

Validation of Columbia
Zero Draft Validation Report
Cowater Sogema Independent Validator
31st May 2018

1. EXECUTIVE SUMMARY

The Government of Colombia announced its commitment to implement the EITI at the EITI's 6th Global Conference in Sydney in May 2013. The EITI Board designated Colombia as an EITI Candidate in October 2014. In July 2017, Colombia requested an early Validation, ahead of the original 1 July 2018 deadline. In December 2017, the EITI Board agreed that Colombia's Validation under the 2016 EITI Standard would commence on 1 January 2018.

This draft validation report follows on from a quality assurance review of the International Secretariat's initial assessment. The Validator agrees with the initial assessment that Columbia has met the requirements of the EITI Standard apart from requirement 5.2

2. BACKGROUND

The extractive industries' contribution to national GDP in Columbia represented 6.47% in 2016. The fall in commodity prices and changes in global mining and energy demand patterns caused a sharp reduction in the sector's contribution to the economy in subsequent years. The 2014-2015 EITI Report shows revenues declining to USD 13.2bn in 2014 and USD 4.33bn in 2015. On average oil exports declined by 18% annually during the 2013–2015 period. Foreign direct investment in the sector slumped by 21.1% as well. The country holds significant reserves of coal, gold, nickel, copper, limestone, emeralds, iron, construction materials, silver, platinum, salt and plaster, with estimates of the value of reserves ranging up to USD 28tn according to Colombia's Ministry of Mines and Energy (MME).¹

Colombia's extractive industry are composed of two large sectors, hydrocarbons, developed mainly onshore, and mining, a more diverse industry in terms of techniques, productive processes (underground, open pit, etc.) and operation sizes (large-scale industrial mining, artisanal and small-scale mining, etc.). Colombia's hydrocarbon sector is composed of a preliminary active upstream sector of exploration and production and other segment of downstream composed of trading, transport and refining.² The main areas of commercial hydrocarbon deposits are Meta, Casanare, Arauca, Santander and Huila, among other areas. As of 2015, the government of Colombia had signed 450 exploration and production agreements with 114 oil companies. More than three quarters of production were concentrated among five companies: Ecopetrol (40%), Meta Petroleum (23%), Occidental de Colombia (5%), Equion Energia Ltd (5%) and Mansarovar Energy Colombia Ltd. (4%).

The mining sector is developed throughout the country including minerals such as thermal and metallurgical coal, nickel, precious metals (gold, silver, platinum), emeralds, and a wide range of industrial and construction materials. According to Decree 1666 of 2016³, the mining industry is classified in terms of

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¹ <https://www.minminas.gov.co/documents/10180/23923540/Valoracion+de+Reservas+Mineras+2016.pdf/fb3e5447-14b1-4008-b7c0-dc9824a53d9f>

² <http://www.anh.gov.co/portalarregionalizacion/Paginas/LA-CADENA-DEL-SECTOR-HIDROCARBUROS.aspx>

³ <https://www.minminas.gov.co/documents/10180/23517/37238-Decreto-1666-21Oct2016.pdf/17f4f90c-4481-47cd-a084-c7fa0319f9cf>

production scale, mineral groups and level of formalisation, with categories for subsistence mining, exploration, development and production.

In line with the Validation Guide, the International Secretariat carried out the first phase of validation—initial data collection, stakeholder consultations, and preparation of their initial evaluation of progress against the EITI requirements (the “Initial Assessment”). Cowater Sogema was appointed as the independent Validator to evaluate whether the Secretariat’s work was carried out in accordance with the Validation Guide. Cowater Sogema’s principal responsibilities as Validator are to review and amend the Initial Assessment, as needed, and to summarize its independent review in this Validation Report for submission to the Board through the Validation Committee.

1. Work Performed by the Independent Validator

The Secretariat’s Initial Assessment was transmitted to Cowater Sogema on 10th May, 2017. Our Validation Team undertook this phase of the Validation process through: (1) In-depth review and marking up of the EITI Assessment by each team member; (2) Detailed review and comments by the Multi-Stakeholder Specialist of Requirements 1 and the Civil Society Protocol; (3) Detailed review and comments by the Financial Specialist of Requirements 4, 5 and 6; (4) Consolidation of reviews and the production of this draft Validation Report, sent to the International Secretariat on May 31st 2018.

2. Comments on the Limitations of the Validation

The Validator carefully reviewed the Secretariat’s Initial Assessment and at this stage has no comments on the limitation of the validation process.

3. Comments on the International Secretariat’s Initial Assessment

The initial data collection, stakeholder consultations, and drafting of the Initial Assessment were generally undertaken by the International Secretariat in accordance with the 2016 Validation Guide. The data collection took place across three phases. Firstly, from 1^o to 26 January 2018, a desk review of the available documentation relating to the country’s compliance with the EITI Standard, including but not limited to:

- The EITI work plan and other planning documents such as budgets and communication plans;
- The multi-stakeholder group’s Terms of Reference, and minutes from multi-stakeholder group meetings;
- EITI Reports, and supplementary information such as summary reports and scoping studies;
- Communication materials;
- Annual progress reports; and
- Any other information of relevance to Validation.

A country visit took place on 29 January to 2 February 2018. All meetings took place in Bogota. The Secretariat met with the multi-stakeholder group and its members, the Independent Administrator and other key stakeholders, including stakeholder groups that are represented on, but not directly participating. Annex D lists all stakeholders consulted.

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Finally, the International Secretariat prepared a report making an initial assessment of progress against requirements in accordance with the Validation Guide. The initial assessment did not include an overall assessment of compliance. The report was submitted to the Validator, with the National Coordinator (NC) also receiving a copy.

2. GENERAL COMMENTS

• Progress in EITI Implementation

The EITI has been implemented against an evolving and challenging backdrop. The increased extractives' contribution to economic growth was welcome during the boom years of 2012-2013. In recent years the sector's fiscal and economic contribution has declined. This has brought increased public scrutiny, particularly on the issue of distributions of extractives royalties. Illicit exploitation of minerals and criminal mining has developed to unprecedented proportions, as popular anti extractives sentiments have multiplied. Several extractives projects are currently on hold following fierce opposition from local communities.

The EITI has arranged unparalleled constructive engagement around the extractive industries themes. Stakeholders across all constituencies interested in the EITI process acknowledge that the EITI has provided a structured platform to discuss themes such as revenue transparency, revenue allocation, macroeconomic contribution and a myriad of challenges in environmental payments, social contributions and illicit exploitation of minerals. Government, industry and civil society have addressed a number of key issues through the EITI by producing new data, compiling currently-scattered data in one place, investigating poorly-understood issues, like the complex royalty distribution system, through continuous capacity-building collaboration with key government agencies. Crucially, the EITI has shed light on a number of areas of extractive industry regulation, thereby driving improvements in monitoring practices at both national and subnational level. Several studies have improved understanding of key themes of local concern such as subnational payments, minerals and oil transportation and environmental fee collection. Colombia's EITI helped to identify institutional gaps, made recommendations for improvements and maintained an open collaboration with relevant government agencies to follow up on reforms.

The EITI has also pioneered innovative channels for data collection and publication to improve extractives data and information accessibility from the extractive industry, launching an online platform for data collection, disclosure and compilation of information required under the EITI Standard. Colombia's EITI portal has created a one-stop-shop platform for accessing extractive sector data, both on company payments and government revenues and on licensing, mining and hydrocarbon contracts, geo-referenced production, and transfers to regions and municipalities.

• Impact of EITI Implementation

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Commented [JTT1]: In Colombia, it is defined as the illicit exploitation of minerals, since *per se* mining is a licit activity. The expression "has continued to develop" is imprecise, since 2017 to date thanks to increased government efforts to combat it, this modality has decreased in the country.

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Commented [JTT2]: Can it be changed to: **Determined opposition?**

The following wording is proposed: pending the pronouncements of the local communities. The term Fierce Opposition is not exact and is understood as an opinion of the author, but not a reality of the country.

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While EITI Colombia has made important contributions to extractive industry transparency, it remains shy of its full potential as an instrument to drive broader reforms. Communication efforts have been effective at the national level, but have been limited at the subnational level, and crucially amongst communities hosting extractives activities. The wealth of EITI data has not been extensively used to drive public debate or to support policy-making. The EITI's diagnostic role has yet to be fully matched by additional analytical work and effective communication to all stakeholders. While Colombia's EITI has positioned itself as an independent and credible provider of information on the extractives, the use of EITI data has been weaker and has yet to capitalise on the opportunity to drive tangible improvements in accountability and greater evidence-based debate. Planned revisions to the Mining Code present an opportunity for Colombia's EITI to provide evidence-based input to policy-making and the legislative process.

Two areas present strong potential for Colombia's EITI to play a crucial coordination role. The EITI could act as a coordinator of efforts by government entities, environmental authorities, institutions fighting illicit exploitation of minerals and those with oversight for the management of extractives revenues, private companies including ECOPETROL (unique State-owned company), in coordinating and outreach to host communities. There is also strong potential for the EITI to play a greater role as a diagnostic tool monitoring the implementation of current reforms across government agencies with jurisdiction over the extractive industries, facilitating information-sharing across different databases and coordinating cross-cutting reforms. This coordinating function would be of particularly value in areas such as formalisation of informal production units, supply-chain traceability, legal and beneficial ownership transparency of license and contract-holders, and enforcement of environmental standards. Adequate resourcing and institutionalisation of the EITI by the new administration will be key to ensuring the EITI reaches its full potential to drive reforms. Finally, building on Ecopetrol actual transparency practices, Colombia is encouraged to explore further disclosure of commodity trading aspects such as oil sales to third parties. Similarly, building on the government 'strong commitment to beneficial ownership disclosure, EITI-Colombia is encouraged to ensure that preparations for implementing this requirement are on track.

Commented [JT3]: It is considered necessary to clarify this idea, since efforts had not begun in the territory until they had consolidated and adopted the requirements, without which it was impossible to start working with the municipalities.

Drafting proposal:
Information and communication efforts have been effective at the national level and following this path, there is now a need for action to transfer the experience and content of the EITI initiative to the subnational level, crucially among the communities hosting extractive activities. The value of EITI data is in the process of being disseminated and used extensively to stimulate public debate and support policy development. The diagnostic function of the EITI is at a stage of maturing analytical work and effective communication of all stakeholders. Although EITI Colombia has achieved a position as an independent and credible provider of information on the extractive industry, the use of EITI data should capitalize on the opportunity to drive tangible improvements in accountability and evidence-based debate. The planned revisions to the Mining Code, among other initiatives, represent an opportunity for EITI Colombia to provide relevant evidence-based data and information for policy development and the legislative process.

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The Independent Validator's Assessment of Compliance

Figure 1 – Validator's assessment

EITI Requirements		LEVEL OF PROGRESS				
Categories	Requirements	No progress	Inadequate	Meaningful	Satisfactory	Beyond
MSG oversight	Government engagement (#1.1)					
	Industry engagement (#1.2)					
	Civil society engagement (#1.3)					
	MSG governance (#1.4)					
	Work plan (#1.5)					
Licenses and contracts	Legal framework (#2.1)					
	License allocations (#2.2)					
	License register (#2.3)					
	Policy on contract disclosure (#2.4)					
	Beneficial ownership (#2.5)					
	State participation (#2.6)					
Monitoring production	Exploration data (#3.1)					
	Production data (#3.2)					
	Export data (#3.3)					
Revenue collection	Comprehensiveness (#4.1)					
	In-kind revenues (#4.2)					
	Barter agreements (#4.3)					
	Transportation revenues (#4.4)					
	SOE transactions (#4.5)					

	Direct subnational payments (#4.6)						■	
	Disaggregation (#4.7)						■	
	Data timeliness (#4.8)						■	
	Data quality (#4.9)						■	
Revenue allocation	Distribution of revenues (#5.1)						■	
	Subnational transfers (#5.2)				■			
	Revenue management and expenditures (#5.3)	■	■	■	■			■
Socio-economic contribution	Mandatory social expenditures (#6.1)						■	
	SOE quasi-fiscal expenditures (#6.2)	■	■	■	■	■	■	■
	Economic contribution (#6.3)							■
Outcomes and impact	Public debate (#7.1)						■	
	Data accessibility (#7.2)	■	■	■	■			■
	Follow up on recommendations (#7.3)						■	
	Outcomes and impact of implementation (#7.4)						■	

Legend to the assessment card

	The country has made no progress in addressing the requirement. The broader objective of the requirement is in no way fulfilled.
	The country has made inadequate progress in meeting the requirement. Significant elements of the requirement are outstanding and the broader objective of the requirement is far from being fulfilled.
	The country has made progress in meeting the requirement. Significant elements of the requirement are being implemented and the broader objective of the requirement is being fulfilled.
	The country is compliant with the EITI requirement.
	The country has gone beyond the requirement.
	This requirement is only encouraged or recommended and should not be taken into account in assessing compliance.
	The MSG has demonstrated that this requirement is not applicable in the country.

3. DETAILED FINDINGS

This section highlights areas where the Validator disagrees with the findings of the Initial Assessment or requires further clarification.

- Under requirement 4.1 the total royalty payments to government in the mining sector accounted for 72.1% of total royalty payments to government in 2016 since each company accounted for less than 1% each. See Recommendation 21 below.
- It is noted that coverage of total revenue has been declining for the years 2014, 2015 and 2016 from 96.4%, 93.5% and 89.7% respectively. See recommendation 22 below.
- It is highlighted under provision 4.5 (page 61 on the initial assessment) that Ecopetrol already published information on most aspects required by the EITI Standard in its flagship annual sustainability report.⁴ Ecopetrol representatives expressed willingness to engage further with the MSG and other stakeholders to explore further ways of enhancing transparency in their operations, governance and fiscal contributions. See recommendation 23 below.
- Page 63 of the initial assessment notes that for Requirement 4.7, relevant data is not disaggregated by project. Reporting at project level is required provided it is consistent with US SEC and EU rules. The report doesn't mention if financial data is consistent with the above stated rules or not. See recommendation 24 below.

4. RECOMMENDATIONS

While the following report includes recommendations for specific improvements the MSG may wish to consider implementing, the following is a list of strategic recommendations that could help Colombia make even greater use of the EITI as an instrument to support reforms.

1. To strengthen implementation, the government is encouraged to ensure that its commitment is sustained across different political administrations, including through the provision of sustainable sources of funding.
2. To further strengthen implementation and maintain the high-level collaboration with other constituencies in the MSG the industry constituency is encouraged to ensure consistent representation at levels commensurate with other constituencies. The industry constituency is encouraged to make full use of EITI data and findings from reports to drive improvements in extractives sector management.
3. To strengthen implementation, the government is encouraged to ensure the enabling environment for CSO participation in EITI implementation is maintained, including at the local and rural levels and through innovative ways to channel local stakeholders' views into national EITI discussions.
4. To strengthen implementation, EITI Colombia is encouraged to consider more efficient ways of balancing the MSG's more bureaucratic duties with more in-depth analysis and discussions linked to broader reform priorities. EITI Colombia is encouraged to ensure documents relevant to MSG discussions are circulated with ample time for review prior to MSG discussions and taking of decisions.
5. To strengthen implementation, EITI Colombia and wider stakeholders are encouraged to liaise

⁴ https://www.ecopetrol.com.co/wps/portal/es/ecopetrol-web/lut/p/z1/04_Sj9CPkssy0xPLMnMz0vMAfIjo8ziLQIMHd09DOy93YMsDAwCjYldA728nZ2cA0z1wwkpiAJKG-AAjeZA_VGEIBtkRhikOyoqAgAU5V0e/#

Commented [JTT4]: This percentage does not correspond, it is not held in any separate document.

Rubros	Total 2016	Total aporte Empresas adheridas 2016	Materialidad 2016	Materialidad 2015
Impuestos y Regalías				
Impuesto de Renta (causación)	2.103.048	1.728.716	82%	76%
Impuesto sobre la Renta para la Equidad CREE (causación)	1.168.955	1.031.987	88%	90%
Impuesto a la Riqueza (causación)	797.420	639.524	80%	87%
Regalías de crudo y gas (caja)	3.849.234	3.753.814	98%	97%
Regalías de minería (caja)	1.447.940	1.197.289	83%	84%
Pagos e inversión sector hidrocarburos				
Dividendos Ecopetrol S.A. (caja)	690.176	690.176	100%	100%
Derechos económicos	159.571	157.431	99%	100%
Impuestos, pagos e inversión sector minero				
Compensaciones económicas	238.114	200.260	84%	90%
Canon Superficial y Administración	16.744	7.127	43%	15%
Impuesto al Oro, Plata y Platino -OPP (caja)	28.018	11.571	41%	48%
Total	10.499.220	9.417.896	89,7%	93%

See:

http://www.eiticolombia.gov.co/sites/default/files/documentos/proceso_materialidad_-_informes_eiti_colombia.pdf

Commented [JTT5]: The "lower" coverage is consistent with the fall in revenues, explained in MATERIALITY EXERCISE #EITICOL. See:

http://www.eiticolombia.gov.co/sites/default/files/documentos/proceso_materialidad_-_informes_eiti_colombia.pdf

closely with relevant government entities in the modernization of the cadastre and other systems maintained by the sector regulators ANM and ANH with the aim of ensuring routine and accessible disclosure of data listed in Requirements 2.2 and 2.3. In particular, EITI Colombia is strongly encouraged to ensure that information on mining, oil and gas license transfers is disclosed to levels commensurate with information on license allocations.

6. To strengthen implementation, Colombia is encouraged to consider piloting beneficial ownership reporting in the forthcoming EITI Report in order to increase awareness of [this theme](#) and pilot beneficial ownership definitions and thresholds. In particular, the MSG may wish to consider the various types of control that can be exercised over a company. EITI Colombia may also wish to conduct broader outreach to the companies on the objectives of beneficial ownership transparency, as well as hold conversations [and articulation](#) with government agencies on how to make such disclosures mandatory.
7. To strengthened stakeholders' understanding of the complex issue of illegal gold [exploitation](#) mining, EITI Colombia is encouraged to expand EITI reporting of informal gold production and exports, drawing on all available relevant information. EITI Colombia is encouraged to liaise with DANE to coordinate with the government agency's plans to expand coverage of commodities.
8. To strengthen implementation, Colombia is encouraged to review [materiality definitions](#) for its EITI reporting based on previous reporting exercises, with the aim of establishing, ahead of reconciliation, a materiality threshold for selecting companies that ensures that all payments that could affect the comprehensiveness of EITI reporting be included in the scope of reconciliation.
9. To strengthen implementation, EITI Colombia is encouraged to work with Ecopetrol on exploring the scope for disclosing Ecopetrol's crude oil sales to third parties to levels commensurate with information on the sales of the state's in-kind revenues.
10. To strengthen implementation, the government and the MSG are encouraged to explore ways to bring more transparency to direct subnational revenue collection and uses of extractives revenues at the subnational level.
11. To further strengthen implementation, Colombia may wish to make progress in implementing project-level EITI reporting (for project-specific revenue flows) ahead of the deadline for all EITI Reports covering fiscal periods ending on or after 31 December 2018, agreed by the EITI Board at its 36th meeting in Bogotá.
12. To strengthen implementation, Colombia is encouraged to increase its efforts to publish more up-to-date EITI data to ensure a higher relevance and usefulness for public debate and policy-making. To make future reporting exercises cost efficient while credible, the government and the MSG are encouraged to explore ways to maximise the use of information made public through other sources and the use of the online cost-efficient tools already developed to ensure a sustainable solution for future reporting.
13. To strengthen implementation, EITI Colombia is strongly encouraged to ensure that all production and export data is consistently sourced from official government data.
14. In accordance with Requirement 5.2.a, Colombia should ensure that the specific formula for calculating transfers to individual local governments be disclosed and explained, to support an assessment of discrepancies between budgeted (allocated) and executed subnational resources. Given the high level of public interest in this issue, Colombia may wish to consider including LGUs in the reporting process for subnational transfers to reconcile these transactions.
15. To strengthen implementation, the MSG is encouraged to explore collaboration with the Ministry of [Treasury](#) to link the EITI better to the portal of economic transparency and to develop indicators to improve the comprehension of the extractive industry contribution to the economy at the [national and local levels](#).
16. To strengthen implementation, EITI Colombia is encouraged to explore playing a more active role in promoting the use of revenue tracking tools and coordinating a more concerted effort to include this information in reaching out to regions and communities.

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Commented [JT6]: We ratify that the materiality process in Colombia is carried out annually, an exercise that comprises two steps: 1) the participation of the member companies is analyzed and potential companies are invited and 2) during the process of information collation by the Independent Administrator.
See: MATERIALITY EXERCISE -#EITICOL
http://www.eiticolombia.gov.co/sites/default/files/documentos/proceso_materialidad_-_informes_eiti_colombia.pdf

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17. To strengthen implementation, especially at the subnational level, the MSG and the government are encouraged to explore ways of expanding EITI reporting on both mandatory and voluntary social expenditures with a view to enhancing transparency on key issues of interest to local stakeholders.
18. To strengthen implementation, particularly at the subnational level, EITI Colombia is encouraged to develop a robust communicational strategy, including capacity-building at the regional and community levels, and follow a time-bound implementation plan. The strategy could bolster the EITI's role in coordinating efforts across several government agencies related to extractive industry, particularly in subnational outreach.
19. To strengthen implementation and to make future reporting exercises cost efficient, EITI Colombia is encouraged to collaborate with other government agencies, especially the regulators ANH (hydrocarbons) and ANM (mining) to ensure that these agencies' information system are integrated as mainstreamed EITI disclosure mechanisms.
20. To strengthen implementation EITI Colombia is encouraged to canvass stakeholders broadly in following up on past EITI recommendations and designing the scope of future work plans and EITI reporting exercises, for instance CSOs' calls for tax liability calculation reports.
21. EITI Colombia should increase coverage of total royalty payments to Government in mining sector as 72% coverage at present leaves a gap of 28%. It is recognized that each company in this sector accounted for less than 1% of royalty payments, however, the definition of materiality may be suitably modified to cover more payments unless it is not cost-effective to do so.
22. If resources (time, financial cost) don't limit the exercise, EITI Colombia should maintain overall coverage of 90% or more of total revenue.
23. Though Colombia has made satisfactory progress under provision 4.5 as Ecopetrol already published information on most aspects required by the EITI standards, its representatives expressed willingness to engage further with the MSG and other stakeholders to explore further ways of enhancing transparency, governance and fiscal contributions. EITI should work towards that objective.
24. If the financial data under provision 4.7 is consistent with SEC and EU rules then reporting at project level is required. In that case "satisfactory progress" will need to be downgraded.

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