALITY AND THE REPORTING TEMPLATES. |
|--|

Progress

Reporting Templates — Sub-Requirement (a)

With funding from the World Bank, the Commission engaged a consultant to prepare a report (the World Bank Report) that addressed, among other topics, the history, legal structure, and economic scope of the mining and hydrocarbon sectors of the Guatemalan economy. Representatives of the government and companies in the mining and hydrocarbon sectors, which included many of the members of the Commission, assisted in the preparation of the World Bank Report.

The World Bank Report specifically discussed EITI's 2011 requirements regarding reporting templates and proposed actual reporting templates to be used by the Commission in connection with the Reconciliation Report. The contents of the World Bank Report were presented to the Commission in May 2012 and the templates proposed by the World Bank Report were formally adopted by the Commission in August 2012.

Ernst & Young held a training session in December 2012 at which it presented the reporting templates to companies in the mining and hydrocarbon sectors that had elected to participate in the Reconciliation Report.

Materiality — Sub-Requirements (b), (c)(i), and (d)

The World Bank Report detailed the various tax and non-tax payments made by companies in the mining and hydrocarbon sectors to government entities in Guatemala and summarized the legal basis for and aggregate amount of each payment stream. Adopting the recommendations of the World Bank Report, the Commission determined the payment streams in each sector that were to be included on the reporting templates.

- The mining sector paid GTQ 350.8 million in taxes, royalties, mining fees, penalties, and interest in 2010 and the six largest of the payment streams, taken together, accounted for 99.3% of the total payments. The Commission determined that these six payment streams constituted the material payment streams for the mining sector.

- The hydrocarbon sector paid GTQ 989.5 million in taxes, royalties, state participation in production, pipeline fees, and private funds/donations in 2010 and the six largest of the payment streams, taken together, accounted for 99.3% of the total payments. The Commission determined that these six payment streams constituted the material payment streams for the hydrocarbon sector.
- Requirement 9(d) lists the following as payment streams that should be included in a reconciliation report: host government's production entitlement; national state-owned company production entitlement; profit taxes; royalties; dividends; bonuses; and license fees, rental fees, entry fees, and other considerations for licenses and/or concessions. As applicable to the Guatemalan mining and hydrocarbon sectors, all of the payment-stream categories listed in Requirement 9(d) are included in the payment streams deemed material by the Commission.

The Commission did not establish a separate materiality threshold for each payment stream — such that any company operating within the country that paid more than the threshold amount with respect to a payment stream was asked to complete a reporting template with respect to that payment stream. Instead, each company that voluntarily agreed to participate in the Reconciliation Report was asked to report all payments made, without regard to any threshold amount.

Reporting Companies — Sub-Requirement (c)(ii)

The World Bank Report identified the companies that are active in the mining and hydrocarbon sectors and ranked them according to the Quetzal value of their production. Based on the World Bank Report, the Commission's Agreement about Materiality, attached to the TOR, lists the following companies as "relevant companies to be included in the Reconciliation Report":

Mining

Montana Exporadora de Guatemala, S.A. (Montana)
 Guatemarmol, S.A.
 Explotaciones Mineras de Guatemala, S.A.
 Entre Mares de Guatemala, S.A.
 Compania Guatemalteca de Niquel, S.A. (CGN)
 Mayaniquel, S.A.
 Minera San Rafael, S.A.

Hydrocarbon

Empresa Petrolera del Istmo, S.A.
 Perenco Guatemala Limited (Perenco)
 PetroEnergy, S.A.
 Petro Latina Corporation

Compania Petrolera del Atlantico, S.A.
City Peten S. de R.L.

At its January 29, 2013 meeting, the Commission received a report that efforts were being made to gather information from seven mining companies and two oil companies. The Commission was also informed at that meeting that one of the mining companies, Explotaciones Mineras de Guatemala, S.A., would not be able to provide its information in a timely manner in order to be included in the Reconciliation Report.

Ultimately, the following six mining companies and two oil companies participated in the reconciliation process and were included in the Reconciliation Report:

| Mining | Hydrocarbon |
|--|--|
| Montana Guatemarmol, S.A. Entre Mares de Guatemala, S.A. CGN Mayaniquel, S.A. Minera San Rafael, S.A. | Empresa Petrolera del Istmo, S.A. Perenco |

Government Entities — Sub-Requirement (c)(iii)

The World Bank Report traced each of the payment streams deemed material by the Commission and identified the government entities responsible for administering and collecting the payments. The Commission's Agreement about Materiality lists MINFIN as "the government agency with which the Reconciler must perform conciliation as it is the final recipient of sector payments." The Agreement about Materiality also notes, however, that other government entities can be consulted by the reconciler in order to understand the payment streams that pass through them. Ernst & Young did involve additional government agencies in the reconciliation process.

At its January 29, 2013 meeting, the Commission received a report that the following government entities were participating in the reconciliation process, each of which was ultimately included in the Reconciliation Report: MEM, MINFIN, SAT, SCEP, and CONAP.

Period — Sub-Requirement (c)(iv)

The Commission determined that the initial Reconciliation Report would cover 2010 and 2011. The Commission is currently developing a work plan for a reconciliation report that will cover 2012.

Aggregation/Disaggregation — Sub-Requirement (c)(v)

Payments made by the participating companies are disaggregated by industry sector (mining v. hydrocarbon) and by individual payment stream. Both the TOR and the Agreement about Materiality contemplate that the non-tax payments made by the participating companies would also be disaggregated by company; however, with the exception of Perenco, all of the participating companies requested that their information not be disaggregated by company. As a result, the Reconciliation Report does not show payments (other than Perenco's) disaggregated by company.

When a draft of the Reconciliation Report was presented to the Commission at its March 13, 2013 meeting, the Commission noted the mix of aggregated and disaggregated information and left it to the mining companies to decide whether their information would be reported on an aggregated or disaggregated basis. In a letter dated April 15, 2013, GREMIEXT, the mining trade association, informed the Commission that the information of all participating mining companies would be presented in an aggregated manner in the Reconciliation Report.

Local and Regional Government Payments — Sub-Requirement (e)

Adopting the recommendations of the World Bank Report, the Commission determined that royalty payments made by the participating mining companies directly to local municipalities were material. As a result, the reporting templates for participating mining companies included a request for disclosure of those payments and the municipalities to which the participating companies paid royalties were asked to complete reporting templates disclosing those payments. The Agreement about Materiality listed two municipalities whose receipts of regalías municipales (royalties paid to municipalities) were deemed material: San Miguel Ixtahuacán and Sipacapa, both in San Marcos. Ultimately, Ernst & Young obtained the participation of seven municipalities in reporting receipts of regalías municipales (royalties paid to municipalities):

- San Miguel Ixtahuacán, San Marcos
- Sipacapa, San Marcos
- Rio Hondo, Zacapa
- Potptún, Petén
- Chuarrancho, Baja Verapaz
- Granados, Baja Verapaz
- Estor, Izabal

At its January 29, 2013 meeting, the Commission was informed that seven municipalities were participating in the reconciliation process.

Subnational Transfers — Sub-Requirement (e)

Pursuant to Article 31 of the Hydrocarbons Law, Congress issued Decree No. 71-2008, Ley del Fondo para el Desarrollo Economico de la Nacion, creating FONPETROL

and requiring that 25% of the royalties and production share paid by oil companies be paid to the CODEDES and 3% of the royalties and production share be paid to CONAP. Following the recommendations of the World Bank Report, the Commission determined that the FONPETROL transfers were material. Reporting templates, requested from the appropriate government entities, specifically reported FONPETROL transfers and those subnational transfers were included in the Reconciliation Report.

In-Kind and Social Payments — sub-requirements (f) and (g)

The World Bank Report identified a number of social payments and projects undertaken by companies that participated in the Reconciliation Report and the Commission included information requests regarding those payments/projects on the reporting templates completed by those companies. However, the Reconciliation Report does not discuss those payments/projects. The Agreement about Materiality lists the following social payments:

Montana

- Centro de atención permanente en San Miguel Ixtahuacán (GTQ 21.5 millones);
- Centro urbano del Caserío San José Nueva Esperanza en San Miguel Ixtahuacán (GTQ 4 millones);
- Programa de certificación de responsabilidad social y ambiental en la producción del café

CGN

- Protección de la Reserva Natural Privada Setal

Perenco

- Programa de responsabilidad social

There is no indication that the Commission ever discussed whether any other social payments or any in-kind payments, infrastructure provisions, or other barter-type arrangements existed or whether any such payments were material

Additional Information — Sub-Requirement (h)

The information provided in the Reconciliation Report is effectively disaggregated to the company level (see discussion below), it includes direct payments and intra-government transfers to local and regional levels, and the Commission's Agreement about Materiality attached to it as an annex includes descriptions of social payments. An annex to the Reconciliation Report also lists other donations made by Perenco in 2010 and 2011. Although we make a number of suggestions aimed at improving the information captured in the future, within the framework of EITI, the Reconciliation Report is comprehensive with respect to 2010 and 2011.

Stakeholder Views

Stakeholders did not express any objections to the reasonableness of the materiality agreements reached by the Commission nor any objection to the comprehensiveness of the payment streams included in the Reconciliation Report or the companies or government entities participating in the process (other than a general desire that more companies be included).

Validators' Assessment

The Commission defined six payment streams in the mining sector as material and six payment streams in the hydrocarbon sector as material, yet it did not define a materiality threshold for each individual payment stream; rather, the Commission accepted the voluntary participation of eight companies, each of which reported all of the payments it made into the applicable payment streams. This approach resulted in the disclosure of a high percentage of the aggregate payments made into the identified payment streams for both the mining and hydrocarbon sectors, but it failed to reconcile a majority (and in some cases, nearly all) of the payments made into several of the payment streams the Commission deemed material.

For example: 95% and 97%, respectively, of the Solidarity Tax (ISO) paid by mining companies in 2010 and 2011 was paid by companies that did not participate in the Reconciliation Report. The ISO represented less than 1% of the aggregate payments made by mining companies in those years, but the ISO payment stream was deemed material by the Commission and substantially all of the ISO payments made by mining sector companies were not reflected in the Reconciliation Report.

Similarly, 71% and 62%, respectively, of the cánones mineros (mining fees) paid in 2010 and 2011 were not included in the Reconciliation Report and 57% and 39%, respectively, of the fondos privados (private funds) paid by oil companies in 2010 and 2011 were not included in the Reconciliation Report. Again, these represent very small Quetzal amounts, but are payment streams deemed material by the Commission that are largely missing from the Reconciliation Report.

More significantly, 18% (GTQ 23.8 million) and 5% (GTQ 9.8 million), respectively, of the regalías de hidrocarburos (hydrocarbon production royalties) paid by all hydrocarbon companies in 2010 and 2011 are not reflected in the Reconciliation Report.

The following table summarizes the information shown on pages 34-38 of the Reconciliation Report regarding the magnitude of payments that were received by the government from non-participating companies:

| | Amounts Received by Government (GTQ) | | | | | |
|---|--------------------------------------|----------------------------------|------------------------------------|--------------------|----------------------------------|------------------------------------|
| | Mining Sector | | | Hydrocarbon Sector | | |
| Payment Streams Deemed Material | From All Companies | From Non-Participating Companies | % From Non-Participating Companies | From All Companies | From Non-Participating Companies | % From Non-Participating Companies |
| -- 2010 -- | | | | | | |
| Impuesto Sobre la Renta (ISR) | 238,160,000 | 38,375,000 | 16.11% | 89,400,000 | 11,086,000 | 12.40% |
| Impuesto de Solidaridad (ISO) | 2,650,000 | 2,506,000 | 94.57% | | | |
| Impuesto de Timbres Fiscales (ITF) | 62,860,000 | 132,000 | 0.21% | | | |
| Regalías al Estado | 20,736,000 | 1,017,000 | 4.90% | 132,300,000 | 23,799,000 | 17.99% |
| Regalías Municipales | 20,736,000 | 1,056,000 | 5.09% | | | |
| Cánones | 2,833,000 | 1,998,000 | 70.53% | | | |
| Participacion estatal en la producción | | | | 614,823,000 | 0 | 0.00% |
| Donaciones para reconstrucción y Batallón | | | | 130,496,000 | 0 | 0.00% |
| Fondos Privativos | | | | 7,883,000 | 4,462,000 | 56.60% |
| Sistema Estacionario de Transporte | | | | 6,248,000 | 0 | 0.00% |
| TOTAL: | 347,975,000 | 45,084,000 | 12.96% | 981,150,000 | 39,347,000 | 4.01% |
| -- 2011 -- | | | | | | |
| ISR | 390,000,000 | 13,778,000 | 3.53% | 93,300,000 | 3,759,000 | 4.03% |
| ISO | 4,340,000 | 4,211,000 | 97.03% | | | |
| ITF | 83,670,000 | 34,000 | 0.04% | | | |
| Royalties to the State | 35,795,000 | 1,008,000 | 2.82% | 192,100,000 | 9,821,000 | 5.11% |
| Royalties Municipalities | 35,795,000 | 1,003,000 | 2.80% | | | |
| Cánones | 1,904,000 | 1,182,000 | 62.08% | | | |
| Participacion estatal en la producción | | | | 898,145,000 | 0 | 0.00% |
| Donaciones para reconstrucción y Batallón | | | | 8,791,000 | 0 | 0.00% |
| Private Funds | | | | 5,402,000 | 2,098,000 | 38.84% |
| Sistema Estacionario de Transporte | | | | 3,872,000 | 0 | 0.00% |
| TOTAL: | 551,504,000 | 21,216,000 | 3.85% | 1,201,610,000 | 15,678,000 | 1.30% |

Although some of the smaller payment streams were not fully reconciled in Guatemala's initial Reconciliation Report, overall, the country has accounted for 87% and 96%, respectively, of the aggregate amount of payments made in the mining sector and 96% and 99%, respectively, of the aggregate amount of payments made in the hydrocarbon sector in 2010 and 2011. The materiality concepts, reporting templates, and verification methodology employed in the Reconciliation Report achieved almost complete disclosure and verification of substantially all of the payments identified in the World Bank Report. In addition, there is a high degree of

stakeholder confidence that the manner in which the payment streams were identified, reported, and verified was comprehensive.

Ernst & Young recommended in the Reconciliation Report that the Commission expand the number of companies participating in future reconciliation reports. As discussed in connection with Requirement 11, stakeholders believe that there is a second tranche of companies that is prepared to participate in the reconciliation report for 2012. It would be helpful if in connection with the 2012 reconciliation report, the Commission defined a materiality threshold for each of the payment streams (for example ISR payments in the mining sector and royalty payments and private funds in the hydrocarbon sector) and targeted companies whose payments into those payment streams would significantly increase the percentage disclosure.

Because the Reconciliation Report disaggregates the payments made by Perenco and there were only two oil companies included in the Reconciliation Report, the hydrocarbon sector of the report is effectively disaggregated by company. Similarly, because there were only two production-phase mining companies included in the report and, on a value of production basis, Montana accounted for more than 99% of the mining production reflected in the report, much of the mining sector of the report is effectively disaggregated by company.

There do not appear to be any legal impediments that would prevent the disaggregation of non-tax payments, so the Commission should work with the participating companies to achieve that level of disaggregation in the 2012 reconciliation report. In addition, the Commission should develop a plan for removing the impediments to tax-payment disaggregation and a timeline for achieving that goal, recognizing that the Commission cannot control the timing or outcome of any legislative action required to remove the impediments. Also, the Commission should consider whether disaggregation by project is a goal it wants to achieve and, if so, develop a plan and timeline for achieving it.

Guatemala is in compliance with Requirement 9.

However, substantially all of the material payments are currently made by only a couple of companies, and those companies are actively involved in the EITI process and are willing to make voluntary disclosures at a very granular level. As the relevant sectors mature and more companies begin making payments, the Commission will likely need to modify the process to incorporate many of the recommendations included in this Validation Report. Putting into place payment-level materiality thresholds and MOUs or other requirements for company participation, and working to increase the degree of actual disaggregation, are steps that can be taken now (in developing the plan for the 2012 reconciliation report) to improve the sustainability of the process in the future.

3.10 EITI Requirement 10

THE ORGANIZATION APPOINTED TO PRODUCE THE EITI RECONCILIATION REPORT MUST BE PERCEIVED BY THE MULTI-STAKEHOLDER GROUP AS CREDIBLE, TRUSTWORTHY AND TECHNICALLY COMPETENT.

Progress

The TOR for engagement of a reconciler was discussed at several meetings of the Commission, including meetings that included the participation of representatives from the World Bank and the EITI International Secretariat. The TOR was approved by the Commission in August 2012.

Ernst & Young was the only organization that expressed interest in preparing the Reconciliation Report. However, the Commission discussed Ernst & Young's EITI experience with the World Bank, and with World Bank approval, engaged Ernst & Young to prepare the Reconciliation Report pursuant to the TOR.

Stakeholder Views

The stakeholders interviewed, including many members of the Commission, were overwhelmingly satisfied with the technical competence of Ernst & Young as reconciler, and none of those interviewed expressed any concerns about Ernst & Young's credibility or trustworthiness.

Validators' Assessment

Guatemala is in compliance with Requirement 10.

3.11 EITI Requirement 11

**THE GOVERNMENT IS REQUIRED TO ENSURE THAT
ALL RELEVANT COMPANIES AND GOVERNMENT ENTITIES REPORT.**

Progress

Company Participation

For the periods covered by the Reconciliation Report, substantially all (>90%) of Guatemala's oil production came from one field, Xan, and was produced by one company, Perenco. Production in the mining sector was similarly concentrated. In 2010, for example, there were only five active production licenses for metal mines. One company, Montana, accounted for substantially all (>95%) of the value of the country's mining production during the periods covered by the Reconciliation Report.

With the voluntary participation of Perenco and Montana assured through the companies' active participation on the Commission and with the support of GREMIEXT, the Commission invited a few dozen oil and mining companies, in both the exploration and production stages of operation, to voluntarily report their 2010 and 2011 payments for inclusion in the Reconciliation Report.

In December 2012, Ernst & Young held a training session, open to all of the invited companies, to explain the reporting templates and the process for inclusion in the Reconciliation Report.

Following the training session, six mining companies (two then in production and four in the exploration stage) and two oil companies (both in production) elected to participate. The mining companies that chose to participate accounted for 96% of the value of Guatemala's total mining production in 2010 and 98% of the value of the country's total mining production in 2011. The oil companies that chose to participate accounted for 99% and 98%, respectively, of the value of Guatemala's total hydrocarbon production in 2010 and 2011.

Neither Ernst & Young nor the Commission was able to provide information regarding the number of companies that made payments into the material payment streams but did not participate in the reconciliation process. However, with the exception of mining royalties paid to municipalities that did not participate in the reconciliation process, pages 34-38 of the Reconciliation Report (summarized in the table set forth under the Validators' Assessment of Requirement 9) discloses the magnitude of the payments made by the non-participating companies.

The government has not introduced or amended legislation or regulations that would make it mandatory for companies in the extractive industries to report their

payments in accordance with the reporting templates adopted by the Commission. Similarly, the government has not entered into binding agreements that require companies in the extractive industries to report per the reporting templates.

Government Entity Participation

Based on the World Bank Report, which details the tax and non-tax payment streams applicable to Guatemala's hydrocarbon and mining sectors, the Commission identified each of the government agencies that administered, collected, or transferred each payment stream. This led to the participation of six government agencies in the reporting process.

The participation of the six government entities was sufficient to permit Ernst & Young to reconcile the payments made by the reporting companies against the amounts received by the appropriate government entities. However, the Commission only requested reporting templates regarding the municipal share of mining royalties from municipalities to which the participating companies paid royalties. It is likely that non-participating mining companies paid royalties to municipalities that were not asked to complete reporting templates, and it is possible that the royalty amounts paid to one or more of those municipalities was significant – especially if analyzed as a percentage of the municipality's total revenue.

Neither Ernst & Young nor the Commission was able to provide information regarding the number of municipalities that received mining royalties but did not participate in the reconciliation process. However, mining royalties are calculated based on the value of the metal produced and the companies that participated in the Reconciliation Report accounted for 96% and 98%, respectively, of the value of Guatemala's total mining production in 2010 and 2011.

Stakeholder Views

Production companies, both hydrocarbon and mining, view EITI as an important tool for demonstrating their monetary contributions to Guatemalan society. As a result, extractive industry companies and GREMIEXT have been heavily involved in the country's implementation of EITI from the very beginning. To a significant extent, the participation of the companies, working together with the civil society organizations, is what kept EITI implementation alive in Guatemala through the change in administration following the September 2011 Elections.

Given the strong, voluntary participation of the largest payer companies, stakeholders believe that EITI reporting has been implemented in Guatemala in a manner that fits the country's current legal and social framework and still satisfies the EITI Criteria of "publication of all material oil, gas and mining payments by companies to governments."

Validators' Assessment

The Commission did not use an annual revenue threshold or volume production threshold or any similar type of criteria to identify the extractive industry companies that would be required to complete the reporting templates and report payments for the Reconciliation Report. In fact, the stakeholders generally agree that the privacy provision of the Guatemalan constitution (reiterated in the country's revenue laws) prevents the Commission from mandating any company's participation in EITI reporting. There is no current effort to remove those legal impediments to mandatory reporting.

Instead, the Commission relied on the leadership of its company members to achieve voluntary reporting of 87% and 96%, respectively, of the aggregate amount of payments made by mining companies to the government and 96% and 99%, respectively, of the aggregate payments made by hydrocarbon companies to the government in 2010 and 2011. Given the relative infancy and concentration of these sectors in Guatemala, this high percentage of reporting was achieved with the participation of only two producing oil companies and two producing mining companies. As discussed with regard to Requirement 9, this small number of reporting companies led to some anomalies in the numbers, even with respect to payment streams that the Commission agreed were material.

The standard terms of reference for validating Requirement 11 (with regard to company participation) calls for evidence demonstrating that "all companies that make material payments to government are participating in the reporting process." In a case, such as Guatemala, where material payment streams are defined, but no materiality threshold is established for the payment streams, technical compliance with the validation terms of reference would require the participation of all companies making any payments of the type deemed material. That standard is not met with regard to the Reconciliation Report because non-participating companies made payments in 2010 and 2011 into the payment streams deemed material by the Commission. However, paragraph (b) of Requirement 11 contemplates the exclusion of extractive industry companies where there is "a high degree of certainty that the amounts [the excluded companies report] would in any event be immaterial."

In Guatemala, the non-participating companies made payments totaling 13% and 4%, respectively, of the aggregate amount of payments made by all companies in the mining sector and 4% and 1%, respectively, of the aggregate amount of payments made by all companies in the hydrocarbon sector in 2010 and 2011. Other than with regard to the mining sector in 2010, none of the non-participating companies, neither separately nor in the aggregate, made payments totaling 5% or more of the aggregate payments made in their sector. The exclusion of these non-participating companies in accordance with paragraph (b) of Requirement 11 seems appropriate. The Reconciliation Report states that the "Commission decided that materiality for the participation of companies in the Reconciliation Report was 90% of the total

annual production in Guatemala in 2010 and 2011 from the mining and hydrocarbon sectors." This materiality threshold does not appear in the Agreement about Materiality attached to the TOR, and we have been unable to confirm that the Commission formally adopted that threshold in any other manner; however, the Commission did formally approve the Reconciliation Report, which contained that statement.

The non-participating companies in the mining sector for 2010, in the aggregate, made payments totaling 13% of the aggregate amount of payments made by all companies in that sector for 2010. It is difficult to conclude that 13% of the aggregate payments is "immaterial," but the increase in reporting to 96% in 2011 shows substantial progress toward comprehensive reporting in the mining sector.

Pages 34-35 of the Reconciliation Report show that none of the participating oil companies reported any ISO or ITF payments for 2010 or 2011 and that the participating mining companies reported only approximately 5% of the total ISO payments made in 2010 and 2011. As discussed in Annex 5 to the Reconciliation Report, for 2010 and 2011, only taxpayers that determined their ISR obligations under the optional regimen are required to pay the ISO. Ernst & Young has confirmed that because the participating companies determined their ISR under the general (5%) regimen, they were not required to pay the ISO. The ITF is a stamp tax applicable to the recorded value of certain documents, but the ITF also exempts a number of types of documents. Ernst & Young did not find it unusual that the participating companies would not have had any significant value of ITF taxable transactions during the periods covered by the Reconciliation Report.

For future reports, it is imperative that the Commission establishes materiality thresholds for each of the payment streams it deems material and works to increase the number of reporting companies — both within the oil and metal mining sectors, but also, potentially, from other extractive industry sectors (for example, non-metal mining). Specifically, the Commission should pursue the participation of companies that will provide greater disclosure of the material payment streams that remain relatively opaque in the Reconciliation Report.

EITI in Guatemala has received the strong support of the country's leading oil and mining companies, and that has led to voluntary reporting by the largest payers in the industry. According to company representatives, there is a second tranche of companies that could likely be persuaded to participate in future EITI reports, and stakeholders report that informal attempts are underway to gain the participation of these companies in the reconciliation process for 2012.

Guatemala's approach of building consensus among companies to report voluntarily has resulted in a reporting group that is committed to EITI implementation and can work together to overcome reporting impediments like the ones discussed in connection with Requirement 15.

This voluntary approach does raise potential concerns regarding continuity and sustainability. If one or more companies were to elect not to participate in future reconciliation reports, the continuity of reported payment streams could be compromised. Moreover, if the companies were to become alienated by other groups within the Commission or by a future administration, they could all withdraw from reporting and the initiative would fail. This potential to halt the reporting process places considerable power in the hands of the companies, power which could be misused in the future – though there is no indication of any such misuse to date.

Moreover, as the industry matures, and greater numbers of oil and mining companies reach production stage, obtaining the uniform and reliable participation of all material payers on a voluntary basis will become more difficult. Putting into place now the procedures necessary to sustain compliance with EITI in the future is critical, as this may be the time when all stakeholders have the greatest incentive to achieve and maintain compliance.

In preparing the Reconciliation Report, Ernst & Young received reporting templates from MEM, MINFIN, SCEP, CONAP, seven municipalities, and 22 CODEDES. Ernst & Young also received confirmation from the SAT regarding tax payments. Through the participation of these government entities, Ernst & Young was able to confirm that all of the government receipts within all of the material payment streams (other than municipal royalties paid to non-participating municipalities) were reported.

The reporting companies in the mining sector made royalty payments directly to the municipalities in which their projects were located. Only the municipal governments that received royalty payments directly from reporting companies were requested to participate in the reconciliation process. It is likely that payments were made to municipalities that were not a part of the reconciliation process, because none of the reporting companies made any royalty payments to that municipality. The Commission should cause all municipalities that receive royalty payments from extractive industry companies to submit reporting templates, then pursue broader company reporting to correct any payment/receipt imbalance. However, given that mining royalties are production based and the companies that participated in the Reconciliation Report accounted for 96% and 98%, respectively, of the value of Guatemala's total mining production in 2010 and 2011, the fact that some municipalities did not complete reporting templates did not significantly affect the comprehensiveness of the Reconciliation Report.

Guatemala is compliant with Requirement 11. However, the fact that the entire EITI implementation in the country currently depends on the voluntary compliance and good will of a very small number of participating companies raises serious concerns about the long-term sustainability of the initiative, especially because the number of producing companies is poised to expand as the industry grows.

3.12 EITI Requirement 12

THE GOVERNMENT IS REQUIRED TO ENSURE THAT COMPANY REPORTS ARE BASED ON ACCOUNTS AUDITED TO INTERNATIONAL STANDARDS.

Progress

Under the TOR defining the scope of work for the reconciler, Ernst & Young was required to make an assessment of all reporting templates received from the participating companies to determine whether the reported payments came from accounts duly audited to international standards. Only in the event that Ernst & Young could not confirm that the payment amounts reported by the participating companies met this requirement were the government and Ernst & Young required to develop an alternate plan and timeline for satisfying this requirement. Ernst & Young has confirmed that it assessed the reporting templates submitted by the participating companies and verified that all of the reported payments tied to accounts duly audited to international standards. As a result, no alternate plan was needed to ensure that the audit standard was met.

Stakeholder Views

The participating companies interviewed generally confirmed that their financial statements are audited to international accounting standards. Ernst & Young has also pointed out that the International Financial Reporting Standards have been mandatory for companies in Guatemala since 2008.

When asked if they could have obtained an opinion letter from their external auditor stating that the payment amounts shown on the reporting templates corresponded to company accounts that had been audited to international standards (adjusted for accrual/cash-basis differences), each of the participating companies interviewed answered affirmatively that it would have been possible and feasible to have obtained and submitted such an opinion letter.

Validators' Assessment

The scope of EITI is narrow. It focuses on whether payments made by a company were received by the appropriate government entity. And, as pointed out by a few of the civil society representatives interviewed, EITI does not assess whether the amount paid by a company complies with the applicable legal requirement, and does not assess whether the applicable legal requirement is fair or appropriate.

Audited financial statements are not a guarantee of legal compliance, and they do not supplant the need for rigorous government administration and enforcement of

applicable legal requirements. However, financial audits do provide comfort that adequate internal controls are in place to permit, among other things, the detection of production reporting irregularities or systemic valuation errors and they provide a high-level check on the calculation of material items. Therefore, linking the payment amounts reported by participating companies directly to the companies' corresponding accounts that have been audited to international standards lends credibility to a reconciliation report. The stronger the link, the greater the credibility of the report.

Although Ernst & Young made the assessment required by the Commission to ensure that the reporting templates submitted by the participating companies were based on accounts audited to international standards, the Reconciliation Report does not discuss the assessment or the audit requirement nor does it discuss the process used to tie the reported payment amounts to the companies' audited accounts. As a result, the link between the audited financial statements of the participating companies and the numbers reported in the Reconciliation Report is not as strong as it could be.

Substantially all (if not all) of the company payments reflected in the Reconciliation Report were made by companies whose financial statements are audited by international certified public accounting firms. Specifically, Perenco's accounts are audited by Deloitte & Touche, London, and Goldcorp's financial statements are audited by Deloitte LLP. Goldcorp's consolidated financial statements, which are publicly available, state that they are prepared in accordance with International Financial Reporting Standards as issued by the International Accounting Standards Board.

Each of the reporting templates submitted by the participating companies was signed by a management-level employee, under the following acknowledgement: "admitimos que es nuestra responsabilidad presentar este formulario con informacion fidedigna" (translated as "we recognize that it is our responsibility to submit this form with accurate information"). The reporting template submitted by Montana was signed by its general manager and legal representative and the reporting template submitted by Perenco was signed by its accounting manager.

However, the reporting template attestations do not specifically affirm that the reported payments correspond to the companies' audited accounts or that the accounts were audited in accordance with International Financial Reporting Standards. In addition, none of the companies was asked to submit an opinion letter from their external auditor to address this issue.

With regard to the ISR, ISO, and ITF tax payments, the amounts reported by the participating companies were supported by Ernst & Young's review of the underlying tax returns, which were signed and attested to by company representatives.

Although there is no indication that the Commission was made aware of the specific basis on which Ernst & Young concluded that the reporting templates submitted by the participating companies corresponded to audited accounts, the Reconciliation Report was prepared in accordance with the TOR regarding this issue and the Commission approved the report. Our interviews and reviews confirmed a number of indicators that show Ernst & Young's and the Commission's satisfaction with the validity of the reported numbers is reasonable. Therefore, we can conclude that this requirement has been met. However, we note that the link between the audited financials and the numbers contained in the Reconciliation Report would be stronger, thereby increasing the credibility of the report and making the validation of this requirement more certain, if (i) the reporting templates contained a more direct attestation regarding the numbers submitted, (ii) the reporting templates were submitted with opinion letters from the companies' external auditors, and (iii) the reconciler disclosed in the reconciliation report the method and evidence used to ensure that the reported payments correspond to audited accounts.

In view of the foregoing, Guatemala is in compliance with Requirement 12.

3.13 EITI Requirement 13

THE GOVERNMENT IS REQUIRED TO ENSURE THAT GOVERNMENT REPORTS ARE BASED ON ACCOUNTS AUDITED TO INTERNATIONAL STANDARDS.

Progress

Under the TOR defining the scope of work for the reconciler, Ernst & Young was required to make an assessment of all reporting templates received from the participating government entities to determine whether the reported receipts came from accounts duly audited to international standards. Only in the event that Ernst & Young could not confirm that the receipts reported by the participating government entities met this requirement were the government and Ernst & Young required to develop an alternate plan and timeline for satisfying this requirement. Ernst & Young has confirmed that it assessed the reporting templates submitted by the participating government entities and verified that all of the reported receipts tied to accounts duly audited to international standards. As a result, no alternate plan was needed to ensure that the audit standard was met.

Stakeholder Views

Ernst & Young has verified that each of the government entities that submitted reporting templates or otherwise participated in the Reconciliation Report is subject to audit by the Contraloría General de Cuentas. The audit reports issued by the Contraloría General de Cuentas for 2010 and 2011 state that the audits were conducted based on international auditing standards.

Validators' Assessment

Similar to Requirement 12 regarding auditing of company submissions, we recommend that the Commission take two steps to strengthen the link between the Contraloría General de Cuentas' audit of the relevant government entities and the numbers submitted for the Reconciliation Report by those entities: (i) the attestation clause of each reporting template should state that the signatory is affirming that the reported numbers correspond to the entity's accounts that have been audited to international standards and (ii) require that the reporting templates be submitted with an opinion letter from the Contraloría General de Cuentas stating that the numbers on the reporting template conform to the audited accounts. The reconciliation report itself should also disclose the process undertaken by the reconciler to ensure that the reported receipts correspond to audited accounts.

Although there is no indication that the Commission was made aware of the specific basis on which Ernst & Young concluded that the reporting templates submitted by

the government entities corresponded to the audited accounts, the Reconciliation Report was prepared in accordance with the TOR and the Commission approved the report.

In view of the foregoing, Guatemala is in compliance with Requirement 13.

3.14 EITI Requirement 14

COMPANIES COMPREHENSIVELY DISCLOSE ALL MATERIAL PAYMENTS IN ACCORDANCE WITH THE AGREED REPORTING TEMPLATES.

Progress

Each reporting company was asked to complete a reporting template specific to the company's industry sector (mining or hydrocarbon) and its stage of operation (exploration or production).

In addition to the six payment streams that the Commission deemed material with regard to mining companies, the reporting template for production-stage mining companies requested that the companies report aranceles a la importación (import tariffs) paid and the reporting template for exploration-stage mining companies requested that the companies report cánones de superficie (surface fees) and the impuestos único sobre inmuebles (property/ad valorem tax) paid.

Production-stage mining companies were also requested to complete a separate reporting template to report the impuestos único sobre inmuebles (property/ad valorem tax) and royalties paid to municipalities. In addition, Montana was asked to report the following social payments:

Centro de atención, SMI,
Centro urbano El Caserío SMI,
Certificación café, and
Plan de desarrollo municipal;

and CGN was requested to report the following social payments:

Protección Reserva Setal, and
Fundación Ratché.

In addition to the six payment streams that the Commission deemed material with regard to hydrocarbon companies, the reporting template for production-stage oil companies requested that the companies report the ITF and donaciones otros (other donations) that they paid, as well as the payments related to aportes para la nación: Batallón Ecológico (contributions to the Ecological Battalion).

The reporting template for exploration-stage oil companies requested that the companies report tasas por hectárea (acreage fees) and the impuestos único sobre inmuebles (property/ad valorem tax) paid.

Stakeholder Views

The company representatives and government officials interviewed in connection with this Validation Report believe that the company payments disclosed in the Reconciliation Report, including the social payments discussed in the Agreement about Materiality attached as an annex to that report, reflect all of the material payments made by the reporting companies to government entities for the 2010 and 2011 reporting periods.

None of the representatives of civil society organizations that were interviewed nor any of the company representatives and government officials were aware of any specific payments made by companies in 2010 or 2011 that were not reflected in the Reconciliation Report.

Validators' Assessment

The reporting templates completed by the participating companies requested the disclosure of all payments made during the 2010 and 2011 reporting periods with regard to the payment streams deemed material by the Commission. The reporting templates also requested the disclosure of some payments, including specific social payments, made by the participating companies, even though such payment streams were not deemed material by the Commission. The Reconciliation Report addresses each of the material payment streams.

Based on our discussions with numerous stakeholders and our review of the reporting templates, as well as the overall process, it appears that the participating companies comprehensively disclosed all material payments for 2010 and 2011 in accordance with the agreed reporting templates.

Guatemala is compliant with Requirement 14.

3.15 EITI Requirement 15

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| GOVERNMENT AGENCIES COMPREHENSIVELY DISCLOSE ALL MATERIAL REVENUES IN ACCORDANCE WITH THE AGREED REPORTING TEMPLATES. |
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Progress

Each of the participating government entities was asked to complete a reporting template specific to the material payment streams that it was responsible for collecting, transferring, or administering. The reporting templates generally requested that the government entity disclose the total of all payments received within a payment stream (from both participating and non-participating companies) and the amount of such payment received from each of the participating companies. With the exception of the SAT, which was prohibited by the privacy provisions of the Guatemalan constitution and specific provisions of applicable revenue laws from disclosing the disaggregated information requested by the reporting templates, all of the government entities identified by the Commission completed the reporting templates approved by the Commission.

With regard to the ISR, ISO, and ITF payments administered by the SAT, each participating company requested its tax returns from the SAT and provided those tax returns to Ernst & Young for review. Ernst & Young then confirmed with the SAT the government's receipt of each of the payments shown on the tax returns of the participating companies. The SAT and MINFIN also provided Ernst & Young with the aggregate amount of all ISR, ISO, and ITF payments received within the mining and hydrocarbon sectors (from both participating and non-participating companies).

The limitations on the SAT's ability to complete disaggregated reporting templates regarding the tax payments it administered were described in the World Bank Report presented to the Commission and were discussed by the Commission at several of its meetings, including the 24 November 2011 and 8 December 2011 meetings. At the December 2011 meeting, the Commission reached a general decision that the aggregated reporting by the SAT combined with separate reporting by each participating company was acceptable. This process was also presented at a 20 December 2012 conference hosted by Ernst & Young. Ultimately, Ernst & Young outlined in the Reconciliation Report the process it used to verify with the SAT the tax payments reported by the participating companies and the Commission approved the report.

With regard to the amounts transferred to CONAP and the CODEDES via the FONPETROL, Ernst & Young obtained independent numbers via the reporting templates completed by MINFIN, CONAP, and the SCEP (on behalf of the CODEDES) and reconciled the corresponding payment streams and receipts to identify

discrepancies. Also, with regard to the royalty amounts paid directly by the companies to the municipalities, Ernst & Young obtained independent numbers via the reporting templates completed by the companies and the municipalities and reconciled the corresponding payment streams to identify discrepancies.

Stakeholder Views

Ernst & Young, the participating companies, and the tax authorities all believe that the Constitution's taxpayer privacy provision, together with the implementing provisions of the revenue laws, prevent the SAT from independently disclosing disaggregated payments made by taxpayers. As a result, the Commission, the participating companies, the SAT, and Ernst & Young worked together to develop an alternative process for verifying government receipts: the participating companies voluntarily requested copies of their own tax returns from the SAT and authorized the release of information directly to Ernst & Young so that Ernst & Young could verify with the SAT the government's receipt of specific payment amounts.

The participating companies, the SAT, and MINFIN, together with Ernst & Young, believe that the mechanisms employed in connection with the Reconciliation Report resulted in the comprehensive disclosure of the payment streams deemed material by the Commission.

Validators' Assessment

With regard to each of the payment streams deemed material by the Commission, the relevant government entities comprehensively disclosed all revenues. In the case of non-tax payments, the disclosures were made in accordance with the agreed reporting templates. In the case of tax payments, the disclosures were made through verification of payments received pursuant to corresponding tax returns. In each case, the government reporting/verification provided for bilateral reconciliation of the payments.

Guatemala is in compliance with Requirement 15.

3.16 EITI Requirement 16

THE MULTISTAKEHOLDER GROUP MUST BE CONTENT THAT THE ORGANIZATION CONTRACTED TO RECONCILE THE COMPANY AND GOVERNMENT FIGURES DID SO SATISFACTORILY.

Progress

Ernst & Young worked collaboratively with the applicable government entities and several of the reporting companies to gather and reconcile the information necessary for the Reconciliation Report.

Ernst & Young presented a preliminary draft of the Reconciliation Report to the Commission and received guidance from the Commission regarding the threshold level of discrepancies to be reconciled.

The Commission received the final Reconciliation Report and officially approved it in May 2013.

Stakeholder Views

With one exception, the stakeholders interviewed expressed overwhelming satisfaction with the work done by Ernst & Young and the comprehensiveness of the Reconciliation Report within the guidelines of the TOR.

One of the reporting companies expressed dissatisfaction with Ernst & Young's handling of their participation in the reporting process. Specifically, (i) the company does not believe that Ernst & Young provided adequate follow-up after the company submitted its reporting template, (ii) the company was not made aware of some of the discrepancies regarding its reported numbers, discrepancies that the company believes it could have explained and corrected, and (iii) the company disagrees with the attribution (to another reporting company) of taxes paid with respect to oil it produced. The company provided a very detailed written presentation to our Validation Team explaining the discrepancies that it believes were not properly addressed in the Reconciliation Report.

Validators' Assessment

The Commission established a materiality threshold for discrepancies that Ernst & Young was instructed to investigate and reconcile. As a result, initial discrepancies identified by Ernst & Young that were not material (as defined by the Commission) were not investigated. It appears that some of the discrepancies identified by the

dissatisfied reporting company did not exceed the materiality threshold, which would explain why Ernst & Young would not have contacted the company regarding those amounts. However, given the small number of companies that participated in the reporting process, Ernst & Young should have been instructed by the Commission and given adequate time to inquire into all discrepancies in this initial Reconciliation Report.

With regard to the taxes that the dissatisfied company believes were misattributed to another reporting company, Ernst & Young noted the disagreement in the Reconciliation Report (albeit tangentially) and concluded that the attribution in the Reconciliation Report was consistent with the applicable contracts and legal requirements.

Although the timelines for issuing the Reconciliation Report were extremely compressed, given the issues raised, it seems that Ernst & Young should have communicated more with the dissatisfied company and could potentially have set out in the Reconciliation Report the company's position regarding attribution of the taxes — even while concluding that the attribution was correct as presented in report. This communication and company buy-in to the process is especially important given the voluntary nature of the company reporting process.

Ultimately, the issues raised by the dissatisfied reporting company do not appear to have materially affected the payments (whether in the aggregate or by payment stream) reported in the Reconciliation Report. The Commission indicated its satisfaction with the Reconciliation Report and the work performed by Ernst & Young when it approved the final report.

Guatemala is in compliance with Requirement 16.

3.17 EITI Requirement 17

THE RECONCILER MUST ENSURE THAT THE EITI REPORT IS COMPREHENSIVE, IDENTIFIES ALL DISCREPANCIES, WHERE POSSIBLE EXPLAINS THOSE DISCREPANCIES, AND WHERE NECESSARY MAKES RECOMMENDATIONS FOR REMEDIAL ACTIONS TO BE TAKEN.

Progress

The Reconciliation Report includes the payments made in 2010 and 2011 by: mining companies that accounted for 96% and 98%, respectively, of the value of Guatemala's total mining production; and oil companies that accounted for 99% and 98%, respectively, of the value of Guatemala's total hydrocarbon production.

The Reconciliation Report discloses 87% and 96%, respectively, of the payment streams deemed material to Guatemala's mining sector for 2010 and 2011 and 96% and 99%, respectively, of the payment streams deemed material to Guatemala's hydrocarbon sector for 2010 and 2011.

The Reconciliation Report sets out the methodology used by Ernst & Young to identify and reconcile discrepancies between the reported payments and the corresponding receipts. With regard to discrepancies in company payments identified in the Reconciliation Report, the vast majority resulted from timing issues (accrual v. cash basis reporting of payments). Investigating only those discrepancies deemed material by the Commission, Ernst & Young was able to reconcile 99% of the initial discrepancies it identified for 2010 and 94% of the initial discrepancies it identified for 2011.

Of the GTQ 1.2 billion in aggregate payments reported by the participating companies (mining and hydrocarbon) for 2010, the aggregate of the unresolved discrepancies shown in the Reconciliation Report for that period is only GTQ 1.2 million (0.1%). Similarly, of the GTQ 1.7 billion in aggregate payments reported for 2011, the aggregate of the unresolved discrepancies for that period is only GTQ 2.0 million (0.1%).

Only GTQ 37,000 (0.03%) and GTQ 44,000 (0.01%), respectively, of the transfers made in 2010 and 2011 pursuant to the FONPETROL (to the CODEDES and CONAP) could not be reconciled by Ernst & Young.

Ernst & Young made the following recommendations regarding the reconciliation process and future reconciliation reports:

- That the Commission promotes the presentation of the non-tax information of the participating companies on a disaggregated basis (by company).

- That the government entities that receive, distribute, and administer the payment streams included in the reconciliation reports implement a regular monitoring system that allows for timely internal reconciliation of the information generated by the various government entities.
- That the Commission incorporates additional companies in the reconciliation process, to include smaller companies in the reconciliation reports.
- That the Commission has more timely communications with key company personnel regarding the objectives and requirements of reporting so that the companies can provide the required information in a more efficient manner.
- That the Commission has more timely communications with the key municipal, CODEDES, and CONAP personnel regarding the objectives and requirements of reporting so that those government entities can provide the required information in a more efficient manner.
- That the Commission considers requesting that information regarding production volumes be included in the reconciliation reports (in addition to production values) as an additional test of materiality.
- That the reconciliation report for 2012 be completed in the second half of 2013 in order to leverage the knowledge gained by all parties in the preparation of the Reconciliation Report.

Stakeholder Views

With the exception of the issues discussed in connection with Requirement 16, the stakeholders interviewed expressed universal satisfaction with the comprehensiveness (in accordance with the TOR) and quality of the Reconciliation Report.

Validators' Assessment

The recommendations made by Ernst & Young can be divided into two categories:

- Recommendations that stem from the fact that the Reconciliation Report was the first attempt at implementing EITI in Guatemala — and as a result, the reporting parties who were not active participants on the Commission were unfamiliar with the process and requirements — and from the fact that the timelines for preparation of the Reconciliation Report were very tight; and

- Recommendations that aim to expand the scope of future reconciliation reports.

The Commission is currently developing plans for the preparation of the 2012 Reconciliation Report, which should take into account the issues regarding timing that have been raised by Ernst & Young, in addition to the suggestions for expanding the scope of disclosures.

None of the recommendations offered by Ernst & Young, however, are remedial in nature, stemming from an inability to reconcile material discrepancies. Because substantially all discrepancies were reconciled, no remedial action is necessary.

In view of the foregoing, Guatemala is in compliance with Requirement 17.

3.18 EITI Requirement 18

THE GOVERNMENT AND MULTI-STAKEHOLDER GROUP MUST ENSURE THAT THE EITI REPORT IS COMPREHENSIBLE AND PUBLICLY ACCESSIBLE IN SUCH A WAY AS TO ENCOURAGE THAT ITS FINDINGS CONTRIBUTE TO PUBLIC DEBATE.

Progress

Guatemala produced its first Reconciliation Report on May 14, 2013. The report covers both 2010 and 2011. The report is clearly written, providing the Commission's agreed definition of material payments and revenues, describing revenue streams, ensuring that company and government disclosures are based on accounts audited to international standards, or with a plan to meet this requirement, and describing the methodology and results of the reconciliation. The Reconciliation Report did not provide a list of all individuals and entities with mining licenses, but the Commission provided a list of active mineral licenses to the Validation Team, included as an appendix to this Validation Report.

The Government and Commission are currently working to address the communication barriers described in Requirements 6 and 8 above through development and implementation of a communication strategy. The strategy, focused on EITI Guatemala and its first Reconciliation Report, includes improvements to the EITI website, dissemination of materials in Spanish and several indigenous languages, workshops, and various information spots on television and radio.

- ***Web-Based Resources, Documents, Videos and Audio Spots***

The full Reconciliation Report is available on the EITI-GUA website at <http://www.mem.gob.gt/wp-content/uploads/2013/03/Informe-de-Conciliación-2010-y-2011-aprobado-por-EITI-GUA-mayo-2013.pdf>, the COPRET website at <http://transparencia.gob.gt/index.php/component/content/category/23-eiti>, and on the EITI International website at <http://eiti.org/files/Guatemala-2010-2011-EITI-Report.pdf>.

The full report consists of 103 pages, including the annexes. While the report is clearly written, its length alone could serve as a deterrent to potential readers. Accordingly, the Commission produced a seven page summary report, available at <http://www.mem.gob.gt/wp-content/uploads/2013/03/Resumen-Ejecutivo-Informe-de-Conciliación-2010-y-2011-EITI-GUA.pdf>. The Commission has undertaken translations of this summary report into three indigenous languages (Mam, Garifuna and Q'eqchi').

The Commission also recently developed a brochure that further condenses the summary report and includes colorful charts and graphs, a short glossary, the names of the National Working Commission members, and contact information for readers seeking additional information. The brochure is available at: <http://www.mem.gob.gt/wp-content/uploads/2013/03/Triptico-resumen-Informe-de-Conciliación-EITI-GUA.pdf>. The Commission has also developed a general brochure on EITI Guatemala, which will be made available in indigenous languages.

The Commission produced an approximately 22 minute documentary summarizing EITI and describing the Reconciliation Report. The video is available on the EITI Guatemala website at <http://www.mem.gob.gt/viceministerio-de-desarrollo-sostenible/eiti/> and on You Tube at <http://www.youtube.com/watch?v=DhZJwCvS6Sk#t=13>.

Three 1-minute audio spots have been produced, one which is specific to the Reconciliation report, available at <https://soundcloud.com/memprensa/spot-de-radio-informe-de>, and the others more generally about EITI Guatemala and transparency, both available at <http://www.mem.gob.gt/viceministerio-de-desarrollo-sostenible/eiti/>.

The general audio spot has been translated into Mam, Garifuna, and Q'eqchi'. The spot says:

The Initiative for the Extractive Industries Transparency, EITI, is an international effort to increase transparency in both directions. The extractive industries payments made to the State and both income tax and non-taxes that the state receives from them. The EITI in Guatemala began its efforts in 2010 with the joint participation of civil society, extractive industries, and the government of the Republic. During the years 2010 and 2011 the extractive industries payments to the state totaled 2961.24 million quetzals in tax and nontax according to the reconciliation report, which compares the numbers and identifies any differences between them. The EITI in Guatemala allows public accountability for the income received from the exploitation of our natural resources, which are public goods granted in concession to generate benefits for all. This is a message from EITI Guatemala: Transparency for progress!

The Commission is also working to create an EITI-GUA website that is easier to access and navigate, under the domain www.eitiguatemala.org.gt. The draft layout for the new website shows clearly marked tabs to allow users to easily find key information. For example, the EITI Reconciliation Report is readily available under "Documents and Information," and a prominent tab labeled "Contact Us" leads to a page enabling the public to contact the Commission.

EITI-GUA recently commissioned a review of the current website to guide future changes. The consultants hired to conduct this review completed a draft report of their findings in October 2013. The draft, titled “Report and Recommendations for Guatemala EITI Web Portal,” provides a review of EITI country websites and recommendations for EITI-GUA, including webpage design and search engine optimization. The report notes that posting official documents on the EITI-GUA website is not a sufficient form of public communication, but the Commission should also publish easily digestible news summaries, FAQs, and “posters” with printed graphics and caricatures. The report further recommends posting EITI-GUA updates on a blog that is linked to EITI social media pages.

Importantly, the report comments that literacy rates¹ are low in Guatemala, among the lowest in Central America, and a very low percentage of the Guatemalan population (16%)² has internet access, while an even lower percentage (13%, approximately two million users) utilize social media outlets like Facebook. The report emphasizes that, although the electronic gap in Guatemala decreases each year, such statistics should be considered in EITI-GUA’s overall communication strategy.

Further work to ensure that the Reconciliation Report is publicly accessible has been accomplished through the meetings, events, and media outreach described below.

- ***Meetings and Events to Publicize the Reconciliation Report***

Pre-Publication Meetings and Events

The World Bank financed a “Program of Direct Support to Civil Society” that the Commission carried out from August 2012 to February 2013. The program included production of printed and audiovisual materials, 3 workshops with different stakeholders in the country, and recommendations for creating a center of EITI-GUA documentation.

In April 2013, the results of the Reconciliation Report of EITI-GUA for 2010 and 2011 were presented publicly to the National Working Commission, representatives of participating companies, as well as State agencies that provided data: 7 mining companies, 2 oil companies, SAT, MEM, MIN FIN, SCEP and CONAP.

¹ According to the U.S. Central Intelligence Agency, 75.9% of the total population of Guatemala is literate (age 15 and over and can read and write), 81.2% of males and 71.1% of females (2011 est.). See <https://www.cia.gov/library/publications/the-world-factbook/geos/gt.html>.

² According to the World Bank, approximately 16% of the Guatemalan population had Internet access in 2012. See <http://data.worldbank.org/indicator/IT.NET.USER.P2>.

In May 2013, a meeting was held in Coban, Alta Verapaz, with the Expanded Group of Civil Society (25 organizations) to validate and approve the Conciliation Report, and to continue with the actions of capacity building and information dissemination. The participants of this meeting made the following observations and recommendations for future reports, which are reprinted in the current Reconciliation Report:

- a. Identify and quantify what benefits or exemptions on tax matters are enjoyed by the Extractive Industries (exemptions for import of machinery, raw materials and other materials provided in the Mining Act under Section 86 and other laws).
- b. Identify municipalities directly receiving royalties and what amount or percentage each receives.
- c. What loopholes or limitations does the law on access to information have, compared to other countries.
- d. Identify the taxation scheme under which Extractive Industries fall (Small Taxpayer general scheme or benefit in accordance with the regime or with the *maquilas*).
- e. It is recommended that company participation be in a disaggregated manner.
- f. Publish a summary of the Reconciliation Report for education, since it will be published and will be released to communities.
- g. Produce an alternative report, including or supplementing the first reconciliation report, which must include information related to development and economic, environmental, social and educational benefits that the extractive industry has generated in its area of influence.

Post-Publication Meetings and Events

The delay in completion of the Reconciliation Report until May 2013 naturally delayed public distribution and activities related to the final report. Given this limited timeline, the Commission was prepared to act upon release of the Report.

On June 12 2013, a contract with a team of communications specialists, AR Productions, was signed and the Communications Strategy and EITI-GUA plan was presented to the Commission, including the Expanded Group of Civil Society.

The objectives of the Communications Strategy are summarized as follows:

1. Communicate to different target groups (stakeholders: government, extractive industries and civil society), the local media and groups interested in the Extractive Industries Transparency Initiative (EITI) and its implementation in Guatemala;
2. Introduce to different target groups (stakeholders: government, extractive industries and civil society) the main findings of the EITI Reconciliation Report;
3. Contribute to social dialogue, exchange of perspectives, public debate and feedback from groups and individuals around the issue of transparency of extractive industries, the resources generated by the state and the use thereof, and the importance of transparency and accountability; and
4. Provide guidelines and technical criteria to ensure continuity of the communications strategy applied to the implementation of the EITI in Guatemala.

The Communications Strategy is focused on three geographic areas: San Marcos, Izabal and Petén. These areas were selected because major extractive activities exist in each region, and the regions represent diverse geographical and cultural aspects of Guatemala. The communications team held several outreach meetings this year focused on civil society in the following regions: two in San Marcos, three in Izabal, and two in Petén, as well as several briefings for government representatives and community development council (CODEDES) representatives.

The civil society meetings were about six hours in duration. The meetings were planned alongside local community representatives to ensure their local and cultural relevance, and began with a culturally respectful ceremonial opening. Generally, the meetings provided an overview of EITI and a review of data presented in the Reconciliation Report. The EITI documentary and video spots were shown and discussed in short segments. Each meeting was designed for approximately 30 participants, who had opportunities to ask questions, make comments and discuss the topics presented in the meeting, including transparency and access to information under EITI. Furthermore, each participant was provided with a copy of the presentation materials and a CD that contains audiovisual materials, the Reconciliation Report and Summary Report, brochures and other EITI documents.

The table below summarizes the locations and level of participation in these civil society meetings.

| Department | Location | Date | Reported Number of |
|------------|----------|------|--------------------|
|------------|----------|------|--------------------|

| | | | Participants |
|-------------------|---------------------------------------|-------------------|---------------------|
| Petén | Santa Elena, Hotel Tikal | 6 August 2013 | 27 |
| Petén | La Libertad, Salón Oxlaju Tzuul | 9 August 2013 | 23 |
| San Marcos | San Miguel Ixtahuacán, Hotel Molina's | 15 August 2013 | 21 |
| San Marcos | San Pedro Sacatepéquez | 16 August 2013 | 34 |
| Izabal | Los Amates | 18 September 2013 | 50 |
| Izabal | El Estor | 19 September 2013 | 14 |
| Izabal | Livingston | 20 September 2013 | 33 |
| TOTAL | | | 202 |

The meetings in Izabal were generally well attended and included representatives of CODEDES, several mayors, and representatives of a range of civil society organizations. The communications team reported that the meeting scheduled in El Estor coincided with a week of various events held by other organizations and local authorities, resulting in lower attendance.

Notably, the first meeting held in the San Marcos department was delayed by a road blockage, which prevented a bus carrying eight participants traveling from Sipakapa from reaching San Miguel to attend the EITI meeting held there. The purpose of this roadblock is unclear, and no such issues were reported at the subsequent meetings in San Marcos. The second meeting in San Marcos was attended by a number of media outlets, including Channel 4, Nuestro Diario, Radio Sonora, Prensa Libre and Siglo XXI, who conducted interviews in the audience.

The Validation Team attended the August 2013 EITI outreach meeting in Petén. The meeting was conducted in Spanish with Q'eqchi' translation, attended by approximately 25 participants representing civil society groups throughout the region. The communication team conducted advanced preparations to invite community representatives to the meeting, and also advertised the meeting and the objectives of EITI through mobile loudspeakers during the meetings, to continue to disseminate information. The team displayed an EITI banner at the event, depicted below. The Validation Team also noted an EITI banner on display in Flores, Petén.



EITI Guatemala Outreach Event in Libertad, in the Department of Petén

The agenda for the meeting the Validation Team observed in Libertad, Petén is provided below.

**WORK AGENDA
INFORMATIONAL MEETINGS EITI - GUA**

| TIME | ACTIVITY | RESPONSIBLE |
|-----------------------|---|---------------------------------|
| 7:00 – 8:00 | Registration of participants, distribution of materials, pre-evaluations, breakfast. | Marvin Guamuch Edwin Gabriel |
| 8:45 – 09:00 | Welcome | Claudia Chiac |
| 09:00 – 09:15 | Presentation of the consulting firm, objectives of the meeting and presentation of the facilitator. | Erlin Ayala |
| 09:15 – 09:35 | Presentation of agenda and participants. | Edwin Gabriel |
| 09:35 – 09:45 | History of the use and exploitation of natural resources - Audiovisual and presentation. Questions and answers. | Edwin Gabriel |
| 09:45 – 10:35 | What is EITI – GUA and what are its goals – Audiovisual and presentation. Question and answers. | Edwin Gabriel |
| 10:35 – 11:25 | What is the Reconciliation Report and what are its objectives, report results, presentation. Questions and answers. | Edwin Gabriel |
| 11:25 – 11:40 | Coffee Break | Marvin Guamuch |
| 11:40 – 12:15 | Does it benefit us to implement EITI in Guatemala, presentation. Questions and answers. | Edwin Gabriel |
| 12:15 – 12:30 | Social audit and exercise on how to conduct a social audit. Questions and answers. | Edwin Gabriel |
| 12:30 – 13:00 | General conclusions | Edwin Gabriel |
| 13:00 – 13:050 | Post-evaluation and presentation of communication tools. | Erlin Ayala |
| 12:50 – 1:00 | Interviews | Erlin Ayala |
| 1:00 – 02:15 | Lunch (Full video presentation to reinforce the themes). | Marvin Guamuch |
| 02:15 – 2:45 | Perdiem distribution to participants. | Erlin Ayala – Marvin Guamuch |

While in each department, the communications team also held briefings with government leaders and, in some cases, CODEDE representatives. At least eight such briefings were held, including a meeting convened by the Governor of the Department of Petén including 13 municipal mayors and a 2-hour meeting convened by the Governor of Izabal including 34 representatives of the Department Technical Unit (UTD), where 156 EITI CDs and 156 EITI DVDs were taken by participants for further distribution. Representatives expressed interest in hosting EITI presentations at future CODEDE meetings in these departments.

- **Media Outreach and Coverage**

The communications strategy has also focused on local media, targeting radio stations during prime time hours, averaging between 4-12 repetitions per day, during key programming (e.g., news). A summary of the radio outreach is provided below.

| Department | Radio Stations | Coverage | Start Date | End Date | Languages | Repetitions by Municipality |
|-------------------|--|---|--------------|--------------|-----------------------------|---|
| Petén | Radio Peten, FM Maya Peten, Sexy FM, Mopan Stereo (Noticiero Enfoque), Guacamaya Radio Shekina (Noticiero Libre Expresión) | North and Central (Santa Elena, San Benito, San Andrés, La Libertad, Santa Ana) | 3 August | 7 September | Spanish | 10 daily, for a total of 360 spots in 36 days |
| Petén | Radio u t'an kaj (la voz del pueblo) | Zona Sur, Poptún, San Luis, Sayakché | 11 August | 10 September | Spanish Q'eqchí Mopán | 8 daily, for a total of 240 spots in 30 days |
| San Marcos | Radio San Miguel San Miguel Ixtahuacán | Zona urbana San Miguel Ixtahuacán | 15 August | 15 September | Spanish | 6 daily, for a total of 180 spots in 30 días |
| San Marcos | Radio Maya FM 94.5 FM | San Marcos | 16 August | 16 September | Spanish | 25 daily, for a total of 750 spots in 30 days |
| Izabal | Círculos del norte, S.A Radio Corporación del Norte | Estor and Los Amates | 19 September | 18 October | Spanish, Q'eqchí | 4 daily, for a total of 108 spots in 27 days |
| Izabal | 107.5 FM | Livingston, | 20 | 19 October | Spanish | 4 daily, for a |

| | | | | | | |
|---------------|---------------------|----------------|--------------|------------|------------------|--|
| | | Río Dulce | September | | | total of 108 spots in 27 days |
| Izabal | Radio FM Amates | Los Amates | 19 September | 18 October | Spanish, Q'eqchí | 4 daily, for a total of 108 spots in 27 days |
| Izabal | La pegajosa 92.7 FM | Puerto Barrios | 19 September | 18 October | Spanish, Q'eqchí | 4 daily, for a total of 108 spots in 27 days |

Additionally, the Communications Strategy focused on television-based outreach, as summarized in the table below:

| Department | Channel | Coverage | Start Date | End Date | Languages | Repetitions |
|-------------------|--------------------------------------|-----------------------------------|-------------------|-----------------|------------------|---|
| Petén | Canal 20 Santa Elena | Santa Elena, San Benito, | 3 August | 7 September | Spanish | 10 daily, for a total of 360 spots in 36 days |
| San Marcos | Canal 4 | Zona Urbana San Marcos | Pending | Pending | Spanish | 43 daily, for a total of 860 spots in 20 days |
| San Marcos | Canal noticias San Miguel Ixtahuacán | Zona urbana San Miguel Ixtahuacán | 15 August | 15 September | Spanish | 6 days, for a total of 180 spots in 30 days |
| Izabal | Izavisión-Notizabal | Puerto Barrios | 17 September | 17 October | Spanish, Q'eqchí | 6 days, for a total of 138 spots in 23 days |
| Izabal | Cable Visión del Norte, Canal 9 | Morales, Izabal | 19 September | 18 October | Spanish, Q'eqchí | 4 days, for a total of 108 spots in 27 days |
| Izabal | Cable la Buga | Toda el área urbana de Livingston | 20 September | 19 October | Spanish, Q'eqchí | 10 days, for a total of 300 spots in 30 days |

Aside from the EITI spots described above, there has been a limited amount of media coverage regarding EITI-GUA and the Reconciliation Report. The existing coverage has focused on the Government of Guatemala's pursuit of EITI Compliance, the EITI-GUA Commission's participation in the May 2013 EITI Global Conference in Sydney, the July 2013 visit of Francisco Paris (EITI Regional Director for Latin

America) to Guatemala, and the Government of Guatemala's August 2013 request for an extension of its Validation deadline.

The communications team, AR Productions, made EITI audiovisual spots, the EITI documentary and some interviews of workshop participants available online via the EITI-GUA website and You Tube. At least one of these interviews, a participant interview from a San Marcos EITI workshop, is now a link on "Mashpedia." Other news clips have been reposted, including a short news clip regarding EITI-GUA posted on the Department of Peten's Facebook page.

- ***Additional Outreach Activity and Events***

Following the Validation Team's field visits, EITI-GUA produced a report on its Communications Strategy. The report, dated October 15, 2013, provides a summary of the work completed in 2013 and recommends a five-year Communications Plan. In addition to summaries of the meetings and activities described above, the report comments that EITI-GUA has produced and distributed 500 CDs containing:

- The EITI Reconciliation Report;
- A general PowerPoint presentation on EITI-GUA;
- A PowerPoint presentation on the Reconciliation Report;
- The Executive Summary of the Reconciliation Report;
- A list of links to EITI audiovisual spots, including spots in Spanish, Garifuna, Q'ueqchi', and Mam and the EITI documentary in Spanish and Garifuna;
- An EITI brochure; and
- A Reconciliation Report brochure.

According to the report, these CDs have been distributed to participants in the EITI meetings with civil society and government described above. The report states that over 100 CDs and DVDs including the Reconciliation Report and communication materials were given to participants of the International Conference on Science, Technology and Innovation on 24 September 2013. The Commission also provided a list of approximately 34 civil society, religious, and educational organizations to which they have delivered or intend to deliver informational CDs. At least a few of these CD deliveries, for which the Commission provided signed delivery confirmation, were to prominent civil society organizations that are generally opposed to mining. The Commission is continuing to develop this list of civil society organizations and distribute the EITI CDs accordingly.

In efforts to further disseminate information, the report states that 50 copies of the Reconciliation Report; 2,000 copies of the Executive Summary of the Reconciliation Report; 2,000 copies of the Reconciliation Report brochure; and 2,000 copies of the EITI-GUA brochure are currently under layout and design.

The Commission also provided the Validation Team with a copy of an academic paper that included and referenced data from the EITI-GUA preliminary Reconciliation Report. This information was presented in a section of the paper that discussed development and the costs of development in Guatemala. The paper was presented at the International Seminar on Development Challenges of Guatemala, 28 – 29 May 2013, at the University of Rafael Landívar, Guatemala.

The Commission recently held a lunch meeting with the new board of the extractive industries guild “GREMIEXT.” The meeting included a presentation that summarized recent EITI developments, including the findings of the preliminary EITI-GUA Validation Report and future actions of the Commission.

The Government is currently negotiating the TOR to hire consultants who will focus on education and outreach programs for civil society groups who currently do not participate in EITI, as well as training activities for the Expanded Civil Society group.

Stakeholder Views

Stakeholders expressed a range of views regarding the accessibility and clarity of the Reconciliation Report. Most stakeholders believed the report to be very complete and comprehensive, but had not read the full report. Many stakeholders had not seen the Reconciliation Report at all, and those who had access to it often were not aware that a summary report was available.

Many stakeholders, including government, industry and civil society representatives, did not know how to access the report, and some had not heard of it. The Validation Team referenced the EITI Guatemala website as a source for accessing the report, and many stakeholders were unfamiliar with the EITI Guatemala website and how to access it.

Those who were familiar with the website have found it to be very useful and can generally locate items like the Reconciliation Report on the website. However, many stakeholders would prefer for the information to be categorized in layers of pages instead of being listed in links that appear all on one page. Stakeholders have also suggested that an independent domain be utilized for the EITI Guatemala website, as has been presented in Commission work plans.

Importantly, the stakeholders widely view the information in the Reconciliation Report to be credible and complete. Many stakeholders commented that they would like to see more information than is currently required, including which local entities receive funds and how these funds are used on local levels. Stakeholders, particularly civil society stakeholders, would like much more information regarding what they can do with the report and how it can best be utilized to benefit their communities and Guatemala.

Some stakeholders found the EITI Guatemala advertisements, presentations and spots to be a little confusing. The primary point of confusion concerns the scope of transparency – the publicity discusses transparency in general without always limiting the scope to transparency of revenue. This is a difficult message for stakeholders who are working for transparency in other areas related to extractive industries (e.g., the licensing process, etc.) and it can lead to dissatisfaction with the initiative when these stakeholders find that the EITI is presently working on a more limited scope of transparency.

Some stakeholders found the public messages produced by EITI Guatemala to be too pro-industry. However, others commented that the campaign should include more information regarding the benefits of extractive industries in Guatemala and address what they believe are misunderstandings about extractive industries.

One representative of the EITI-GUA Commission commented that EITI-GUA civil society representatives had not been included in the 2013 communications strategy, particularly in workshops delivered by the communications consultants. The representative commented that, after some debate on this point, one or more alternate representatives of the EITI Commission did participate in a workshop. Our review of workshop reports confirms such participation. It is unclear whether or not this feeling of exclusion is widely shared by other members of the Commission who represent civil society or any other sector.

Regarding communications in general, a common theme among all stakeholders was that it is unclear how companies, government agencies, and civil society organizations previously unassociated with EITI-GUA can find out more about the EITI and participate more actively. The communication from the Commission to a broader number of companies, and to civil society organizations more involved in extractive industries, appears to be quite weak. Some companies suggested that more regular communication to industry could be helpful to aid them in remaining engaged and interested in the EITI process.

Validators' Assessment

Guatemala is in substantial compliance with this Requirement, but needs to continue focused and ongoing action to remain compliant.

This evaluation takes into consideration that the majority of the publicity activities have been concentrated in the short span of recent months, due to the delayed completion of the Reconciliation Report. However, the Commission did take steps to begin publicizing aspects of the report prior to its publication, gaining stakeholder input and increasing publicity around the Reconciliation Report and related issues.

The Commission responded rapidly to the availability of the report, holding outreach events, particularly focused on civil society, in both rural and urban areas.

Our Validation Team notes that a detailed strategy to communicate the EITI Report and perspectives in areas other than the departments of San Marcos, Izabal and Petén is currently lacking, as are efforts to present the report to significant groups in Guatemala that are opposed to mining. The effort to distribute informational CDs including the Reconciliation Report is useful and should continue, but should be supplemented with opportunities for open discussion of the information presented.

The Validation Team notes that media coverage of the EITI in Guatemala has been rather limited, particularly coverage documenting evidence of genuine public debate around the initiative. However, while observing the communication team's EITI meeting in La Libertad, the Validation Team noted the high quality of discussion among participants, who expressed a range of perspectives and engaged in a useful question and answer session regarding how revenue transparency and the EITI could benefit their communities on a local level. The Commission should work diligently to increase opportunities to generate and broaden such discourse, including groups that are opposed to mining.

The summary report and brochure created this year are very helpful tools for stakeholders, aiding them in understanding the major points of the Reconciliation Report through a more user-friendly format. The Commission also provided translation at stakeholder meetings, produced audio spots in Mam, Garifuna, Mopán, and Q'eqchi', and will soon have a Summary Reconciliation report in at least three of these languages.

The Commission should continue these and other outreach activities as part of an ongoing and sustained communication strategy, based on continued input from civil society representatives, the Expanded Group of Civil Society and other stakeholders, to further advance its efforts and facilitate genuine dialogue among sectors. The availability of a greater number of materials in prominent indigenous languages is essential. The Commission's plan to develop a more independent and user-friendly website for EITI-GUA under the domain www.eitiguatemala.org.gt should be implemented. The Commission should also take into consideration the need to further define "transparency" in publicity materials, to avoid stakeholder confusion about the objectives and roles of the EITI in Guatemala.

3.19 EITI Requirement 19

OIL, GAS AND MINING COMPANIES MUST SUPPORT EITI IMPLEMENTATION.

The current structure of extractive industries in Guatemala is relatively small, as discussed in sections 2.2.2 and 2.3.2 hereof. Those that contributed to the development of the Reconciliation Report are:

| Mining | Oil & Gas |
|---|---|
| Montana Exploradora de Guatemala, S. A. Guatemarmol, S. A. Entre Mares de Guatemala, S. A. Compañía Guatemalteca de Níquel, S. A. Mayaníquel, S. A. Minera San Rafael, S. A. | Empresa Petrolera del Istmo, S. A. Perenco Guatemala Limited |

The validation team was able to meet with representatives from both oil companies and all but one of the mining companies. Schedule conflicts unfortunately prevented the team from meeting personally with Guatemarmol to discuss issues at length, although contact was established via email and telephone.

While there are varying degrees of knowledge and involvement in the EITI process, there is general support for EITI among the companies interviewed. Stakeholders both from within industry and from other sectors noted repeatedly that the Commission should plan for more extensive outreach to companies both currently supporting EITI, and those not yet supporting EITI.

In the current structure of extractive industries in Guatemala, Perenco and Goldcorp dominate production and sales. Perenco and Goldcorp are both members of the Commission and cooperated actively with Ernst & Young on the development of the Reconciliation Report. Perenco representatives have been participating in EITI-GUA since 2011. The company officially declared its public commitment to the initiative in a public signing event in August 2012, represented by its General Manager. This commitment is publicized on the company's website at <http://www.perenco-guatemala.com/about-us/news/single/perenco-guatemala-signs-extractive-industry-transparency-initiative.html>.

Goldcorp has also made a public commitment to EITI, manifested both on its website at <http://www.goldcorp.com/Responsible-Mining/Memberships-and-Commitments/default.aspx#eita> and on the EITI website at <http://eiti.org/supporters/companies/goldcorp>. There does not appear to be a similar public statement on its Guatemalan website, <http://goldcorpguatemala.com/>. On its international website, and the EITI international website, however, Goldcorp manifests its support for EITI.

As the industry expands and more projects become operational, its structure will no doubt transition to one with greater complexity. The EITI process will need to adapt to reflect the entry of more companies in production.

Our Validation Team distributed the EITI Company Self-Assessment form to each participating company. The self-assessment form contains the following questions:

| |
|---|
| <p>1. Has the company made public statements in support of the EITI process in this country?</p> <p>2. Has the company committed to support and cooperate with implementation of the Country EITI Work Plan (as agreed by the multi-stakeholder group), including abiding by government EITI-related directives (e.g.laws and MoUs) and, where appropriate, meeting with stakeholders?</p> <p>3. Have all material payments been disclosed to the organisation contracted to reconcile figures and produce the EITI Report as per agreed EITI reporting templates and pursuant to agreed timelines?</p> <p>4. Was the data that was submitted to the organisation contracted to reconcile figures and produce the EITI Report taken from accounts independently audited to international standards?</p> <p>5. Has the company responded to queries from the organisation contracted to reconcile figures and produce the EITI Report to assist in the reconciliation of country payments with government receipts in accordance with EITI reporting templates?</p> <p><i>Narrative Opinions</i> If any indicators above are marked “No”, please provide an explanation:</p> <p>Any other comments:</p> |
|---|

Responses to the Self-Assessment form are summarized in the chart below. These forms show that approximately 33% of respondents have not made a public statement in support of the EITI Guatemala, while 66% of the companies have made such a statement.

Approximately 83% (5 of the 6 respondents) have agreed to support and implement the EITI-GUA Work Plan.

All respondents indicate that they have disclosed all material payments to the organization contracted to reconcile figures and produce in the EITI Reconciliation Report, as per agreed EITI reporting templates and pursuant to agreed timelines.

All respondents indicate that data that was submitted to the organization contracted to reconcile figures and produce the EITI Report was taken from accounts independently audited to international standards.

Finally, all respondents indicate that they responded to queries from the organization contracted to reconcile figures and produce the EITI Report to assist in the reconciliation of country payments with government receipts in accordance with EITI reporting templates.

| COMPANY | RESPONSES TO QUESTIONS ON SELF-ASSESSMENT FORMS | | | | | COMMENTS |
|--|---|---|---|---|---|--|
| | 1 | 2 | 3 | 4 | 5 | |
| Compañía Guatemalteca de Níquel, CGN | X | x | ✓ | ✓ | ✓ | 1. The company has not make any public statement regarding the EITI in an independent manner, as it considers that such initiative is of the Industry as a whole. 2. Has not done it yet in an individual manner, but did so as Industry. |
| Empresa Petrolera del Itsmo, S.A. | X | ✓ | ✓ | ✓ | ✓ | The auditing company did not comply with the established conciliation methodology in the conciliation. There were no meetings with us neither to understand the numbers nor to give the corresponding explanations. Despite there was a written response, and in theory they were satisfied with it, the report appeared with numbers of those already answered not yet conciliated, and even with numbers that were never consulted. |
| Guatemarmol, S.A. | X | ✓ | ✓ | ✓ | ✓ | There has not been opportunity for it. |
| Perenco Guatemala Limited | ✓ | ✓ | ✓ | ✓ | ✓ | N/A |
| Mayaniquel, S.A. | X | ✓ | ✓ | ✓ | ✓ | As industry members, for the moment. |
| Montana Exploradora de Guatemala, S.A. | ✓ | ✓ | ✓ | ✓ | ✓ | N/A |

3.20 EITI Requirement 20

THE GOVERNMENT AND MULTI-STAKEHOLDER GROUP MUST TAKE STEPS TO ACT ON LESSONS LEARNT, ADDRESS DISCREPANCIES AND ENSURE THAT EITI IMPLEMENTATION IS SUSTAINABLE. IMPLEMENTING COUNTRIES ARE REQUIRED TO SUBMIT VALIDATION REPORTS IN ACCORDANCE WITH THE DEADLINES ESTABLISHED BY THE BOARD.

Progress

The purpose of this requirement is to reinforce the value of the EITI *process*. The multi-stakeholder group should evaluate the EITI process and ensure that the EITI contributes to wider public debate.

Process of Addressing Discrepancies in EITI Reconciliation Report

In order to address discrepancies found during the EITI Reconciliation process, Ernst & Young met with the Commission which agreed that Ernst & Young would check all the differences greater than either GTQ 1 million or 20% of the reconciled payment, and with regard to differences in the distribution to the CODEDES, check all discrepancies that have arisen.

Ernst & Young communicated with the leadership of participating companies to discuss the identified differences and explanations. Ernst & Young also communicated with government leadership and CODEDES to discuss the identified differences and hear explanations. They also reviewed additional documents to check the tax and nontax payments made by companies, other documents related to revenue receipts of government entities.

In concluding the Reconciliation Report, Ernst & Young made the following recommendations aimed at improving the performance of future Reconciliation Reports:

- That the Commission promote the presentation of non-tax information of the companies participating in the initiative in disaggregated form;
- That the government entities that receive payments distribute and/or administer the payments made by extractive industry companies, and implement a regular monitoring system that reconciles in a timely manner the information generated by the various government entities;
- That the Commission incorporates additional companies in the reconciliation process;
- That the Commission disseminate the objectives and requirements of the

reconciliation process for companies in an improved and more timely manner, properly providing the required information needed for the reconciliation report to key personnel within companies, including the General Counsel, Chief of Finance, Accountant and Head of the Tax Department;

- That the Commission timely disseminate the best information to key personnel of municipalities, CODEDES, and CONAP in order to provide appropriate and timely information necessary for the preparation of a reconciliation report;
- To consider the allocation and use of the amounts recovered in the country's production, in order to better meet the long-term goals of the EITI; and
- That during the second half of 2013, another reconciliation be performed between tax and nontax payments made by participating companies and reported earnings from these entities as received by the Government for the period 2012. This would leverage the knowledge and resources acquired during the development of the Reconciliation Report.

The Expanded Civil Society Group also met in Coban to discuss the Reconciliation Report and in a letter to the National Working Committee dated May 14, 2013 made the following recommendations for future reports:

- Identify and quantify what benefits or exemptions on tax matters are enjoyed by the Extractive Industries (exemptions for import of machinery, raw materials and other materials provided in the Mining Act under Section 86 and other laws);
- Identify municipalities directly receiving royalties and what amount or percentage each receives;
- Identify the loopholes or limitations of the law on access to information, compared to other countries;
- Identify the taxation scheme under which Extractive Industries fall (Small Taxpayer general scheme or benefit in accordance with the regime or with the *maquilas*);
- That company participation be presented in a disaggregated manner;
- Publish a summary of the Reconciliation Report for education and dissemination to communities and the public; and
- Produce an alternative report, including or supplementing the first

reconciliation report, which must include information related to development and economic, environmental, social and educational benefits that the extractive industry has generated in its area of influence.

Review Mechanism

The different sectors represented in the Commission reviewed the Reconciliation Report. The Expanded Group of Civil Society separately held a meeting in May 2013 where they reviewed the report in detail and later approved, with recommendations. The report was discussed, reviewed, and approved by the Commission in the same month.

The meetings of the Commission are the principal venue and opportunity for the members to review EITI-GUA implementation. Otherwise, there does not appear to be any evidence that the EITI-GUA process has incorporated regular review mechanisms to evaluate and facilitate the participation of all stakeholders. Neither is there evidence of ways that stakeholders outside of the Commission can contribute to a review of EITI-GUA implementation.

Such review processes should be discussed, developed, and implemented to ensure that Commission continues to improve the EITI process in Guatemala in a way that reflects and responds to stakeholder input.

EITI-GUA is currently completing this first Validation process which requires the Commission to review and comment on the Preliminary Validation Report. In addition to providing comments, the Commission submitted additional detailed plans for 2013, provided in Requirement 5. The Validation process will provide further feedback that should be considered by stakeholders to discuss the progress and future of EITI-GUA.

Validators' Assessment

The time between Guatemala's completion of its first Reconciliation Report covering 2010-2011 and the beginning of the Validation process was very short. The process for undertaking the next reconciliation report covering 2012 has yet to begin. The Validation team thus has little to review to determine the Commission's progress responding to the recommendations in the first report, with the exception of the additional 2013 plans provided by the Commission, noted above. We do note, however, the need to address the legal composition of the Commission and to continue and deepen the communications EITI-GUA communications strategy with all stakeholders, but particularly with civil society and also with companies. The Commission should follow through with its additional plans for 2013; incorporate feedback from the Validation Report into its 2014 Work Plan and long-term strategic planning; and focus on increasing participation and on building genuine ongoing relationships with civil society, companies, and other stakeholders.

4. Summary of Evaluation

| EITI REQUIREMENT | | Met or Unmet |
|------------------|--|--------------|
| 1 | The government is required to issue an unequivocal public statement of its intention to implement the EITI. | ✓ |
| 2 | The government is required to commit to work with civil society and companies on implementation of the EITI. | ✓ |
| 3 | The government is required to appoint a senior individual to lead on the implementation of the EITI. | ✓ |
| 4 | The government is required to establish a multi-stakeholder group to oversee the implementation of the EITI. | ✓ |
| 5 | The multi-stakeholder group, in consultation with key EITI stakeholders, should agree and publish a fully costed work plan, containing measurable targets and a timetable for implementation and incorporating an assessment of capacity constraints. | ✓ |
| 6 | The government is required to ensure that civil society is fully, independently, actively and effectively engaged in the process. | ✗ |
| 7 | The government is required to engage companies in the implementation of the EITI. | ✓ |
| 8 | The government is required to remove obstacles to the implementation of the EITI. | ✗ |
| 9 | The multi-stakeholder group is required to agree a definition of materiality and the reporting templates. | ✓ |
| 10 | The organisation appointed to produce the EITI reconciliation report must be perceived by the multi-stakeholder group as credible, trustworthy and technically competent. | ✓ |
| 11 | The government is required to ensure that all relevant companies and government entities report. | ✓ |
| 12 | The government is required to ensure that company reports are based on accounts audited to international standards. | ✓ |
| 13 | The government is required to ensure that government reports are based on accounts audited to international standards. | ✓ |
| 14 | Companies comprehensively disclose all material payments in accordance with the agreed reporting templates. | ✓ |
| 15 | Government agencies comprehensively disclose all material revenues in accordance with the agreed reporting templates. | ✓ |
| 16 | The multi-stakeholder group must be content that the organisation contracted to reconcile the company and government figures did so satisfactorily. | ✓ |
| 17 | The reconciler must ensure that the EITI report is comprehensive, identifies all discrepancies, where possible explains those discrepancies, and where necessary makes recommendations for remedial actions to be taken. | ✓ |
| 18 | The government and multi-stakeholder group must ensure that the EITI report is comprehensible and publicly accessible in such a way as to encourage that its findings contribute to public debate. | ✓ |
| 19 | Oil, gas and mining companies must support EITI implementation. | NA |
| 20 | The government and multi-stakeholder group must take steps to act on lessons learnt, address discrepancies and ensure that EITI implementation is sustainable. Implementing countries are required to submit validation reports in accordance with the deadlines established by the board. | NA |

5. Progress Against the Work Plan

Narrative Summary

In September 2012, the Commission presented a revised Work Plan for the period 2011 – 2013. The 2012 – 2013 Work Plan, approved by all members of the National Working Commission, is funded by a US\$300,000 grant from the World Bank, as administrator for the EITI Multi-Donor Fund, and a budgeted US\$150,000 from the Government of Guatemala. Guatemala is also working to secure additional funds. The plan includes implementation of a training/capacity building plan; preparation of the Reconciliation Report, including a scoping exercise; a communication strategy, including dissemination of the Reconciliation Report to urban and rural sectors; and completion of the Validation Report. The plan also includes outreach to universities and academic institutions.

The Work Plan timeline was revised to respond to a number of delays resulting from conflict in the extractive industry sectors; legal and operational difficulties in processes of selection and recruitment of consultants for the Reconciliation and Validation Reports; and time needed to build capacity within the multi-stakeholder group. The original legal form of the multi-stakeholder group, first established as a Secretariat, was found by Guatemala's Supreme Court to be unconstitutional and was subsequently declared void. The group then re-established itself as the National Working Commission. Due to these challenges, the process of establishing the multi-stakeholder group alone took an unexpected 18 months.

Guatemala also experienced an earthquake last year that affected the country's western region, resulting in a State of Emergency from November 2012 – June 2013, and consuming the energy and attention of the government and other stakeholders in the Commission.

General issues with trust resulting from the sociopolitical context of Guatemala's recovery from 36 years of internal armed conflict were also cited as a cause for delays, particularly as conflicts continue over extractive activities and a post-conflict environment leaves the trustworthiness and credibility of participatory processes in question.

Regardless, the Commission has made progress towards completing the actions and objectives listed in its Work Plan, including:

- Surpassing a number of legal and political obstacles to achieve formation of a multi-stakeholder group;
- Securing a line item for the EITI in the National Budget;
- Completing over 15 multi-stakeholder sessions to define actions regarding implementation of the EITI in a participatory manner;

- Planning and completion of the country's first Reconciliation Report, covering the years 2010 and 2011; taking into consideration stakeholder feedback; and including data from 7 mining companies, 2 oil companies, SAT, MEM, MIN FIN, SCEP and CONAP;
- Conducting a series of general outreach events and workshops for civil society and indigenous communities in 2012 and 2013;
- Conducting a series of outreach events to government leaders and civil society in 2013, including in the departments of San Marcos, Izabal and Petén, focused on data from the Reconciliation Report, including a Summary Report and audiovisuals, and providing opportunities for participants to discuss EITI and the Reconciliation Report;
- Participation in the Sixth Global Conference and National EXPO of the EITI in Sydney, Australia, with substantial participation from Guatemala's National Working Commission; and
- Facilitating Guatemala's first EITI Validation with the Commission's selected Validation Team.

Guatemala's Commission continues to work to make EITI materials and data from the Reconciliation Report available in prominent indigenous languages. Increasing such actions will be necessary to more effectively disseminate information presented in the Reconciliation Report and to bring EITI into public debate. The Commission is now working towards increasing outreach and publicity, particularly to civil society, but also to universities and academic institutions. The Commission is also dedicated to completing and responding to recommendations presented in its first Validation Report.

A summary table of progress against the Work Plan is attached as Annex B.

Following review of the preliminary Validation Report, the Commission shared with our team additional plans that respond to recommendations therein. These are summarized under Requirement 5.

6. Summary of Stakeholder Engagement

6.1 Engagement by Civil Society

Civil society organizations are very diverse and dynamic in Guatemala. These include organizations that have supported EITI-GUA since the country's candidacy, those that were previously more active but are presently less or not engaged, those that are not involved but are neutral, and those that are opposed to EITI-GUA.

For those civil society organizations that have been involved or supportive of EITI, numerous meetings and workshops have been held in the last two and a half years to increase awareness of EITI. These activities have typically been led by the government or the Commission, with the supported of international organizations.

Supportive organizations, including the civil society representatives on the Commission, believe that the EITI reports can help improve transparency in the extractives sector and provide a tool for tracking how revenue is used and for holding local governments accountable. They see the EITI process as providing opportunities to engage in dialogue with other sectors, opportunities which are few and far between given the history of conflict in the country and the often contentious nature of discussion surrounding extractive industries.

Our Validation Team also met with several representatives of organizations that are not involved in EITI-GUA or are opposed to it. For these groups, EITI is fatally inadequate as it does not address fundamental issues, foremost among them: corruption in the licensing process, human rights issues, and environmental impacts. While some criticize the civil society representatives in the Commission as being unrepresentative, most of the criticism is directed at the government which these groups consider lacking in credibility to lead transparency initiatives like EITI.

There is general agreement among the civil society representatives on the Commission that the Executive Coordinator and Technical Secretariat are working hard to guide the work of the Commission, work with different stakeholders, and improve EITI implementation. Stakeholders from all sectors also agree that broadening the Commission's outreach to civil society is and should be on-going and sustained.

An updated stakeholder assessment of civil society organizations has been suggested. Outreach to groups not currently active is also recommended, including those associated with the Catholic Church, with women's rights, and with youth concerns.

6.2 Engagement by Companies

The structure of the extractive industries in Guatemala is fairly simple at the present time particularly when compared with Latin American neighbors like Peru and

Chile. The two leading mineral and oil producers in Guatemala are both active and public supporters of EITI-GUA, with representatives on the Commission. This is particularly helpful as the government and the Commission seek to engage more companies in the process.

While eight companies participated in the development of the first Reconciliation Report, there are more companies that have not. Many of these are small and medium sized companies. The outreach to companies regarding EITI appears to have been fairly limited - there has been little evidence to show sustained and meaningful outreach to all companies, informing them of their central role in the EITI process and the benefits of participation. Moreover, there has been little evidence to show that capacity constraints of companies have been analyzed and addressed through a comprehensive and strategic program of action. Recent efforts of the Government to meet with companies to confirm their commitment and expand their participation are positive developments.

A sub-sector of the extractive industries that does not appear to have received a great deal of focus has to do with small-scale mining which is often carried out illegally. This sector merits further study and focus in the context of EITI.

The extractives sector in Guatemala is expanding, with a number of companies entering the production phase and other projects being made available for bidding. An increase in companies in production and in new entrants in both mining and oil and gas will present tremendous challenges and opportunities. A principal challenge is the institutionalization of EITI requirements among all companies, particularly the obligation to report pursuant to EITI standards and rules. At present, such reporting is all voluntary. The government and the Commission should lead the formulation of collaborative approaches to ensure a stable framework for EITI reporting and participation by companies. These may include changes in legislation, new legislation, additional requirements or obligations in licenses, or contractual provisions.

7. Impacts of EITI Based on Discussions with Stakeholders

Stakeholders generally agree that the challenges of implementing EITI in Guatemala are very difficult. However, those involved in the Commission either as members or observers generally believe that the achievements of EITI-GUA so far are significant, and even constitute a breakthrough in improving transparency.

A wide range of stakeholders we consulted had positive feedback about the Reconciliation Report, and a number of them noted that it was the first time that this kind of information was available in the country.

Civil society representatives on the Commission and other supportive organizations expressed that the Reconciliation Report can be an important tool for monitoring how revenue is used and for holding local governments accountable. They emphasized the need for capacity building initiatives focused on helping communities understand and use the report.

For a number of government entities interviewed, EITI-GUA represents a major step forward in showing that Guatemala is serious about confronting corruption issues. It is one way for the government to gain more credibility, especially with respect to international investors.

For donor organizations consulted, the country's participation in EITI is extremely important and can demonstrate the benefits of multi-sectoral engagement and revenue transparency. It can also facilitate continued international support for this initiative.

Some civil society organizations are concerned that the government and companies will simply use EITI to claim that there is transparency in the extractives sector in general. They believe that the government has little to no credibility on anti-corruption and transparency initiatives, thus, some feel that EITI is a distraction from more fundamental issues having to do with licensing, equity in contracts, community consultation, human rights issues, and environmental impacts.

Other stakeholders conveyed that despite their concern about flaws or corruption in permitting issues, EITI holds tremendous potential especially if the extractives sector expands. There are concerns about Guatemala's readiness for an influx of revenue from mining or oil production, and an initiative like EITI that can help monitor this revenue will be critical.

Finally, most stakeholders expressed support for any initiative that can bring together different sectors of society – particularly those historically opposed to one another – to help engage in genuine dialogue and work together toward shared goals. Despite the wide range of perspective about EITI, stakeholders also agree that the initiative has encouraged public debate.

8. Sustainability of the EITI Process Based on Discussions with Stakeholders

The different members of the Commission hold the opinion that EITI is and can be sustainable through a combination of factors. The initiative will need resources to continue, and while the country should continue to seek support from international organizations, some believe the government should institutionalize EITI in budgetary terms. The government should then include regular funding for EITI implementation in the national budget, thus ensuring its financial sustainability.

Other stakeholders who have been supporting EITI since the country's candidacy expressed that they would not have imagined that the country could already have accomplished the milestones it has to date, given different legal, political, financial, and capacity barriers. This is, therefore, reason for them to believe that the initiative can continue and that the Commission does have the will and commitment to implement EITI going forward.

Others emphasized that the future of EITI will depend largely on whether other fundamental issues associated with extractive industries are addressed. For example, community consultation issues and fiscal reforms in the sector cannot be ignored.

The fact that the entire EITI implementation in the country currently depends on the voluntary compliance and good will of a very small number of participating companies raises serious concerns about the long-term sustainability of the initiative, especially because the number of producing companies is poised to expand as the industry grows.

Some industry stakeholders have noted serious concerns regarding the sustainability of EITI should a moratorium on mining licenses be imposed. They believe this would result in a high level of distrust between industry leaders and the government, which will lead to some loss of confidence in the value of EITI-GUA.

Many industry and government stakeholders noted that the EITI will be sustainable in Guatemala if it results in a better international reputation and climate for foreign investment in Guatemala. These stakeholders view EITI as a sign of transparency and an opportunity to promote Guatemala's reputation among potential investors.

Government stakeholders have noted that stakeholder participation must increase to ensure the sustainability of EITI. Stakeholders in all sectors indicated that the current weaknesses in the legal framework for the Commission are an obstacle to increased participation: there should be increased and more transparent stakeholder representation and all representatives on the commission (government,

industry and civil society) must be able to vote. In this regard, the Commission reports that it aims to revise the legal framework and address these obstacles by the end of 2013.

Stakeholders in all sectors also commented that participation would increase if the Commission worked to address misconceptions, particularly among civil society, regarding the purpose of EITI and the limitations of the issues that EITI can realistically address. The use of “transparency” in EITI communications thus should be qualified as transparency of revenue. Many stakeholders recommend that participation will improve by ensuring that the capacity building and communications functions of EITI are fully-funded and ongoing functions of EITI Guatemala, and are delivered not only in Spanish but in prominent indigenous languages.

Stakeholders also commented that strong industry and civil society participation, and accessibility of all EITI documents in a widely publicized EITI website, are keys to ensuring that EITI will survive in the transition from one government to the next, a very important factor for the sustainability of EITI in Guatemala.

The government has addressed many obstacles to EITI implementation in Guatemala, including financial barriers. Despite the delays that affected EITI-GUA implementation in 2012, the Commission has been able to undertake a significant number of activities and meet several critical milestones through the day-to-day leadership of the Executive Coordinator and the Technical Secretariat.

The Commission must continue to work on implementing its communication plan, and ensure that communication and increased participation of civil society and industry stakeholders is an ongoing and fully funded piece of the Commission’s strategy.

The government must continue working to address current barriers in disclosure of tax information, and establish a framework that provides greater assurance that companies will participate in EITI. Furthermore, the government must focus on developing a legal mechanism that provides for stable and secure membership in the Commission, and provides non-government members with voting rights.

9. Actions and Innovation of the MSG Going Further than the EITI Requirements

The work of the Commission has largely focused on meeting Work Plan targets and deadlines under the EITI framework, for example, for the reconciliation report and the validation process.

However, there are a number of actions taken by the Commission which go beyond the minimum expectations of the EITI requirements:

- The Commission supported a separate, dedicated meeting of the Expanded Civil Society Group to review the Reconciliation Report. The group endorsed the report. This was prior to, and ultimately supportive of, the Commission's review and approval. Moreover, the group's recommendations were included in the final Reconciliation Report.
- The Commission's membership includes not just one, but several senior individuals at the ministerial level. These include MEM, MINFIN, and MARN. While this might sometimes present challenges for inter-agency coordination, it does convey a significant level of government commitment.
- The on-going Communications Strategy employs a multi-media approach, involving a documentary, YouTube videos, audio spots in four indigenous languages, audio spots played on mobile loudspeakers, radio and television spots, and meetings with open forums. While it is not possible to evaluate the long-term impacts of these efforts, this appears to be an innovative approach to information dissemination for communities and nationally.

10. Conclusions and Recommendations

10.1 General Assessment of EITI Implementation in Guatemala

The Commission was granted an extension by the EITI Board to complete the validation process, in view of the unforeseen delays due to the legal nullification of the regulation creating the governmental entity previously designated to lead the implementation of EITI-GUA.

Despite these delays and the transition between administrations from 2011 to 2012, Guatemala has made significant progress in implementing the EITI in a relatively short period of time. Notable developments include the formal constitution of the Commission, representation of civil society organizations and companies on the Commission; updating of the EITI-GUA Work Plan covering 2011-2013; and the completion of the Reconciliation Report covering 2010 and 2011.

Stakeholders on the Commission have invested a great deal of their time and resources on supporting the process and objectives of EITI. They see it as an important way to improve transparency and accountability in government and in the extractives sector. Equally important, they view it as an opportunity for different sectors to find avenues for dialogue in an environment more commonly characterized by conflict.

While Guatemala has made meaningful progress in the implementation of EITI, a number of issues need to be addressed to facilitate even greater compliance with EITI requirements. The analysis of the 20 different requirements addresses these issues in detail and contains numerous recommendations. Of particular note should be requirements 6 and 8. Compliance with many other requirements, such as requirement 18, also needs strengthening.

With respect to requirements 6 and 8, it is important that the government demonstrate its seriousness in providing for a secure and stable framework for the multi-stakeholder Commission which fully recognizes civil society and companies as members equal to government, and with equal importance given to their participation through, for example, voting rights.

While the Government took the significant step of providing a legal basis for the Commission through Government Resolution 96-2012, it has not yet addressed the fact that this very same framework regards non-government representatives only as “guests,” prohibited from having voting rights or a say in decision-making. The internal rules of the Commission granting them these rights are inconsistent with the terms of the decree. Legal challenges that will affect and possibly derail the work of EITI-GUA are real possibilities, given that the implementation of EITI-GUA was already delayed due to a legal challenge to SECYT in 2012, and that a highly contentious and volatile atmosphere pervades issues surrounding extractive industries.

Our Validation Team understands that the Government is currently working to amend the decree to provide a stable framework for the Commission. We also understand from the Commission that plans will be strengthened to engage civil society and companies. If Government is able to accomplish these and also remove barriers to the disclosure of tax-related information, these will facilitate more comprehensive compliance with EITI requirements.

10.2 Lessons Learned from the Implementation Process

1. Delays in implementation resulted in a shorter period between the approval of the Reconciliation Report and the start of the validation process. This is not ideal, as one area that needs to be validated is the public accessibility of the report. It is also important that sufficient time be provided to stakeholders to address and implement measures to respond to the recommendations in the reconciliation report.
2. Sufficient time should be allocated for procurement processes, especially in this context where several government agencies are involved. In the case of the procurement process for the validation services, this was initially started by MEM, and then restarted by MINFIN a month later. That delay, together with the time necessary for a normal contracting process, resulted in an even more abbreviated time frame for the validation process.
3. In the course of the reporting process, one company identified discrepancies but because these amounts did not exceed the materiality threshold set by the Commission, the reconciler did not contact the company. The company also believes certain taxes were misattributed. The reconciler indirectly noted this in the Reconciliation Report but concluded otherwise. The company is thus dissatisfied with the process. Given the small number of reporting companies, the voluntary nature of reporting at this stage, and the importance of company support, the reconciler should have been instructed by the Commission to communicate with the company with respect to these issues.

10.3 Recommendations

To strengthen the implementation of EITI in Guatemala and help move the country toward compliance, the major recommendations are as follows:

Stability of Commission; Full Participation of Civil Society and Companies

1. For the long-term stability of the Commission and to ensure the full and equal participation of civil society and company representatives, legal measures should be taken to address the inadequacies of Government Resolution 96-2012. The framework for the Commission should ensure the full and equal participation of civil society and company representatives in the actions and decisions taken by the

Commission. It should ideally not have a fixed or limited term, and certainly not one that coincides with an election year. Our Validation Team understands that the Government is planning to amend the legal framework this year to address these different issues.

Work Plan; Capacity Building

2. The Commission should continue working toward a more fully funded work plan and endeavor to secure a higher level of domestic funding. It should also be developing the work plan for the next strategic period, to ensure the sustainability of the process. This should continue and build on activities and accomplishments, and should include budget estimates and funding sources. In this regard, the Commission has informed our team that the Government is in the process of allocating funds for EITI implementation, and is also discussing another grant from the World Bank.
3. The Commission should build into its work plan the development of a transition plan to help the Commission avoid delays and continue to make progress during changes in administration. In this regard, the Commission has informed our team that they publicly announced their intention to develop a transition plan to provide continuity and stability for the EITI-GUA process.
4. The Commission should also include a thorough assessment of capacity constraints of companies and the government in the next work plan. It should consider conducting an updated assessment of capacity constraints for civil society.
5. The Commission should consider conducting an updated and comprehensive assessment of civil society organizations that would help deepen the outreach process.
6. On the basis of updated capacity constraints and stakeholder assessments, the Commission can better plan a long-term strategy of training, workshops, and other capacity building initiatives for the different stakeholders.

Reporting Process

7. The taxpayer privacy provisions of the constitution and applicable revenue laws are considered as limits on the ability to require all companies to complete EITI reporting templates, thus, the Commission should develop a plan, timeline, and framework to eliminate these legal impediments. This framework should not only encourage but require participation of and reporting by companies.
8. As the extractives sector expands and more companies begin making payments, the Commission will need to modify the reporting process. Putting into place payment-level materiality thresholds and MOUs or other requirements for company participation and working to increase the degree of actual disaggregation are steps

that can be taken now (in developing the plan for the 2012 reconciliation report) that will improve the sustainability of the process in the future.

9. The Commission depended heavily on the reporting companies to identify payments that they make to government entities. The Commission should consider conducting independent surveys of municipal and departmental officials, local civil society organizations, and NGOs/development organizations to identify unreported projects (including in-kind, infrastructure-related, and social payments) that may be funded by extractive industry companies and the non-participating companies that may be making such payments.

Outreach, Communication, and Information Dissemination

10. A sustained program to raise awareness and disseminate information on a broader level to civil society organizations will be necessary for long-term effectiveness of the EITI process. This should include outreach to women and women's groups, to youth groups, and to a broader group of organizations, even those historically opposed to extractive industries. More outreach, consideration, and inclusion of these sectors will contribute to the public debate.
11. The Commission should continue and strengthen its current communication strategy. The availability of a greater number of materials in prominent indigenous languages is essential. The Commission should also take into consideration the need to further define "transparency" in publicity materials, to avoid stakeholder confusion about the objectives and roles of the EITI.
12. The Commission should lead in the design and development of an outreach program specifically for companies, to increase participation and support for the EITI and the reconciliation process for 2012.

It is important for the public to recognize that EITI focuses primarily on revenue transparency through the reconciliation of payments and receipts, and on the multi-stakeholder process. Revenue transparency does not necessarily equate to transparency with respect to other critical issues relating to licensing, contracts, consultation, project monitoring, and allocation of revenues.

For many stakeholders, however, revenue transparency is difficult, if not impossible, to separate from transparency in other stages or aspects of the extractive sector. For EITI to be relevant and even more effective for a wider range of stakeholders, it is important to support legal and fiscal reforms that can constructively address contentious fiscal, environmental, and social issues.

The Commission should consider whether there are ways it can support such constructive reforms. It should consider adopting various approaches recommended under the 2013 EITI Standard, such as encouraging that oil and mining contracts be made public.

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