

Extractive Industries Transparency Initiative (EITI)

Validation of Timor Leste

Assessment by the EITI International Secretariat

6 February 2018

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1. Summary

Timor-Leste’s second Validation commenced on 11 January 2018. The EITI International Secretariat assessed the progress made in addressing the seven corrective actions established by the EITI Board following Timor Leste’s first Validation in 2016¹. The seven corrective actions relate to:

1. Industry engagement (requirement 1.2);
2. Civil society engagement (requirement 1.3);
3. MSG governance (requirement 1.4);
4. Disaggregation (requirement 4.7);
5. Data quality (requirement 4.9);
6. Mandatory social expenditures (requirement 6.1); and
7. Outcomes and impact of implementation (requirement 7.4).

The Secretariat’s assessment is that Timor Leste has addressed all of the corrective actions and has made “satisfactory progress” on the corresponding requirements. The draft assessment was sent to the Timor Leste Multi-Stakeholder Working Group (MSWG) on 16 January. On 6 February, the TL-EITI National Coordinator Elda Guterres da Silva advised the Secretariat that the MSWG had reviewed the document, had no comments and agreed with the assessment. The assessment was thus finalised for consideration by the EITI Board.

2. Background

Timor-Leste was accepted as an EITI Candidate in February 2008 and was designated as compliant with the EITI Rules in July 2010. The first Validation of Timor-Leste commenced on 1 July 2016. On 11 January 2017, the EITI Board found that Timor-Leste had made meaningful progress in implementing the 2016 EITI Standard. Seven corrective actions were identified by the Board, pertaining to the following requirements: Industry engagement (#1.2), Civil society engagement (#1.3), MSG governance (#1.4), Disaggregation (#4.7), Data quality (#4.9), Mandatory social expenditures (#6.1), and Outcomes and

¹ <https://eiti.org/validation/timor-leste/2016>

impact of implementation (#7.4). The Board asked Timor-Leste to address these corrective actions to be assessed in a second Validation commencing on 11 January 2018.

Timor-Leste has undertaken a number of activities to address the corrective actions:

- The Timor-Leste MSWG was given until 11 April 2017 to submit an action to plan to address the corrective actions relating to industry engagement and civil society engagement. The action plans were submitted on 10 April 2017.
- On 24 - 25 April, the MSWG held a workshop facilitated by the International Secretariat on the next steps that should be taken to address the corrective actions.
- The MSWG extensively discussed the corrective actions in subsequent meetings. As discussed below, all constituencies took part in addressing the corrective actions.
- On 1 March 2017, Timor-Leste was suspended by the EITI Board due to its failure to publish an EITI Report for 2014 by 31 December 2016. On 29 June 2017, the suspension was lifted following the publication of the outstanding [2014 EITI Report](#).
- The [2015 EITI Report](#) was published on 30 December 2017.

In addition to addressing the corrective actions, the MSWG has started discussing the next steps towards systematic disclosures of extractive data through government and company websites. Through a workshop facilitated by the International Secretariat, the MSWG evaluated the current status of online disclosures of EITI data and agreed on next steps to possibly transition to fully embedding this data in government systems and company websites instead of conventional reporting through annual EITI Reports. The MSWG intends to commission a consultant to develop an action plan for systematic disclosures to supplement the mainstreaming pre-feasibility study prepared by the International Secretariat.

The 2015 EITI Report published in December 2017 also expanded the scope of EITI reporting. Revenues paid by subcontractors are now included, as well as a more detailed analysis of the management of the petroleum fund. Project level reporting has been implemented.

The following section addresses progress on each of the corrective actions. The assessment is limited to the corrective actions established by the Board and the associated requirements in the EITI Standard. The assessment follows the guidance outlined in the Validation Guide². In the course of undertaking this assessment, the International Secretariat has also considered whether there is a need to review additional requirements, i.e. those assessed as “satisfactory progress” or “beyond” in the 2016 Validation. While these requirements have not been comprehensively assessed, in the Secretariat’s view there is no evidence to suggest progress has fallen below the required standard and no additional issues that warrant consideration by the EITI Board.

3. Review of corrective actions

The assessment below discusses whether the corrective actions have been sufficiently addressed. The assessments are based on minutes of the MSWG meetings from January to December 2017, the 2014 and

² https://eiti.org/sites/default/files/documents/validation-guide_0.pdf

2015 EITI Reports, the 2016 Annual Progress Report, various documents submitted by the MSG to the secretariat, e-mail correspondences, and stakeholder consultations (in-person and via skype).

3.1 Corrective action 1

In accordance with requirement 1.2, companies should demonstrate that they are fully, actively and effectively engaged in the EITI process. In accordance with requirement 8.3.c.i, the company constituency is requested to develop and disclose an action plan for addressing the deficiencies in company engagement documented in the initial assessment and validator's report within three months of the Board's decision, i.e. by 11 April 2017. The government should also ensure that there is an enabling environment for company participation with regards to relevant laws, regulations and administrative rules.

Findings from the first Validation

The first Validation concluded that Timor-Leste had made meaningful progress in meeting this requirement. Companies were actively engaged in the design and implementation of the EITI process by participating in MSWG meetings and providing inputs to the EITI reporting process. However, Validation noted that it is difficult to conclude that companies are effectively engaged in the EITI process in a way that supports the principles of the EITI. The Board found that the companies' refusal to adhere to the requirements on disaggregation of production and export data was not justified because the industry's argument that disclosing this information would be commercially sensitive and would affect their competitiveness proved untenable. It was also found that the companies' insistence on confidentiality agreements whereby the Independent Administrator was asked to secure the companies' approval of the data before circulating the draft of the report to other MSG members contributed to the lengthy review processes for approving the EITI Report. This resulted in delays in meeting the deadline for the publication of the 2013 EITI Report.

Progress since Validation

In addressing the corrective actions, the companies agreed to publish disaggregated data for production and export in the 2014 and 2015 EITI Reports (pp. 24-25). The companies have also agreed to waive the confidentiality agreement for the 2014 EITI Report while reserving the right to revert to this procedure if it becomes necessary in the future. This discussion is documented in the minutes of the MSWG meeting on 31 March 2017, in the MSWG's action plan for corrective actions submitted to the International Secretariat, as well as in Timor-Leste's Annual Progress Report for 2016 (p.21). There were no concerns raised regarding the confidentiality agreement in connection with the 2015 EITI Report.

Secretariat's Assessment

The Secretariat is satisfied that the corrective action on company engagement has been addressed, and that Timor-Leste has made satisfactory progress in meeting requirement 1.2. The issues regarding disaggregated data and confidentiality agreements were addressed during the preparation of the 2014 and 2015 EITI Reports. Discussions during MSWG meetings subsequent to the first Validation show that the companies are continuously engaged in the EITI process and are willing to adhere to the principles of the EITI. Even though the constituency has reserved the right to require confidentiality agreements if it becomes necessary, it appears that the companies are willing to forego these agreements as long as they are satisfied with the credibility of the Independent Administrator (IA). To ensure this, companies were closely involved in the selection of the IA for the 2014 and 2015 EITI Reports.

3.2 Corrective action 2

In accordance with requirement 1.3.a, civil society should demonstrate that they are fully, actively and effectively engaged in the EITI process. Specifically, civil society should ensure that they are able to fully contribute and provide input to the EITI process and that they have adequate capacity to participate in the EITI. In accordance with requirement 8.3.c.i, the civil society constituency is requested to develop and disclose an action plan for addressing the deficiencies in civil society engagement documented in the initial assessment and Validator's report within three months of the Board's decision, i.e. by 11 April 2017.

Findings from the first Validation

The first Validation concluded that Timor-Leste had made meaningful progress in meeting this requirement. It was noted that there is an enabling environment for civil society participation in Timor-Leste and that civil society is taking part in outreach activities and efforts to promote public debate. However, lack of capacity prevented civil society from fully and effectively influencing the design and implementation of the EITI. In addition, there appeared to be a certain level of apathy among civil society regarding the EITI process, as seen from the lack of engagement on key issues such as the disclosure of disaggregated data.

Progress since Validation

The civil society constituency has undertaken the following steps to address the corrective action:

1. **Revisited the CSO selection process to ensure meaningful engagement in EITI.** The CSOs have elected new representatives to the MSWG and clarified the term limits of each member. The new selection process now takes into account the CSO representatives' background in the extractive sector, which should include related experience for at least four years to ensure ability to engage in discussions about the extractive sector.
2. **Consultation with the wider constituency to ensure broader participation in EITI.** The CSOs have started to solicit regular feedback every three months from the wider constituency regarding EITI implementation. Consultations with other constituents also occur before MSG meetings to ensure adequate discussion of issues related to EITI reporting.
3. **Participation in technical discussions.** The minutes of meetings show that CSOs have participated in the discussions on the preparation of the 2014 and 2015 EITI Reports specifically on the determination of materiality threshold (7 March 2017 meeting), and on whether to include company tax settlement in future reports (11 May 2017 meeting). Civil society was also tasked to prepare a summary of petroleum fund expenditures and an analysis on the sustainability of the fund. The 2014 and 2015 EITI Reports include a brief commentary from the CSOs on government expenditures and the sustainability of the Petroleum Fund (p.41, 2014 EITI Report, p. 40, 2015 EITI Report). Further, the CSOs have claimed during stakeholder consultations that they have lobbied for the disclosure of all petroleum contracts and licenses and for more transparency in social expenditures in the 2014 and 2015 EITI Reports. They also insisted on more disaggregated reporting on local content on a per project basis. Their agenda for future reports is to focus on revenue management, evaluation of budget expenditures, and disclosure of fees imposed on companies for violation of laws. They have been pushing for disclosures on the identity of investors in Timor-Leste as part of their beneficial ownership agenda. Their participation in reviewing the

Annual Progress Report involved ensuring its accuracy and contributing to the assessment of EITI impact in Timor-Leste. On mainstreaming, the civil society constituency supports the government's plan to hire a consultant to conduct an extensive examination of Timor-Leste's readiness for mainstreaming and provide recommendations.

4. **Outreach activities.** The CSOs were actively engaged in outreach activities organized by the government and the national secretariat after the publication of the 2014 EITI Report. For example, civil society led a subnational forum in Aileu district and have created a local network of CSOs in rural areas. Immediate outreach priorities include developing an advocacy plan which will involve engagement with parliamentarians, and expanding their network with the academe to assist civil society in analysing EITI reports. A report dissemination program for the 2015 EITI Report is in the pipeline, to be conducted with Core Group Transparency, one of the umbrella networks bringing together NGOs that are engaged in transparency issues.
5. **Attendance at MSG meetings.** Records from MSGWG meetings show that CSOs were almost always represented in MSGWG meetings in 2017, except for one meeting where there was no representative from the CSOs. There are currently three full members and three alternate representatives of civil society on the MSGWG. One representative appears to be attending MSGWG meetings regularly. All the rest have been attending intermittently.

Secretariat's Assessment

The Secretariat is satisfied that the corrective action on CSO engagement has been addressed, and that Timor-Leste has made satisfactory progress with requirement 1.3. Civil society has made efforts to improve the quality of their participation in the EITI process as shown by the contributions to the discussions of the EITI Report, annual progress report and mainstreaming, consultations with local CSOs, regular participation in MSGWG meetings and efforts to improve the process for selecting representatives to the MSGWG.

3.3 Corrective action 3

In accordance with requirement 1.4.i, civil society members of the multi-stakeholder group should ensure that they have the capacity to carry out their duties.

Findings from the first Validation

The first Validation concluded that Timor-Leste had made meaningful progress in meeting this requirement. It had not been established that civil society representatives have the capacity to carry out their duties to enable them to fully contribute and provide input to the EITI process. It was also observed that the CSOs were not able to engage in technical discussions due to language barriers and lack of understanding of the EITI Standard. Moreover, there was no evidence that they were actively addressing their capacity constraints.

Progress since Validation

The CSOs have undertaken the following steps to address the corrective action:

1. In April 2017, the civil society constituency conducted a two-day workshop with the participation of the International Secretariat where they assessed their level of participation, discussed how to improve the engagement of civil society as a constituency, and finalized a capacity building plan.

The agenda also included an introduction to the EITI Standard. Participants identified challenges in participating in the EITI process such as lack of time to attend MSWG meetings, financial constraints, inability to understand the English language, and lack of capacity to engage in technical discussions pertaining to EITI Requirements, and discussed how to address these issues.

2. Civil society developed and agreed an action plan for capacity building. The action plan includes capacity requirements for MSWG membership, scheduling regular consultations with wider CSOs, seeking financial assistance, proposing that EITI documents be translated to Tetum and that discussions be conducted in Tetum, and seeking technical assistance from foreign partners and government. All of these activities have been implemented.
3. Civil society MSWG members have sought the assistance of former CSO representatives in the MSWG and Publish What You Pay Indonesia to better understand their roles and help them assess their performance. Due to lack of funding while the government of Timor-Leste was undergoing a transition period, the CSOs sought to build their own capacity by participating in seminars on state budget and expenditures conducted by the Central Bank. They also held meetings with Timor Gap, the national oil company, and the Ministry of Finance to increase their understanding of company operations and public financial management. Further, civil society participated in a roundtable discussion on the management of the supply base project in the Southern part of the country.

Secretariat's Assessment

The Secretariat is satisfied that the corrective action on CSO engagement has been addressed, and that Timor-Leste has made satisfactory progress on requirement 1.4. It appears that the CSO representatives have implemented the activities in the capacity building plan and have sought external assistance from government and international partners to improve their understanding of the sector and of revenue management. Civil society has also addressed the issue of language barrier by pushing for the use of Tetum in all meetings and documents. Consequently, they have been able to participate in the technical discussions related to EITI reporting such as the sustainability of the petroleum fund, the need for disaggregated data for social expenditures and local content, and the scope of beneficial ownership disclosures.

3.4 Corrective action 4

In accordance with requirement 4.7, the MSWG should ensure that the financial data disclosed is disaggregated by individual company, individual government entity and individual revenue stream to the levels required by the EITI Standard.

Findings from the first Validation

The first Validation concluded that Timor-Leste had made meaningful progress in meeting this requirement. Taxes collected by the National Directorate for Petroleum Tax (NDPT) representing approximately 35% of total government revenues from the sector were not disaggregated by type of revenue stream and by company, and it was not shown that disaggregated figures are publicly disclosed elsewhere.

Progress since Validation

The 2014 (pp.66-71) and 2015 (pp.67-69) EITI Reports provide information on payments and reconciled figures disaggregated by company and by revenue stream. Although the government figures are not

presented by collecting agency, this is easy to deduce from the fact that only three agencies are involved i.e. National Petroleum and Mineral Authorities (ANPM) for non-tax revenues, NDPT for tax revenues, and Central Bank of Timor-Leste (BCTL) for the Petroleum Fund. The payment process flow from companies to agencies for each revenue stream is discussed and clearly illustrated on page 43 of the 2014 EITI Report and page 42 of the 2015 EITI Report.

Secretariat's Assessment

The Secretariat is satisfied that the corrective action on levels of disaggregation has been addressed, and that Timor-Leste has made satisfactory progress on requirement 4.7. All revenues in the 2014 and 2015 EITI Reports are disclosed to the levels required by the Standard. Further, the data is disaggregated by individual project. Consequently, the corrective action on Requirement 4.7 has been addressed.

3.5 Corrective action 5

In accordance with requirement 4.9.c, the MSGW and the Independent Administrator should ensure that future EITI Reports are produced in accordance with the 'agreed upon procedure for EITI reports' as outlined in the standard Terms of Reference for EITI Reports developed by the EITI Board. Specifically, the MSGW should ensure that:

- a. The procedure for safeguarding confidential information do not disadvantage any stakeholders or create obstacles and delays to EITI Reporting;
- b. Future reporting templates are developed in consultation with the Independent Administrator and that there is no deviation from the templates approved by the MSG;
- c. A review of prevailing auditing and assurance practices is undertaken and that assurances are agreed upon prior to commencing data collection; and
- d. The Independent Administrator is viewed by all MSG members as credible, trustworthy, and technically competent.

Findings from the first Validation

The first Validation concluded that Timor-Leste has made meaningful progress in meeting this requirement. The assessment highlighted gaps in the use of the agreed upon procedure for EITI reports including concerns about confidentiality agreements, deviation from agreed reporting templates due to the fact that they were not prepared in consultation with the Independent Administrator (IA), as well as concerns about the competence and credibility of the IA.

Progress since Validation

The TORs for the 2014 and 2015 EITI reports conform with the agreed upon procedures for EITI Reports as outlined in the standard ToRs for Independent Administrators issued by the EITI Board. The MSGW confirmed that for the 2014 and 2015 EITI Report, the confidentiality agreements have been waived by the companies. Company representatives stated in a letter to the EITI Chair dated 10 April 2017 that they have agreed not to use the confidentiality agreements for the 7th and 8th EITI reports (covering fiscal years 2014 and 2015) but maintains their right to revert to such agreements if needed. This was reiterated during a meeting between industry and the International Secretariat in April 2017.

The reporting templates for the 2014 and 2015 EITI Reports were developed by the MSGW in consultation with the IA, and there were no deviations between the templates that were approved by the MSGW and the template used for EITI reporting. These issues are addressed in the MSGW's action plan for implementing the corrective actions from Validation submitted to the International Secretariat, as well as

from MSWG meeting minutes dated 7 February 2017 where the reporting templates were discussed by the IA together with the MSG.

The 2014 and 2015 EITI Reports also clarify the prevailing audit and assurance practices (p. 62 and p. 63 respectively). The IA confirmed that government data is subject to an external audit while company data is quality assured through sign-offs from senior company officials for the purpose of EITI reporting. All companies are publicly listed with audited financial statements that conform to international standards.

The MSWG has confirmed its assessment that the IA for the 2014 and 2015 EITI Report is credible, trustworthy, and technically competent. This was addressed in the MSWG's action plan, and in the 2016 Annual Progress Report (p. 22).

Secretariat's Assessment

The Secretariat is satisfied that the corrective action related to data quality has been addressed, and that Timor-Leste has made satisfactory progress on requirement 4.9. The Secretariat is satisfied that the 2014 and 2015 EITI Reports were produced in accordance with the 'agreed upon procedure for EITI reports' as outlined in the standard Terms of Reference for Independent Administrators developed by the EITI Board. There was a concerted effort from the MSWG to address the deficiencies in the reporting process, particularly in ensuring that the templates were developed in consultation with the IA. The 2014 and 2015 EITI reports also now clearly explain the assurance procedures for companies and government. Concerns regarding the credibility of the IA have been addressed, with the MSWG members confirming that they perceive the current IA to be credible and competent.

3.6 Corrective action 6

In accordance with requirement 6.1, the MSWG should ensure that mandatory social expenditures are disclosed, and where possible, reconciled. Specifically, with regards to local content commitments provided in-kind, the MSWG should ensure that the nature and the deemed value of each in-kind commitment is disclosed.

Findings from the first Validation

The first Validation concluded that Timor-Leste had made meaningful progress in meeting this requirement. The 2013 EITI Report contained only aggregated data on value and spending of social expenditures by company. While the MSWG agreed that local content commitments should be considered as social expenditures, none of the local content commitments appeared to be costed in the regulator's annual report, the 2013 ANPM report. In light of this, it was difficult to conclude that the nature and the deemed value of the in-kind transactions were disclosed.

Progress since Validation

The 2014 and 2015 EITI reports explain that although there are no laws mandating social expenditures, cost-recoverable expenditures stated in the companies' PSCs and work plans (p. 84) could be considered mandatory social expenditures. These pertain to local content commitments in the form of procured goods, training and employment. The 2014 EITI Report (p. 85) and the 2015 EITI Report (p. 85) provide information on expenditures by Conoco Phillips and ENI for training, local goods and employment. Data is disaggregated by company and by type of expenditure. The corresponding government figures are provided by the regulator ANPM are provided for each type of expenditure. In 2014 and 2015 there were no discrepancies. The 2015 EITI Report further includes the voluntary social expenditures of Timor Gap with corresponding amounts and beneficiaries (p.86). The report also explains that there are two mandatory social projects in the pipeline for ENI: a national library and a Data Tape and Core Storage

Facility Infrastructure, but that no costs have been incurred for these projects in 2014 and 2015 as they are still at the planning stage (p. 86 for both reports).

Secretariat's Assessment

The Secretariat is satisfied that the corrective action related to social expenditures has been addressed, and that Timor-Leste has made satisfactory progress on requirement 6.1. The Secretariat is satisfied that the type and value of mandatory social expenditures have been sufficiently explained and disclosed for all relevant companies in the 2014 and 2015 EITI Reports to the levels required by the Standard. Extensive discussions on the type and nature of social expenditures of companies were had during the International Secretariat's meeting with the MSWG in April 2017. The inputs provided by ANPM and the companies during that meeting clarified what should be considered mandatory social expenditures in Timor-Leste and these were accordingly reflected in the 2014 and 2015 EITI Reports.

3.7 Corrective action 7

In accordance with requirement 7.4.a.iv and v, the MSWG should ensure that future annual progress reports include an assessment of progress with achieving the objectives set out in its work plan, including the impact and outcomes of the stated objectives. The annual progress report should also include a narrative account of efforts to strengthen the impact of EITI implementation.

Findings from the first Validation

The first Validation concluded that Timor-Leste has made meaningful progress in meeting this requirement. The MSWG had reviewed progress and outcomes of implementation on a regular basis, including by publishing annual progress reports over the past four years. However, the 2015 Annual Progress Report contained no discussion of impact, and there were no impact studies commissioned by the MSWG.

Progress since Validation

The [2016 Annual Progress Report](#) contains a discussion on impact and outcomes for each objective stated in the work plan. Among the identified outcomes in the APR as well as during consultations, are the stakeholder's increased understanding of public expenditures (p. 14, 2016 APR), revenue flows and financial systems which has enabled them to participate in discussions on the national budget and the management of the Petroleum Fund (pp. 14, 18, 2016 APR). Government representatives noted that the EITI has built their capacity in comprehending issues on beneficial ownership (p. 18, 2016 APR). The MSWG members also acknowledge that the EITI has increased their knowledge on license processes, social expenditures, and has been a platform to push for contract transparency (p. 16, 2016 APR).

The 2016 Annual Progress Report documents the MSWG's efforts to strengthen EITI implementation (p.24) which includes hiring additional secretariat staff to ensure proper and timely implementation of activities. The MSWG also adopted a policy to use Tetum during MSWG meetings and to have all documents translated in the local language and the EITI Report in other languages (including Bahasa) to accommodate the needs of wider CSOs. Two proposed legislations, namely the Transparency Law and Mining Law are underway and are expected to strengthen implementation by making company participation in the EITI mandatory.

Secretariat's Assessment

The Secretariat is satisfied that the corrective action related to the annual progress report has been addressed, and that Timor-Leste has made satisfactory progress on requirement 7.4. The Secretariat is satisfied that the MSWG has exerted efforts to assess impact and outcomes from their EITI

implementation as documented in their 2016 Annual Progress Report. Consequently, the corrective action on Requirement 7.4 has been addressed.

4. Conclusion

Having reviewed the steps taken by Timor-Leste to address the seven corrective actions requested by the EITI Board, the Secretariat's assessment is that Timor Leste has addressed all of the corrective actions and has made "satisfactory progress" on the corresponding requirements.