

# Validation of Kazakhstan

## Report on initial data collection and stakeholder consultation

## Abbreviations

APR	Annual Progress Report
BIN	Bank Identification Number
CRIRSCO	Committee for Mineral Reserves International Reporting
CSO	Civil Society Organisation
DP	Dialogue Platform
EBRD	European Bank for Reconstruction and Development
EGSU	Unified State System of Subsoil Use Management of the Republic of Kazakhstan
EITI	Extractive Industries Transparency Initiative
FATF	Financial Action Task Force
ICNL	International Centre for Not-for-Profit Law
IWG	Interagency Working Group
KZT	Kazakh Tenge
LCC	License Contractual Conditions
MDTF	Multi-Donor Trust Fund
MSG	Multi Stakeholder Group
NCO	Non-Commercial Organisation
NCOC	North Caspian Operating Company
NGO	Non-Governmental Organisation
NRGI	Natural Resource Governance Institute
NSC	National Stakeholders Council
PSA	Production-Sharing Agreement
PWYP	Publish What You Pay
QFE	Quasi-fiscal expenditures
RGI	Resource Governance Index
RoK	Republic of Kazakhstan
SOE	State-owned Enterprise
TOR	Terms of Reference
UNESCO	United Nations Economic Scientific and Cultural Organisation
USD	United States Dollar

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## Executive Summary

The Government of Kazakhstan announced its commitment to the EITI in 2005 and was accepted as an EITI Candidate in September 2007. In 2010, the EITI reporting requirements were embedded in the Law on Subsoil and Subsoil use, making it mandatory for all companies to report in accordance with the EITI. In October 2013, EITI Board declared Kazakhstan compliant with the 2011 EITI Rules.

On 24 October 2016, the Board agreed that Kazakhstan's Validation under the EITI Standard would commence on 1 July 2017. This report presents the findings and initial assessment of the International Secretariat's data gathering and stakeholder consultations. The International Secretariat has followed the Validation Procedures<sup>1</sup> and applied the Validation Guide<sup>2</sup> in assessing Kazakhstan's progress with the EITI Standard.. While the multi-stakeholder oversight of EITI implementation, EITI reporting and dissemination are working well in Kazakhstan, there are concerns related to certain gaps in reporting, in areas such as state-owned companies (#2.6), quasi-fiscal expenditures (#6.2), social expenditures (#6.1.), barter (#4.3) and transportation arrangements (#4.4). Recommendations for addressing these and other issues are set out in the assessment tables.

## Overall conclusions

Kazakhstan has implemented the EITI for ten years. In the first phase leading up until 2013, implementation was largely driven and motivated by the desire to achieve compliance with the 2011 EITI Rules. During these years, efforts were undertaken to institutionalise EITI Reporting by embedding EITI reporting obligations and associated data quality assurance procedures into the Law on Subsoil and Subsoil Use. These efforts largely addressed challenges with comprehensiveness and reliability observed during the first few years of implementation. It also enshrined the practice of annual EITI Reports being released within ten months of the end of the financial year, facilitated by the government decision to fund reporting from the republican budget. As priority was given to meeting the EITI minimum requirements, there was relatively limited discussion about how the EITI could contribute to address ongoing issues in the extractive sector. There were also few attempts to expand EITI reporting in order to disclose data of relevance to national debates but not covered by the EITI Standard.

The second phase, from 2013 to date, appears to have been more motivated by a desire to demonstrate regional leadership on issues like beneficial ownership and mainstreaming. Implementation has also been more focused on ensuring that the EITI contributes to releasing the data that people are interested in using. As a result, EITI Reports have expanded year on year to cover data on social investments, local content, and transportation arrangements. Major reforms like the launch of an online cadastre, preparation of a new online geological database and development of a new Subsoil Code have been priorities of the government. Discussions are also underway with regards to contract transparency and coverage of environmental issues in future EITI Reports. Notwithstanding this progress some transparency gaps remain, in particular with regards to the many state-owned companies which control large parts of the Kazakh economy, including the extractive sphere.

Apart from some disruptions in 2010 caused by re-organisation of the ministries overseeing the extractive sector as well as internal conflicts between members of the civil society constituency, multi-stakeholder oversight of EITI implementation has remained relatively stable. There is a strong sense of ownership

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<sup>1</sup> <https://eiti.org/document/eiti-validation-procedures>

<sup>2</sup> <https://eiti.org/document/eiti-validation-guide>

within the ministry in charge of EITI implementation, and all stakeholders are contributing to the EITI process. Civil society remains engaged in the EITI, but the impact of their work and the strength of their voice is hampered by longstanding conflicts between the various NGOs and civil society coalitions that have an interest in the EITI. This conflict reflects differences of opinion on what strategy civil society should take to get their views across, splitting those who favour engagement and compromise from those that prefer what is sometimes perceived as more confrontational campaigning. It also reflects the diversity of civil society in terms of their priority issues, i.e. extractive sector governance vs environmental focus vs human rights focus. Moreover, personality conflicts, ethnicity and competition for access to financial resources have contributed to fuel the disagreements.

At the same time, this initial assessment also shows that the wider space for civil society to operate, express opinions and contribute to public policy making is increasingly narrowing. To some extent this can be explained by the political environment of the country, where a relatively small elite is preparing for political succession. While little is known about how the political leadership might change in the coming years, there is a sense that the challenges that civil society is currently experiencing in terms of stricter legislation, more government control and limitations on freedom of expression are motivated by a desire to ensure stability in the lead up to political transition. Economic factors are also playing a role. Despite a desire and efforts to diversify the economy, Kazakhstan remains highly dependent on oil, gas and mining revenues. Low commodity prices and limited new investment has slowed economic growth considerably, with GDP growth decreasing from 6% in 2013 to 1% in 2016<sup>3</sup>. Combined with the devaluation of the national currency, *tenge*, and increasing unemployment, there are concerns about growing public discontent. While some of this is mitigated by increased spending from the National Fund, economic stability is seen as key to ensuring smooth transitions. Notwithstanding these challenges, this initial assessment shows that the narrowing space for civil society is not yet affecting EITI implementation. However, in order for civil society to be able to play a stronger role in using EITI data to stimulate public debate, it will be necessary to ensure that further measures under consideration by the government do not adversely affect civil society substantively engaged in the EITI process.

Finally, it is worth noting that although EITI implementation in Kazakhstan has significantly enhanced transparency in the extractive sector, there appears to be limited impact of this transparency on greater accountability and reform. Although Kazakhstan is meeting the minimum expectations of the EITI in terms of publication and dissemination of EITI data, more could be done to make use of EITI data for analytical purposes, including ensuring that it delivers recommendations pertinent to addressing challenges and reform needs in the extractive sector.

## 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 Kazakhstan make greater use of the EITI.

1. It is recommended that a more sustainable and transparent disclosure framework related to license and contract allocations is put in place, embedded in the relevant Ministries and SOEs that have rights

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<sup>3</sup> World Bank (2017) Kazakhstan – The economy has bottomed out: what is next?, <http://documents.worldbank.org/curated/en/585891494402103086/Kazakhstan-The-economy-has-bottomed-out-what-is-next-country-economic-update-Spring-2017>

to negotiate contracts. The transition to the new legal framework under the new Law on Subsoil would be a good opportunity to effectuate this change.

2. It is recommended that the government takes steps to ensure that the new draft Subsoil code provides a sound foundation for comprehensive reporting and publication of beneficial ownership data.
3. It is recommended that the NSC undertakes a comprehensive assessment of the public accessibility of information related to state-owned enterprises, including quasi-fiscal spending, and agree a plan for engaging with and requesting disclosures from SOEs for the data that is currently not yet disclosed. A more regular outreach and dialogue with SOEs engaged in oil, gas and mining would be beneficial.
4. In light of the substantial production pertaining to KazMunayGas, the NSC could consider joining the EITI's targeted effort on increasing transparency in commodity trading.
5. It is recommended that the NSC develops its understanding of the oil and gas swap agreements with the Government of Russia, including the terms of the relevant agreements, the parties involved, the resources which have been pledged by the Government of Kazakhstan and SOEs involved in oil, gas and mining activities, the value of the balancing benefit stream provided by Russia, and the financial significance of these agreements.
6. It is recommended that the NSC strengthens its plans for overcoming remaining barriers to full transparency in transportation of oil, gas and minerals by engaging further and more directly with the transportation companies, and ensure that remaining details on payments and volumes transported are disclosed.
7. The NSC is encouraged to explore opportunities for fully transitioning to mainstreamed implementation by implementing the recommendations from the mainstreaming feasibility study. Given that the disclosure of the EITI data is becoming more automated, the NSC could focus less on publication of data and more on analysing the data. This could help ensure that the EITI contributes more to public debate about policies and reforms in the extractive sector.
8. The NSC might wish to consider further opportunities for improving transparency related to the decision-making, management and spending of the National Fund.
9. The NSC should build on its efforts to improve transparency in social expenditures, notably by undertaking a comprehensive review of the types of mandatory social expenditures that exist, the governing instruments (contracts, MoUs), and ensure that all material social expenditures are disclosed.
10. The NSC could consider more extensive coverage of environmental payments, including potentially tracking the spending of payments levied for environmental remediation purposed in the extractive sector.
11. The NSC might wish to undertake regular impact assessments to inform the strategic direction of EITI implementation in the country. This could include conducting an annual strategic planning and review meeting to ensure that the process continues to address the relevant issues and challenges in the extractive sector in Kazakhstan. The NSC might also wish to ensure that the recommendations from the EITI process are more oriented towards legal, administrative and other reforms by changing the current approach to the development of recommendations. This could be done by engaging the constituencies of the NSC in the formulation of recommendations for consideration by the

Validation of the Republic of Kazakhstan: Report on initial data collection and stakeholder consultation government.

Figure 1 – initial assessment card

EITI Requirements		LEVEL OF PROGRESS				
		No progress	Inadequate	Meaningful	Satisfactory	Beyond
Categories	Requirements					
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	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:*

-  **No progress.** All or nearly all aspects of the requirement remain outstanding and the broader objective of the requirement is not fulfilled.
-  **Inadequate progress.** Significant aspects of the requirement have not been implemented and the broader objective of the requirement is far from fulfilled.
-  **Meaningful progress.** Significant aspects of the requirement have been implemented and the broader objective of the requirement is being fulfilled.
-  **Satisfactory progress.** All aspects of the requirement have been implemented and the broader objective of the requirement has been fulfilled.
-  **Beyond.** The country has gone beyond the requirements.
-  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.

## Introduction

### Brief recap of the sign-up phase

In April 2005, Ministry of Energy and Mineral Resources (MEMR) of the Republic of Kazakhstan (RoK) created Interagency Working Group, the main aim of which was to develop recommendations related to EITI implementation in Kazakhstan (Hart Group, 2013). In June 2005, the President of Kazakhstan N. A. Nazarbayev officially announced country's commitment to the EITI. In October 2005, the Memorandum of Understanding (MoU) was signed between the Interagency Working Group, representing the government and the other three parties notably the RoK Parliament, extractive sector and representatives of civil society (Kazakhstan EITI, 2017). Kazakhstan was subsequently admitted as an EITI candidate country in September 2007.

### Objectives for implementation and overall progress in implementing the work plan

According to the 2017-18 NSC work plan, Kazakhstan's two main objectives for implementation are (1) Open data; and (2) Beneficial ownership disclosure. With regards to open data, the rationale set out in the work plan is that open data can contribute to increased transparency in company and government activities. It can also help raise awareness of the way the country's natural resources are used, issues of taxation and utilization of the extractive sectors revenues (2017-18 NSC work plan, p.1). The emphasis on beneficial ownership was prompted by the EITI's new requirements on beneficial ownership transparency. The work plan emphasises the benefits of beneficial ownership transparency for government, companies, prospective investors and civil society (2017-18 NSC work plan, p.5). In one of his latest interviews<sup>4</sup>, Zhenis Kasymbek, Minister of Investment and Development (MID) and EITI Champion, noted that Kazakhstan had started a beneficial ownership pilot and collected information via the existing electronic reporting system – Unified State System of Subsoil Use Management of the Republic of Kazakhstan (EGSU) – pertaining to extractive data. Additionally, the interview noted that beneficial ownership transparency was considered in the draft new Subsoil Code which will enter into force in 2018. Overall, implementation of the current 2017-18 work plan is on track.

The first EITI Report covering 2005 extractive industry revenues in Kazakhstan was published in 2007. In the period 2007-2016 a total of 11 EITI reports have been published and are available on Kazakhstan's EITI website. The reports have gradually expanded in scope from aggregated disclosure of payments and revenues to a more disaggregated account not only of government revenues but also on issues such as social investments, local content, etc. The deadline for publishing the 2016 EITI Report is by the end of 2018, and the report is on track to be published in Q4 2017.

### Summary of engagement by government, civil society and industry

The 2005 MoU sets out the objectives of the National Stakeholder Council (NSC) as well as the NSC composition, responsibilities and mandate of NSC members, and internal governing rules and practices. The MoU was updated in 2013<sup>5</sup>, and again in April 2017 through the addition of an annex<sup>6</sup>. The current NSC consists of representatives of government, the Mazhilis, Kazakhstan's parliament, extractive companies and NGOs (NSC members, 2017). The NSC Chair is Zhenis Kasymbek, Minister of Investment

<sup>4</sup> <http://metalmininginfo.kz/archives/4743>

<sup>5</sup> 2013 NSC MoU, [http://eiti.geology.gov.kz/images/stories/IPDO/norm\\_baza/memorandum2013.pdf](http://eiti.geology.gov.kz/images/stories/IPDO/norm_baza/memorandum2013.pdf)

<sup>6</sup> 2017 NSC MoU Annex, [http://eiti.geology.gov.kz/images/stories/ipdo2/norm\\_baza2/20042017.doc](http://eiti.geology.gov.kz/images/stories/ipdo2/norm_baza2/20042017.doc)

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With the exception of a period in 2011 when the work of the NSC came to a halt due to reorganisation of the ministries overseeing the extractive sector and changes in the civil society representation to the NSC, the NSC has operated without disruption. Despite a number of changes in government leadership of the process over the last years, government commitment has been constant. Since 2012, a dedicated national secretariat has supported the NSC with its work.

### Key features of the extractive industry

Kazakhstan's extractive sector plays an important role in the country's development, with revenues constituting more than half of the state budget (2015 EITI Report, p.53). According to the 2017 BP Statistical Review of World Energy<sup>7</sup>, Kazakhstan's total proven oil reserves were equal to 30 billion barrels at the end of 2016 and average oil production was equal to approximately 1.7 million barrels per day. Natural gas and coal reserves totalled 1 trillion cubic metres (m<sup>3</sup>) and 25 605 million tonnes respectively at the end of 2016. Kazakhstan also produces a diverse range of mineral commodities, including uranium, chromite, titanium sponge, magnesium metal and rhenium. These figures clearly demonstrate that Kazakhstan is one of the most resource rich countries in Eurasia region.

According to the Resource Governance Index<sup>8</sup> by the Natural Resource Governance Institute (NRGI), Kazakhstan scores 56 out of 100 points and ranks 25<sup>th</sup> among 89 countries that were assessed. Kazakhstan gets the second-best ranking among Eurasian countries but still shows weak resource governance scores compared to the global average. According to the index, Kazakhstan shows good results in taxation, state-owned enterprises, sovereign wealth funds, government effectiveness, regulatory quality, rule of law, political stability and absence of violence, and open data subcomponents. It has lower scores on the licensing, national budgeting, voice and accountability, and control of corruption subcomponents.

### Overview of the Validation process

Validation is an essential feature of the EITI implementation process. It is intended to provide all stakeholders with an impartial assessment of whether EITI implementation in a country is consistent with the provisions of the EITI Standard. It also addresses the impact of the EITI, the implementation of activities encouraged by the EITI Standard, lessons learnt in EITI implementation, as well as any concerns stakeholders have expressed and recommendations for future implementation of the EITI.

The Validation process is outlined in chapter 4 of the EITI Standard<sup>9</sup>. It has four phases:

1. Preparation for Validation by the multi-stakeholder group (MSG)
2. Initial data collection and stakeholder consultation undertaken by the EITI International Secretariat
3. Independent quality assurance by an independent Validator who reports directly the EITI Board
4. Board review

The [Validation Guide](#) provides detailed guidance on assessing EITI Requirements, and more detailed

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<sup>7</sup> BP statistical review 2017, <https://www.bp.com/content/dam/bp/en/corporate/pdf/energy-economics/statistical-review-2017/bp-statistical-review-of-world-energy-2017-full-report.pdf>

<sup>8</sup> NRGI (2017) Resource Governance Index: Kazakhstan, <http://resourcegovernanceindex.org/country-profiles/KAZ/oil-gas>

<sup>9</sup> See also <https://eiti.org/validation>

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[Validation procedures](#), including a standardised procedure for data collection and stakeholder consultation by the EITI International Secretariat and standardised terms of reference for the Validator.

The Validation Guide includes a provision that: “Where the MSG wishes that validation pays particular attention to assessing certain objectives or activities in accordance with the MSG work plan, these should be outlined upon the request of the MSG”. The Kazakhstan EITI MSG did not request any issues for particular consideration.

In accordance with the Validation procedures, the International Secretariat’s work on the initial data collection and stakeholder consultation was conducted in three phases:

**1. Desk Review.** Prior to visiting the country, the Secretariat will conduct a detailed 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.

In accordance with the Validation procedures, the Secretariat has not taken into account actions undertaken after the commencement of Validation.

**2. Country visit.** A country visit took place on 15-25 August 2017. All meetings took place in Almaty and Astana, but included stakeholders based in other regions. 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 in, the multi-stakeholder group. In addition to meeting with the MSG as a group, the Secretariat met with government, companies and civil society representatives either individually or in constituency groups, with appropriate protocols to ensure that stakeholders were able to freely express their views and that requests for confidentiality are respected. The list of stakeholders consulted is outlined in Annex B.

**3. Reporting on progress against requirements.** This report provides the International Secretariat initial assessment of progress against requirements in accordance with the Validation Guide. It does not include an overall assessment of compliance. The International Secretariat’s team comprised: Dyveke Rogan and Olesia Tolochko.

## Part I – MSG Oversight

### 1. Oversight of the EITI process

This section relates to government oversight of the EITI process, stakeholder engagement and the environment for implementation of EITI in country, the governance and functioning of the multi-stakeholder group (MSG), and the EITI work plan.

#### *Government oversight of the EITI process (#1.1)*

##### **Documentation of progress**

President Nursultan Nazarbayev first announced Kazakhstan's intention to implement the EITI at an international conference in Almaty on 14-16 June 2005. On 5 October 2005, a Memorandum of Understanding (MOU) was signed between the government and three other parties<sup>10</sup>: parliamentarians, extractive companies, and civil society representatives. Kazakhstan obtained EITI candidate status at the EITI Board meeting in Oslo in September 2007<sup>11</sup>, and gained EITI compliant status in October 2013 based on a Validation against the 2011 EITI Rules<sup>12</sup>.

The government has publicly reaffirmed its commitment to the EITI on several occasions, most recently at the 8<sup>th</sup> National EITI Conference in Astana in October 2016. The Conference was opened with a welcome speech by Vice-minister on Investments and Development and Deputy Chair of NSC, Timur Toktabayev<sup>13</sup>. Back to back with this conference, the EITI Chair, Fredrik Reinfeldt, met with the First deputy Prime-Minister, Askar Mamin, who also expressed support of the EITI implementation<sup>14</sup>. The Government of Kazakhstan has also been represented on the EITI Board as alternates in the period 2013 until present.

EITI implementation in Kazakhstan is currently led by the MID with the national secretariat embedded in the Committee of Geology and Subsoil Use. Zhenis Kasymbek, Minister of Investments and Development, is the EITI Champion and Chair of the NSC since 30 September 2016<sup>15</sup>. He succeeded Aset Ishekeshev as EITI Champion in the period August 2014-June 2016. Prior to that, Deputy Prime Minister Kairat Kelimbetov served as EITI Champion in the period 2012-2014, supported by Minister of Industry and New Technologies Albert Rau and Vice-Minister of Industry and New Technologies Nurlan Suranbayev as NSC Chair and NSC deputy Chair respectively. Prior to that, the Ministry of Oil and Gas (later reorganised to the Ministry of Energy) was the agency hosting the EITI.

These changes in government leadership over the years do not appear to have affected the engagement of the government in implementation, nor the ability of the government to mobilise domestic resources for the EITI implementation. The government has always contributed financially to the implementation of the EITI. Although in the early days, implementation was co-funded by external partners like the World

<sup>10</sup> 2005 NSC MoU, [http://eiti.geology.gov.kz/images/stories/IPDO/norm\\_baza/memorandum.doc](http://eiti.geology.gov.kz/images/stories/IPDO/norm_baza/memorandum.doc)

<sup>11</sup> Minutes of the 3<sup>rd</sup> EITI Board meeting, [https://eiti.org/sites/default/files/documents/boardmeeting\\_003\\_minutes.pdf](https://eiti.org/sites/default/files/documents/boardmeeting_003_minutes.pdf)

<sup>12</sup> Minutes of the 25<sup>th</sup> EITI Board meeting, [https://eiti.org/sites/default/files/documents/boardmeeting\\_025\\_minutes.pdf](https://eiti.org/sites/default/files/documents/boardmeeting_025_minutes.pdf)

<sup>13</sup> The 8<sup>th</sup> National EITI Conference in Astana, <http://eiti.geology.gov.kz/ru/about-us/eiti-news-kazakhstan/194-2016-10-27-11-08>

<sup>14</sup> <http://eiti.geology.gov.kz/ru/about-us/eiti-news-kazakhstan/228-2016-10-25-last>

<sup>15</sup> NSC minutes no.61, p.1

Bank, implementation is now fully funded by the government budget. While this means that the overall budget available for the EITI has decreased, the government has championed more cost-efficient ways of implementation, such as the move towards electronic reporting (*see requirement 7.2*) and integrating EITI staff costs into the overall costs of the line agency, *Kazgeoinform*, under the Committee of Geology and Subsoil Use. The decrease in resources does not appear to have prevented EITI Kazakhstan from taking on new issues. For example, the government initiated legal support to facilitate beneficial ownership disclosure and has committed to take part in the EITI mainstreaming pilot (*see requirement 7.2*). EITI reporting has continued to expand, to include new types of disclosures such as information on local content. In addition, the government has given political support to dissemination events in extractive regions, an annual EITI conference, and also financial support in conjunction with the EITI Board meeting in Astana in October 2016.

Senior government officials are represented on the NSC, including the Vice-Minister for Investment and Development (deputy Chair of the NSC), the Vice Minister of Finance, the Vice Minister of Energy, the Head of Specialized Management of the State Revenue Committee of the Ministry of Finance, and the Director of the Department of Subsoil use of the Ministry of Energy.

### Stakeholder views

There is general agreement among most stakeholders that the government is committed and engaged in the EITI process. Although all relevant government agencies are involved in the EITI, the nature of their engagement reflects their level of responsibilities in terms of management of the sector. While the ME and MoF were considered crucial agencies in the EITI reporting process and, therefore, had permanent seats on the NSC, the MNE and MoJ were providing data only upon request and were less active players in the governance of the process. MID was considered important in terms of their influence on the legislative and regulatory agenda. Company representatives commented that in particular ME, MID and MoF were committed and engaged in the EITI process. No scepticism towards the EITI was observed amongst government agencies. The national secretariat said that an indicator of this was that they no longer had to provide explanations for their information requests. Some civil society representatives considered the government's commitment to be a genuine reflection of desire to be more open and transparent, while others considered it mere window-dressing.

With regards to the EITI Champion, it was explained that the bylaws for the NSC stipulate that the Minister of MID should be the EITI Champion and Chair of the NSC, and the vice-minister of MID should be the deputy chair of the NSC. In addition, the NSC has the opportunity to call on the first Deputy Prime Minister Askar Mamin, who oversees MID, in case of any issues requiring government intervention at the highest level. An example of this was the implementation of the requirement on beneficial ownership disclosure. As this required cross-departmental collaboration, the NSC had raised the issue of the beneficial ownership roadmap with the Deputy Prime Minister, who had subsequently directed all relevant government agencies to provide their input to the beneficial ownership roadmap. Stakeholders considered that such interdepartmental collaboration would not have been possible without the intervention of the Deputy Prime Minister.

Company representatives appreciated the high-level representation of the government on the NSC, often at a vice-minister level. No stakeholder had observed any decrease in government engagement at any time, not even during times of reshuffles and reappointments to key roles such as MSG chair. The integration of EITI in *Kazgeoinform's* work in terms of budget and staff alongside providing an annual

budget line for the EITI was considered another indication of the government's commitment to the EITI.

In terms of opportunities for improvement in government engagement, it was suggested that EITI should be a part of the official job description of government staff in relevant agencies, to guarantee their contributions including whenever there were successions.

### Initial assessment

The International Secretariat's initial assessment is that Kazakhstan has made satisfactory progress in meeting this requirement. The government is fully, actively and effectively engaged in the EITI process, and has appointed a lead that has the authority to coordinate action across ministries, mobilise resources for implementation, and who enjoys the confidence of all stakeholders.

## Company engagement (#1.2)

### Documentation of progress

Kazakhstan has a well-developed extractive sector with around 400 companies active in the upstream oil, gas and mining sector. The largest projects include *Karachaganak*<sup>16</sup>, *Kashagan*<sup>17</sup>, and *Tengiz*<sup>18</sup> on the oil and gas side. On the mining side, in addition to the state-owned companies, the *Eurasian Group* is the largest player on minerals and metals such as chromium, manganese, iron ore, bauxite and coal. *KazMinerals* is one of the leading copper producers, *ArcelorMittal* mines coal and iron ore, *Kazzinc* has several copper, zinc and lead assets, *Kazakhaltyn* is the largest gold producer in the country, *Bogatyr Coal* and *Severny* mines comprise one of the world's largest open pit coal mines, and *Syrymbet* manages the largest undeveloped tin deposit in the world.

In 2010, Kazakhstan enacted legislation mandating subsoil users to comply with the EITI. Specifically, Art. 50.3.8 of the Law on Subsoil and Subsoil Use from 2010 introduces the concept of the EITI at the bidding stage, stating that "the bid shall contain the obligation to accede to the Memorandum of Understanding on the EITI before signing the contract (...)"<sup>19</sup>. Art. 76.6 on the duties of subsoil users states that "subsoil users must comply with the terms of the Memorandum of Understanding on the EITI (...)". While Kazakhstan struggled with comprehensive reporting in the early years of implementation, these legal amendments and efforts to mainstream implementation (*see requirement 7.2*) have contributed to an enabling environment for company participation in the EITI both in terms of the legal framework as well as in practice. In the 2015 EITI Report, nine companies failed to report, mainly because they did not have any operational activities (*see requirement 4.1*). One of these companies cited confidentiality reasons for their lack of disclosures.

Companies in Kazakhstan are fully, actively and effectively engaged in the EITI process. While individual companies and global EITI supporters such as ExxonMobil and Statoil played an important convening role in the early stages of implementation, the main industry associations – KazEnergy and the Association of Mining and Metallurgical Enterprises (AGMP) – have taken an active role in bringing companies together

<sup>16</sup> Jointly operated by ENI and Shell with participation of Chevron, KazMunaiGas and Lukoil.

<sup>17</sup> Operated by the North Caspian Operating Company, with participation of CNPC, ENI, ExxonMobil, Inpex, KazMunaiGas, Shell and Total.

<sup>18</sup> Operated by Tengizchevroil with participation of Chevron, ExxonMobil and KazMunaiGas.

<sup>19</sup> 2010 Law on Subsoil and Subsoil Use, [https://online.zakon.kz/Document/?doc\\_id=30770874#pos=0;0](https://online.zakon.kz/Document/?doc_id=30770874#pos=0;0)

in the recent years. An industry working group, hereinafter the ‘KazEnergy EITI working group’, has been established under the auspices of the KazEnergy Association. According to KazEnergy, the group discusses issues such as “development of recommendations for improving oil and gas companies’ management and transparency mechanisms, analysis of legislation and preparation of proposals regarding amendments and changes to legislative acts, recommendations on improvement of NSC efficiency, awareness raising of the Association and its members throughout the EITI implementation process, and other pertinent issues”<sup>20</sup>. The working group currently has eleven members, representing both multinational companies as well as major national players in the oil and gas sector. All working group members also have their area of EITI responsibility, for example, Validation or communication<sup>21</sup>.

There is an ample evidence of industry contributions to the process. For example, the KazEnergy EITI working group initiated the drafting and introduction of new reporting forms in 2016, to cover issues such as companies’ expenses for social investments, training activities for employees, and purchase of goods and services in accordance with local content provisions<sup>22</sup>. This has subsequently been extended to draft reporting templates covering expense of subsoil users on scientific research and other research (KazEnergy working group meeting minutes, 10.07.2017). The working group meeting minutes also illustrate industry discussions about contributions to the NSC workplan, beneficial ownership roadmap, etc.

KazEnergy has also supported and facilitated opportunities for dissemination of events such as the annual EITI national conferences where the EITI reports are presented annually. These have tended to take place within the framework of the larger annual Eurasian KazEnergy Forum<sup>23</sup>.

Industry representatives have also contributed to spread awareness of the EITI through media interviews and press releases<sup>24</sup>. AGMP acts as the coordinator of the NSC working group on communications and has actively contributed to shaping the media and communications work of the NSC. These efforts have also included outreach to mining companies. For example, AGMP promotes EITI through industry media platforms such as the AGMP website, mobile application, and the mining and metallurgical magazine. It has also holds meetings with press-secretaries in mining companies and promotes the preparation of more materials communicating how companies are working transparently<sup>25</sup>.

### Stakeholder views

There appears to be general agreement among stakeholders that companies are making an active and important contribution to the process.

The companies explained that it was the government that had initiated the introduction of the EITI provisions in the 2010 Law on Subsoil and Subsoil Use. Nonetheless, it was important for companies that the EITI was enshrined in legislation as it facilitated their work in terms of disclosing data. It was noted that it was important that the EITI requirements were reflected in the new draft Subsoil Code and Tax Code in order for them to continue to be able to provide the requested information. Although the

<sup>20</sup> KazEnergy interview, p.2. Available from the EITI International Secretariat.

<sup>21</sup> Overview of KazEnergy working group members available from the EITI International Secretariat.

<sup>22</sup> KazEnergy interview, p.2. Available from the EITI International Secretariat.

<sup>23</sup> <http://www.kazenergyforum.com/index.php/en>

<sup>24</sup> List of articles available from the EITI International Secretariat.

<sup>25</sup> 2016 APR, p.10



companies often agreed with the government position, there were also examples of times where the companies had voiced different views, for example, on the issue of contract transparency.

In terms of opportunities for improving industry participation, stakeholders commented that the industry attendance in NSC working groups had been increasingly patchy in recent months. Some also questioned whether the companies' independence was sufficiently preserved given their representation through bodies like KazEnergy, which were not perceived by all stakeholders to be independent of government. Although the companies were perhaps more efficiently represented through the associations, some stakeholders commented that the level of discussion and debate in the NSC had been higher when companies were individually represented. Some civil society representatives claimed that companies were mainly participating because they were forced to. Others commended in particular KazEnergy for being an active participant not only in the NSC but also in terms of legislative work.

### **Initial assessment**

The International Secretariat's initial assessment is that Kazakhstan has made satisfactory progress in meeting this requirement. Companies are fully, actively and effectively engaged in the EITI process and there is an enabling environment for company participation. Nonetheless, companies should strive to ensure that the breath of industry views are adequately captured reflecting the diversity of the companies operating in Kazakhstan in terms of size, origin and sectors.

### ***Civil society engagement (#1.3)***

Civil society has grown rapidly since Kazakhstan gained independence in 1991. The International Centre for Not-for-Profit Law (ICNL) describes the overall development of the civil society sector in Kazakhstan as follows<sup>26</sup>:

“Civil society in Kazakhstan has steadily become more diverse, visible, and robust since the breakup of the Soviet Union. Civil society organizations (CSOs) established during the early 1990s were inspired by the rapid process of reform and were primarily concerned with human rights issues and the “democracy agenda.” By 1997, the number of CSOs had reached 1,600 due primarily to significant financial support from international funding agencies, including from the United States and Western Europe. Growth continued to accelerate in the 2000s, and according to figures obtained from the Ministry of Justice in 2013, there are now over 38,000 independent CSOs in the country engaged in a wide range of activities (...) Recent years have seen the development of formal arrangements for CSO–Government cooperation, as well as the rise of organizations engaged in service provision and meeting social development challenges”.

However, reports of several international civil society and human rights organisations show that civil society in Kazakhstan is facing certain challenges and that no significant improvements in the enabling environment for civil society have been observed in recent years. The general opinion of most external civic space monitors appears to be that the situation has deteriorated since 2011. According to the 2017 Freedom in the World report by Freedom House, Kazakhstan's score remains steadily low for the period of 1998-2016, notably 5.5 on the scale 1 to 7 (where 1 is the best result and 7 the worst)<sup>27</sup>. Kazakhstan's

<sup>26</sup> <http://www.icnl.org/research/monitor/kazakhstan.html>

<sup>27</sup> <https://freedomhouse.org/report/freedom-world/2017/kazakhstan>

ranking in 2017 worsened to 6 “due to voters’ lack of access to any genuine political choice and the continuation of efforts by the government to stifle opportunities for opposition groups. Also, in its latest report<sup>28</sup>, Human Rights Watch characterises the current civil society situation in Kazakhstan as follows: “Against the backdrop of an economic downturn, Kazakh authorities in 2016 jailed peaceful protesters, targeted outspoken activists on vague and overbroad criminal charges, and prosecuted independent journalists. Parliament adopted laws placing unjustified burdens and restrictions on nongovernmental organizations (NGOs)”. Numerous other actors including, for example, the European Parliament, OSCE, the UN Special Rapporteur on Human Rights, and the US State Department have expressed similar concerns.

### (i) Expression (*Requirements 1.3(d), 1.3(e)(i), 1.3(e)(iv); Civil society protocol 2.1*)

#### Documentation of progress

Art. 20 of the Constitution of Kazakhstan<sup>29</sup> guarantees freedom of speech and states that censorship should be prohibited. This is also reflected in Art.19 of the Law on Public Associations<sup>30</sup>, which states that CSOs have the right to disseminate information about their activities, establish mass media outlets and perform publishing activities, etc.

In practice, reports by several international organizations point to a limiting environment for freedom of expression in Kazakhstan. According to the Freedom House Report 2016:

“Members of the president’s family and other powerful groups control most of the media sector, including publishing houses. Libel is a criminal offense, and the criminal code prohibits insulting the president. Self-censorship is common. Since 2011, when police used emergency powers to arrest or detain journalists attempting to cover unrest in Zhanaozen and neighbouring cities, raids on independent media outlets and the harassment and detention of journalists have increased. New regulations in 2012 gave the Ministry of Culture and Information expanded powers to combat “unofficial or negative information” about any crisis. Since 2012, courts have shut down dozens of independent newspapers, television channels, and news websites on charges of “extremism”<sup>31</sup>.

Newspapers *Adam Bol*, *Assandi Times*, *Respublika* and *Vzgliad*, the tv-channel *K+*, the video portal *stan.tv* are only some examples of independent media outlets that have been closed over the last years. According to media monitors, the only remaining media outlets considered independent are Moscow-based agency *Fergana News*, *Radio Free Europe/Radio Liberty Kazakh Service*, *Vlast.kz*, *Expert Kazakhstan*, *Exlusive*, *Kapital*, *Ratel.kz*. Moreover, in 2016 new amendments to the Law on Communications<sup>32</sup> were adopted, allowing “authorities to scan communications sent over the HTTPS protocol and to block access to individual webpages with content which the authorities judged to be illegal”<sup>33</sup>. Despite this, activists are increasingly relying on social media, including Facebook and Twitter, to disseminate and share

<sup>28</sup> <https://www.hrw.org/world-report/2017/country-chapters/kazakhstan>

<sup>29</sup> [http://online.zakon.kz/Document/?doc\\_id=1005029#pos=197;-155](http://online.zakon.kz/Document/?doc_id=1005029#pos=197;-155)

<sup>30</sup> [https://online.zakon.kz/Document/?doc\\_id=1005615#pos=140;-161](https://online.zakon.kz/Document/?doc_id=1005615#pos=140;-161)

<sup>31</sup> <https://freedomhouse.org/report/freedom-world/2016/kazakhstan>

<sup>32</sup> [https://online.zakon.kz/Document/?doc\\_id=1049207#pos=0;0](https://online.zakon.kz/Document/?doc_id=1049207#pos=0;0)

<sup>33</sup> <https://www.amnesty.org/en/countries/europe-and-central-asia/kazakhstan/report-kazakhstan/>

Validation of the Republic of Kazakhstan: Report on initial data collection and stakeholder consultation information.

Amnesty International's report on Kazakhstan for 2016-2017<sup>34</sup> flags criminal prosecution of journalists and social media activists as one of the main signs of violation of freedom of expression in Kazakhstan. Organisations like the European Parliament<sup>35</sup>, OSCE<sup>36</sup> and the US State Department<sup>37</sup> have also expressed similar concerns over shrinking freedom of expression.

In terms of freedom of expression within the EITI, there is some evidence that civil society has expressed opinions on the EITI related matters. This includes contributions at conferences<sup>38</sup>, in media<sup>39</sup>, and panel debates<sup>40</sup>. Further examples are documented in the section on stakeholder views below.

### Stakeholder views

Generally, stakeholders highlighted that Kazakhstan scored low on issues such as freedom of expression and freedom of media. The space for freedom of expression was considered by some civil society representatives to be extremely narrow with the government monitoring and restricting discussions. While it had previously been possible for civil society to have such discussions online, the government was now moving to control also the online sphere. Criminal cases related to freedom of expression were increasing, with criminal prosecutions for dissemination of certain information online that could be interpreted to advocate social, national family, racial or religious hatred, as well as for libel. CSOs gave the example of bloggers and civil society campaigners who had written on issues such as Kazakh-Chinese relations and the sale of land to China, and who had subsequently ended up in jail due to their statements and actions. Others confirmed that CSOs could get into trouble if touching sensitive issues like the President and his family, high level government officials, and election issues, but could not cite or recall any examples of any journalists or civil society representatives that had faced repression for making public statements related to oil, gas and mining. Nonetheless, the issues of self-censorship and personal safety were becoming more relevant for all.

One civil society activist, Olesya Khalabuzar, leader of the Coalition Community of Youth Professionals, member of the DP platform and former NSC member<sup>41</sup>, was on 1 August 2017 sentenced to two years of restricted freedom<sup>42</sup>. Although officially accused of inciting ethnic hatred, civil society were generally of the view that the sentence was politically motivated. Olesya was also the leader of the opposition movement *Justice* and one civil society representative commented that this Coalition had been active on many issues including anti-corruption, black-listing of judges and civil servants, promoting pro-Russian views, etc.

<sup>34</sup> <https://www.amnesty.org/en/countries/europe-and-central-asia/kazakhstan/report-kazakhstan/>

<sup>35</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2016-0083&language=EN&ring=B8-2016-0337>

<sup>36</sup> <http://www.osce.org/fom/185401>

<sup>37</sup> <https://kz.usembassy.gov/statement-conviction-kazakhstan-union-journalists-president-seitkazy-matayev/>

<sup>38</sup> See for example the civil society presentation on NGO views on regional implementation of the EITI as well as restrictions on NGOs during the 2015 national EITI conference, <http://eiti.geology.gov.kz/images/stories/IPDO/conference/vzgl.pptx>

<sup>39</sup> See for example the article "The population is still passive" <http://pricom.kz/?p=36861>

<sup>40</sup> See for example panel debates on the National Fund (<http://agkipr.kz/archives/644>) and quasi-fiscal expenditures (<http://agkipr.kz/archives/1264>)

<sup>41</sup> Olesya Khalabuzar was a member of the NSC from 2014-15.

<sup>42</sup> <https://www.rferl.org/a/kazakh-khalabuzar-guilty-inciting-hatred/28652879.html>

Some civil society representatives lamented the introduction of the new Law on Mass Media which would restrict the media environment even further, including by requiring all statements to be substantiated with full reference to the source, requiring all questions to government officials to be submitted in writing with the stamp and signature of the editor, and extending the time available for government to respond from three days to two weeks. These measures, if adopted, would increase the risk of prosecution of independent media and stifle public debate as information would become obsolete by the time it could be used. In terms of independent local media outlets, Ratel.kz and Radio Azattyq (Radio Free Liberty) were mentioned. Over the years, the volume of state financial support to media had increased, and combined with an increasingly restrictive legal framework, the current environment was promoting self-censorship and discouraging independent media.

Some local media representatives claimed that everything concerning the extractive sector was quite controversial for journalist and media, including the issues of company ownership that remained opaque. The only times where information like this had been revealed was due to scandals such as, for example, the underperforming Kashagan pipeline subcontractor which had turned out to be owned by the former Minister of National Economy. Some cities and villages were built up entirely to support extractive operations and as such local authorities and companies were vulnerable to any criticism voiced by the local population and companies would yield significant influence on all activities. The governance and spending of the National Fund was also considered a taboo topic for journalists, although some were writing about it and managing to spark some debate.

One civil society activist commented that self-censorship was increasing and that fewer NGOs were willing to get in engaged in topics like the EITI because it required critical thinking on controversial issues. It was noted that one civil society activist Maks Bokaev<sup>43</sup>, who had been critical of the government's spending of the revenues natural resources, had been sentenced to imprisonment for five years. Although Maks has been involved in the EITI-related work, including being an active participant in the EITI in the early years, the main motivation behind his prosecution was his attempts to organise a peaceful assembly in protest of the proposed amendments to the Land Code, and his work to support the victims of the Zhanaozen shooting in 2011. Another civil society activist had been questioned when expressing critical comments towards KazMunaiGas. This activist had also been questioned when linking a discussion about beneficial ownership to the President's family.

Other civil society representatives argued that media and CSOs had freedom to express their views on EITI issues, but that there was limited interest in the topic. For example, at a recent EITI conference only one journalist had showed up. Civil society was generally free to say whatever they wanted related to the EITI and there were no government attempts to restrict the civil society voice on the EITI. For example, at the EITI conference last year, one civil society representative had been asked questions about payments and activities of Chinese companies and had responded with reference to the EITI Report. However, it was of course difficult to separate the EITI from other issues and no NGO had EITI as its one and only focus. As such, if a NGO faced a tax penalty or other restrictions due to its work on more sensitive topics, this would ultimately also affect the ability of the NGO to carry out its EITI work.

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<sup>43</sup> <https://www.hrw.org/news/2016/11/28/kazakhstan-2-activists-sentenced-5-years>

**(ii) Operation (*Requirements 1.3.(b), 1.3(c); Civil society protocol 2.2*)****Documentation of progress***Legal framework governing NGO activities*

The key laws governing the operation of civil society activities include<sup>44</sup>:

- The Civic Code of Kazakhstan (1994, amended 2012), which defines non-commercial organisations and sets out the various forms that these can take
- The Administrative Offense Code (2014, amended 2017) and Criminal Code (2014, amended 2017) which define administrative and criminal responsibilities for violation of the laws governing CSO activities
- Tax Code (2008, amended 2017) which defines taxation of non-profit organizations
- Law on Non-Commercial Organisations (2001, amended 2017)
- Law on Public Associations (1996, amended 2016)
- Law on Volunteering Activity (2016, amended 2017)
- Law on State Social order (2005, amended 2017)
- Law on Payments (July 2016)

Since 2012, the government has initiated a series of amendments to the legal framework governing the NGO sector:

- A new Criminal Code was adopted in July 2014, which set out the consequences for violations of the laws governing NGOs. It introduces criminal provisions for leaders of Public Associations, including Art. 174 on discrimination.
- A new amendment to the Administrative Offenses Code was added in December 2015. Art. 489-1 introduces administrative responsibility for not providing information or providing inaccurate or intentionally wrong information on founders, assets composition, sources and usage of financial support, etc.<sup>45</sup>.
- The 2001 Law on Non-Commercial Organisations was amended, resulting in new Rules for Providing Information by Non-Commercial Organisations (NCOs) on their Activities and Formation of the NCO Database coming into force in December 2015<sup>46</sup>. The Rules impose information and reporting requirements on CSOs. The Rules were subsequently revised in March 2016.
- The Law on Communications was amended in January 2017, facilitating government surveillance and control of websites and internet activities.
- The Law on Payments, adopted in July 2016, now requires reporting on the use of foreign funds.
- The Law on Volunteering Activity (January 2017), introduces incentives for volunteers and also

<sup>44</sup> See ICNL for complete list.

<sup>45</sup> [https://online.zakon.kz/Document/?doc\\_id=31577399#pos=6056;-192](https://online.zakon.kz/Document/?doc_id=31577399#pos=6056;-192)

<sup>46</sup> <https://infonpo.kz/>

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imposing new reporting requirements on volunteers.

In addition, amendments to the 2008 Tax Code and 1999 Law on Mass Media are currently being drafted and scheduled to be discussed by the Parliament in September 2017. Amendments affecting NGOs include the proposed removal of exemption for income tax payments for NGOs receiving grants, and a requirement for VAT payments for large NGOs. If adopted, this could add a tax burden of 30% to NGOs. The proposed amendments to the Law on Mass Media would include changes such as requiring written consent for publishing any quotes, a requirement to register to post any information online, and removal of the opportunity to remain anonymous in online debates.

### *Registration of CSOs*

The process for registering NGOs is relatively transparent and there does not appear to be any significant legal barriers to registration. Art. 23 of the Constitution of Kazakhstan<sup>47</sup> guarantees the right to freedom of forming associations. According to the Law on State Registration of Legal Entities and Record-Registration of Branches and Representative Offices<sup>48</sup>, all public associations should be registered at the MoJ. According to ICNL, the operation of unregistered CSOs is prohibited and subject to administrative and criminal liability. Registration of an NGO typically takes about 10 days and in case of rejection, a written explanation must be provided.

In practice, it has been reported that “NGOs reported some difficulty in registering public associations. According to government information, there were discrepancies in the submitted documents”<sup>49</sup>. Moreover, currently there is no possibility to register an NGO online – this option is available only for commercial entities. There is no evidence of that CSOs involved in the EITI have faced challenges registering their organisations.

### *Access to funding*

There are no legal barriers to domestic funding that apply to NGOs in Kazakhstan. Moreover, according to Art. 33 of the Law on NCOs, any NCO “*may engage in entrepreneurial activities to the extent that it corresponds with its statutory goals*”<sup>50</sup>. The government funding for civil society has grown in recent years, amounting to USD 28m in 2016<sup>51</sup>. The government also recently established the Civil Initiatives Support Centre, often referred to as the “state-operator”, which is a government entity in charge of channelling public and private funds to NGOs and monitoring their implementation<sup>52</sup>.

When it comes to foreign funding, the Law on Payments was adopted in July 2016 and “*includes reporting requirements concerning the receipt and expenditure of foreign funds or assets, and a requirement to label all publications produced with support from foreign funds as such*”<sup>53</sup>. The reports on funds received and their spending have to be filed quarterly. Administrative and criminal penalties will be applied to the NGOs that do not comply with these requirements. Additionally, “*potential restrictions on the conduct of*

<sup>47</sup> [http://online.zakon.kz/Document/?doc\\_id=1005029](http://online.zakon.kz/Document/?doc_id=1005029)

<sup>48</sup> [https://online.zakon.kz/Document/?doc\\_id=1003592](https://online.zakon.kz/Document/?doc_id=1003592)

<sup>49</sup> US State Department, 2015, p.20

<sup>50</sup> <http://www.icnl.org/research/monitor/kazakhstan.html>

<sup>51</sup> Ibid.

<sup>52</sup> <http://cisc.kz/en/cisc/about-us/>

<sup>53</sup> <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265538#wrapper>

*meetings, protests, and similar activities organized with foreign funds*” are introduced in the Law of Payments<sup>54</sup>. There is no evidence that this reporting has imposed restrictions on NGOs working on the EITI issues, although all NGO representatives lamented the cost and burden of these requirements (see *stakeholder views*).

According to the Tax Code<sup>55</sup>, NGOs are exempted from taxation of income received depending on the nature and purpose of the funds. Recently, it has been reported that some NGOs that have expressed critical opinions<sup>56</sup> have been subject to tax inspections and charges of tax evasion. There is no evidence of any NGOs working on the EITI issues having been subjected to such inspections.

### *Monitoring of NGO activities*

Starting from 2016, all NCOs in Kazakhstan are obliged to report on their activities for the previous calendar year to the Ministry of Religion and Civil Society Affairs<sup>57</sup> by 31 March every year. Organisations should provide information about the founder and members, composition of property, sources of funding and directions of spending money according to the requirements of the authorized body in the sphere of interaction with non-governmental organizations<sup>58</sup>. This information will be included in the NCO database hosted by the Ministry. In case of not meeting the deadlines or other reporting rules, fines or a temporary ban on activities could be applied. CSOs were required to report for the first time by 31 March 2016. According to ICNL “at least 1800 reports were received before the 31 March deadline” covering information on the 2015 financial year. According to the database website statistics, almost 3000 organisations provided information in the second round of reporting covering the 2016 financial year. While not all NCOs submitted data as required, non-compliant NCOs were not penalized for failure to meet the reporting deadline.” In terms of CSOs working on EITI issues, there is no evidence that this reporting has caused any challenges or has limited their work in any ways beyond adding some bureaucracy. Moreover, a webinar dedicated to the reporting procedures was organised within the CSO constituency, with CSO representatives presenting step by step instructions on reporting for the NCO database<sup>59</sup>.

### *Freedom of assembly*

With regards to freedom of assembly, the situation is often characterised as restricted in Kazakhstan. According to Amnesty International<sup>60</sup>, “*Organizing or participating in a peaceful public assembly without prior authorization from the authorities was a violation under both the Administrative Offences Code and the Criminal Code, punishable by heavy fines or up to 75 days’ detention. Providing “assistance” to “illegal” assemblies, including by “means of communication”, including social media, constituted a criminal offence.*” Moreover, there are restrictions on where the assembly can take place. Although there is considerable evidence of violations of freedom of assembly related to e.g. land reform issues and worker’s rights, no restrictions have been observed on freedom of assembly related to the EITI issues.

<sup>54</sup> <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dclid=265538#wrapper>

<sup>55</sup> [https://online.zakon.kz/Document/?doc\\_id=30366217#pos=0;8](https://online.zakon.kz/Document/?doc_id=30366217#pos=0;8)

<sup>56</sup> Including the case of Seitkazy Mataev, National Press Club; the International Legal Initiative.

<sup>57</sup> Article 41 of the Law on NGO, [https://online.zakon.kz/Document/?doc\\_id=1021519#pos=0;0](https://online.zakon.kz/Document/?doc_id=1021519#pos=0;0)

<sup>58</sup> <https://infonpo.kz/>

<sup>59</sup> [https://groups.google.com/forum#!topic/dp-eiti/GECHiZBB\\_9U](https://groups.google.com/forum#!topic/dp-eiti/GECHiZBB_9U),

<https://pruffme.com/landing/u21750/tmp1458551149>

<sup>60</sup> <https://www.amnesty.org/en/countries/europe-and-central-asia/kazakhstan/report-kazakhstan/>

## Stakeholder views

Civil society generally lamented what they regarded as a trend towards a more restrictive and controlled environment for civil society. It was argued that the real motivation behind the shrinking space was a desire to control any potential uprising or public discontent as the leadership was preparing for succession. The decrease in oil revenues also kept the government under pressure to maintain social services to avoid social discontent and unrest resulting from loss of employment opportunities, devaluation, etc.

Some NGOs reported that the new requirements for annual filing on information of NGO activities had not had any implications on their NGO's activities. It was also noted that the requirement had led to the removal of a number of dormant NGOs. Indeed, prior to this requirement, around 30 000 NGOs had been registered in Kazakhstan. However, according to the government's data base established on the basis of the new reports filed by NGOs, only some 3000 were active.

A government representative explained that a new Ministry – the Ministry of Religion and Civil society – had recently been established in November 2016 with the objective of improving the dialogue between the government and NGOs. This ministry had also been tasked with overseeing the implementation of the 2015 Rules for Providing Information by NGOs on their Activities and Formation of the NGO Database. According to the ministry, the objective of the rules was to increase transparency and accountability of NGOs towards the beneficiaries of their projects in terms of project execution. Reports on the progress with implementing NGO project activities had to be filed by 31 March every year either electronically or in hard copy, and so far approximately 3000 NGOs had reported. The ministry hoped that the information on the NGOs as well as information on the state grants would soon be made available online in a database open to the public so that everyone would be able to access the information. The development was also seen to complement the trend towards greater transparency in government and it was hoped that the database would also contribute to promote dialogue and understanding between government and civil society. According to the government, well-established NGOs had not experienced difficulties in reporting as they already had the systems in place for recording this information which was often requested of them anyway by donors. Admittedly, it could be more difficult for smaller NGOs with less financial and human resources but at the same time the rules were also intended to build NGO capacity and strength in terms of reporting, organisational structure etc. In terms of consequences for NGOs failing to the report, it was explained that the local executive authorities were in charge of law enforcement. Sanctions available to them included warnings and fines. One civil society representative commented that a key challenge with the new Rules on reporting of information on NGOs was the lack of legal specificity. The vague language made it difficult for NGOs to know what exactly needed to be reported, making their reporting more vulnerable to mistakes and hence possibly also warnings and fines.

In terms of funding, a civil society representative said that she last year had several projects funded by foreign donors and that the new reporting requirements under the Law on Payments introduced in 2016 had mainly meant added administrative and financial burden as every single detail of grant spending had to be reported. The fines for erroneous reporting had also gone up from USD 150-600. As a first step, NGOs had to notify the MoF within ten days of receiving a grant from a foreign donor. This could be done online, and the government was usually quick to acknowledge receipt. Secondly, NGOs had to submit quarterly report on spending. Before this law, NGOs only needed to inform the MoF of receipts of such grants when filing their tax returns. Civil society had heard commentary suggesting that the government thought that foreign donors were funding revolutionary activities in Kazakhstan and that therefore this



new reporting was designed to monitor the spending of such funds<sup>61</sup>. There had also been talks about channelling all foreign funds through the state-operator and rumours to ban foreign funding, but there was no indication that this would happen in the near future.

The government explained the new requirements of the Law on Payments introduced in 2016, requiring NGOs receiving foreign funds to report to notify the government of the receipt of such funds enabled the MoF to assess any taxes to be paid by NGOs. The government also explained that government resources were increasingly available to NGOs in the form of grant competitions and premiums. Although some CSOs involved in the DP were recipients of government grants and did not perceive this to be problematic, others stayed away from such grant arguing that it had an impact of their independence. Others again argued that government grants were only a problem if it resulted in a tamed and less critical civil society voice on the NSC. Keeping silent on the NSC could be interpreted as consent.

Civil society lamented that the law could be used to prosecute NGOs to the government's liking. For example, an NGO associated with the *Aykyndik* coalition had recently received a tax penalty of worth five years of accrued income tax payments as well as additional fines due to that the donor of the grant did not appear on the 2009 list of donors allowed to make tax exempt grants. According to some, this was an outdated list that was simply used by the authorities for them to have an excuse to impose the tax penalty. Civil society considered the real motivation behind the tax penalty to be due to the NGO's role in providing legal assistance to activists detained during the land reform protests of last year. It was however noted that this type of cases was still relatively rare.

In terms of laws currently being drafted, there was considerable concern related to the draft amendments to the Law on Mass Media. If this was passed, any journalist would need to provide written consent from all sources and it would be prohibited to publish personal details and family secrets. Furthermore, all online discussion on local sites would be subject to registration, making it impossible to continuous anonymous online debates. While there was little self-censorship online, this would significantly curb freedom of expression also online. There were also concerns related to the proposed amendments to the Tax Code, proposing the removal of tax benefits for all NGOs and imposing corporate income tax (20% on all) and VAT (10% on large organisations). This would considerably reduce the ability of NGOs to operate as they would essentially have to do so on the same terms as for profit organisations. The increase in government funding for NGOs was seen to significantly narrow the independence of civil society.

Although none of the CSOs consulted had any challenges with registering their NGOs, it was noted that it was an issue for some groups. Recently, an independent trade union focused on oil worker's rights had unsuccessfully tried to register further branches. This meant that the trade union branches were operated illegally and the head of the trade union Larisa Kharkova, was recently convicted<sup>62</sup>. Representatives of the MoJ explained the registration process for "non-commercial entities", including NGOs. The procedures and requirements were outlined in the Law on NCO and registration requirements typically included submission of the charter/bylaws of the NGO, the receipt of payment of the application fee and an excerpt of the minutes of the general assembly. It took the MoJ maximum ten days to effectuate the registration. Grounds for denying registration were outlined in Art. 11 and in the event of denial, the exact reasons would be quoted in the denial order alongside an explanation of the opportunities for re-application. As of now, it was not possible to apply online. The MoJ kept a register of all non-commercial organisations, whereas the Ministry of Religious and Civil Society Affairs kept a register of the NGOs that

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<sup>61</sup> See also Kazakhstan: Space for civil society shrinking? <http://www.eurasianet.org/node/84461>

<sup>62</sup> <https://www.hrw.org/news/2017/07/26/kazakhstan-trade-union-leader-convicted>

Validation of the Republic of Kazakhstan: Report on initial data collection and stakeholder consultation had filed reports in accordance with the Rules on providing information on NGO activities.

### (iii) Association (*Requirements 1.3(e)(iii); Civil society protocol 2.3*)

#### Documentation of progress

There is no evidence to suggest that there are restrictions or limitations on NGOs in terms of their ability to associate, communicate and cooperate with other national or international NGOs. Civil society in Kazakhstan is fast growing and it is estimated that there are currently close to 40 000 NCOs operating in Kazakhstan<sup>63</sup>, although less than 10 000 of these are estimated to be NGOs.

Civil society has been actively involved in Kazakhstan's EITI process from the outset. In July 2004, the *Coalition Oil Revenues under Public Oversight* was formed with support of the Soros Foundation Kazakhstan to promote EITI implementation in the country. A year after, Kazakhstan joined the EITI. As implementation got underway and more CSOs expressed interest in joining the process, the *Coalition Oil Revenues under Public Oversight* decided in February 2011 to establish the Dialogue Platform (DP) on the EITI in order to expand the representation of civil society in the EITI. The DP was joined by two more CSO coalitions, notably *Azamattyk Kuryltai* and the *Civil Alliance of Kazakhstan*.

However, the member coalitions struggled to reach agreement on funding, participation in international events, priorities for EITI implementation, and NSC membership. In late 2011 the Soros Foundation Kazakhstan<sup>64</sup> supported a workshop on conflict management and negotiations to help the civil society group develop ToRs for the DP. Elections to the NSC were carried out in November 2011. However, the results of the elections were contested and in 2013 *Azamattyk Kuryltai* left the DP claiming pro-governmental loyalty of two other member coalitions. *Azamattyk Kuryltai* and another non-DP member coalition, *Aikyndyk*, united their efforts in questioning the legitimacy of the DP. Despite one coalition withdrawing the DP has continued to expand its membership since 2013 and is now currently comprised of four coalitions: *Oil Revenues under Public Oversight*, *Civil Alliance of Kazakhstan*, *Union of NGOs of Kazakhstan*, *Confederation of Labour Union* and *Community of Youth Professionals*<sup>65</sup>. Due to continuous controversies and disputes between the coalition engaged with the EITI, Publish What You Pay excluded the three Kazakh coalitions affiliated to PWYP (*Azamattyk Kuryltai*, *Aikyndyk* and *Oil Revenues under Civil Oversight*) from its membership in August 2014<sup>66</sup>.

Despite the decision of some coalitions to remain outside the DP, and thus not be eligible for NSC membership, representatives from these coalitions nonetheless participate in EITI work. For example, representatives from both *Azamattyk Kuryltai* and *Aikyndyk* participated in the NSC working group on reconciliation and the compilation of an EITI glossary in Kazakh. Representatives from these coalitions also contributed to preparations for Validation, including the production of a shadow Validation report<sup>67</sup>.

<sup>63</sup> <http://www.icnl.org/research/monitor/kazakhstan.html>

<sup>64</sup> <https://www.opensocietyfoundations.org/about/offices-foundations/soros-foundation-kazakhstan>

<sup>65</sup> A fifth coalition, *Community of Youth Professionals*, suspended its membership on 18 July 2017 due to the arrest of its leader.

<sup>66</sup> According to the PWYP Global Steering Committee decision on Kazakhstan, there was no PWYP affiliated coalition in Kazakhstan that met the PWYP governance standards and hence all affiliations were declared invalid. The GSC decision is available from the EITI International Secretariat.

<sup>67</sup> Krivodanov, Y. (2016) Readiness Assessment and Risk Evaluation for Kazakhstan's EITI Validation in 2016 and the Development of Practical Data-based Recommendations. Available from the EITI International Secretariat.

Section VII of the ToR for the DP<sup>68</sup> stipulates the rules aimed at ensuring that the NSC CSO representatives carry out their duties in terms of coordination and collaboration with the wider constituency. This includes contact with NGOs not represented on the DP as well as international organisations. It also includes an obligation to notify the DP members of any EITI events, collecting DP member opinions prior to NSC meetings, and informing the DP of the outcomes of NSC meetings. The DP has a Facebook page and a google group where most of the coordination takes place. The ToR for the DP does not appear to regulate the frequency of DP meetings, but provides for meetings to take place in person or with remote participation. Minutes from DP meetings are not public, but shared within the google group. There is no evidence of that the government has sought to restrict these channels.

In terms of collaboration with international CSOs, despite both NRGi and PWYP having left Kazakhstan, representatives from the NGO community continue to participate in the regional gatherings convened by the Eurasia Hub, NRGi and PWYP. For example, a CSO NSC member attended the EurasiaHub training on decision making chain in natural resource management in Baku in May 2016.

### Stakeholder views

Civil society representatives lamented that the relationship had not always been easy. Some of the civil society groups with roots in the West where a lot of the oil extraction takes place were considered to be more hardliners and wanted the civil society position in the NSC to be stronger. Other groups were more conciliatory, favouring softer dialogue. There were also ethnic divisions between those groups promoting Kazakh culture and language versus Russian speaking groups, and some personality clashes. This resulted in verbal and written accusations and difficulties in finding common ground, ultimately mostly affecting the effectiveness of civil society's involvement in the EITI.

Civil society explained that their main tools for liaison with other national CSOs were through the DP Facebook page and Google group. In addition, online or in-person meetings would take place, and anyone could participate in these meetings. Nonetheless, there could be a better division of labour across civil society. So far, much of the DP's work was carried out in Almaty, including on reconciliation. However, there was considerable further work to be done in terms of research, analysis, dissemination etc. and it would be beneficial for the collaboration between civil society if some of this work could be led by some of the Western-based groups.

Civil society appreciated opportunities to work with wider civil society in the region, noting the ability to share experience and lessons learnt including on topics such as civil society space. However, several expressed disappointment with the decision of the PWYP to leave the country in 2014, noting that they felt betrayed and abandoned at a time where the need for international support was growing.

A company representative said that NGOs were very active on the council but sometimes did not come with a united position. Lack of coordination sometimes had an impact on their effectiveness in getting their views across. Civil society had also argued amongst each other about their degree of independence. At the same time, the participation of NGOs was seen as important given their expertise and knowledge of what was going on the ground in extractive regions. It was also noted that over the years, civil society representation to the NSC had become more diverse.

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<sup>68</sup> <https://www.facebook.com/groups/eitikz/1657631474482707/>

#### (iv) Engagement (*Requirement 1.3.(a), 1.3(e)(ii); Civil society protocol 2.4*)

##### Documentation of progress

Civil society is actively contributing to the design, implementation, monitoring and evaluation of the EITI process, including through participation in the NSC<sup>69</sup>. There is ample evidence of civil society representatives contributing actively to the scope and production of the EITI Reports by providing expert input on the reporting templates, chairing the NSC working group in charge of reconciliation, commenting on TORs for the IA, drafting comments and suggested edits to the EITI Reports etc. In 2014, civil society also developed their own list of recommendations for improvements of EITI Reporting.

In addition, civil society representatives have prepared a number of analytical studies based on the data disclosed in the EITI Report. For example, based on the 2014 EITI report they issued an analysis of the contextual information in the EITI Report<sup>70</sup>, an analysis of the discrepancies<sup>71</sup>, a study looking at revenues received under Production Sharing Agreements<sup>72</sup>, an assessment of the tax burden of Kazakhstan's extractive sector<sup>73</sup> and a study on the practice for calculating dividends paid by SOEs<sup>74</sup>.

In terms of capacity to participate in the EITI, civil society has participated in and contributed to a number of capacity building events and projects. Examples include the November 2016 meeting of NGOs to discuss the strategic future direction of the EITI in Almaty; the 2016-2017 Kameda budget transparency capacity building project by OSF, which included a training for trainers event involving NGOs from the various regions of Kazakhstan; the 2016 project on *EITI in Kazakhstan: Data analysis* by the NGO Echo; the establishment of a working group on EITI glossary in 2016; and the Seminar on Beneficial Ownership in November 2016<sup>75</sup>.

##### Stakeholder views

Civil society representatives cited ample examples of their involvement in the design, implementation and monitoring of the EITI process. This included contributions to the workplan, the annual progress report, extensive work on the production of the EITI report as well as through analysis of the data and associated research. It was noted that although some CSOs involved in the EITI had specific expertise such as auditing, there was generally a need for more capacity building and training.

<sup>69</sup> Civil society is currently represented by three full members and three alternates, who were elected in April 2017 and will serve until April 2018.

<sup>70</sup> Esilbaev, M. (2015) Analysis of the contextual information of the national report "On the implementation of the Extractive Industries Transparency Initiative in the Republic of Kazakhstan for 2014". Available from the EITI International Secretariat.

<sup>71</sup> No name (2016); Analysis of discrepancies between tax and nontax payments in accordance with the National Report on the Implementation of the Extractive Industries Transparency Initiative (EITI) for 2014". Available from the EITI International Secretariat.

<sup>72</sup> Kasabulatova, S. (2015) The analysis of tax revenues under Production Sharing Agreements. Available from the EITI International Secretariat.

<sup>73</sup> No name (2106) Tax burden of Kazakhstan's mining sector. Available from the EITI International Secretariat.

<sup>74</sup> No name; Study of the practice of calculating dividends from companies with state participation under the EITI and displaying dividends in the EITI reports for 2013-2014. Available from the EITI International Secretariat.

<sup>75</sup> <https://www.facebook.com/groups/eitikz/permalink/1816970868548766/>

## (v) Access to public decision-making (*Requirement 1.3(d); Civil society protocol 2.5*)

### Documentation of progress

Regarding the ability of civil society to engage in analysis and advocacy on natural resource issues, there is evidence of analysis and criticism of current government policies related to natural resource governance. For example, representatives of civil society were strongly supporting inclusion of the beneficial ownership and contract disclosure requirements to the Subsoil Code, and have also provided input to the amendments to the Tax Code.

Civil society has also campaigned both successfully and less successfully on issues related to the governance of the CSO sector. It has been reported that while the CSOs attempts to push back on the new Criminal and Administrative Offences Codes in 2014 were not successful, the government did take into account advocacy efforts by CSOs related to the Rules for Providing information by NCOs<sup>76</sup> which resulted in an amended version being issued<sup>77</sup>.

In terms of accessing forums for public debates and discussion, a national plan for development of relationship between NGOs and government was signed in 2015. The plan includes several cooperation activities, namely development of public monitoring, development of sectoral cooperation between government and NGOs, NGO participation in the local government development, increasing role of NGOs in the development of a charity culture and social responsibility, discussion of priority directions of cooperation with international NGOs<sup>78</sup>. The government also hosts bi-annual civic forums that serve as dialogue platforms and consultation mechanisms between government and civil society.

### Stakeholder views

Civil society explained that the legal changes governing NGOs had been openly discussed amongst civil society who had come together to try to oppose the recent legal changes to the Law on NGOs and Law on Payments. Civil society had convened a conference to discuss this issue last year, and had conveyed their position and criticisms of the draft amendments to the government. CSOs had also tried to raise the issue within the NSC. Despite this intervention, the amendments had been adopted.

In other cases lobbying efforts had proved more effective. For example, during the discussion of the draft media law in 2006, parliament in particular independents had been more inclined to listen to the voice of civil society. However, these days the parliament was fully controlled by members of the ruling party.

At the local level, civil society lamented that while NGOs often suggested public debates and participations in decisions affecting them, the companies and local administration would often ignore them. The public councils that were established were mostly involving pro-governmental NGOs. On the other hand, it was argued that in a country like Kazakhstan CSOs should not let go of any opportunity to continue dialogue with the government.

It was noted that the 2015 Access to Information Law was considered deficient both in terms of falling

<sup>76</sup> ICNL Newsletter 09.03.2016, <https://drive.google.com/drive/folders/0Bytu8odJy0gedGZwOHdQUU1pQU0>

<sup>77</sup> <http://www.icnl.org/research/monitor/kazakhstan.html>

<sup>78</sup> <http://www.government.kz/ru/rasporyazheniya-premer-ministra-respubliki-kazakhstan/rasporyazheniya-premer-ministra-rk-za-dekabr-2015-goda/31496-ob-utverzhdanii-natsionalnogo-plana-po-razvitiyu-vzaimodejstviya-nepravitelstvennykh-organizatsij-i-gosudarstva-v-respublike-kazakhstan-na-2016-2020-gody.html>

short of UNESCO Standards as well as in its application in that government officials were continuously refusing requests for access to information.

Other stakeholders had observed that civil society had made reference to the EITI when participating in public hearings on the new draft subsoil code.

### Initial assessment

The information collected during the initial assessment shows that the space for civil society in Kazakhstan is clearly narrowing. There is limited freedom of expression, high levels of self-censorship and the legal framework is increasingly imposing greater restrictions and control over civil society.

Notwithstanding this overall picture of the civic space, the initial assessment nonetheless concludes that Kazakhstan has made satisfactory progress in meeting this requirement for the following reasons:

1. The EITI requires that civil society representatives who are substantively involved in the EITI process are “able to engage in public debate related to the EITI process and freely express opinions”. Evidence provided as part of the initial assessment shows that civil society representatives seem able to speak freely in public about the EITI process including for example during MSG meetings, EITI events including for the promulgation of EITI Reports, public events, in the media, etc.

Although there is clearly a high-degree of self-censorship in Kazakhstan, most of the stakeholders consulted did not have any concrete examples of self-censorship in relation to the EITI process or voiced concern that self-censorship was having an impact on the dissemination of information related to the EITI process. The only concrete example that was given was related to one CSO representative who had been questioned by a government representative that was present when she made the links between the EITI’s beneficial ownership requirements and the President’s family. This CSO representative had also been told off by a government representative when making critical comments about KazMunayGas. Other civil society representatives substantially engaged in the EITI process, including Olesya Khalabuzar and Maks Bokaev, have faced oppression as a result of the opinions that they have expressed, but these have not been opinions related to the EITI process.

It should be noted that, in general, there is limited evidence of public debate related to the EITI. Although self-censorship and limited freedoms of expression might contribute to this, the view of most of those consulted is that it is mostly a result of the technical nature of the EITI process, and the lack of funding to engage more substantially in campaigning and events where such opinions can be voiced.

2. The EITI requires that civil society substantively engaged in the EITI are able to operate freely. Evidence gathered as part of the initial assessment process shows a regressive trend when it comes to an enabling legal framework for NGOs. Recent legal amendments appear to be resulting in heavy and bureaucratic reporting requirements for NGOs, creating fear of non-compliance and associated penalties within the NGO community. There are also strong suggestions that these legal amendments are designed to support greater government control of NGO activities. Notwithstanding these developments, the legal regime is not yet affecting the ability of NGOs working on EITI issues to engage in the EITI. Apart from straining already scarce human and financial resources, none of the NGOs consulted had faced problems complying with the new

Validation of the Republic of Kazakhstan: Report on initial data collection and stakeholder consultation requirements, nor ceased or changed their activities as a result of these legal amendments.

3. The EITI requires that civil society representatives are able to communicate and cooperate with each other regarding the EITI process. The findings noted above show that civil society involved in the EITI process are not restricted from engaging with other national or international civil society groups. The CSO constituency has developed mechanisms for ensuring that MSG members can communicate with the wider civil society constituency, and there do not appear to be any restrictions on these communications. At the same time, it is clear that the civil society voice in the EITI would be stronger and more impactful if the constituency is able to overcome its differences of background and opinion and work together in a more effective way.
4. The EITI requires that civil society representatives are able to be fully, actively and effectively engaged in the design, implementation, monitoring and evaluation of the EITI process. The information gathered shows that civil society representatives are able to contribute and provide input to the EITI process, and have capacity to carry out their EITI duties. There is no evidence of any attempts to restrict this engagement, although the resource constraints that civil society is facing are of great concern and are likely to severely limit civil society's future participation in the process.
5. The EITI requires that civil society is able to contribute to public debate. This requirement underpins the assumption that such debate can influence public policy making and reform. The initial assessment shows that civil society to some extent has access to opportunities and forums for engaging in public decision-making around the extractive sector and the environment for civil society. In some instances, civil society views have been heard and taken into account, in other cases not. Lack of access to funds and lack of a strategic direction for the civil society input on EITI issues are important factors limiting this ability.

## **MSG governance and functioning (#1.4)**

### **Documentation of progress**

#### *NSC composition and membership (#1.4.a)*

The NSC was established in 2005, and is governed by a MoU that was first developed in 2005<sup>79</sup> and subsequently revised in 2013<sup>80</sup>, with a further annex added in April 2017<sup>81</sup>. The composition of the NSC is set out in the annex, stipulating the minimum and maximum number of full representatives from each constituency as well as alternates. As of 15 June 2017, the NSC comprised one MSG Chair and two deputy Chairs, twelve full members and eight alternates<sup>82</sup>. The Chair and two deputy Chairs represent MID. In addition, government is represented by two people from MoF (one full member and one alternate) and two members from ME (one full member and one alternate). Civil society has six representatives, including two from the Civil Alliance (both alternates), three from Oil Revenues under Public Oversight (two full members and one alternate) as well as one full member from the Coalition Union of NGOs of Kazakhstan. The companies have six members. Four of them representing the oil and gas constituency,

<sup>79</sup> [http://eiti.geology.gov.kz/images/stories/IPDO/norm\\_baza/memorandum.doc](http://eiti.geology.gov.kz/images/stories/IPDO/norm_baza/memorandum.doc)

<sup>80</sup> [http://eiti.geology.gov.kz/images/stories/IPDO/norm\\_baza/memorandum2013.pdf](http://eiti.geology.gov.kz/images/stories/IPDO/norm_baza/memorandum2013.pdf)

<sup>81</sup> [http://eiti.geology.gov.kz/images/stories/ipdo2/norm\\_baza2/20042017.doc](http://eiti.geology.gov.kz/images/stories/ipdo2/norm_baza2/20042017.doc)

<sup>82</sup> See Annex A.

notably Chevron and NCOC, (full members), and KazEnergy and Shell (alternates). Two members (one full member and one alternate) represent the mining constituency, both from AGMP. Finally, the Parliament has four representatives and no alternates. Provision 1.2 states that election of NSC members and their alternates is conducted by the constituency itself, however, NSC is approving the final list.

With regards to **government representation**, the MoU sets out how the government will be represented on the NSC. Art. 1(5) of the annex states that the government will appoint a Chairperson and deputy Chairperson who should be government officials of high rank. It further specifies that the government will have no less than three members and no more than six members, including the Chairperson and deputy. Naturally, there has been several changes to government representation since the MSG was first established in 2005. The 2016 APR includes an overview of government representation in 2016-17. It shows that on 30 September 2016, MID Minister Zhanis Kasymbek and MID vice-minister Timur Toktabaev replaced their predecessors as a result of a reshuffle in government. On 28 February 2017, the new MOF vice-minister Dalenov Yerbolatovich replaced the former vice-minister as NSC representative, again due to reappointments within the ministry. Mr Yerbolatovich was replaced again on 13 May 2017 by Chairman of the Treasury Committee Kanat Baedilov. At this meeting, former Chairman of the MID Committee of Geology and Subsoil use Bazarbai Nurabayev was replaced by the new Chairman Nadyrbaev Aluadinovich. A similar consolidated overview of NSC members from government and their replacements for the years prior to 2016 does not appear to be publicly available.

On the **representation of Parliamentarians**, the MoU states that no less than three but no more than six representatives of the Parliament can be a part of the NSC (Art 1(6) of the Annex). The MoU does not outline the procedure for nominations and replacements of parliamentarians. According to the 2016 APR, the NSC approved the nomination submitted by Parliament of the four NSC members representing Parliament, notably Schegelsky Gleb Anatolievich, Chairman of the Ecology and Environment Committee; Muradov Ahmet Seidarakhmanovich, member of the Ecology and Environment Committee; Nikitinskaya Ekaterina Sergeevna, member of the Finance and Budget Committee; and Khituov Taras Kikbaevich - member of the Economic Reform and Regional Development Committee.

With regards to **company representation**, Art. 1 (7) of the annex states that company constituency should be represented by three NSC members and three alternates. The company constituency should include one member and one alternate from the association of oil and gas companies, KazEnergy, one member and one alternate from the association of mining companies, AGMP, and one representative and one alternate from the individual oil and gas companies. Both the sub-constituency of oil and gas companies, and the sub-constituency of mining companies have agreed regulations on election of members to the NSC<sup>83</sup>. The regulation set out the number of seats available to each sub-constituency as well as the nomination and election process (simple majority voting) to follow during both regular elections and snap elections (in case of resignations during the term). The regulations for each sub-constituency differ on two aspects, notably (1) the duration of the mandate, which is one year for AGMP and permanent for KazEnergy; and (2) criteria for being elected, which for KazEnergy is that the NSC members must be citizens of Kazakhstan. AGMP does not have similar criteria in their regulations. Minutes from KazEnergy working group meetings indicate that there has been some rotation of industry representatives to the NSC over the years. In February 2017, Total's representative stepped down and was replaced by an NCOC representative. In May 2017, the oil and gas constituency representation was confirmed by the NSC with

<sup>83</sup> <http://eiti.geology.gov.kz/en/the-national-council/council-members>



Chevron and NCOC as full members, and the KazEnergy Association and Shell as alternate members (2016 APR). There were also rotations in the oil and gas constituency in December 2015<sup>84</sup>. It does not appear that the mining company representation has changed since it was agreed in 2012 that AGMP would represent the mining constituency.

With regards to **civil society representation**, provision 1.8 of the NSC MoU states that the civil society representation on the NSC is organised by the NGO DP, and that their representation consists of three full members and 3 alternates. The coordinating body of the DP consists of the DP moderator and the coordinators of the member coalitions. The DP moderator is elected annually by DP members, and the coordinators are appointed by their respective coalitions. According to the DP TORs, section VI, elections should take place annually. Each DP member coalition first nominates candidates for election. There is no cap on the number of nominees from each coalition, and nominees do not need to be members of the DP or the coalition, the only criteria is that the nominee is not a civil servant or a company employee. According to the DP TORs, coalitions are encouraged to nominate candidates that have the necessary professional experience to carry out their duties on the NSC, taking into account gender balance, representation of producing regions etc. Each candidature should be accompanied by a brief CV, including a recommendation setting out why the nominee is suitable to represent CSOs on the NSC. Each coalition should also nominate three electors who would be the persons eligible to vote on the nominees on behalf of the coalition. The six candidates with the highest number of votes become the NSC members and alternates.

Civil society last refreshed their representation to the NSC as well as the moderator of the DP in April 2017. The process commenced on 3 February 2017, with instructions issued by the DP moderator for nominating new representatives to the NSC and a new moderator for the DP with a deadline of 9 February. In addition to nominees, the coalitions were also asked to nominate three electors for each coalition. Finally, the coalitions were also invited to nominate candidates for the DP moderator, who could be a representative of any of the NGOs represented on the DP. Instructions for elections, including lists of nominees and ballot papers were distributed to the electors electronically on 10 April, with the deadline for submissions of electronic votes via email to the DP coordinator being 11 April 1800. The deadline was later extended until 12 April 1100. There were seven candidates nominated, out of which three NSC members and three alternates were to be elected. NSC members and their alternates were elected based on the scoring table where each elector provided ranking for all candidates. Results were announced electronically on 12 April and the completed ballots were circulated to all. Elected NSC members were Maria Lobachova (Coalition Oil Revenues Under Public Oversight), Sholpan Aytenova (Zertteu Research Institute)<sup>85</sup>, and Bolat Turgunbayev (Coalition Union of NGOs of Kazakhstan). Elected alternates were Zhybek Akhmetova (Coalition Civil Alliance of Kazakhstan), Daniel Bekturganov (Coalition Oil Revenues Under Public Oversight) and Aigul Duisenova (Coalition Civil Alliance of Kazakhstan). Pavel Lobachov (Coalition Oil Revenues Under Public Oversight) was elected as the moderator of the DP.

Provision 1.8 of the NSC MoU states that civil society should be independent from government and companies in their activities. Provision 2.9 notes that funding for logistics related to civil society representatives' participation should be transparent and published on the national EITI website. According to the 2017-18 work plan, the funding budgeted for covering travel costs associated with CSO NSC member's participation in NSC activities amounted to USD 3000, provided by the Soros Foundation.

<sup>84</sup> KazEnergy letter of 28.12.2015, available from the International Secretariat.

<sup>85</sup> Previously a member of the "Coalition Oil Revenues Under Public Oversight".

The TOR for the DP also includes provisions on operational and policy independence of CSOs involved in the EITI. Section II(1) states that a DP member cannot be affiliated to the government or to extractive companies. It is the responsibility of DP members to comply with the provisions on conflict of interest set out in the TOR. Section II(2) states that the coalitions of the DP consider conflict of interest within the framework of the DP TORs to occur if an NSC member, the DP moderator, or a Coalition Coordinator takes up a position in the civil service or takes permanent employment in an extractive company. Section II(3) further states that in the event of conflict of interest it is the responsibility of the individual to announce this to the DP, and for the DP to take a decision on the continuation of the individual's DP activities and duties.

Despite these provisions, what constitutes conflict of interest has been a subject of disagreement between DP members and non-DP members. In March 2014, the non-DP member coalition *Azamattyk Kuryltay* sent an appeal to the EITI Board<sup>86</sup>, noting that one NSC CSO member (who was also an alternate member of the EITI Board at the time) had both been intimately involved in the development of the reporting templates for the EITI Report and had subsequently, in her capacity as accountant, provided paid training services for companies on how to complete the templates. In light of this, *Azamattyk Kuryltay* questioned the ability of this person to objectively represent the NGO opinion on the NSC and carry out her duties in terms of NGO scrutiny and analysis of the data submitted by the companies for the EITI Report. The DP on the other hand did not consider this a conflict of interest according to their TOR. Facing considerable pressure from non-DP members as well as the PWYP international secretariat, the NSC CSO representative concerned decided not to renew her nomination during the subsequent civil society elections to the NSC taking place in July 2014.

#### *NSC Terms of reference (#1.4.b)*

The MoU governing EITI implementation in Kazakhstan serves as the Terms of Reference for the NSC, and was substantially overhauled in 2013. Since then, while the text of the MoU has stayed the same since 2013, a new annex to the MoU was approved in April 2017. The new annex covered several aspects that were not included previously, notably stronger provisions on the composition of the NSC, duties and powers of the NSC, and policies on meetings and decision-making.

Overall, the MoU addresses the EITI Standard, except for fully disclosing the NSC's per diem policy. The other provisions of requirement 1.4.b are addressed as follows:

- Capacity of the NSC: The TOR mainly regulates capacity to participate and not the competencies and skills required of NSC members to carry out their duties. Provision 2.2 indicates that all NSC members and their alternates should have equal opportunities to participate in NSC meeting and, therefore, online meetings are provided for in case funding is not sufficient to cover in-person participation.
- Responsibilities of NSC members: Provision 2.6 of the MoU Annex states the expectations on outreach: "the NSC should undertake effective outreach on the EITI, namely publication and dissemination of the EITI reports (full reports in an electronic version and hard copies of the popular versions), publications in the media, usage of internet, holding of public meetings in regions with local municipalities, industry, CSO and other interested parties". The MoU Annex provision 2.7 also mandates that the: "NSC approves changes to the MoU, the ToR for EITI

<sup>86</sup> Available from the International Secretariat

Validation of the Republic of Kazakhstan: Report on initial data collection and stakeholder consultation Reports, the EITI Report, work plans, design of popular versions of the EITI Reports, programme of the national conferences, and promotional materials". The MoU, part 2, also mandates the NSC to oversee activities related to Validation. The MoU does not specifically state that NSC members have responsibility to liaise with their constituency, but it does state that NSC representatives speak and take decisions on behalf of their constituency. Liaison responsibilities of company and CSO representatives are provided for in the constituency guidelines.

- NSC meetings: Provision 3.2 of the MoU Annex states that meetings should take place at least once every three months (on a quarterly basis). According to provisions 3.3 and 3.4, all NSC members should be notified about the meeting at least 10 days in advance and all materials should also be circulated then. In order to be quorate, the meeting needs to have at least half of the NSC members present and at least one representative from each constituency. The MoU also states that the meeting can take place in a form of Skype conference, WebEx or VPN channel (Provision 3.1 MoU Annex). Observers can attend NSC meetings, however, they need to notify national secretariat in terms specified in provision 3.6 of the MoU Annex. If NSC member does not attend three meetings in the row without any valid reason, he or she should be replaced with a new NSC member (provision 2.1 of the MoU Annex).
- Working groups: the NSC has established four working groups on (1) communications; (2) EITI reporting; (3) Validation and (4) implementation of new EITI Standards. The regulation of the working groups are set out in Annex 3 of the 2013 MoU.
- Decision-making: Provisions 4.1 and 4.2 of the MoU Annex sets out the decision-making procedures, which urge decisions by consensus but also provides for voting. Provisions 2.2, 2.3, 2.5 and 2.10 of the MoU Annex guarantee inclusiveness in decision-making. According to provision 2.3 of the MoU Annex, NSC members can delegate their voting right to another NSC member or alternate.
- Nomination procedures: Provision 1.2 of the MoU Annex specifies nomination procedures noting that "should there be a need for rotation, the selection of new candidates to the NSC is carried out by constituencies independently. The NSC then approves the final list of members at its meeting. Each constituency should have their own nomination process and should provide documentation of it to the NSC". The nomination process for each constituency is not included in the MoU itself, apart from for government representation. However, the nomination procedures for companies are available online<sup>87</sup>, and the nomination procedures for civil society are available in the TOR for the DP, published on their Facebook page<sup>88</sup>. Provision 1.3 of the MoU Annex stipulates that the mandate of the NSC members is for three years.
- Record-keeping: Provision 3.5 of the MoU Annex requires that the draft meeting minutes are approved within a day of its circulation and uploaded online. However, the MoU does not specify record-keeping on meetings and decisions taken outside of the NSC meetings, for example during meetings of the NSC Working Groups.
- Per diems: The MoU does not clearly indicate the NSC's practice with regards to per diems for attending NSC meetings or other payments to NSC members. In provision 2.9, funding transparency is encouraged and it is stated that information should be published on the website,

<sup>87</sup> <http://eiti.geology.gov.kz/en/the-national-council/council-members>

<sup>88</sup> <https://www.facebook.com/groups/eitikz/1657631474482707/>

especially when it comes to the logistics expenses of the CSO representatives. As noted above, the budget secured for funding of costs associated with CSO's participation in NSC meetings is indicated in the 2016-17 workplan.

Annex 2 of the 2013 MoU regulates the role of the national secretariat vis a vis the NSC. Neither the MoU nor the Annex contains any mention of the EITI's code of conduct.

### Stakeholder views

**With regards to stakeholder representation**, stakeholders explained that there was generally modest rotation on the NSC, and a good balance of fresh blood and institutional memory. In terms of government representation to the NSC, it was for each ministry to decide who should be representing them on the NSC. Typically, the ministries would seek to be represented at the same level of seniority. The NSC would also invite representatives from other government agencies or ensure senior participation whenever the agenda required so. For example, when the NSC had recently decided to proceed with the mainstreaming project, the government agencies had been represented at deputy-minister level in order to ensure political support for the project. If a government NSC member was not available to attend a meeting, the member would typically send a deputy. This was not considered a problem. Government representatives would typically change following elections or reshuffles, or whenever there were staff changes in the ministries. Apart from these ad hoc changes in government representation, the MoU stipulated that government members should be reshuffled once every three years.

Companies highlighted that they considered the representation of companies through associations a strength. Given the large number of extractive companies operating in Kazakhstan, this was an ideal way of ensuring legitimate representation. Companies were happy with their representation and there had never been any examples of their voice being ignored. State-owned companies were members of the industry association and therefore considered to be represented by industry. This reflected other practices of state-owned companies, who would for example also participate in legislative and policy initiatives through the associations. State-owned companies in Kazakhstan were also considered to be quite independent and more resembling private companies than state entities. The oil and gas constituency explained that they held two full and two alternate seats on the NSC, and that KazEnergy usually filled at least one of these, and that the remaining seats was held by other KazEnergy members. Whenever there were regular rotations, KazEnergy would invite expressions of interest from their members for the seats and collectively the working group would decide on who should represent them. If a company NSC representative would resign during the term, an extraordinary meeting would be called to identify a new member. Non-members of KazEnergy were not eligible for NSC membership, but would nonetheless receive a circular about the nomination process for the EITI NSC and be invited to observe the NSC. With regards to the mining constituency, the AGMP explained that mining companies had passed to the AGMP the role of NSC representation. Non-AGMP members' eligibility had never been an issue given that AGMP had more than 400 members of the mining sector.

Some civil society representatives commented that their representation was ensured through the Dialogue Platform, which was designed to make sure that CSOs are represented in the most adequate way. DP membership was not a pre-requisite for being elected to the NSC. There was also opportunity for non-DP members to have their opinions heard. The election procedures for the NSC had been developed in consultation with all civil society members of the DP, and many civil society representatives were of the view that these should be respected. Although some argued that it was the same CSO representatives

that were being elected to the NSC time and again, others said that in recent elections new comers and non-affiliated NGOs had been elected. One commented that it was difficult for newcomers to be elected through one of the existing coalitions with strong civil society leaders, but that there were avenues such as for example by affiliating a new coalition to the DP. One current CSO NSC member had successfully been elected to the NSC this way.

Some civil society representatives expressed strong views that their constituency was not adequately represented in terms of diversity and plurality of opinion, and argued for more seats around the NSC and a different nomination process as they regarded the current nomination process as flawed. Their main objection to the nomination process seemed to be the criteria to be affiliated to the DP in order to be eligible to vote for NSC elections. Some outrightly dismissed any consideration of DP affiliation on principle grounds, saying that it would compromise values and legitimise the DP platform. Others thought that even if they would try to become members of the DP, the other members would unite and agree their voting in a way that would ensure that anyone else trying to be elected to the NSC would not be successful.

As for parliamentarians, it was noted that it was typically the speaker that would nominate the MPs to serve on the NSC, usually after parliamentary elections or if an MP was replaced during the term. The decision to include a forth constituency of parliamentarians in the NSC had been taken from the outset given that the proposal for Kazakhstan to join the EITI had been initiated by MPs in 2005. Their ongoing participation and support was considered crucial at the time, and was still essential in terms of securing the annual budget for EITI implementation, as well as other issues such as legislative reforms. Civil society were mostly of the view that the participation of parliamentarians was not useful. Parliamentarians knew nothing about the EITI and rarely shared information with other parliamentarians. Other civil society representatives were of the view that it was useful to involve parliamentarians given their role in embedding EITI issues in legislative reform.

**With regards to constituency consultation**, it was rare that government representatives would liaise with each other outside of NSC meetings although it had happened in the context of the drafting of the new subsoil code. Mining company representatives explained that consultation between the AGMP and the wider constituency was ensured through calls, letters, in person meetings or teleconferences. There was daily contact on a range of issues, not limited to the EITI. Whenever an important issue was raised in the NSC, the AGMP would seek to consult the wider constituency before expressing their views. At the same time, not all companies seemed aware of decision-making procedures and how to get their views across. A similar mechanism exists within the KazEnergy association where regular meetings on EITI was convened through the KazEnergy EITI working group, and working group members would also receive regular communications through emails and calls including information about issues on the NSC agenda. In addition to these meetings, KazEnergy would provide an update on progress with the EITI to the wider oil and gas constituency during KazEnergy GA and conference. KazEnergy working group members would also participate directly in the EITI process by virtue of their contributions to the various NSC working groups.

In terms of civil society, it was explained that NSC CSO members would usually seek other CSO members input prior to meetings through the Facebook page or email circular to the Google group. After NSC meetings, the members would post information on the decisions and minutes on these same platforms. Although some non-CSO members of the NSC lamented that their views had not been taken into account and that meetings were held behind their back or documents circulated with insufficient time for

comment. Other CSOs said that some of those that complained had not signed up to the Google or Facebook Groups, which were the official communication channels, despite being invited. Also, not all civil society representatives always responded in time for their opinions to be taken into consideration.

Although the NSC MoU and the TOR for the DP mention conflict of interest and independence of NGOs, few civil society representatives consulted seemed to be aware of how this worked in practice. Some said that although all NGOs were now required by law to report on all foreign funding received, there was no voluntary reporting within the DP of funding sources or other affiliations. When asked about conflict of interest, several CSOs commented that government grants would compromise their independence and that permanent work for extractive companies would be unacceptable. On the other hand, some civil society representatives argued that most of the NGOs involved in the DP were funded by the government or companies, without further reference to examples of how such affiliations had negatively affected the CSO's judgements. It was also explained that most NGOs had other income-generating activities in addition to their voluntary NGO work, and in some cases this could include projects for extractive companies. However, some argued that despite such affiliations or funding the ability of NSC CSO member to act and speak independently had never been compromised. Whilst civil alliance might well be paid by the government, it was argued that they were nonetheless doing useful work in promoting the EITI in the regions.

**In terms of the functioning of the NSC**, stakeholders explained that the NSC meets about 4-5 times a year, and the meeting date is set with no less than a week's notice. Remote participation in the form of skype, video and electronic decision-making was also now provided for in the statutes and practice of the NSC, although it was not common. The agenda and documents for the meeting would be proposed by the national secretariat, based on suggestions from NSC members. As an example, it was explained that at the last NSC meeting, the CSOs had proposed to add contract transparency to the NSC agenda and this had thus been discussed. Minutes from NSC meetings were produced within a week of the meeting, with NSC members being given 24 hours to comment on the draft minutes. There were often comments on the minutes, most frequently from the CSOs but also sometimes from the company constituency. Recently, the NSC had decided to make efforts to provide a more detailed account of the NSC discussions in the meeting minutes. Most stakeholders appeared to be satisfied with the work of the secretariat in terms of servicing the NSC, providing timely circulation of agendas and documents and providing adequate time for stakeholders to study them. However, some noted that the meeting minutes of the NSC had used to be so brief that there were almost pointless. This had improved in recent months. One stakeholder expressed concern about the use of so-called "online decision-making" wondering if NSC members really opened the documents and emails that were sent to them whenever online decisions were proposed. Another stakeholder explained that there were rarely discussions in the NSC. Mostly discussions would take place in advance of meetings, and usually not across constituencies, with NSC meetings mainly approving proposals and taking decisions.

Several stakeholders referred to the creation of working groups as an efficient way of organising the NSC's work. The working groups were used to elaborate and discuss issues, whereas the NSC meetings were more for decision-making. Although non-NSC members were welcome to attend working groups, it was noted however that the participation amongst the constituencies were uneven. Often, the tasks were left to civil society. This was a problem in that companies and government had views and information that could not be taken into account during working group deliberation whenever these constituencies were not present.

For example, although the working group on reconciliation has initially attracted 13 participants, this had soon boiled down to a handful of active civil society representatives only. This was partially due to the need for having online meetings and that most CSOs were based in Almaty making it easier for them to meet in person. The working group would nonetheless collaborate closely with the Independent Administrator and the Secretariat, and their recommendations would typically be adopted by the NSC even if other constituencies had not followed the working group discussions. However, better company and government involvement would likely have resulted in more comprehensive reporting.

Civil society lamented that their capacity to participate in the EITI was severely affected by the lack of financial resources. Although on paper, the number of CSOs affiliated to the EITI might look impressive, in reality there were only about 8-10 NGOs that could be considered relatively engaged and 4-5 that were actively engaged. Some of those commented that they were also now likely to pull back from the EITI and focus on other projects.

With regards to decision-making, the NSC members highlighted decision-making by consensus as one of the key strengths of the NSC. This meant that no decision had ever been taken that did not have the support of all the constituencies. Although this sometimes lead to drawn-out discussions, it was nonetheless the preferred method for decision-making as voting risked side-lining stakeholders. If consensus could not be reached, the NSC would continue to discuss and explore options. The example of contract transparency was given. Although government, MPs and civil society did not have any concerns with introducing contract transparency the company constituency had made it clear that they were not supportive of such a move. However, the NSC was continuing to explore the middle ground on this issue, including potentially making contract disclosure possible for new contracts to be signed. A company representative highlighted that there was a high level of transparency with regards to NSC activities and operations, pointing to the Kazakhstan EITI website that contained all relevant information including meeting minutes. Civil society also said that they sometimes put their foot down. For example, on the 2015 EITI Report the CSOs had demanded that their comments be taken into account or they would not endorse the report. Similarly, the CSOs had objected to online decision-making regarding the recently proposed changes to the MoU, which suggested revisions to the decision-making procedure that they did not support. As a result the decision was deferred to the next in-person meeting of the NSC.

### **Initial assessment**

The International Secretariat's assessment is that Kazakhstan has made meaningful progress in implementing this requirement. The government has established a multi-stakeholder group with clear governance rules and practices. Most constituencies have developed good routines for nominations and liaison with their wider constituencies. There are minor weaknesses in the implementation of the requirements, namely: the lack of publication of the procedure for nominating Parliamentarians to the NSC, a lack of consolidated overview of changes in government participation over the years, and a lack of implementation of the recently agreed (June 2017) rules for CSO representatives to publish their funding sources and affiliations.

In addition to these issues, there are concerns related to civil society representation on the NSC. The constituency has strived to develop an inclusive platform for all NGOs to take part in the EITI, with clear governance rules, open elections, and annual rotations to decision-making positions. In an attempt to further increase inclusiveness, the DP also decided that non-members can be nominated to decision-making positions and participate in EITI work, but they would not have voting rights. Despite what appear

to be sound and fair rules for constituency governance and coordination, two coalitions have decided not to join this platform. Although this is their choice, the overall result is that the civil society voice in the EITI is suffering. The considerable in-fighting among the coalition has prevented civil society from pursuing a clear strategy in their EITI work. It has also put the EITI work burden on a few individuals, rather than spreading it across the wider network of NGOs, building on their strengths be they analytical related to public debate or access to the grassroots. In light of this, although the requirements for an open invitation to participate in the EITI and for an independent nomination process appears to be fulfilled, the broader objective of ensuring diverse and representative participation of civil society has not been achieved.

## Work plan (#1.5)

### Documentation of progress

The work plan for 2017-2018 was approved by the NSC on 19 April 2017. The final version of the work plan was a result of revision of the previous draft of the work plan from 28 February 2017. The work plan outlines two main priorities linked to the EITI Principles: open data and beneficial ownership disclosure. Both priorities are marked as national priorities. The rationale for choosing the objective of open data is set out in the minutes of the NSC meeting of 28 February 2017. The minutes note that<sup>89</sup>:

The EITI open data can contribute to increased transparency of the activity conducted by the government and enterprises, and help to raise awareness of the way the country's natural resources are used, issues of taxation and utilization of the extractive sectors revenues. This serves as a powerful incentive to ensure effective spending of these revenues. Open data ensure accountability and proper administration, enhance the level of public debates, and benefit the struggle against corruption. The objectives behind the use of open data are the promotion of transparency, accessibility of data, public debates and elimination of corruption.

The minutes further note that:

The Republic of Kazakhstan has an official portal of open data: <http://data.egov.kz/>. The portal publishes open data pertaining to central state bodies, local executive bodies and other organizations(...). In the context of our country's strategic objectives, the future development of EITI – foremostly aimed at attracting both foreign and domestic investments – imply the following priority areas:

- Remote use of file data and geological data ensuring maximum declassification of previously inaccessible reports;
- Introduction of international standards of public reporting covering the results of geological explorations (GO), resources and mineral reserves;
- Processing interactive information on mineral deposits (interactive mapping);
- Simplified procedure of granting the right to subsoil use for geological contracting services;
- A transparent online monitoring enabling reconciliation of the data supplied by the government and companies regarding their allocations to Kazakh budget as well as social investments;
- Necessary data – openly available on the official websites of the Ministry of Economy and Ministry of Finances – to analyze and forecast management of public income and expenses;

According to the workplan, beneficial ownership disclosure has the following objectives:

Disclosure of beneficiaries can be beneficial for all stakeholders. For companies, it's an improvement of investment climate (investors will have confidence in what they invest in), decrease of reputational, financial and legal risks, related to suspicious assets or politically exposed persons. For the government - attracting bigger and highly qualitative investments, reduce reputation of a corrupt country, ensure payment of taxes by companies to prevent concealment of income and tax evasion, and ensure that the

<sup>89</sup> NSC meeting minutes 28 February 2017, p.2.



country receives all the funds from assets of the extractive industries owed by the country. For tax and other government agencies - opportunity to ban for illegal practices. And for the civil society it is the fight against corruption and illegal financial flows, improving accountability of a government and companies, reduction of mistrust.

Each objective is complemented by a set of necessary actions. Steps, indicators, implementing party, partners, timing and source of funding are also listed for each of the objectives. Although most of these activities appear to be aligned with the EITI principles, they do not appear to be clearly aligned with the national priorities. For example, regular NSC activities such as preparing for validation, preparation of the EITI Report and improving public understanding of the EITI process are listed as activities needed to achieve the open data objective.

The work plan includes estimated timeframes are included for all activities, but these could be more specific. For example, the study concerning the information content on the open data website, or the annual training for the NSC could include a more specific timeframe than simply indicating the years 2017-2018. Nonetheless, the work plan is overall aligned with EITI Reporting and Validation deadlines.

The work plan includes an overall estimated budget of KZT 110 752 590, or USD 349 209, for 2017. According to the estimated budget, 44% of funding should come from the World Bank, 26% from EBRD, 14.6% from the government, and the remaining funds from other donors. However, only funding from the government (for secretariat salaries and the EITI report) and EBRD (in the context of the EITI's beneficial ownership programme with EBRD) is currently confirmed. The work plan foresees the establishment of a fundraising working group sometime in 2017-18. At the time of validation, this working group had not yet been created.

The work plan does not clearly indicate consultation activities to be undertaken with key stakeholders to inform future work plan revisions. However, it does include stakeholder consultations in the context of the APR preparations. The work plan only mentions the action point to revise and make corrections to the work plan in accordance with the comments made by the Validator. Moreover, the work plan does not outline the MSG's plans for implementing the recommendations from Validations and EITI reporting.

Extension of the detail and scope of the EITI Reporting is not clearly included in the work plan. There is an action point on making adjustments and corrections to the draft TOR for the EITI Report. For example, the TOR for production of the 12<sup>th</sup> National Report 2016 states that beneficial ownership disclosure should be included in the reporting. Additionally, there is a separate priority on beneficial ownership disclosure in the work plan that is addressing Requirement 2.5. Considerations aimed at extending the scope of the EITI Reporting is therefore partially covered with regards to beneficial ownership. When it comes to the plans for addressing technical aspects of reporting, action points of quality assurance and availability of data are described only with regard to beneficial ownership disclosure.

No potential challenges or limitations related to potential capacity constraints are specified. However, the work plan includes capacity strengthening events for the National Secretariat's employees. Additionally, several seminars and roundtables are planned and aim to raise the level of expertise in areas such as validation, beneficial ownership, subnational implementation etc. With regard to addressing any potential legal or regulatory obstacles, the work plan contains an action point on eliminating legal barriers to integration of beneficial ownership requirements.

The work plan has been made publicly available on the EITI webpage in Kazakhstan<sup>90</sup>.

The work plan for 2016-2017 includes more information, especially on how to reflect the results of consultation with key stakeholders, reviewing the workplan, the scope and details of EITI Report, etc. Overall, the work plan for 2016-2017 appears to be more comprehensive and detailed. However, the work plan for 2016-2017 had an action point for the MSG to discuss the national priorities in resource governance, link them to the EITI implementation and reflect accordingly in the workplan ("Activities of the NSC" section). It is not clear how this action point was implemented or reflected related to the previous period. The same action point appears in the work plan 2017-2018.

### Stakeholder views

In terms of the development of the work plan, stakeholders explained that the work plan is usually revised annually but that there is an opportunity to propose revisions during the year. For example, this year, the work plan had been updated in April as part of the preparations for Validation. Both the NSC and the secretariat could be initiators of revisions to the work plan, although Council members would rarely make proposals on their own. If they did, it was usually suggestions like amending the TOR for the Independent Administrator, establishment of working groups etc. and these suggestions usually came from the civil society constituency. Company representatives explained that the KazEnergy association coordinated input to the work plan on behalf of the constituency, and directly contributed to the drafting. In their view, the work plan had a clear structure with aims, goals and a budget.

With regards to the two new national priorities identified in April 2017, it was explained that the secretariat had made the proposal to focus these on beneficial ownership transparency and open data. These two suggestions had been accepted by the NSC and no further proposals had been made by any NSC member. In terms of the rationale behind these objectives and how they are linked to national priorities, the national secretariat explained that beneficial ownership had been selected as a priority because it was a new EITI Requirement. Open data on the other hand was in line with the government's broader objectives and efforts towards e-governance. EITI would contribute by mainstreaming extractives data and by serving as an example and creating a culture of openness more broadly. A company representative noted that beneficial ownership had been one of the most discussed topics during the last two years and that in light of it being one of the revisions to the subsoil law it was deemed appropriate to feature it as a national priority in the workplan. Other priorities had also been discussed, including sub-national EITI implementation. However, due to lack of resources and coordination challenges these discussions had died out. One stakeholder lamented that despite attempts in 2014 to design a work plan reflecting national priorities based on extensive consultations with stakeholders, the NSC had mostly disregarded the suggestions and formats and reverted back to their current way of designing the work plan. Some civil society NSC members said that although they had accepted the two work plan priorities and agreed with them, there were other priorities among civil society such as subnational EITI implementation, social investments and contract transparency. However, due to lack of funding, civil society had not been able to convene in a strategic meeting to discuss these issues since 2015. Another CSO NSC member did not recall having contributed to the work plan.

Stakeholders confirmed that the work plan was mainly a tool for the secretariat to guide their activities. The NSC rarely requested updates on the execution of the work plan but the secretariat would inform the

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<sup>90</sup> <http://eiti.geology.gov.kz/en/work-plan>

NSC whenever it was time to commence a work plan activity, or if a workplan activity was delayed.

Stakeholders explained that the workplan contained a budget that was a mix of confirmed and unconfirmed funding. A government representative explained that the EITI was a minor component in the overall budget for the agency *Kazgeoinform*. Every year, *Kazgeoinform* would request and defend their budget proposal including a line to cover EITI reports at approximately USD 40 000. Other implementation costs such as staff time to work on the EITI, was covered by *Kazgeoinform*'s overall budget. The national secretariat considered there to be sufficient funds for the EITI, despite the decline in the funding available from external partners in recent years. They lamented that there was limited opportunity to increase the funds for the EITI report, which could attract other bidders. It was also noted that the availability of funding for civil society participation in NSC meetings had been challenging. Representatives from the international community confirmed that they typically received a general funding request from the EITI secretariat annually, outlining the types of activities and promotional material that required funding.

In terms of widening the scope of the work plan and EITI implementation, the companies commented that their constituency had been crucial in pushing for disclosure of social investments. Companies were also considering suggesting disclosure of environmental payments and their usage, as well as expenditures on research and development.

### Initial assessment

The International Secretariat's initial assessment is that Kazakhstan has made satisfactory progress in implementing this requirement. The NSC's work plan serves well as a management tool for the national secretariat and implementation appears mostly to be on track, despite the somewhat patchy timeframes and unconfirmed funding sources for some of the activities. Although it functions less well as a strategic planning tool and there has been limited consideration and consultation related to the work plan objectives, this has not prevented Kazakhstan to take on issues of relevance to its extractive sector, such as beneficial ownership, reporting of local content, reporting on social investments and considerations of adding further environmental reporting and discussions around contract transparency. In light of this, it can be concluded that the overall objective of making sure that the EITI report addresses relevant issues and priorities in the country is being fulfilled even if the work plan process is not the main vehicle for making that happen.

Table 1 - Summary assessment table: MSG oversight

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Government engagement (#1.1)	The government is fully, actively and effectively engaged in the EITI process, including through senior government participation and by providing funding for implementation.	Satisfactory progress
Company engagement (#1.2)	Companies are providing substantial input to the EITI process and there is an enabling legal framework facilitating company participation in the EITI.	Satisfactory progress

Civil society engagement (#1.3)	The space for civil society in Kazakhstan is clearly narrowing. There is limited freedom of expression, high levels of self-censorship and the legal framework is increasingly imposing greater restrictions and control over civil society. Notwithstanding this overall picture of the civic space, there is limited evidence that the broader situation is having an impact on civil society's ability to participate in the EITI.	Satisfactory progress
MSG governance and functioning (#1.4)	The government has established a well-functioning MSG with clear governance rules and practices. Most constituencies have developed procedures for liaison and nominations. Although this includes the civil society constituency, there are concerns that the decision by some coalitions not to take part in the existing platform are hampering the overall contribution of civil society in their engagement in the EITI.	Meaningful progress
Work plan (#1.5)	The NSC has developed a work plan that serves as a management tool for the secretariat and that is regularly updated. Although the work plan functions less well as a strategic planning tool for the NSC, this has not prevented the NSC from making sure that the EITI Report addresses relevant issues in the country nor has it prevented discussions and engagement on topics such as environmental reporting and contract transparency.	Satisfactory progress
<p><b>International Secretariat's conclusions and recommendations:</b></p> <ol style="list-style-type: none"> <li>1. The government and companies should ensure more regular outreach and dialogue with SOEs engaged in oil, gas and mining in order to improve transparency related to SOEs.</li> <li>2. In its consideration of further amendments to laws affecting civil society and in its practice of enforcing these laws, the government should take care to ensure that such measures do not affect the ability of civil society to effectively participate in the EITI.</li> <li>3. The civil society constituency should take steps to ensure that its participation in the EITI reflects the diversity and interests of all civil society groups with a view to maximise the civil society input and strengthen the civil society voice in the process.</li> <li>4. The civil society constituency should implement the policy of disclosing funding sources and affiliations.</li> <li>5. The NSC should ensure that the nomination process for Parliamentarians is publicly available.</li> <li>6. The national secretariat could improve the elaboration of the work plan by making sure that it includes clearer timeframes and costings for the various activities.</li> <li>7. The NSC is encouraged to conduct an annual strategic planning and review meeting to ensure that the process continues to address the relevant issues and challenges in the extractive sector in Kazakhstan.</li> </ol>		

## Part II – EITI Disclosures

### 2. Award of contracts and licenses

This section provides details on the implementation of the EITI requirements related to the legal framework for the extractive sector, licensing activities, contracts, beneficial ownership and state-participation.

#### *Legal framework (#2.1)*

##### **Documentation of progress**

The 2015 EITI Report<sup>91</sup> provides an overview of laws and regulations and the fiscal regime (pp.18-26), with reference on how to access these laws online<sup>92</sup>. In terms of fiscal devolution, the report notes that the budget system is highly centralized. The report explains the role and responsibilities of government agencies involved in managing the sector, notably the Ministry of Energy (MoE), the Ministry of Investments and Development (MID), the Ministry of National Economy (MNE), and the Ministry of Finance (MoF) (pp.18-19).

In terms of reforms underway, the 2015 EITI Report provides an explanation of the 100 steps policy of the President for realising institutional reforms (pp.23-24). The summary of the main provisions related to subsoil are provided in the report, including the steps on drafting a new Code on Subsoil and Subsoil Use. The report also explains other recent reforms related to their 2015 World Trade Organisation accession, notably changes to the Law on Subsoil and Subsoil use, as well as changes to the auction procedure for subsoil use entitlements under the law (pp.20-23).

The minutes of the WG on reconciliation documents discussion of the chapter on the legal framework, highlighting suggestions for improving the description of the fiscal regime in the 2015 EITI Report as well as providing an account of the preparation of the new subsoil code<sup>93</sup>.

##### **Stakeholder views**

Government representatives explained that in response to the challenges in the extractive sector, notably the lower commodity prices, decreasing investments in explorations, and depleting reserves, the government had sought to respond by reforming the legal and regulatory framework governing the sector. The changes were aimed at attracting investment and new exploration, and reducing administrative barriers. These reforms were embedded in a new draft subsoil code. Stakeholders highlighted that overall the new code sought to liberalise the existing regime. Key reforms included the simplification of license and contracts allocation process and reducing the time between contract award and contract signing. The fiscal regime would be revised removing signature bonuses and introducing a royalty regime based on the sales value. There were also reforms related to mining closure, drawing on international best practice.

Mining companies expressed high expectations towards the new code. They hoped that it would help

<sup>91</sup> Note that all page numbers refer to the English-language version of the 2015 EITI Report of Kazakhstan.

<sup>92</sup> [http://egsu.energo.gov.kz/webapp/pages/administration/regulatory\\_docs.jsf](http://egsu.energo.gov.kz/webapp/pages/administration/regulatory_docs.jsf)

<sup>93</sup> Minutes from WG on reconciliation, 03.08.2016, pp.1-2. Available from the EITI International Secretariat.

attract investment and new exploration by removing administrative barriers contained within the old legislation. It had been important to the mining companies to ensure that the new code provides a balance between the framework governing subsoil users with old contracts where stabilization clauses prevailed, and new investors whose investment would be governed by the new regime. A new tax code was also being drafted and there was a need to ensure harmonisation between the two pieces of legislation. Some companies were not happy that the possibility to transfer old contracts to the new regime had not been provided for in the new subsoil code.

Representatives from the international community also expressed high expectations towards the new subsoil code, which had been in the works for several years. Overall, there seemed to have been a comprehensive dialogue on the code including through a working group on the code as well as through public consultations. According to a government representative, the code would be submitted to the Parliament in September, and the hope was that it would be adopted by January 2017.

Civil society was hopeful that the adoption of the new code would remove discretionary practices in the award of contracts and licenses.

### **Initial assessment**

The International Secretariat's initial assessment is that Kazakhstan has made satisfactory progress in meeting this requirement. In accordance with Requirement 2.1.a, Kazakhstan has disclosed the required information related to the fiscal regime and level of fiscal devolution, an overview of the relevant laws and regulations, and information on the roles and responsibilities of the relevant government agencies. In the Secretariat's view, Kazakhstan has also gone beyond the minimum requirements by providing a detailed account of reform efforts as encouraged by the EITI Standard.

### ***License allocations (#2.2)***

#### **Documentation of progress**

The 2015 EITI Report describes the legal framework for awarding rights to explore and exploit natural resources in Kazakhstan (pp.20-22). According to the 2010 Law on Subsoil and Subsoil Use, rights can be awarded through contests (tenders or auctions) or direct negotiations<sup>94</sup>. Rights to exploitation and production of hydrocarbons, coal and uranium is the competence of the ME whereas rights to exploitation and production of other minerals is the competence of the MID<sup>95</sup>.

Tenders and auctions are run by a tender commission, and are announced online<sup>96</sup>. The announcement indicates the application deadlines, and conditions of the auction and the site being offered at auction, including the main bid parameters used in tenders and auctions, which in accordance with Art. 52 of the Law on Subsoil are purely financial (signature bonus, social investment and local content spending). It does not seem that any technical criteria are considered. The results of the auction are published online,

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<sup>94</sup> 2015 EITI Report, p. 21

<sup>95</sup> Ibid, p.20

<sup>96</sup> See example of tender announcement: <http://dep-nedra.mid.gov.kz/kk/pages/habarlama-kazakstan-respublikasynyn-investiciyalar-zhne-damu-ministrliqi-kazakstan-1>

noting the name of the deposit and the name of the winning company<sup>97</sup>. The list of applicants does not appear to be routinely disclosed.

In accordance with Art. 35 of the Law on Subsoil and Subsoil Use, contracts can be concluded on the basis of direct negotiations for certain assets. The conditions for using direct negotiations are further detailed in the law. In order to take part in direct negotiations, the party wishing to make a contract sends an application to the competent body in accordance with the requirements set out in Art. 58 of the Law on Subsoil. Art.58 includes the same financial criteria as described above for tenders and auctions. It also requires submission of information such as the technical, managerial and organizational capabilities of the applicant, ecological expertise etc. A list of deposits open for direct negotiations are available online<sup>98</sup>. The Ministry does not publish an announcement every time a contract is concluded through direct negotiations, however contracts will be indicated as signed in the cadastre map once they are concluded (*see Requirement 2.3 below*).

The 2015 EITI report notes that in 2015, 76 new contracts on subsoil use were signed (p.30). The 2015 supplementary report clarifies that 70 of these were awarded through direct negotiations, three were awarded through tenders, two were awarded under the simplified procedure for exploration, and one was awarded under clause 1 Art. 70-1 of the Law on Subsoil. With regards to the three contracts awarded through tenders, the draft 2015 supplementary EITI Report discloses the list of applicants and the winners (p.18-19). It also confirms that the contracts were awarded on the basis of the financial criteria.

The 2015 supplementary EITI Report explains what constitutes a transfer of a subsoil right (p.13). In order to transfer subsoil rights, a company needs to first obtain permission from the authorities for the disposal of the subsoil right. In seeking such permission, the company must file an application that contains the information described on pp.13-14 of the 2015 supplementary report. The application is then reviewed by the Ministry and the Expert Commission for Subsoil Issues, before a decision is taken. Secondly, there might be contractual amendments. The 2015 supplementary report discloses the list of the 42 permits issued by MID for transfers of subsoil rights pertaining to mining in 2015, including the name of the company applying for the transfer, the contract concerned, and the decision (pp.19-24). It also discloses the list of the 12 permits issued by ME for transfers of subsoil rights pertaining to hydrocarbons in 2015 (pp.24-25).

Some additional information on license allocations is included in the 2015 EITI Report. The report explains the State's pre-emptive rights to shares in extractive projects (p.23). It also explains the legal grounds for contract terminations, noting that eight contracts were terminated in 2015 and that the ME sent 90 notifications to subsoil users about breaches of contractual obligations<sup>99</sup>.

### Stakeholder views

A government official commented that the new draft subsoil code proposed an overhaul of the existing contract award system that should make it more transparent and less prone to discretion and illegal behaviours in the contracting phase. In the mining sector, rights for exploration and production would move from a contract system to a licensing system with standard terms and allocation following the first

<sup>97</sup> See for example announcement of result of 2015 tender: <http://dep-nedra.mid.gov.kz/kk/pages/zher-koynauyn-paydalanu-kukygyn-alu-ushin-aukcion-turindegi-konkurstyn-kortyndysy>

<sup>98</sup> <http://dep-nedra.mid.gov.kz/ru/kategorii/perechen-slaboizuchennyh-uchastkov-nedr-po-kotorym-pravo-nedropolzovaniya>

<sup>99</sup> 2015 EITI Report, pp.30-31

come first serve principle. This would put an end to negotiations. Tenders would likely be retained in hydrocarbons, but contracts would become more standardised.

A government representative explained that there had been increasing licensing activities in the oil and gas sector since the moratorium on new contracts imposed in 2007 came to an end in 2013. Since then, the government had conducted 1-2 hydrocarbon tenders annually, offering an increasing number of blocks in each tender. The tender criteria consisted of signing bonus and social investment amounts, and the criteria for the specific tender rounds were specified in the tender announcements. The minimum thresholds for each bid parameter were also established by the tax code. In the case of auctions, the only bid criteria was the signing bonus. In terms of decision-making, a tender commission would consider all the bids and would hence have information to the full list of bidders and the details of their bids. This information was not publicly available, only the name of the winning bidder would be published. In case of direct negotiations, no announcement would be published upon completion of the contract negotiations and signing. However, in accordance with the Law on Access to Information, any citizen could ask for this information and should be provided with it within three days of filing a request. Government officials explained that direct negotiations were less common for oil and gas contracts, but could take place if a contract pertained to a strategic deposit in which case it would require the participation of KazMunayGas. In such cases, the contract would be awarded to KazMunayGas and it would be for KazMunayGas to select their strategic partner(s) in the project, following their own internal procedures. This was confirmed by KazMunayGas, who also noted that to their knowledge there had only been one oil and gas tender as of late.

With regards to mining, KazGeology representatives explained that currently, exploration contracts could either be offered through auctions or through direct negotiations with KazGeology. In the last couple of years there had not been any auctions. Under direct negotiations, KazGeology would consider proposals by companies and if satisfying the criteria, they would facilitate the negotiation process with the government. This would change if the new subsoil code would be adopted. With regards to production contracts, these were mostly awarded through tenders although companies working with new and innovative technologies could qualify for direct negotiations.

No government representative consulted was aware of any deviations in the contracts that had been awarded in 2015 despite the suggestions of irregularities in contract awards in early 2017<sup>100</sup>. Civil society commented that although the government always tried to convince them that there were clear procedures for tenders and model contracts, many contracts were still awarded through direct negotiations and it was impossible to know what kind of arrangements were agreed during these negotiations. It was also anecdotal evidence suggesting that sometimes the stringent local content requirements on foreign firms were used as an excuse to award the contracts to local companies.

### **Initial assessment**

The International Secretariat's initial assessment is that Kazakhstan has made satisfactory progress in meeting this requirement. In accordance with Requirement 2.2, Kazakhstan has disclosed the required information related to the process for awarding contracts in 2015, as well as the technical and financial criteria used. The 2015 supplementary report discloses further details on the process used for awarding the 76 new contracts signed in 2015, including confirming the use of financial criteria. The supplementary report also documents the process for transferring a subsoil use right as well as information about the

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<sup>100</sup> [https://tengrinews.kz/kazakhstan\\_news/glava-komiteta-mir-rk-sozdal-opg-natsbyuro-313626/](https://tengrinews.kz/kazakhstan_news/glava-komiteta-mir-rk-sozdal-opg-natsbyuro-313626/)



transfers effectuated in 2015. It also discloses list of applicants that took part in the auctions conducted. According to stakeholder consultations, there are no indications of deviations from the applicable legal and regulatory framework governing the award of these contracts. It is also worth noting that the report includes other details on licenses and contracts, such as statistics on termination of contracts and contractual breaches.

### *License registers (#2.3)*

#### **Documentation of progress**

The 2015 EITI Report explains the recently launched interactive license cadastre hosted by the Committee of Geology and Subsoil use<sup>101</sup>. While still work in progress, it includes the name of the license holders, the coordinates of the license area, the type of a license, and the commodity being produced for the licenses that have been added to the cadastre so far. For some licenses, the cadastre includes the date of award, for others the expiry data and for some the duration (number of years that the license is valid for) but this information is inconsistent. The cadastre does not include the date of application, although it has a field entitled “date of license” which does not yet appear to be filled in for any of the licenses. The EITI Report also explains some of the cadastre features, noting the possibility for seeing the date of application for contract areas that have not yet been awarded but where applications have been received.

The 2015 EITI Report also include links to pdfs published on the Committee of Geology website, which documents all licenses active as of 1 January 2016. These pdfs list the license holder, the award date, and the commodity, but does not include the coordinates of the license area, the duration of the license or the date of application.

#### **Stakeholder views**

A government representative confirmed that although oil and gas contracts were included in the interactive cadastre, it did not include the date of application or the duration of the license. This information was available from the MoE and there were no concerns or confidentiality provisions preventing the release of this data. However, government representatives questioned the usefulness of disclosing this information online.

Another government representative explained that the interactive cadastre was now complete in that it included all active exploration and production contracts as well as contracts that had been applied for. However, not all data points had yet been populated given lack of human resources. Because of this, the date indicating the duration of the contract was not always visible for all contracts. Work on populating this information would continue, and in the meantime it was possible to calculate the duration of the contract given that this was set out in law, i.e. six years for exploration and 25 or 45 years for production depending on the type of deposit. With regards to date of application, it was noted that the map was not designed to include this data point. However, the information was available upon request. It was also noted that in case of tenders, there was a standard maximum timeframe from the announcement of the tender results to the signing of the contract stipulated by law, notably 18 months.

A civil society representative said that the map was a good step forward but that it was not yet much used given that it was very slow to load and CSOs generally did not have the capacity to make use of the data.

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<sup>101</sup> <https://gis.geology.gov.kz/maps/izy>

## **Initial assessment**

The International Secretariat's initial assessment is that Kazakhstan has made meaningful progress in meeting this requirement. In accordance with Requirement 2.3, Kazakhstan has provided links and explanations in the EITI Report on how to access the online license register. The online register includes the name of the license holder, the coordinates of the license area, the award date, and the commodity being produced, but does not always include the duration of the license nor does it include the date of application. Similar but less detailed data is available from pdfs published on the Committee of Geology and Subsoil use website.

However, despite these shortcomings, the information provided in the EITI Report on how to use the cadastre, its various search functions etc. are welcome additions, in particular as this system is relatively new in the country, and should be of interest and relevance for prospective investors.

## ***Contract disclosure (#2.4)***

### **Documentation of progress**

The 2015 EITI Report notes that Kazakhstan does not practice disclosure of contracts (p.30). Nonetheless, the report provides a list of existing PSCs including a brief overview of the largest contracts. The report also comments on termination of contracts and breaches of contractual obligations (as noted under requirement 2.2 above).

The draft supplementary 2015 EITI Report outlines the relevant legal provisions preventing contract disclosure, notably Section 17, Art. 62-65 of Order No. 412 of the Minister for Investments and Development, as well as the type of information that is confidential (p.27). It also specifies the information that is not considered confidential, notably "information regarding the performance of contractual obligations of local concern, the planning and implementation by a subsoil user of purchases of goods, works and services, as well as spending for training Kazakh specialists and for socio-economic development of the region and development of its infrastructure" (p.28). Although there is no commentary on any reforms underway related to contract disclosure, the draft supplementary report offers some reflections on contract transparency in Kazakhstan (p.28).

### **Stakeholder views**

Government representatives explained that oil and gas model contracts were now publicly available, containing all the standard terms. However, model contracts had confidentiality provisions in them meaning that when the actual contract had been signed it could not be published. New model contracts would mirror the new subsoil code when adopted, and opportunities for including contract transparency in the new code were still being discussed.

Some companies explained that it would be difficult possible to disclose old contracts because of the confidentiality clauses. Others states that they were against contract transparency as it would put the companies at a competitive disadvantage. For some it might also not be desirable to disclose the old contracts as new contracts appeared to sometimes have tougher terms, and comparisons could be unhelpful. A company representative noted that this might change if the new subsoil code was adopted as the code would most likely provide for contract transparency.

Civil society said that there had been heated debates over contract transparency during the last year, and they lamented that the NSC had not yet reached a more nuanced level of discussion about what terms could be considered sensitive and what terms could be publicly released. It was also noted that some of the contracts could be purchased, but that the interesting details were typically found in the supplements and annexes, which were not available. Civil society also argued that the opaque decision-making around contracts to some extent caused phobia and was counterproductive as the government silence on these issues was interpreted as if the government was doing something fishy.

### **Initial assessment**

The International Secretariat's initial assessment is that Kazakhstan has made satisfactory progress in meeting this requirement. The 2015 EITI Report and the draft supplementary report clarify that contract transparency is not practiced, and set out the legal provisions preventing contract transparency. Although there is no account of reforms underway, the report notes the NSC's reflections that while contract transparency in Kazakhstan is premature, there are also certain benefits.

### ***Beneficial ownership disclosure (#2.5)***

#### **Documentation of progress**

The 2015 EITI Report includes a definition of beneficial ownership<sup>102</sup> and comments on any existing legal requirements and confidentiality issues related to beneficial ownership disclosure. Furthermore, the report references the beneficial ownership roadmap currently under development by MID, and the need for public disclosure of beneficial ownership information by data by 1 Jan 2020. The report does not attempt to disclose beneficial ownership for the companies that are part of the scope of the report, nor does it include disclosure of legal ownership.

The NSC approved the beneficial ownership roadmap on 22 December 2016<sup>103</sup>. While the roadmap does not yet outline the objectives for beneficial ownership transparency nor the institutional set up, it envisages legal reform to take place in 2017 and 2018 in order to make beneficial ownership disclosure mandatory by law. The roadmap also states that a public register will be considered. An inter-governmental working group on beneficial ownership was established in 2016 with the mandate to oversee implementation of the roadmap<sup>104</sup>.

As of July 2017, Kazakhstan had made some progress with implementing the roadmap, in particular on legal reforms. According to the minutes from the 27 February 2017 NSC meeting, the draft Subsoil Code Art.6 (4) concerns accessibility of information about "physical persons, foreign state organisations and/or international entities that directly, or indirectly, control users of subsoil hydrocarbon and hard rock mineral resources".

According to the TORs for the Independent Administrator, companies have also been asked to file their beneficial owners as part of the EGSU reporting for the 2016 EITI Report.

<sup>102</sup> The definition of the beneficial owner is included in the Art. 1.3 of the Law on Combating Money Laundering Obtained Through Criminal Means and Financing of Terrorism, [https://online.zakon.kz/Document/?doc\\_id=30466908#pos=0;0](https://online.zakon.kz/Document/?doc_id=30466908#pos=0;0)

<sup>103</sup> MSG meeting minutes 22.12.2016, p.1; <https://eiti.org/document/kazakhstan-beneficial-ownership-roadmap>

<sup>104</sup> List of member available from the EITI International Secretariat

## Stakeholder views

All stakeholders were generally supportive of beneficial ownership transparency, even if some of the mining companies expressed some reservations. Government representatives explained that the new draft subsoil code requires subsoil users to disclose their beneficial owners, and there had been little pushback on this. It was an example of how the EITI had contributed to legal reform and also an example of how high-level government support had stimulated coordination across government agencies and departments.

Some mining companies were against beneficial ownership transparency because it would require them to reveal personal information such as the names and addresses of the beneficial owner. This was considered to infringe on privacy and safety. Furthermore, company staff did not have authority to reveal this kind of data. Although the EITI was piloting disclosure of beneficial ownership for the 2016 report, none of the mining companies consulted were aware of any company that had voluntarily filed this information. Some also questioned the usefulness of disclosing beneficial ownership data. Oil and gas companies expressed support for beneficial ownership transparency, noting also the appropriateness of exempting publicly listed companies from this requirement.

Civil society was of the view that the government effort on beneficial ownership was genuine, but that it was difficult to know whether the companies would follow through on their commitments and actually file the data. When companies had first expressed reluctance towards beneficial ownership transparency, civil society had appreciated the intervention of then Minister Asset Ishekeshev who had responded that the whole world was now ready to disclose this data, and with that attitude Kazakhstan would be lagging behind. One civil society representative commented that the issue of government asset disclosure was extremely sensitive in Kazakhstan and the recent effort to require publication of these details had been postponed until 2020. It was also noted that beneficial ownership transparency touched on sensitive issues such as foreign, particularly Chinese, ownership of companies operating in Kazakhstan. Sometimes Chinese companies were disguised as Kazakh companies in order to get away with local content requirements. Beneficial ownership transparency would reveal the extent of Chinese ownership in the sector.

Other government officials commented on the complementary efforts of the Government of Kazakhstan to follow the Financial Action Task Force (FATF) standards. It was explained that the last FATF review had taken place in 2011, and the government was now preparing for the second review to take place in 2021. This second review would not only consider the legal requirements, but also the effectiveness of the measures put in place by Kazakhstan in terms of monitoring and preventing anti-money laundering and terrorist financing. The Law on Combating Money Laundering Obtained Through Criminal Means and Financing of Terrorism included a definition of beneficial ownership consistent with the FATF standards and obliged certain actors including banks, lawyers, etc. to maintain access to beneficial ownership information on their clients and submit this to the Committee on Financial Monitoring whenever required to do so. There were requirements for verifying the beneficial ownership information, including supporting documentation such as Articles of Association and copies of the identity of the beneficial owners. Beneficial ownership information was thus considered reliable when provided, but it was noted that it was not always that the information was provided in the first place. It was noted that the MoJ maintained an online database of legal entities. This database contained information on the director and founders of legal entities registered in Kazakhstan, but there was no discussion so far about adding beneficial ownership information to this register. The register was publicly accessible, but only after a pre-

Validation of the Republic of Kazakhstan: Report on initial data collection and stakeholder consultation registration process with an agency in Kazakhstan.

## Initial assessment

Implementing countries are not yet required to address beneficial ownership and progress with this requirement does not yet have any implications for a country's EITI status. Nonetheless, Kazakhstan has made some progress on the legal framework for beneficial ownership disclosure even if the proposed language in the current draft Subsoil Code does not envisage public access to the beneficial ownership data.

## State-participation (#2.6)

### Documentation of progress

State-participation in the extractive industries gives rise to material revenue in Kazakhstan. The 2015 EITI Report lists the following main SOEs involved in upstream oil, gas or mining activities as well as in transportation:

- KazMunayGas (100% state-owned), including its 15 subsidiaries engaged in exploration and production of oil and gas and eight subsidiaries engaged in transportation of oil and gas (p.35; annex 2-2). KazMunayGas' 2015 annual report is publicly available<sup>105</sup>.
- Kazatomprom (100% state-owned), engaged in extraction and processing of uranium. Kazatomprom has 81 subsidiaries. It is unclear how many are engaged in exploration, production or transport. Kazatomprom's 2015 annual report is publicly available<sup>106</sup>
- Tau-Ken Samruk (100% state-owned), engaged in exploration, production, processing and sales of solid minerals (p.35). Tau-Ken Samruk's 2015 annual report is publicly available<sup>107</sup>.
- National Exploration Company "KazGeology" (100% state-owned), engaged in exploration work, including geological surveys, drilling, economic evaluation of mineral deposits and reserves estimation. KazGeology's 2015 annual report is publicly available<sup>108</sup>.
- KazTransOil (100% state-owned subsidiary of KazMunayGas), engaged in transportation of oil and operation of oil pipelines. KazTransOil's 2015 annual report is publicly available<sup>109</sup>.
- KazTransGas (100% state-owned subsidiary of KazMunayGas), engaged in transportation of gas. KazTransGas' 2015 annual report is publicly available<sup>110</sup>.
- Kazakhstan Themir Zholy (100% state-owned), manages the national railway transportation system. Themir Zholy's 2015 annual report is publicly available<sup>111</sup>.

<sup>105</sup> [http://www.kmg.kz/upload/corporate\\_management/equity/2015/kmg\\_annual\\_report\\_2015\\_ru.pdf](http://www.kmg.kz/upload/corporate_management/equity/2015/kmg_annual_report_2015_ru.pdf)

<sup>106</sup> [http://docs.google.com/gview?url=http://www.kazatomprom.kz/sites/default/files/corpfiles/integrated\\_annual\\_report\\_for\\_2015.pdf&embedded=true](http://docs.google.com/gview?url=http://www.kazatomprom.kz/sites/default/files/corpfiles/integrated_annual_report_for_2015.pdf&embedded=true)

<sup>107</sup> [http://raexpert.kz/docs/annual\\_contest/tau\\_ken\\_samruk/TKS\\_AR\\_2015\\_RU\\_0920\\_1545\\_spread.pdf](http://raexpert.kz/docs/annual_contest/tau_ken_samruk/TKS_AR_2015_RU_0920_1545_spread.pdf)

<sup>108</sup> <http://kazgeology.kz/kz/corporate-governance/year>

<sup>109</sup> <http://www.kaztransoil.kz/doc/ru/2983.pdf>

<sup>110</sup> <http://docplayer.ru/38871272-Godovoy-otchet-ao-kaztransgaz-za-2015-god.html>

<sup>111</sup> [http://www.railways.kz/sites/default/files/kfo\\_2015\\_g\\_po\\_msfo\\_rus\\_horoshego\\_kachestva\\_zhivaya\\_podpis.pdf](http://www.railways.kz/sites/default/files/kfo_2015_g_po_msfo_rus_horoshego_kachestva_zhivaya_podpis.pdf)

In terms of the ownership that the government, SOE(s), SOE subsidiaries, and JVs involving SOEs hold in mining, oil and gas companies operating in the country, annex 2-2 notes that the government, through Samruk-Kazyna<sup>112</sup>, owns 100% of KazMunayGas, Kazatomprom, Tau-Ken Samruk and National Exploration Company “KazGeology”. The annex also discloses the ownership held by these four companies in subsidiaries, JVs and other oil, gas and mining assets. For KazMunayGas, this includes 17 subsidiaries, 11 of which are majority owned by KazMunayGas. For Kazatomprom, it includes eight subsidiaries, two of which are majority owned by Kazatomprom. For Tau-Ken Samruk it includes six companies, all of which are wholly owned by Tau-Ken Samruk. For KazGeology, it includes three subsidiaries, none of which are majority owned by KazGeology. It is not clear from the EITI Report or other EITI documents whether this is a comprehensive overview of all SOE subsidiaries engaged in exploration, production or transportation of oil, gas and minerals in Kazakhstan. However, the RGI findings indicate that at least KazMunayGas disclosed their level of ownership in joint ventures and a list of their subsidiaries in the annual report<sup>113</sup>.

The EITI Report states that “there are no rules and practices governing the transfers of funds between the state-owned enterprise (SOE) and the state, retained earnings, reinvestment and third-party financing” (p.62). The RGI findings indicate that at least KazMunayGas disclosed the rules and practices pertaining to financial transactions between the company and the government<sup>114</sup>.

The report provides limited information on any changes in government ownership in oil, gas and mining companies in 2015. It notes that in 2015, 50% of KazMunayGas’ stake in Kashagan was purchased by Kazakhstan’s sovereign wealth fund Samruk-Kazyna (2015 EITI Report, p.62). Samruk-Kazyna also bought 10% of the shares in KazMunayGas for KZT 750 bn (2015 EITI Report, p.62). As noted above, Annex 2-2 of the 2015 EITI Report contains a list of the companies in which the government holds ownership and the % share. When comparing this list to the same overview (annex 2-3) provided in the 2014 EITI Report, there appear to be several changes. For example, these lists show that KazMunayGas’ ownership in Satpaev operating JSC and KMG Kashagan BV was reduced from 100 % in both companies in 2014 to 75% and 16.81% respectively in 2015. The annex pertaining to the 2015 report also shows ownership in some companies that did not figure in the annex pertaining to the 2014 report and visa-versa, indicating changes in ownership. Nonetheless, there is limited explanation of any changes in ownership in the report, nor does the report account for the terms attached to the government’s equity stake such as the government’s responsibility to cover expenses at various phases of the project cycle, e.g., full-paid equity, free equity, carried interest.

With regards to loans and loan guarantees, the 2015 EITI Report provides information on three loans from the government to Samruk-Kazyna, including amount of the debt remaining and the percentage allocation of this debt to companies in the extractive sector (p.38). The 2015 supplementary report states that KazMunayGas “did not use, did not resort to and did not have any liabilities in respect of any state subsidies, guarantees and/or similar tools of financial support” in 2015 (p.7). However, the information is consistent with that reported elsewhere, which suggest that the debt of KazMunayGas in 2015 amounted

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<sup>112</sup> Samruk-Kazyna is a sovereign wealth fund and a joint stock company, 100 % owned by the Government of Kazakhstan. It holds ownership in several companies in the country, including but not limited to the extractive sector. As such Samruk-Kazyna is not considered an SOE in accordance with the EITI Standard.

<sup>113</sup> See RGI data explorer 2017, indicators 1.4.9.b and 1.4.9.d. <http://resourcegovernanceindex.org/about/data-and-source-documents>

<sup>114</sup> Ibid, indicators 1.4.1.a.

to more than USD 17bn<sup>115</sup>. The 2015 supplementary report further notes that a USD 450 million loan agreement was signed in London in January 2015 between Kazatomprom and international banks (p.9). The loan is for a period of 4.5 years at an annual rate of 2% + Libor without collateral. The 2015 supplementary report also states that Themir Zholy took borrowings in the amount of USD 7.25 m in 2015 (p.10). Again, this contradicts figures reported elsewhere, suggesting that debts amounted to USD 6 bn in 2015<sup>116</sup>.

### Stakeholder views

Representatives of Samruk-Kazyna explained that as part of the government's privatisation effort, Samruk-Kazyna was preparing for IPOs for 25% of the shares that they hold in Kazatomprom, KazMunayGas and Tau-Ken Samruk, likely to take place in the period 2018-2020. Transparency was seen to support these companies in their preparations to go public. Samruk-Kazyna also confirmed that they in 2015 bought 50% of KazMunayGas' shares in Kashagan, with 10% of those financed through a loan from the national bank. The details of this transaction were available in Samruk-Kazyna's financial statement.

Representatives of KazMunayGas explained that the individual PSAs regulate the terms attached to the company's ownership in oil and gas projects. Their participation would typically be carried by the strategic partners at the exploration phase, whereas upon commercial discovery KazMunayGas would fully cover the costs associated with their participation. It was noted that a breakdown of these arrangements per project should be available from the MoE. With regards to the financial rules and practices governing the company's operations, the dividend policy governing KazMunayGas' relationship with its subsidiaries set out the regulation and conditions for reinvestments, rights to receive dividends and policies on retention of revenues. Furthermore, Samruk-Kazyna's dividend policy regulated similar issues between Samruk Kazyna and KazMunayGas. At a minimum 50% of net profits should be paid in dividends every year. Both dividend policies were publicly available. In terms of loans and loan guarantees, KazMunayGas explained that all intra-company loans were detailed in the financial statement available from the stock exchange.

Representatives of KazGeology explained that although they in the initial years had received budget support, they were now self-financed. This was confirmed by government representatives. Revenue was generated mainly through provision of geological services and consulting services related to geological exploration. As a joint stock company 100% owned by government, the company would pay dividends to the government. In terms of equity share, the company currently held equity in 25 projects and would typically take an equity share in the range of 25-49%. The strategic partner operating the project would cover the costs associated with KazGeology's participation. Although no project had yet reached the production stage, it was envisaged that the company would sell their shares either to private companies or the state when production commenced.

Tau-Ken Samruk explained that they currently have a 100% stake in six production and seven exploration contracts, only one of which is currently producing. Two of the exploration contracts had been granted to Tau-Ken Samruk in the last two years through direct negotiation and based on the pre-emptive right they enjoy as a state-owned company. In the last two years, the company had also sold two unprofitable exploration assets to private buyers. Given the lack of profits, the company had not yet paid any dividends

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<sup>115</sup> Kapparov, K. (2016) Invisible Public debt: The Case of Kazakhstan, p. 121.

<sup>116</sup> Ibid, p.122

to its shareholder, Samruk-Kazyna. Samruk-Kazyna had supplied Tau-Ken Samruk with further equity, but had not provided other financial support. The company had also taken a loan from EBRD in June 2017.

Representatives of Kazatomprom explained that they were currently engaged in one recently acquired exploration asset, 13 production projects and several development projects, both as majority and minority shareholders. The company had not sold any assets in the last couple of years. The rules governing their financial relationship with the government was set out in the Law on Joint Stock Companies and the Articles of Association of the company. They paid dividends to Samruk-Kazyna, but did not receive any financial support from the government in their capacity as state-owned company. Also, they had not taken any loans nor provided any loan guarantees to any of their subsidiaries, although some of the subsidiaries had taken loans from commercial banks. They had however issued some bonds a couple of years ago.

Civil society lamented the lack of information available on the activities of state-owned companies. It was noted that there was no common law governing SOEs, rather they were all government by their respective Articles of Associations. Most SOE Board were made up of ministers and other government representatives affecting their ability to operate independently.

Civil society was also of the view that SOE financial statements did not provide a complete picture of the state of affair of SOE finances. For example, cash-strapped KazMunayGas had in 2015 sold 50% of its shares to Samruk-Kazyna and Samruk-Kazyna had sold 10% of these shares to the National Bank for USD 4 bn. The National Bank had financed this purchase from a targeted transfer from the National Fund. As such, the government had tried to cover up what in reality was a substantial subsidy to KazMunayGas. A challenge was that SOEs like KazMunayGas had started to borrow heavily on the basis of government support. This was taken into account by credit rating agencies, who would award an investment rating rather that would otherwise have been a junk rating on the basis of that the SOE would be supported by government funding. This was incentivizing further borrowing by SOES and the National Fund was thus ending up being used as a collateral for SOE debt. Such borrowing was not subject to parliamentary oversight and there was no contingency plan for what to do in case of company insolvency.

Civil society further explained that the 2015 sales to the National Bank was motivated by the need for KazMunayGas to urgently reduce its debts or face Eurobond covenant penalties. KazMunaygas' debt last year was estimated to USD 23 bn, and it had been forced to reduce this to USD 11 bn as it was not even able to pay the interest on its debts. This had been done through the sale to the National Bank, as well as through a USD 3 bn oil backed loan to Vitol, as well as sales of other assets.

### **Initial assessment**

The International Secretariat's initial assessment is that Kazakhstan has meaningful progress in meeting this requirement for the following reasons:

- In accordance with Requirement 2.6, Kazakhstan has provided an overview of some of the SOEs engaged in the extractive sector. However, it is not clear if the EITI Report comprehensively lists all SOEs and SOE subsidiaries engaged in exploration, production or transportation of oil, gas and minerals. This information might be available for some or all SOEs in their annual reports, without being referenced or incorporated into the EITI process. It also appears that the EITI Report does not fully account for the government's ownership in SOE subsidiaries and any changes associated with such government ownership as both the EITI report and other sources indicate changes in ownership



that are not mentioned or explained. Furthermore, the report does not comment on terms attached to the government's equity stake in each of the projects.

- The report states that there are no rules governing the financial relationship between SOEs and the government. This statement is not backed up by any evidence and contradicts e.g. the findings of the 2017 RGI, suggesting that further clarifications are needed.
- The NSC has attempted to improve the SOE disclosures, including by providing some information on loans and quasi-fiscal expenditures (*see requirement 6.2*) in the 2015 Supplementary Report. Despite these efforts, information available in other public sources seem to suggest that this information does not provide the full picture of total SOE loans and debts in 2015.
- The NSC acknowledges the gaps in reporting on SOEs, explaining in the supplementary report that the requirement has been “partially implemented” (p.37). The report explains that “The supplement to the report includes information on the financing of projects (mainly of a social nature) with state participation, as well as projects financed from own funds of companies without recourse to the state budget. The information is taken from open sources on official websites of national companies, as well as responses of national companies in the extraction and transportation sectors to official requests by the Ministry for Investment and Development. It was decided at the NSC meeting of 15 June 2017 to consider the possibility of a study on quasi-fiscal expenditures using the funds of donors (...).” Stakeholder consultations support the impression that SOEs have not been engaged in providing information related to requirement 2.6. Rather the data is mainly sourced from publicly available reports and websites.

Table 2 - Summary assessment table: Award of contracts and licenses

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Legal framework (#2.1)	Kazakhstan has disclosed the required information related to the fiscal regime and level of fiscal devolution, an overview of the relevant laws and regulations, and information on the roles and responsibilities of the relevant government agencies. Kazakhstan has also gone beyond the minimum requirements by providing a detailed account of reform efforts as encouraged by the EITI Standard.	Beyond
License allocations (#2.2)	Kazakhstan has disclosed the required details related to contracts awarded and transferred in 2015.	Satisfactory progress
License registers (#2.3)	Kazakhstan has undertaken a major reform with the launch of the online cadastre. However, the cadastre does not yet include information on the date of application for the contracts applied for in 2015, nor does it always include the duration of the license. It is noted that work is underway to populate the cadastre with this information.	Meaningful progress
Contract disclosures (#2.4)	The 2015 EITI Report and the draft supplementary report clarify that contract transparency is not practiced, and set out the legal provisions preventing contract transparency.	Satisfactory progress

Beneficial ownership (#2.5)	Kazakhstan has made good progress on developing a legal framework for beneficial ownership reporting, although further work is needed to ensure that the new draft Subsoil code provides a sound foundation for comprehensive reporting and publication of this information.	N/A
State-participation (#2.6)	Kazakhstan has disclosed some information related to SOEs, but there are questions about the comprehensiveness of the data provided, which sometimes conflicts with information from other sources. It is noted that the NSC has acknowledged the weaknesses in SOE reporting and has agreed plans for addressing that.	Meaningful progress
<p><b>International Secretariat's conclusions and recommendations:</b></p> <ol style="list-style-type: none"> <li>1. Although the government disclosed the required information for contracts awarded in 2015, it is recommended that a more sustainable and transparent disclosure framework is put in place and embedded in the relevant Ministries and SOEs that have rights to negotiate contracts. This should include routine disclosure of any contract awarded or transferred (regardless of the procedure) as well as the technical and financial criteria used, the list of pre-qualified firms, actual bidders and winning bids. The transition to the new legal framework under the new Law on Subsoil would be a good opportunity to effectuate this change.</li> <li>2. The government should continue its work on the cadastre to ensure that it reflects the date of application for the contracts and licenses, and that the validity of the license (date of award and expiry) is available for all contracts and licenses that have been entered into.</li> <li>3. It is recommended that the government takes step to ensure that the new draft Subsoil code provides a sound foundation for comprehensive reporting and publication of beneficial ownership data.</li> <li>4. It is recommended that the NSC undertakes a comprehensive assessment of the public accessibility of information related to state-owned enterprises, and agrees a plan for engaging with and requesting disclosures from SOEs for the data that is currently not yet disclosed.</li> </ol>		

### 3. Monitoring and production

This section provides details on the implementation of the EITI requirements related to exploration, production and exports.

#### *The overview of the extractive sector, including exploration activities (#3.1)*

##### **Documentation of progress**

The 2015 EITI Report provides an overview of the extractive industries (pp. 36-47), including geological prospecting and exploration activities in the oil and gas sector (p.37) and in the mining sector (p.44). The report notes that main exploration activities are currently undertaken with financing from the government.

##### **Stakeholder views**

It was explained that the SOE KazGeology had been established to attract new investment in geological exploration. As a result of this policy a series of strategic exploration projects were underway. Work on establishing a geological centre of excellence, a geochemical laboratory and a national geological database was underway for the period 2016-2018. The aim was to replenish the minerals base, which had been largely depleted or outdated in the 20 years of sovereignty, and find new deposits. Government

representatives also talked about increasingly depleting hydrocarbon fields and the need to intensify exploration in hydrocarbons using new technologies.

A government representative also highlighted that Kazakhstan had now adopted the Committee for Mineral Reserves International Reporting Standards (CRIRSCO) for estimating mineral reserves, and was working on adopting the equivalent international standards for hydrocarbons by 2020. This would contribute to address misinterpretations in volumes of reserves.

One civil society representative noted that the link between attracting investment and the EITI was not always helpful and against the goals of some NGOs.

### **Initial assessment**

The International Secretariat's initial assessment is that Kazakhstan has made satisfactory progress in meeting this requirement. In accordance with requirement 3.1, Kazakhstan has disclosed an overview of the extractive sector including exploration activities. In the Secretariat's view, Kazakhstan has also gone beyond this requirement by providing additional information on geological prospecting and reserves.

### ***Production data (#3.2)***

#### **Documentation of progress**

The 2015 EITI Report discloses total production volumes for oil and gas for 2015 (p.42), disaggregated by commodity. It also comments on the largest producing regions and fields (pp.42-43), with further details on production volumes for each region provided in annex 6, disaggregated by crude oil, condensate and natural gas. The value of the total oil and gas production is disclosed, but not per individual commodity (p.42).

Production data for minerals and metals is provided on pp.48-49, including for uranium, coal, gold, silver, copper, lead, zinc, iron ore, manganese, bauxite and chromite. Annex 6 provides further details, disaggregating production volumes by producing region, apart from for Uranium where only total production volumes for the country are disclosed. The report does not disclose the value of production for any of the minerals or metals.

According to the report, the source of production and export data is the Committee on Statistics of the MNE as well as Kazatomprom for uranium statistics. The calculation and verification methods are not described.

#### **Stakeholder views**

It was noted that the MoE monitors production data, including both production volumes and values through the EGSU. The Committee on Statistics under the MNE also monitors and collects production data from oil, gas and mining companies, including statistics on both volume and value of production. A company representative confirmed that this data was reported to and available from the Committee on Statistics.

The value of production is calculated based on the average sales price. The statistics are compiled either on a monthly or quarterly basis, depending on the size of the company, and published monthly. Annual reports are also compiled and audited, and there is monthly reconciliation with production data from other ministries such as MoE and MID, providing further assurances on the data.

A government official said that the issue of hiding or misreporting production, albeit common in other countries, had not been an issue in Kazakhstan. The challenge was mainly in outdated estimates of mineral reserves. Equally, a sophisticated system for metering hydrocarbons production include transports and exports through pipelines had been established.

### **Initial assessment**

The International Secretariat's initial assessment is that Kazakhstan has made meaningful progress in meeting this requirement. In accordance with requirement 3.2, Kazakhstan has disclosed detailed data on production volumes, disaggregated by commodity and producing region. However, production values are only available for oil and gas and not for other commodities.

### ***Export data (#3.3)***

#### **Documentation of progress**

The 2015 EITI Report discloses total export volumes for oil and gas for 2015 (p.44), disaggregated by commodity. It also comments on the largest exporting regions, disaggregating export volumes per region (annex 6). The value of the total oil and gas exports is disclosed, including by individual commodity and region (p.44; annex 6).

Export data for minerals and metals is provided on pp.49-50, with annex 6 disaggregating export volumes and values by producing region. The only commodity where no exports are indicated is bauxite. The report also discloses other contextual information on exports such as main export destinations per commodity, and explains how exports of some commodities have dropped because of the 2014 temporary export ban on precious metals and raw materials.

According to the report, the source of production and export data is the Committee on Statistics of the MNE, the Customs office, LCC reports by companies as well as Kazatomprom for uranium statistics. The Independent Administrator comments that export data declared in the LCC reports is not objective and should be considered background information. It is also mentioned that not all companies included export figures in their LCC reports (Annex 6).

#### **Stakeholder views**

The Committee on Statistics said that they collaborate with the Committee on Customs and the Committee on State Revenues with regards to collection of export data. The main source of information comes from the customs declarations that are submitted to the Committee on State Revenues, and there was little likelihood of any commodities leaving the country without an export declaration being filed. In addition to customs declarations, annual reconciliation with trading partners and inter-agency collaboration helped improve data quality and reliability.

The Committee on statistics was not aware of the lack of disclosure of bauxite export values in the EITI Report but said that this point would be quick to verify. A company representative said that Kazakhstan does not export bauxite, but aluminium for which bauxites is used as raw materials. The values of aluminium exports are publicly available.

### **Initial assessment**

The International Secretariat's initial assessment is that Kazakhstan has made satisfactory progress in meeting this requirement. In accordance with requirement 3.3, Kazakhstan has disclosed export data including export values and volumes per commodity and producing region. In the Secretariat's view, Kazakhstan has also gone beyond this requirement by providing additional information on main export destinations.

*Table 3 - Summary assessment table: Monitoring and production*

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Overview of the extractive sector, including exploration activities (#3.1)	Kazakhstan has disclosed an overview of the extractive sector, information about exploration activities as well as additional information on geological prospecting and reserves.	Beyond
Production data (#3.2)	Kazakhstan has disclosed all data apart from production values for minerals and metals, which should be available online from the National Statistics Committee.	Meaningful progress
Export data (#3.3)	Kazakhstan has disclosed all data related to export volumes and export values, as well as additional information on main export destinations.	Beyond
<b>International Secretariat's conclusions and recommendations:</b> <ol style="list-style-type: none"> <li>Future EITI Reports should reference the information on the National Statistics Committee related to production values for minerals and metals.</li> </ol>		

## 4. Revenue collection

This section provides details on the implementation of the EITI requirements related to revenue transparency, including the comprehensiveness, quality and level of detail disclosed. It also considers compliance with the EITI Requirements related to procedures for producing EITI Reports.

### *Comprehensiveness (#4.1)*

#### **Documentation of progress**

##### *Materiality and revenue streams*

The 2015 EITI Report explains the fiscal regime applicable to oil, gas and mining companies. It notes that in addition to general taxes, which are common for all types of companies and industries as per the Tax Code, subsoil users make the following extractive sector specific payments: bonuses (variable), historical costs payment (variable), tax for commercial minerals production (0.5-18%), excess-profit tax (0-60%), rent export tax for oil (0-32%), export tax for crude oil (flat rate), excise tax for oil and gas (flat rate), land

tax, property tax, environment pollution payment, levies, and VAT<sup>117</sup>. In addition, extractive companies are required to make social contributions and in some cases, dividend payments are applicable. In total, 34 revenue streams were deemed relevant to extractive companies and included in the 2015 reporting template<sup>118</sup>. A description of each revenue stream is available (p.26-28). It seems like all applicable revenue streams were included in the scope of the 2015 EITI Report, regardless of their relative contribution to budget revenues. None of the revenue streams listed under Requirement 4.1.b seem to be omitted.

### *Reporting companies*

In agreeing which companies should be considered material, the MSG and IA considered the contribution of each company to total revenues received by the MoF from the oil, gas and mining sectors. According to this data, a total of 461 companies contributed a total of KZT 2670 bn (USD 12 bn) to government revenues. For the purpose of reconciliation, the MSG decided to apply a reporting threshold of KZT 1 bn for oil and gas companies, and KZT 100 m for mining companies<sup>119</sup>. While the options considered for selecting this threshold are not explained in the EITI Report, the rationale was that this would yield a reconciliation coverage of 99.5% of total revenues from oil and gas companies (with 72 of 159 companies included in the scope of the reconciliation), and a reconciliation coverage of 98.8% of total revenues from mining companies (with 82 of 302 companies included in the scope of the reconciliation) (2015 EITI Report, p.12). In total, 99.5% of all payments and revenues for the extractive sector would be covered by the reconciliation. The approach to materiality is further explained in the TOR for the Independent Administrator for the 2015 EITI Report, which states that the MID is tasked with drawing up a list of suggested companies to be covered in the report for approval by the NSC. In doing so, the MID should (1) consider a list of all payments by all extractive companies to MOF in 2015; and (2) apply the KZT 1 bn and KZT 100m thresholds agreed by the NSC at its meeting on 10 March 2015 (p.4). The TOR also states that in the event that these thresholds would yield less than a 98% coverage, MID should notify the NSC, which would then take a decision to decrease the thresholds<sup>120</sup>.

The list of companies included in the reconciliation is provided in annex 10 of the 2015 EITI Report, including their BIN numbers. The list of all 461 companies is not attached to the EITI Report, but is available from the Kazakhstan EITI website<sup>121</sup>. The report notes that 6 out of 82 mining companies did not report, mainly because they did not conduct any operational activities in 2015. Their combined contribution was 1.5% of total mining revenue (p. 74). Similarly, three oil and gas companies did not report, with a combined contribution of 1.85% of total O&G revenue (p.74). Two of these companies – North Caspian Operating Company B.V and North Caspian Operating Company N.V - explained that they did not report because they were operating companies, not a subsoil user. The oil company KOR did not report citing confidentiality reasons. According to the report, the total combined contribution of these three companies amounted to 1.85% of total oil and gas revenue (p. 74).

### *Reporting government entities*

<sup>117</sup> 2015 EITI Report, p.26

<sup>118</sup> Ibid, p.16

<sup>119</sup> Ibid, p.11.

<sup>120</sup> 2015 TOR for the Independent Administrator, p.4.

<sup>121</sup> [http://eiti.geology.gov.kz/images/stories/ipdo2/national\\_reports2015/%D0%9F%D0%B5%D1%80%D0%B5%D1%87%D0%B5%D0%BD\\_%D1%81%D1%83%D1%89\\_2015\\_%D0%9C%D0%A4.rar](http://eiti.geology.gov.kz/images/stories/ipdo2/national_reports2015/%D0%9F%D0%B5%D1%80%D0%B5%D1%87%D0%B5%D0%BD_%D1%81%D1%83%D1%89_2015_%D0%9C%D0%A4.rar)

The report notes that there were two government entities receiving payments, notably the State Revenue Committee of the MOF (customs and other payments to the budget) and the MoE (payments made in kind) (p.74). These were included in the scope of the reconciliation, although the latter did not receive any revenue in-kind in 2015 (*See requirement 4.2*).

In terms of the government agencies that participated, there is nothing that suggests that the reporting government entities failed to comprehensively reports on all revenues. Most initial discrepancies were resolved and unexplained discrepancies are negligible, constituting 0.395% in aggregate<sup>122</sup>. The largest unexplained discrepancy seems to be related to “individual income tax from incomes taxable at the source of payment”, which amounted to 13.8%<sup>123</sup>.

Requirement 4.1.d of the EITI Standard states that “Unless there are significant practical barriers, the government is additionally required to provide aggregate information about the amount of total revenues received from each of the benefit streams agreed in the scope of the EITI Report, including revenues that fall below agreed materiality thresholds”. As noted above, the MSG adopted a reporting threshold whereby 307 companies, collectively representing less than 0.5 % of total oil, gas and mining revenue were excluded from the scope of the reconciliation. The government has unilaterally disclosed the revenues from these companies, disaggregated by company and aggregated by revenue streams, on the Kazakhstan EITI website<sup>124</sup>. Thus, full government disclosure is provided.

#### *Assessment of comprehensiveness*

The 2015 Report discloses KZT 2613 bn in total government revenues from the oil, gas, and mining sectors. 145 companies participated. 6 material mining companies and 3 material oil and gas companies failed to report, representing 1.5% of total mining revenue and 1.85 % of total oil and gas revenue. The government disclosure of total revenues shows that the 307 non-material companies collectively contributed 0.5 % of total extractive industry revenue<sup>125</sup>.

Although the Independent Administrator does not specifically comment on the comprehensiveness of the data, the 2015 EITI Report includes the following statement (p.9):

As a result of the work performed such as collection, reconciliation, analysis and summary of the reports submitted by Payers and Recipient, study of the source documents, personal accounts and account reconciliation statements requested both from Payer and from Recipient, having analysed and compared them, established the causes of discrepancies we reached common ground that the reports submitted by Payer and Recipient for 2015 were prepared in accordance with the approved Regulations. Discrepancies found out have been explained and described.

#### **Stakeholder views**

A government official commented that tax evasion and corruption had been an issue at the establishment of the sector when the country gained independence. The move from state-controlled to a market economy had been a dark page of the history as in all post-Soviet states. However, the shadow economy

<sup>122</sup> 2015 EITI Report, p.119

<sup>123</sup> Ibid, p.114

<sup>124</sup> [http://eiti.geology.gov.kz/images/stories/ipdo2/national\\_reports2015/%D0%9F%D0%B5%D1%80%D0%B5%D1%87%D0%B5%D0%BD\\_%D1%81%D1%83%D1%89\\_2015\\_%D0%9C%D0%A4.rar](http://eiti.geology.gov.kz/images/stories/ipdo2/national_reports2015/%D0%9F%D0%B5%D1%80%D0%B5%D1%87%D0%B5%D0%BD_%D1%81%D1%83%D1%89_2015_%D0%9C%D0%A4.rar)

<sup>125</sup> Ibid

Validation of the Republic of Kazakhstan: Report on initial data collection and stakeholder consultation as well as the number of offshore registered subsoil companies was now decreasing.

Mining companies confirmed that they were satisfied with the threshold of KZT 100 m, which captured all large companies in the reconciliation. According to the mining companies consulted, they were not aware of any payments to government not covered by the EITI reporting template. Oil and gas companies shared this view, noting that there had not been any challenges in reconciliation in recent years, nor any discrepancies.

Government representatives working with tax collection noted that all taxes and non-tax payments appeared to be covered in the EITI Report. In terms of revenue collecting agencies, it was explained that based on an Order agreed by the MoE, MID, MoF, the tax and non-tax payments from the 152 largest oil and gas companies were deposited in the National Fund, while the Committee on State Revenue collected taxes from remaining oil and gas companies as well as mining companies. Other agencies collected non-tax payments depending on the nature of such payments. All of these revenue collections were monitored by the Committee on Treasury, and all revenue apart from that deposited in the National Fund was allocated to the budget. Line ministries did not collect non-tax payments and non-tax payments were paid directly to the Treasury Committee.

### **Initial assessment**

The International Secretariat's initial assessment is that Kazakhstan has made satisfactory progress in meeting this requirement. The NSC has agreed and applied an approach to materiality that has resulted in full coverage of all revenues related to the sector. In addition, the NSC has agreed reporting thresholds resulting in a coverage of reconciliation of 98 % of total revenues. The government has fully disclosed the revenues received from non-material and non-participating companies, disaggregated by company, demonstrating that omissions have not affected the comprehensiveness of the EITI Report. The Independent Administrator has sought to explain discrepancies and has provided an adequate assessment of the comprehensiveness of the report.

### ***In-kind revenues (#4.2)***

#### **Documentation of progress**

The 2015 EITI Report notes that according to the MoE, the payment "Production Share of the Republic of Kazakhstan" pertaining to Production Sharing Agreements are envisaged to be paid in-kind (p.54). However, it is further noted that according to MID and the LCC reports of the companies, payments in-kind were not made in 2015 (p.54). The 2015 EITI Report includes this payment in monetary terms (p.90).

#### **Stakeholder views**

Representatives from the MoF explained that twelve companies were still operating under old PSAs. These companies were obliged to make the payment "production share to the Republic of Kazakhstan". Although until December 2016, the companies had always made this payment in cash, the law provided for the companies to choose whether to pay in cash or in-kind. Companies had always made this payment in cash. However, in December 2016, the North Caspian Operating Company (NCOC), operating the Kashagan field, had decided to make their payment in-kind. This payment was made to the company *LPP PSA*, a company established under the MoE entitled with collecting and marketing in-kind oil and gas. The



oil and gas companies confirmed that this was an option in all contracts, but did not confirm that any such in-kind payments had been effectuated in 2016. Civil society said that they had heard about the establishment of this company, but that they did not have any information about its functions or activities.

KazMunayGas explained that in terms of their equity oil, general information on the total sales volumes and revenues would be available from their marketing subsidiary. Some information about main buyers, sales markets and prices were published in the annual report. It was also confirmed that the oil backed loan agreements entered into by Vitol in 2015 and 2016 for the sale of KazMunayGas' share of production were not typical. Rather, KazMunayGas would sell their oil either on the international spot market, or to domestic buyers and refineries.

It was noted by some stakeholders that further transparency in the commodity trading value chain pertaining to KazMunayGas' equity oil would be desirable as this was an area where many transactions and activities were still relatively opaque. One stakeholder suggested that some of the proceeds from the trade ended up in a company called Vitol Central Asia BV and there were indications that some of the beneficial owners of this company were politically affiliated.

### **Initial assessment**

The International Secretariat's initial assessment is that Kazakhstan has made satisfactory progress in meeting this requirement. Although companies operating under PSAs in Kazakhstan may pay production share in-kind, not such payments were made in-kind in 2015 and this requirement was therefore not applicable for that financial year.

KazMunayGas sells considerable volumes of its equity oil, and there is limited transparency about who buys this oil. Requirement 4.2 is limited to the sale of oil that the government collects as a fiscal agent, and does not extend to sale of NOC equity oil. However, an increasing number of implementing countries have started to extend their disclosures to also cover NOC equity oil. In light of the substantial production pertaining to KazMunayGas as well as recent oil backed loans related to the sale of KazMunayGas' share of oil from Tengiz<sup>126</sup> and Kashagan<sup>127</sup>, the NSC could consider joining the EITI's targeted effort on increasing transparency in commodity trading.

### ***Barter and infrastructure transactions (#4.3)***

#### **Documentation of progress**

The 2015 EITI Report references an intergovernmental agreement from 2012 between Kazakhstan and Russia for annual supply of 1.5 m tons of crude oil in exchange for duty-free supply of 1.3 m tons of petroleum products. It is the NOC, KazMunayGas, that supplies the crude oil. The 2015 annual report of KazMunayGas notes that "In 2015 Kazakhstan supplied Russia with 2.3 mn tonnes of oil on the basis of an intergovernmental agreement under which the parties agreed on reciprocal supplies of Kazakhstan crude to Russia in compensation for losses to the Russian federal budget in respect of oil products supplied by

<sup>126</sup> <https://www.ft.com/content/02273d4e-98da-11e5-95c7-d47aa298f769?mhq5j=e2>

<sup>127</sup> <http://www.reuters.com/article/kazakhstan-kashagan-vitol-idUSL8N1AX26D>

Russia to Kazakhstan during 2012-2013<sup>128</sup>. It further notes that “Supplies to Russia were made under the oil swap agreement between the Kazakhstan and Russian governments. Counter-shipment supply volumes shipped to Russia are specified by the Ministry of Energy<sup>129</sup>”. The 2015 Supplementary Report further notes that “As of the reporting date, the Company fulfilled its obligation under the counter-oil supply agreement between the Government of Kazakhstan and the Russian Government” (p.43). This is confirmed by KazMunayGas<sup>130</sup>. At the same time, the 2016 Annual Report of KazMunayGas mentions a gas swap arrangement with Russia<sup>131</sup>.

In addition, the 2015 EITI reports mentions Order No. 380 of the Minister for Investment and Development<sup>132</sup>, dated 31 March 2015, enabling the government to enter into barter transactions with investors whereby investors are provided with the use of a deposit in return for provision of technology and investment. The 2015 EITI Report lists four contracts that appear to have been signed in accordance with this order, but it is not clear from the 2015 EITI Report what the terms of these contracts are, and what is being “bartered”. According to the Ministerial Order, it seems like it mainly facilitates access to deposits for companies that are working with innovative technologies, notably granting them access through direct negotiations rather than having to go through auctions and tenders<sup>133</sup>. This also seems to be confirmed by the supplementary 2015 EITI Report, which specifies the terms for each of the contracts (pp.29-30). The companies do not get free or partial access to resources or other benefits in exchange for the services that they commit to provide under the terms of the contracts, the only benefit is the award of the contract itself. The EITI Standard states that infrastructure provisions and barter agreements are “agreements, or sets of agreements involving the provision of goods and services (including loans, grants and infrastructure works) in full or partial exchange for oil, gas or mining exploration or production concessions or physical delivery of such commodities”. Although these four contracts could qualify as contracts involving the provision of goods and services in exchange for mineral exploration concessions, there does not appear to be any resources pledged by the state as all the costs associated with the contract, including the additional infrastructure work to be carried out by the companies, are borne by the companies. In light of this, the International Secretariat concludes that these four contracts are not considered “barter agreements” as per the intention of Requirement 4.3.

Finally, the report notes that companies are contractually obliged to provide or finance certain infrastructure for the development of the regions where they operate. For the purpose of this Validation, this issue is considered a mandatory social expenditure and is therefore treated under requirement 6.1 below.

### Stakeholder views

According to civil society, the concept of barter was poorly understood and the NSC had only started to grapple with it last year. Their impression was that some deposits had been given to companies in

<sup>128</sup> KazMunayGas 2015 Annual Report, p. 23

<sup>129</sup> Ibid, p.22.

<sup>130</sup> KazMunayGas (2016) 2016 Annual Report, p.51

<sup>131</sup> The report notes that “A gas swap arrangement between Kazakhstan and Russia entails the substitution of Karachaganak gas, which has historically been supplied to Orenburg for processing, with imports of Central Asian and Russian gas, which are delivered to the southern part of Kazakhstan and the Kostanay region respectively” p.10. It is unclear if this arrangement existed in 2015.

<sup>132</sup> <http://adilet.zan.kz/rus/docs/V1500010758/info>

<sup>133</sup> Ibid.

exchange for certain investments, but that few details were available and they had been told that this was classified information. Some tax rebates existed, but again it was unclear how these worked in the context of barter. Representatives from companies explained that certain tax holidays and tax incentives were allowed under the investment law, but were not aware of barter arrangements as such. Mining companies said that no incentives existed for mining companies.

### Initial assessment

The International Secretariat's initial assessment is that Kazakhstan has made meaningful progress in meeting this requirement, but that further work is required to establish the relevance and applicability of barter disclosures in Kazakhstan. It seems that barter agreements between companies and the government do not exist. However, the swap arrangements between the Government and Kazakhstan and the Government of Russia could constitute a type of barter whereby Russia provides goods (refined oil and gas products) in return for physical delivery of crude oil.

## Transport revenues (#4.4)

### Documentation of progress

Revenues from transportation of oil, gas and minerals are material in Kazakhstan, amounting to KZT 176 bn. The 2015 EITI Report provides a description of the transportation arrangements for oil, gas and minerals (pp.54-60, annex 7); transportation routes for oil and gas (p.55; p.57); and the relevant companies and government entities, including SOEs, involved in transportation. Oil transportation is carried out by the 100% government owned JSC KazTransOil as well as the Caspian Pipeline Consortium in which the government holds 20.75% equity through KazMunayGas (p.54). Gas is transported by the JSC KazTransGas, a wholly owned subsidiary of state-owned KazMunayGas (p.57). Minerals and oil transported via railroad using the network of the SOE JSC Kazakhstan Temir Zholy, the national railway company of Kazakhstan.

The report does not clearly set out the list and definitions of the payments by shippers to the above SOEs for use of the transportation services. However, annex 7 does list the different tariff rates collected by KazTransOil; KazTransGas through four of its subsidiaries – Intergas Central, KazTransGas Aimak, Asia Gas Pipeline, Beineu-Shymkent Pipelines; and by Kazakhstan Themir Zholy for minerals<sup>134</sup>. The report also discloses the volumes of oil transported (p.55), and the volumes of gas transported (p.58), but not the volumes of minerals.

In terms of revenues, the report discloses the total income received for oil transportation by KazTransOil (annex 7) and the total income from gas transportation of KazTransGas (p.57), disaggregated by transport route/revenue stream but not by paying company. Annex 7 also lists names of companies "involved in transport of oil in 2015" and the "list of users of services for the transport and storage of gas in 2015", but it is unclear whether these were the paying companies. According to the 2015 EITI Report, it is not possible to distinguish the revenues received by Themir Zholy for minerals and metals from other goods that the railway company is exporting (p.61).

In addition, the report discloses the total taxes paid by KazTransOil and KazTransGas to the government of

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<sup>134</sup> 2015 EITI Report, annex 7

Kazakhstan (p.56; p.58). However, the report notes that these are overall taxes and payments for all of the activities that these companies are involved in and that it is impossible to separate out the payments made for transportation of oil and gas only (p. 55). As for Themir Zholy, the report does not disclose taxes paid to the government noting that it is not possible to separate taxes paid for transport of minerals and metals from other activities that Themir Zholy (p.61).

### **Stakeholder views**

Representatives from Themir Zholy explained that they were transporting coal, oil, iron ore and other commodities on behalf of mineral producers. This included both domestic, export and transit. Although the company did have statistics on the volumes of minerals and metals transported, this information was confidential to Themir Zholy and the mineral producers using their transportation services. Similarly, revenues collected by Themir Zholy from tariffs and other payments related to their transportation services was also confidential information. However, the company committed to provide an estimate of the share of revenue generated from transportation of minerals and metals relative to total revenues. According to civil society, Themir Zholy was responsible for transporting both raw materials and semi-processed products and the disclosures did not currently fully reflect this.

Representatives from KazTransOil explained that all of the information requested by the EITI was published online, including the financial statement. Their 5000 km long pipeline network transported 45 m tons of oil last year, 50% of which was exported mainly to the Chinese, European and Russian market. 16% was transit oil and the remaining transported for the domestic market. In terms of tariffs, domestic tariffs were set by the state for a five year period. Export tariffs and transit tariffs were set by KazTransOil, with transit tariffs regulated by intergovernmental agreements being similar to those applied to the domestic market. The company explained that although export tariffs could be reviewed annually, they had not been changed for the last three years. Looking ahead, it was noted that parts of the pipeline network now needed further capital investments to ensure extra capacity in light of the growing Russian demand for pipeline capacity for transit of their oil to China. Civil society confirmed that they had suggested to include more information on KazTransOil in the TOR for the Independent Administrator, in particular contextual information.

### **Initial assessment**

The International Secretariat's initial assessment is that Kazakhstan has made meaningful progress in meeting this requirement. While the NSC has made efforts to increase transparency in transportation arrangements, data on total volumes of minerals transported as well as tariffs and revenues collected by the SOE from this transportation have not been disclosed. Although KazTransOil and KazTransGas has disclosed this information, the revenues received in tariffs and other payments are not disaggregated by paying company.

According to the Validation Guide, "Disclosure of material transportation revenues is expected, but not required for compliance with the EITI provisions. Where transportation revenues are material but not disclosed, Validation is expected to evaluate whether the MSG has documented and explained the barriers to provision of this information and any government plans to overcome these barriers". Some of the challenges related to disclosures by Themir Zholy are explained in that it is difficult to disaggregate revenues and volumes of cargos of minerals and metals from other cargos that the railway company is involved in. However, the International Secretariat's assessment is that the NSC could strengthen its plans

for overcoming remaining barriers to full transparency in transportation of oil, gas and minerals by engaging further and more directly with the transportation companies.

### *Transactions between SOEs and government (#4.5)*

#### **Documentation of progress**

As noted in the assessment of requirement 2.6 above, state-participation in the extractive sector gives rise to material revenue and there are multiple SOEs involved in the extractive sector. The description of the fiscal regime indicates that none of the SOEs have any role as fiscal agents collecting revenue on behalf of the state. It is therefore unlikely that there are any financial transactions between the SOEs and other private oil, gas and mining companies beyond those pursuant to equity shares held by the SOEs.

In terms of transactions between the SOEs and the government, it appears that the SOEs make the same tax and other payments as other private companies. In addition, intra-SOE transfers of dividends between subsidiaries and parent companies are disclosed in Annex 2-2, alongside payments of dividends from parent companies to various government agencies. Based on stakeholder consultations, there does not appear to be any other statutory or ad hoc transfers from the government to SOEs.

#### **Stakeholder views**

Representatives of Samruk-Kazyna explained that they receive dividends from the extractive companies in which they hold ownership, notably Kazatomprom, KazMunayGas and Tau-Ken Samruk. Samruk-Kazyna has the authority to invest or retain this revenue, although it pays dividends to the government on their whole portfolio including but not limited to dividends from their equity share in extractive companies. It was noted that all the dividend transactions were disclosed in the EITI Report. Civil society agreed that the dividend disclosures were fairly comprehensive. Based on their research showing large discrepancies between accrued dividends and actual dividend payments, dividends were now reported to the EITI based on the cash accounting method only and this was considered an improvement according to civil society.

Representatives of the MoF confirmed that the tax code is universal and that SOEs pay taxes and other payments like any other company, and that they do not have any fiscal role.

Representatives of Kazatomprom said that the dividend reporting in the EITI had been somewhat confusing shifting from cash-based accounting to accruals based to cash based accounting.

#### **Initial assessment**

The International Secretariat's initial assessment is that Kazakhstan has made satisfactory progress in meeting this requirement. Although the lack of clarity about the rules governing the financial relationship between the government and SOEs (*see requirement 2.6 above*) makes it difficult to assess whether all transactions between SOEs and the government have been disclosed in the 2015 EITI Report, it appears unlikely that there are any direct payments beyond dividends and taxes. Information gathered as part of requirement 2.6 seems to suggest that any financial support from the government to SOEs rather takes the form of equity injections and loans.

### ***Subnational direct payments (#4.6)***

#### **Documentation of progress**

Table 1 of the 2015 EITI Report shows the tax revenues to the local budgets (p.15). It notes that individual income tax, social tax, property tax, vehicle tax, land tax, environmental tax etc. are paid to local budgets. It also states that these payments constitute 16.4% of total tax revenues of local budgets (p.62). It is not clear from the report whether these are actually payments that are collected directly by municipalities from the extractive companies, or whether these are transfers from the central government to local budgets in accordance with the annual budget process.

#### **Stakeholder views**

Some mining companies said that they made certain payments to regional governments and that the details of those payments were set out in the contract. This was also the case for oil and gas companies, who said that the MoF monitors all transactions to budget accounts, including those at local level.

Representatives of the MoF confirmed that some taxes applicable to the extractive sector such as property tax or transportation tax were remitted to the local authorities and retained in the local budget. However, the Independent Administrator explained that the way this works is that it is the MoF that is the sole collector of revenues. There are internal budget codes within the MoF which means that once a payment is made against a budget code destined for the local budget, the money would be directly transferred to the local level.

#### **Initial assessment**

The International Secretariat's initial assessment is that this requirement is not applicable in Kazakhstan. Although some taxes are channelled to the local level, there is a centralised taxes and payments collection system monitored by the MoF. Thus, the local governments do not directly receive and account for payments by extractive companies.

### ***Level of disaggregation (#4.7)***

#### **Documentation of progress**

The revenue data is disclosed by individual company and individual revenue stream, but not by individual government entity. However, as noted under requirement 4.1 above, there is only two government entities that collect taxes and other non-tax payments, notably the State Revenue Committee and the Treasury Committee. Given that the former collects local currency payments and the latter foreign currency payments, the report is implicitly disaggregated to the level required by the EITI Standard. With regards to project level reporting, Kazakhstan's current EITI Reporting is not disaggregated by project. The way payments are levied depends on the type of contract.

#### **Stakeholder views**

Company representatives did not express particular views on project-level reporting. Companies holding shares in multiple projects mainly requested further clarifications on who would have to report what data

Validation of the Republic of Kazakhstan: Report on initial data collection and stakeholder consultation and the role of the operating company. Others commented that currently the EITI Report was the only disaggregated source of tax information available to the public. The figures published on the MoF website for example would only provide aggregated data. Civil society welcomed the EITI's decision that implementing countries should transition to project level reporting by 2018.

### **Initial assessment**

The International Secretariat's initial assessment is that Kazakhstan has made satisfactory progress in meeting this requirement.

### **Data timeliness (#4.8)**

#### **Documentation of progress**

The 2015 EITI Report was approved by the MSG and published on the Kazakh EITI website on 21 October 2016<sup>135</sup>. Kazakhstan has a track record of publishing EITI reports within ten months of the end of the financial year. The move to electronic reporting in 2013 helped facilitate this process.

#### **Stakeholder views**

Few comments were made on the timeliness of the data, although one civil society representative said that the EITI data was not fresh enough even if it was published only ten months of the end of the financial year. It would be better if it was released immediately, even if unaudited, as it would then be more useful to journalists and other policy makers.

### **Initial assessment**

The International Secretariat's initial assessment is that Kazakhstan has made satisfactory progress in meeting this requirement. In the Secretariat's view, Kazakhstan has also gone beyond the requirement by exploring opportunities to disclose data as soon as practically possible through continuous online disclosures as encouraged by the EITI Standard.

### **Data quality (#4.9)**

#### **Documentation of progress**

##### *(i) Terms of Reference for the Independent Administrator:*

The MSG agreed the Terms of Reference for the Independent Administrator for the 2015 EITI Report on 21 January 2016<sup>136</sup>.

The Terms of Reference for the 2015 EITI Report is based on the standard Terms of Reference and agreed upon procedure for EITI Reports, but with substantive amendments mainly related to the data collection phase. The Standard TOR for Independent Administrators states (p.4):

The Independent Administrator is expected to undertake the following tasks during the data collection

<sup>135</sup> MSG meeting minutes 21.10.2016, p.1

<sup>136</sup> MSG meeting minutes 21.01.2016, p.1

Validation of the Republic of Kazakhstan: Report on initial data collection and stakeholder consultation phase:

2.1 Distribute the reporting templates and collect the completed forms and associated supporting documentation directly from the participating reporting entities, as well as any contextual or other information that the MSG has tasked the Independent Administrator to collect in accordance with 1.3.4 above. [Where an alternative approach is proposed - e.g. where the national EITI secretariat assists with data collection, or where the data is collected through an existing reporting mechanism, there should be consultations with the Independent Administrator to ensure the integrity of the information transmitted to the Independent Administrator].

However, in 2013 the NSC decided to integrate EITI reporting in the existing reporting obligations – the Unified State System of Subsoil Use Management of the Republic of Kazakhstan (EGSU) - that licensees have to comply with<sup>137</sup>. To this end, the NSC developed a special EITI reporting template that was added to the EGSU system. Licensees were then instructed to report their payments for EITI purposes, and to indicate whether they have undertaken financial audits, attach copies of financial statements if needed, and attest the data by electronic signature. The system was used for the first time when preparing the 2012 and 2013 EITI reports.

The TOR for the 2015 EITI Report reflects this process. With regards to data collection from the companies, sections 3.3.2 and 3.3.3 task MID and MoE with instructing mining companies and oil and gas companies respectively to file their data in the EGSU system within the established timeframe, and enclosing reporting forms and instructions to support the companies with completing the forms (pp.4-5). Section 3.3.6 instructs licensees to submit their data in the EGSU portal, and to respond to any further requests from the Independent Administrator (p.6).

With regards to government data collection, the process is still manual. In accordance with section 3.3.4, MoF is instructed to compile data on revenues collected from government entities under its supervision, notably the State Revenue Committee (local currency payments) and the Treasury Committee (foreign currency payments), and provide consolidated reports on revenues received to the Independent Administrator (p.5). The TOR further instructs the various government agencies, in accordance with their respective mandates and responsibilities, to submit contextual information as per the agreed templates annexed to the TOR to the Independent Administrator (pp.4-6).

The role of the Independent Administrator in the data collection process is set out in section 3.3.8 of the TOR (p.7). This includes reviewing that the reporting forms submitted by the companies and government agencies have been correctly completed. It also includes entering the data received manually by the MoF into the EGSU system. A consolidated reconciliation report is then generated through the EGSU system. In case of discrepancies, the Independent Administrator is tasked with following up such discrepancies directly with the reporting entities. An overview of the type of data (financial, contextual) to be submitted by which reporting entity, when and how (through EGSU or directly to the Independent Administrator) is provided in section 4, p.11, of the TOR for the 2015 EITI Report.

While the remainder of the TOR contains additional information and instructions specific to the Kazakh context, the key other steps in the reporting process are consistent with those outlined in the Standard TOR and Agreed upon procedures for Independent Administrators as agreed by the EITI Board. However, the International Secretariat understands that not all aspects of the TOR were fully implemented in

<sup>137</sup> In accordance with Resolution No 117 of 10 February 2011 “On approval of rules for monitoring and controlling of compliance with the terms of contracts”, companies must submit quarterly reports to the authorities on the performance against the contractual conditions of their licenses. This includes reporting of tax and other payments.



Validation of the Republic of Kazakhstan: Report on initial data collection and stakeholder consultation practice. For example, no inception report was produced for the 2015 EITI Report.

(ii) Appointment of the Independent Administrator:

The MSG endorsed the appointment of UHY Sapa Consulting as the Independent Administrator for the 2015 EITI Report at its meeting on 6 April 2016<sup>138</sup>. In accordance with requirement 4.9.b, the selection criteria included ensuring that the selected firm had qualifications such as being an independent auditing company operating under international auditing standards; ability to undertake financial analysis and writing; experience with working with multi-stakeholder organisations and specific requirements with regards to accounting and auditing certificates and composition of the team<sup>139</sup>. Given that the assignment was funded from the budget, the appointment followed national procurement rules with MID overseeing the procurement process on behalf of the NSC.

The draft 2015 EITI Report was discussed by the NSC on 30 September 2016, after first having been shared and discussed with the Working Group on Reconciliation, and also shared with the NSC via email<sup>140</sup>. The final 2015 EITI Report was approved on 21 October 2016<sup>141</sup>.

Subsequent to a series of pre-Validation workshops and self-assessments in Q4 2016, the NSC decided that it would be necessary to produce a supplementary report to address the gaps in the 2015 EITI Report<sup>142</sup>. The supplementary report was approved by the NSC at its meeting on 15 June 2017, and has been published online.

(iii) Reporting templates:

In agreeing the TOR for the Independent Administrator for the 2015 EITI Report, the NSC also agreed the annexes attached to the TOR that contain the various reporting templates<sup>143</sup>. Section 4 (1.8) of the TOR gives the Independent Administrator a mandate to review/propose templates as part of the inception report (p.10). Although only a draft report was produced, not an inception report, the IA confirmed that it had the opportunity to comment on the templates even if it did not do so.

(iv) Data assurance and assessment of data reliability

The TOR mandates the Independent Administrator to provide advice to the NSC on the audit and assurance procedures, including examining the relevant laws and regulations and reforms underway (p.9). It does not seem that this was done.

In terms of the specific assurance processes for the company data for the 2015 EITI Report, the TOR further specifies that companies should submit payment data in accordance with their audited annual accounts, including a confirmation letter attesting that the company's data has been audited (p.17). If data has not been audited, the company should provide an explanation for why. Furthermore, the TOR specifies that the data must be approved and electronically signed off by a senior official responsible for the quality and credibility of the data (p.17). This approach is also confirmed in the 2015 EITI Report (p.9). With regards to compliance with the agreed procedure, the 2015 EITI Report notes that 23 of the 154 companies did not have audited financial statements (p.71). Annex 1-4, 1-5, and 1-6 details which

<sup>138</sup> NSC meeting minutes 06.04.2016, p.1.

<sup>139</sup> 2015 TOR for the Independent Administrator, p.1

<sup>140</sup> NSC meeting minutes 30.09.2016, p.2.

<sup>141</sup> NSC meeting minutes 21.10.2016, p.1.

<sup>142</sup> [http://eiti.geology.gov.kz/images/stories/ipdo2/national\\_reports2015/Report2015.pdf](http://eiti.geology.gov.kz/images/stories/ipdo2/national_reports2015/Report2015.pdf)

<sup>143</sup> NSC meeting minutes 21.01.2016, p.1

companies undertook audit in 2015 and those that did not.

With regards to the assurance process for government data, the TOR for the Independent Administrator makes reference to a verification by the Accounts Committee of the data compiled by the MoF (p.7). The 2015 supplementary report states that “An inquiry was made by the Ministry for Investment and Development to the Accounts Committee for Control over Execution of the Budget regarding possible verification of the accuracy of Ministry of Finance data on revenues from the extractive industries. The reply from the Accounts Committee was that the Committee envisaged a check of the completeness and timeliness of the receipt of taxes and other mandatory payments by the Ministry of Finance as part of its planned control measures, and that issues of allocations to the budget by extractive companies are taken into account in the programme of external state financial control by means of that check” (p.33). It further refers to the results of the Accounts Committee’s review of completeness and timeliness of receipts of taxes and other payments, available online<sup>144</sup>. The NSC meeting minutes from 6 April 2016 mentions a review by the NSC of the results of the Accounts Committee verification<sup>145</sup>.

The TOR for the Independent Administrator also states that the data must be approved by a senior official responsible for the quality and credibility of the data (p.17), which is confirmed in the EITI Report (p.9). However, the 2015 EITI Report does not comment on compliance with this procedure, nor does it provide any information on the availability and accessibility of audit reports related to government accounts.

Although the Independent Administrator does not specifically comment on the reliability of the data, the 2015 EITI Report includes the following statement (p.9):

As a result of the work performed such as collection, reconciliation, analysis and summary of the reports submitted by Payers and Recipient, study of the source documents, personal accounts and account reconciliation statements requested both from Payer and from Recipient, having analysed and compared them, established the causes of discrepancies we reached common ground that the reports submitted by Payer and Recipient for 2015 were prepared in accordance with the approved Regulations. Discrepancies found out have been explained and described.

(v) Confidentiality:

The TOR for the Independent Administrator specifies in Section 3.3.8 (14) that the Independent Administrator should keep all information strictly confidential until the draft report has been submitted to the NSC (p.8).

(vi) Data sources and electronic files

The 2015 EITI Report includes sources and references to data. Sourcing has also been discussed by the WG on reconciliation which noted in its comments on the draft 2015 EITI Report that sources should be given, preferably in the form of hyperlinks throughout the report (Minutes from WG reconciliation meeting, 03.08.2016, p.1). The TOR for the report states that the report was prepared by “UHY SAPA Consulting” LLP. The International Secretariat understands that in practice the Independent Administrator hired a consultant to complete the contextual part of the report. This is not mentioned in the report, nor in any NSC meeting minutes.

Data files in excel format are available from the Kazakhstan EITI website, and summary data has been

<sup>144</sup> <http://esep.kz/rus/show1/article/119>

<sup>145</sup> NSC meeting minutes, p.1

Validation of the Republic of Kazakhstan: Report on initial data collection and stakeholder consultation submitted to the International Secretariat.

### **Stakeholder views**

In terms of the selection of the Independent Administrator, it was noted by the national secretariat that the report was funded by the national budget and the national procurement law required the lowest bidder to be selected for the assignment. The relatively low budget available for the assignment seemed to be preventing some firms from bidding. On average, up to three companies usually bid for the contract. However, this was not considered to necessarily affect the quality of the EITI report. Either way, the use of the national procurement process inevitably meant that the NSC had less of a say in the selection of Independent Administrator. The national secretariat was of the view that although no red flags had been raised yet, there would be opportunities for addressing concerns about the winning bid should the NSC have serious issues with the firm that won the contract.

Companies did not express any concerns about the Independent Administrator. Civil society on the other hand commented that they had always discussed the quality of the reports and the opportunity for rotation of the Independent Administrator. However, every year the NSC was confronted with the challenge of the lack of opportunity to make this change given the public procurement law. They admitted that after all these years they had finally “taught” the Independent Administrator how to produce an EITI Report and they now perceived the Independent Administrator to be technically competent, credible and trustworthy. The quality of the reports had also improved.

With regards to the ToR for the Independent Administrator, civil society members of the working group on reconciliation explained that they were involved in the development of the ToR. However, they did not always get their suggested changes to the ToR approved, given that there were some parts that simply couldn't be changed. The national secretariat also commented that some parts of the Standard TOR for Independent Administrators issued by the EITI was not necessarily compatible with national procurement rules. The Independent Administrator did not produce an inception report, but shared the first draft containing about 30% of the information with civil society for feedback and comment. A final draft would subsequently be produced for discussion with the whole council. Any feedback from council members would be taken into account. The Independent Administrator confirmed that they had signed confidentiality agreements with most companies as part of the TOR. One stakeholder had doubts that the TOR really addressed the content of the new Standards and whether all recommendations from previous reports had been addressed in the TOR.

The Independent Administrator confirmed that they tended to outsource the contextual part of the report given the expertise needed to compile this part. However, the Independent Administrator would still take full responsibility for the quality of the contextual part, including quality assuring the information, checking all links, sources etc. There had not been any objections from the NSC to this approach. It was also the view of the Independent Administrator that the contextual part and the reconciliation should be two separate contracts and TOR as they were distinctly different products requiring different types of expertise. Civil society representatives noted that they had more concerns about the contextual part of the report than the reconciliation part. Information in the contextual part of the report was often scattered, and there were questions about the comprehensiveness of some of the information provided, for example on SOEs, barter and transportation payments. Civil society commented that sometimes the contextual information was only based on publicly available sources and it was not always that government agencies or companies were requested to provide information not in the public domain for the purpose of the contextual report.

In terms of the reconciliation process, the Independent Administrator explained that they did indeed get the revenue data from the MoF and inputted this to the EGSU database. An initial reconciliation report would then be generated, and the main task of the Independent Administrator would be to follow up and resolve any discrepancies in the initial reconciliation. They would contact both the companies and MoF directly to obtain further information and supporting evidence like bank statements, receipts etc. to resolve and explain any discrepancies. Neither the Independent Administrator nor civil society could explain why the MoF could not simply enter the data on revenue receipts itself.

With regards to auditing procedures, the national secretariat explained that the Accounts Committee undertakes an annual check of the financial data pertaining to the extractive sector, as part of their wider audit of the MoF. A letter with the results of the audit is provided annually. This was confirmed by representatives from the Committee on State Revenue who explained that the Accounts Committee (state auditors) undertakes annual audits of their Committee, the results of which are made available online. Companies were required to have their data audited by 31 August following the end of the financial year, but in practice most companies would be audited already by 31 March. Audited financial statements were uploaded to EGSU together with the EITI report submissions by the companies.

The Independent Administrator did not have any concern about the reliability of the data submitted either by the companies nor the government. Company data was generally reliable, and there were less discrepancies now that everything was reported on a cash basis. They noted that typically state auditors were more thorough than external auditors. However, the Independent Administrator had not undertaken an assessment of prevailing auditing procedures and practices in accordance with the TOR, neither amongst companies nor government. Furthermore, they did not know the details of the checks performed by the Accounting Committee and did not know whether this “check” was really an audit, nor whether there was a pre-defined audit schedule. The Independent Administrator was only informed whether the checks had been carried out. Whenever there was a discrepancy, the Independent Administrator would request a copy of the “reconciliation act” produced by the MoF and the companies. This act provided a confirmation from both the company and the government that the tax data was correct, however it was based on pre-audited data. The Independent Administrator also said that the Accounts Committee had last year undertaken a full audit of the EGSU system, however this report was not publicly available and they did not know the findings.

Companies noted that the reliability of the non-revenue data depended on the sources used. The data in the EITI Report should be consistent with other publicly available industry data. It was also recommended that the financial data be converted into dollars. Civil society representatives were of the impression that the Accounting Committee audits MoF data, but it was not clear to them what audit procedure was used. They were under the impression that revenues from some randomly selected companies were subject to deeper checks, and that there was an annual auditing plan pertaining to government accounts. Civil society had less concerns about the reliability of the financial data, and again most questions were about the contextual information also from a reliability perspective.

The Independent Administrator confirmed that summary data was submitted to the secretariat as per their TOR.

### **Initial assessment**

The International Secretariat’s initial assessment is that Kazakhstan has made meaningful progress in meeting this requirement. Although the NSC has agreed ToRs for the EITI Report, it is not always followed.

An example is the lack of production of an inception report. The lack of this report has arguably affected the quality of the EITI Report in that no document confirming the NSC's decisions on requirements like e.g. quasi-fiscal expenditures or SOEs have resulted in gaps in reporting. Another example is that the Independent Administrator has not carried out a review of prevailing auditing and accounting practices in accordance with the TOR. Although this does not appear to have affected the quality of company data and the associated procedures for data assurance, it has led to lack of clarity on what assurance procedures are used for verifying the veracity of government data.

Apart from a failure to always follow the TOR, it appears that Kazakhstan has made satisfactory progress against remaining provisions under Requirement 4.9. In light of the discontent by some stakeholders regarding the current Independent Administrator and the inability of the NSC to change the Independent Administrator due to government procurement rules, the NSC is encouraged to explore opportunities for fully transitioning to mainstreamed implementation. This would move EITI reporting online and funds currently used on hiring an Independent Administrator could be spent on improving data availability online. It would also remove the seemingly cumbersome practice of MoF handing data to the Independent Administrator, which the Independent Administrator then inputs into the EGSU reporting system.

*Table 4 - Summary assessment table: Revenue collection*

EITI provisions	Summary of main findings	International Secretariat's assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Comprehensiveness (#4.1)	Kazakhstan has ensured comprehensive disclosed of all payments and revenues pertaining to the extractive sector.	Satisfactory progress
In-kind revenues (#4.2)	Although companies operating under PSAs in Kazakhstan has the option of paying production share in-kind, all such payments were effectuated in monetary payments in 2015.	Satisfactory progress
Barter and infrastructure transactions (#4.3)	The NSC has made some attempts at addressing barter. Although it seems that barter agreements between companies and the government do not exist, the swap arrangements between the Government and Kazakhstan and the Government of Russia could constitute a type of barter whereby goods (refined oil and gas products) are provided in return for physical delivery of crude oil.	Meaningful progress
Transport revenues (#4.4)	Transport revenues are material in Kazakhstan. Although the NSC has taken steps to disclose data related to volumes of oil, gas and minerals transported, and the associated revenues received by SOEs engaged in transportation activities, some gaps remain in particular regarding transportation of minerals.	Meaningful progress

Transactions between SOEs and government (#4.5)	The only direct financial transactions between SOEs and the government appears to take the form of dividends (to Samruk-Kazyna) and the payment of taxes (to the Treasury and National Fund). These transactions have been fully disclosed.	Satisfactory progress
Subnational direct payments (#4.6)	Although some taxes are channelled to the local level upon payment, there is a centralised taxes and payments collection system monitored by the MoF.	Not applicable
Level of disaggregation (#4.7)	The 2015 EITI Report is disaggregated by individual revenue stream, company and government entity.	Satisfactory progress
Data timeliness (#4.8)	Kazakhstan is well within the deadlines for annual EITI Reporting, and has also gone beyond the requirement by exploring opportunities to disclose data as soon as practically possible through continuous online disclosures as encouraged by the EITI Standard.	Beyond
Data quality (#4.9)	Although the NSC has agreed a ToR for the EITI Report, the ToR is not always followed by the Independent Administrator. This has affected the quality of the EITI Report in that NSC decisions on how to approach certain issues have been unclear, resulting in gaps in reporting. It has also affected the approach to assurance of government data.	Meaningful progress

**International Secretariat's conclusions and recommendations:**

1. Requirement 4.2 is limited to the sale of oil that the government collects as a fiscal agent, and does not extend to sale of NOC equity oil. However, an increasing number of implementing countries have started to extend their disclosures to also cover NOC equity oil. In light of the substantial production pertaining to KazMunayGas, the NSC could consider joining the EITI's targeted effort on increasing transparency in commodity trading.
2. The NSC should develop its understanding of the oil and gas swap agreements with the Government of Russia, including the terms of the relevant agreements, the parties involved, the resources which have been pledged by the Government of Kazakhstan state, the value of the balancing benefit stream provided by Russia, and the financial significance of these agreements. Based on this, the NSC should ensure that an appropriate disclosure framework is in place to track the execution of these agreements.
3. It is recommended that the NSC strengthens its plans for overcoming remaining barriers to full transparency in transportation of oil, gas and minerals by engaging further and more directly with the transportation companies, and ensure that remaining details on payments and volumes transported are disclosed.
4. Kazakhstan is encouraged to explore opportunities for transitioning to project-level reporting, including by agreeing a definition of project, map the revenue streams levied by project vs legal entity, and revise EGSU reporting templates accordingly.
5. It is recommended that the NSC explores real-time reporting via EGSU, to be followed up with annual adjustments once audited accounts have been confirmed. This would further increase the timeliness and use of the data.
6. The NSC is encouraged to explore opportunities for fully transitioning to mainstreamed implementation.

This would move EITI reporting online and funds currently used on hiring an Independent Administrator could be spent on improving data availability online. It would also remove the seemingly cumbersome practice of MoF handing data to the Independent Administrator, which the Independent Administrator then inputs into the EGSU reporting system.

## 5. Revenue management and distribution

This section provides details on the implementation of the EITI requirements related to revenue management and distribution.

### *Distribution of revenues (#5.1)*

#### **Documentation of progress**

The 2015 EITI Report explains that the revenues from oil and gas companies go to the National Fund, while the revenues from mining companies go to the national and local budgets, depending on the type of tax or payment (p.64). The actual amounts allocated to each of these three are disclosed on p.53 of the 2015 EITI Report.

In terms of the revenues allocated to the National Fund, the 2015 EITI Report notes that KZT 1,702 bn (USD 8.3 bn) were transferred from the Fund to the national budget in the form of guaranteed transfer to finance current expenditure, budget programs and budget development programs (p.64-65). In addition, it appears that another KZT 754 bn (USD 2.6 bn) were transferred as a so called “targeted transfer” in 2015 (p.65). A detailed overview of how these targeted transfers were allocated and the amounts per budget line is disclosed in the 2015 EITI Report (p.66). The statement of receipts and application of the National Fund in 2015 is available online from the MoF<sup>146</sup>.

The report uses national budget classification codes for the various revenue streams.

#### **Stakeholder views**

Representatives from the National Fund explained that in addition to revenue from oil and gas, constituting 90-95% of the revenue to the fund, other income sources included revenue from the sale of land for agricultural purposes, privatisation of national assets and dividends from securities. The total value of the fund as of 2017 was USD 65 bn. The Decree on the management of the National Fund provides for management of assets by the national bank and includes purchases of foreign securities as well as currency.

However, civil society was critical of the National Fund, noting that it is controlled by one person and that there has been no change since its establishment. A civil society representative noted that this management was outsourced with no information available to the public on who were managing the fund, the assets under their portfolio or their fees. In addition, the lack of informed discussion of the fund’s investment “strategy” meant that most was invested in treasury bonds that yielded 0-2 % return, sometimes negative return. As there was no local management of the investment portfolio, there was nobody to hold accountable for this poor return on investment. The National Fund Management Council was only overseeing the savings portfolio of the National Fund, was composed of members of

<sup>146</sup> [http://www.minfin.gov.kz/irj/portal/anonymous?NavigationTarget=ROLES://portal\\_content/mf/kz.ecc.roles/kz.ec.c.anonymous/kz.ecc.anonymous/kz.ecc.anonym\\_budgeting/budgeting/national\\_fund\\_fldr](http://www.minfin.gov.kz/irj/portal/anonymous?NavigationTarget=ROLES://portal_content/mf/kz.ecc.roles/kz.ec.c.anonymous/kz.ecc.anonymous/kz.ecc.anonym_budgeting/budgeting/national_fund_fldr)

government and the President. As such it was not an independent nor an expert Council, and mainly served to rubberstamp proposals and decisions decided by the executive administration. Decisions of the Council were published post-factum, and there was no opportunity for the wider public to contribute to discussion of the management of the fund. One civil society representative said that although it was perhaps the most pressing issue in the extractive sector, people did not feel they owned the fund or that the fund would benefit them.

Government representatives explained that there are rules for replenishment and deductions from the National Fund, set out in the Decree. According to the rules, the balance of the savings portfolio of the fund should at least be 30% of GDP. Withdrawals from the fund could take three forms: targeted transfers for a variety of purposes including for example “support to the banking sector”; a guaranteed transfer to the budget of approximately 8.5 bn; and expenditures on administrative costs. Decisions on the guaranteed transfers are done on an annual basis as part of the budget process and are approved by Parliament. Targeted transfers are done through Presidential Decree on an ad hoc basis. In 2017, guaranteed transfers amounted to KZT 2.88 trn and targeted transfers KZT 1.5 trn. These figures were expected to decrease by 2020. In terms of transparency, National Fund representatives explained that the Treasury Committee publish data on income and expenditure of the fund on their website on a monthly basis. Civil society lamented the lack of transparency and accountability in particular regarding target funds which were often used to subsidise unhealthy businesses. For example, it was noted that the “purchase” by the National Bank of 10% of Samruk-Kazyna’s shares in KazMunayGas was actually a subsidy of USD 4 bn by the National Bank to cover parts of KazMunayGas’ debt. This was disguised under the broad heading “targeted transfer – support to banking sector”, and the real beneficiaries of these funds were not disclosed.

Representatives of the National Fund explained that the fund was audited annually by an independent auditor, typically one of the big four. This audit report was available online. In addition, the National Bank undertook annual audit of the portfolio under their management. This audit report was also available online. Representatives from Samruk-Kazyna highlighted their recent achievements in the Linaburg-Maduell Transparency Index rankings<sup>147</sup>, noting that considerable information was available in the public domain.

### **Initial assessment**

The International Secretariat’s initial assessment is that Kazakhstan has made satisfactory progress in meeting this requirement. In the Secretariat’s view, Kazakhstan has also gone beyond the minimum requirements by including references to the national budget classification systems as encouraged by the EITI Standard.

### ***Sub-national transfers (#5.2)***

#### **Documentation of progress**

Mandatory subnational transfers related to extractive industries are not applicable in Kazakhstan. The 2015 EITI Report notes that the national budget receives transfers from the National Fund, and then transfers funds onwards to subnational budgets. The amount to be transferred is approved by the Budget

<sup>147</sup> <http://www.swfinstitute.org/statistics-research/linaburg-maduell-transparency-index/>



Law annually (p.68).

### Stakeholder views

No stakeholders expressed views on this issue.

### Initial assessment

The International Secretariat's initial assessment is that this requirement is not applicable in Kazakhstan.

## *Additional information on revenue management and expenditures (#5.3)*

### Documentation of progress

The 2015 EITI Report does include some additional information on revenue management and expenditure, notably:

- An overview of extractive revenue earmarked for specific purposes and geographic regions. As noted under Requirement 5.1 above, the report discloses ad hoc targeted transfers from the National Fund to the local budgets of Almaty and Astana for four different types of infrastructure projects, including amounts per project (p.68). The report also discloses ad hoc transfers from the National Fund to the republican budget, earmarked for specific purposes such as construction of roads etc. (p.66).
- An explanation of the annual budget process, including forecasting and budgeting responsibilities, deadlines, and the Parliamentary process (pp.70-71). It also provides details on how to access information on budget performance, as well as brief information on auditing practices (p.71).

### Stakeholder views

Some companies noted that it could be useful with more information on where the money goes and how it is spent. Civil society commented that budget transparency was low in particular at local levels where akimats would often refuse to publish the local budget. Several civil society representatives said that they would want more information on expenditures and rationale for decisions related to spending.

### Initial assessment

Reporting on revenue management and expenditures is encouraged but not required by the EITI Standard and progress with this requirement will not have any implications for a country's EITI status. In the International Secretariat's view, Kazakhstan has gone beyond the minimum requirements by providing additional information on revenue management and expenditures as encouraged by the EITI Standard.

*Table 5 - Summary assessment table: Revenue management and distribution*

Summary assessment table:		
EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required')

		provisions)
Distribution of revenues (#5.1)	Kazakhstan has disclosed which extractive industry revenues are recorded in the national budget, and which once are allocated to the National Fund. In addition, the report references national budget classification codes as encouraged by the EITI Standard.	Beyond
Sub-national transfers (#5.2)	The 2015 EITI Report confirms that there are no statutory subnational transfers particular to the extractive sector in Kazakhstan.	Not applicable
Information on revenue management and expenditures (#5.3)	The 2015 EITI Report discloses ad hoc spending of National Fund revenue earmarked for particular projects. It also includes an explanation of the budgeting process.	Beyond
<b>International Secretariat's conclusions and recommendations:</b> <ol style="list-style-type: none"> <li>1. The NSC might wish to consider further opportunities for improving transparency related to the decision-making, management and spending of the National Fund.</li> </ol>		

## 6. Social and economic spending

This section provides details on the implementation of the EITI requirements related to social and economic spending (SOE quasi-fiscal expenditures, social expenditures and contribution of the extractive sector to the economy).

### *Social expenditures (#6.1)*

#### **Documentation of progress**

Payments for social development projects and local infrastructure are mandatory and regulated by the contracts, and is one of the bid parameters for obtaining a contract. Social expenditures are recorded in the budget classification system with a code 206114 "Subsoil user allocations to regional social and economic development and to the development of regional infrastructure" (p.68).

Social expenditures are executed in accordance with the terms established by the contracts. Annex 3-2 of the 2015 EITI Report provides a detailed disclosure of the amount that ought to be transferred by a company to the local level (akimat) in accordance with the contract, the actual transfer that was executed as reported by both the company and the akimat, any discrepancies in the reported data, and a description of the nature of social projects that the funds are allocated to. The beneficiaries are local governments.

Annex 5, which discloses company spending on environmental protection and training also includes a reporting line entitled "expenses for social sphere and infrastructure". The difference between this social expenditure and the expenditures in annex 3-2 are not clearly explained in the report. In addition, the 2015 EITI Report also discloses details on company expenditure on other local content provisions (annex 9).

The 2015 EITI Report does not appear to comment on voluntary social expenditures.

## Stakeholder views

A company representative explained that they were obliged to invest 1% of their income in social investments at the local level according to contractual obligations. Prior to 2015, the company was able to make the investment, for example construct an agreed infrastructure, and deduct the costs from their payments to government. However, in 2015 a new budget code was introduced and companies now had to make the payments to the local budget. Accordingly, they now had limited information on how that money was spent. Representatives of the MoF confirmed that in accordance with contractual obligations, companies had to transfer a certain amount to local governments annually for social investments in the region. Since 2015, a separate budget code had been established for this purpose. The amounts received are collected, retained and spent at the local level. The Independent Administrator said that the 2015 EITI Report for the first time included data collections from local governments on their receipts of social expenditures, and it was the first time this data was reconciled with company data. Resolving discrepancies and other issues had taken the majority of the Independent Administrator's time when working on the 2015 EITI Report.

The national secretariat explained that Annex 3-2 included social investment expenses and receipts from akimats and companies, as well as results of reconciliation of these figures. Annex 5 includes data on social expenditures based on the data submitted through EGSU, which included all social expenditures related to the contractual obligations, including expenditures transferred on the account 206114 to the city budget.

Another company representative commented that in addition to the 1% investment, companies were often forced to sign MoUs with local governments for further social developments. These MoUs were not mandated by law or contract, but nonetheless it was often not possible for companies to decline such request from local governors. Although the details of some MoUs were available online, no comprehensive overview of these MoUs existed, nor was there any transparency in the total amounts channelled to social investments for such MoUs, let alone transparency in spending. Civil society confirmed the existence of these MoUs, claiming that they had little or no success in obtaining the actual copy of the MoU when asking for it. According to civil society, it was the local government who decided on what and how these social projects should be executed, without any hearings or opportunities for the local public to offer their opinions. Some projects that had been carried out appeared to not be demanded by anyone. In other cases, the price tag for a certain infrastructure project seemed exaggerated, leading to concerns about corruption and that e.g. construction contracts were awarded to selected companies rather than on a competitive basis. Also, in some cases, infrastructure was built without regard to the cost of further maintenance and operations, and thus becoming a burden for the local budget.

One civil society representative commented that there was still considerable lack of transparency in social investments, and a lack of accountability in that people did not have any say in the spending of social investments which could amount to USD 10-20 m per year for large projects. The idea that companies had no say in the spending either was ridiculous according to this NGO, given that some cities were completely controlled by extractive companies who were the only employers and tax payers in town. Also, important issues such as resettlement compensations were shuffled under the carpet and plans and budgets for resettlements were not made available nor discussed with the villagers affected. Another civil society representative commented on the extensive research and monitoring that had been done over social expenditures, and the wrongdoings that they had discovered, including non-execution of

promised projects, or delayed execution.

It was noted by one NGO that there was no comprehensive information available yet on voluntary social expenditures. In some cases, these could amount to more than USD 50 m per company per year.

With regards to environmental payments, civil society explained that all environmental payments now went to the republican budget and that local people do not see any impact of this money on the environment in extractive regions. The system of fines incentivised companies to pay fines rather than to invest in establishing more environmentally friendly policies and practices. Also for local governments, hosting an extractive project could be seen as an excellent source of income as the fines and other environmental payments levied on the extractive activities could be spent on anything but environmental protection. Company representatives acknowledged the lack of transparency in environmental payments. Companies were obliged to make payments for environmental reclamation that the government was then supposed to spend on environmental restoration. However, there was little transparency on the actual spending of these revenues and it was estimated that only a small percentage was actually spent the way it ought to.

### **Initial assessment**

The International Secretariat's initial assessment is that Kazakhstan has made meaningful progress in meeting this requirement. The NSC has made extensive efforts related to the 1% social investments that are part of the contractual obligations, including reconciling company and government data on social expenditures, as well as including information on what ought to be paid in accordance with the contracts versus what was paid. However, stakeholder consultations seem to suggest that other mandatory social expenditures exist, including social expenditures paid under MoUs. The presentation of the data on social expenditures in the EITI report could also be improved.

## ***SOE quasi fiscal expenditures (#6.2)***

### **Documentation of progress**

The 2015 EITI Report notes that "Information about the quasi-fiscal operations and fuel subsidies will not be published" (p.62). The Independent Administrator highlights in the recommendations that this is an issue that requires addressing (p.122). The report does list some of the social spending of the sovereign wealth fund, Samruk-Kazyna, but this is not an SOE involved in the extractive sector.

Despite the gaps in the 2015 EITI Report, the 2015 supplementary report provides some information on the quasi-fiscal expenditures (QFEs) of some SOEs. It discloses what appears to be QFEs by Kazatomprom, including transfer of social facilities worth KZT 2.25 bn (USD 10.1 m) as well as the allocation of KZT 1.4 bn (USD 6.3 m) to maintenance of social facilities and KZT 750 m (USD 3.3 m) for health facilities (p.9). It also discloses what appears to be QFEs by Themir Zholy, notably the construction of a kindergarten in Astana with a construction contract valuing KZT 952 m (USD 4.3m), the construction of an ice-skating rink with a construction contract valuing KZT 23.6 bn (USD 106 m) (p.9).

The supplementary report also recognises that this requirement has only partially been implemented, noting the NSC's decision to commission a separate study on QFEs.

### **Stakeholder views**

Representatives of KazMunaygas explained that as a state-owned company they would sometimes be requested to provide funding for certain government projects. To this end, Samruk-Kazyna had recently issued a policy that regulates the quasi-fiscal spending. QFE expenditures could sometimes also be deducted from the dividends. Further details on the amounts spent on quasi-fiscal projects were available from the consolidated financial statement of KazMunayGas, under the heading “other spending”.

Tau-Ken Samruk and Kazatomprom said that they did not have any further quasi-fiscal spending beyond the social obligations of their contracts which was equal to those of other companies.

Civil society lamented the large quasi-fiscal expenditures by SOEs. In some cases, QFEs were fully subsidising the existence of whole villages surrounding depleting and unprofitable KazMunayGas-owned fields as a means of curbing social discontent. These expenditures were off budget, and not subject to government procurement laws meaning that there was no control of the spending and no accountability.

### **Initial assessment**

The International Secretariat’s initial assessment is that Kazakhstan has made inadequate progress in meeting this requirement. Although some information has been disclosed in the 2015 Supplementary Report, stakeholder consultations indicate that there are gaps in the information disclosed. This has also been recognised by the NSC through their decision to carry out a separate study on this issue.

## ***Contribution of the extractive sector to the economy (#6.3)***

### **Documentation of progress**

The 2015 EITI Report discloses the following information about the contribution of the extractive sector to the economy:

- The total size of the oil and gas industry in absolute terms, as well as in percentage of GDP (p.71). The size of mining sector in absolute terms is not included, although it is stated as a percentage of GDP (p.71). However, the draft 2015 supplementary report provides this data, with a reference to the Statistics Committee of the Ministry of the National Economy<sup>148</sup> (p.2). There is no reference to the informal sector.
- Total government revenues from the extractive sector in absolute terms as well as in percentage of total government revenues is disclosed (p.53).
- Annex 6 discloses total exports from the whole extractive industry in absolute and as a percentage of total exports (74,3%).
- An overview of employment in the extractive industry in absolute terms and as a percentage of the total employment is discloses (p.72).
- Names of the key regions where oil and gas and mining production is concentrated are disclosed (p.39-50; annex 6).

### **Stakeholder views**

<sup>148</sup> [http://stat.gov.kz/faces/wcnav\\_externalId/homeNationalAccountIntegrated?\\_adf.ctrl-state=13x44agefa\\_4&\\_afLoop=549754877036471](http://stat.gov.kz/faces/wcnav_externalId/homeNationalAccountIntegrated?_adf.ctrl-state=13x44agefa_4&_afLoop=549754877036471)

The Committee on statistics explained that they monitor the informal sector, presenting a paper showing that the contribution to the mining sector only amounts to 0.02% of GDP in 2015 and 0.05% of GDP in 2016. Employment data was also recorded with indicators on gender.

Mining companies said that they had no information on informal mining. A government representative said that illegal mining was prosecuted, and that there had not been reports of any illegal mining happening. There could be some gold diggers in the East stealing from the larger gold tenements, but overall illegal mining was not a major challenge in Kazakhstan. The new subsoil code would provide for artisanal mining permits. A CSO representative commented that some villages in the East lived off plundering large scale gold mines.

### Initial assessment

The International Secretariat's initial assessment is that Kazakhstan has made satisfactory progress in meeting this requirement. Although no information is provided in the report on the informal sector, stakeholder consultations indicate that this is a minor issue.

*Table 6 - Summary assessment table: Social and economic spending*

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Social expenditures (#6.1)	The NSC has made extensive efforts related to the 1% social investments that are part of the contractual obligations, including reconciling company and government data on social expenditures, as well as including information on what ought to be paid in accordance with the contracts versus what was paid. However, stakeholder consultations seem to suggest that other mandatory social expenditures exist, including social expenditures paid under MoUs.	Meaningful progress
SOE quasi fiscal expenditures (#6.2)	EITI reporting recognises challenges in disclosing quasi-fiscal expenditures, and indicates that the NSC has plans for following this up through a separate study.	Inadequate progress
Contribution of the extractive sector to the economy (#6.3)	The 2015 EITI Reports discloses information on the contribution of the extractive sector to the Kazakh economy.	Satisfactory progress
<p><b>International secretariat's conclusions and recommendations:</b></p> <ol style="list-style-type: none"> <li data-bbox="177 1877 1342 1973">1. The NSC should improve transparency in social expenditures, notably by undertaking a comprehensive review of the types of mandatory social expenditures that exist, the governing instruments (contracts, MoUs), and ensure that all material social expenditures are disclosed.</li> <li data-bbox="177 1989 1027 2022">2. The NSC could consider the value of disclosing voluntary social payments.</li> </ol>		

3. The NSC could consider more extensive coverage of environmental payments, including potentially tracking the spending of payments levied for environmental remediation purposed in the extractive sector.
4. The NSC should undertake a comprehensive mapping of quasi-fiscal expenditures and ensure that these are adequately disclosed.

## Part III – Outcomes and Impact

This section provides details on the implementation of the EITI Requirements related to the outcomes and impact of the EITI process.

### *Public debate (#7.1)*

#### **Documentation of progress**

The government, companies, parliamentarians and civil society have all contributed to promote the EITI and ensure that EITI data contributes to public debate, both in the framework of the NSC and outside. Within the NSC, a working group on communications has been established, chaired by the AGMP. The National Secretariat provides support to communication efforts by maintaining the Kazakhstan EITI website.

##### (i) *Efforts to make the EITI Report comprehensible*

The last EITI Report covering extractive sector in 2015 was published in November 2016, and is available on the EITI Kazakhstan website<sup>149</sup>. The report is available in three languages – Kazakh, Russian and English – and, in this way, increases the size of the audience that can read the report.

Additionally, a popular version of the reports is available and shows the main facts and updates from the extractive sector in a user-friendly format (presentation with infographics elements) and makes the report appealing to a wider audience<sup>150</sup>. The popular version of the report is available both in PDF format and in slides.

The NSC working group on communications has developed an EITI glossary to avoid misunderstandings and poor translation of the terminology used in EITI communication s material. The glossary, available in English, Kazakh and Russian, is published on the EITI website<sup>151</sup>.

##### (ii) *Dissemination and promotional activities*

According to the work plan 2016-2017<sup>152</sup>, 200 copies of popular version of the EITI Report, including the full version of the report, were distributed at the 8<sup>th</sup> National Conference in October 2016. Additionally, reports were distributed to the NSC members and sent to municipal councils.

The work plan for 2017-2018<sup>153</sup> includes several activities aiming at raising awareness about EITI process, namely increasing public understanding of extractive industry issues and the regulatory framework by creation and distribution of educational materials and organization of seminars and round tables with NSC members' participation. Additionally, a media plan<sup>154</sup> is developed for 2017-2018 and covers a list of publications to include in an EITI information campaign. Examples of activities for September-December 2017 include publications on transfer pricing, beneficial ownership disclosure in Kazakhstan, how to read an EITI Report, intra-corporate lending etc. There have also been efforts to develop and maintain a

<sup>149</sup> <http://eiti.geology.gov.kz/en/national-reports>

<sup>150</sup> [http://eiti.geology.gov.kz/images/stories/ipdo2/national\\_reports2015/Report\\_EITI\\_RUS\\_Optimized.pdf](http://eiti.geology.gov.kz/images/stories/ipdo2/national_reports2015/Report_EITI_RUS_Optimized.pdf)

<sup>151</sup> <http://eiti.geology.gov.kz/ru/homepage/glossarij-terminov>

<sup>152</sup> [http://eiti.geology.gov.kz/images/stories/ipdo2/work\\_plan/work\\_plan\\_11112016\\_eng.pdf](http://eiti.geology.gov.kz/images/stories/ipdo2/work_plan/work_plan_11112016_eng.pdf)

<sup>153</sup> [http://eiti.geology.gov.kz/images/stories/ipdo2/work\\_plan/work-plan2017-2018.pdf](http://eiti.geology.gov.kz/images/stories/ipdo2/work_plan/work-plan2017-2018.pdf)

<sup>154</sup> <http://eiti.geology.gov.kz/images/stories/IPDO/mediaplan/mediaplan2017.pdf>



Validation of the Republic of Kazakhstan: Report on initial data collection and stakeholder consultation network of journalists and media organisations. The 2016 APR provides an account of some of the articles and media efforts that have taken place in 2016<sup>155</sup>.

Kazakhstan revamped its EITI website in September 2016. It now includes all documents produced by the NSC such as EITI Reports, annual progress reports, workplans etc. It also includes information on the NSC members and meetings, as well as a press section outlining various media articles and news. The website has a feedback from that stakeholders can use. So far, use of social media has been limited.

(iii) *Public accessibility*

EITI reports for 2015, 2014, 2011 and 2010 include annexes to the reports in excel-format, other reports are presented in PDF format. However, the annexes are archived as RAR files which might be difficult for some people to open.

The NSC, together with the MoE has taken the lead in mainstreaming EITI reporting by requesting that companies file their EITI reports as part of other mandatory reporting for subsoil license holders, using an existing online platform – EGSU. Tax and non-tax payments of subsoil users as well as expenditures for social development and local infrastructure are disclosed on the website. It is also possible to export these data in Excel format. Additionally, pilot beneficial ownership disclosure will be done via the EGSU system for the first time in 2017. However, the website is not very user-friendly and some pages are still under development. For example, the “FAQ”<sup>156</sup> and “about system”<sup>157</sup> pages do not include any information. At the same time, the pages containing information from the EITI reports are fully functioning and even include possibility to download data in excel format.

Developing an open data policy is indicated as one of the main objectives in the work plan for 2017-2018. It includes several activities aimed at increasing open data. Although the NSC has not agreed an open data policy, the 2015 Law on Access to Information, amended in 2016, stipulates the type of data that should be publicly accessible as well as provisions on the format of that data. Specifically, article 1(5) defines open data as “public electronic information resources presented in machine-readable format, and intended for further use and re-publication in an unchanged form”<sup>158</sup>. More generally, the government is making efforts to move to e-governance and some data is already available on <https://data.egov.kz/>.

(iv) *Contribution to public debate*

Minutes from NSC meetings show that the NSC has discussed the necessity to spread awareness and ensure that the EITI contributes to public debate. For example, at the NSC meeting of 28 February the NSC discussed the media plan developed by the working group on communication, and the progress with implementation so far, noting that lack of funding for journalists was one challenge hampering media debates. The outcomes of the study “population awareness of oil and gas industry” conducted by Soros Foundation-Kazakhstan in 2016 was also discussed at this meeting, showing that 83% of respondents to the survey knew nothing about the EITI<sup>159</sup>. Similar commentary in regional media support the need for further debates, noting that<sup>160</sup>:

*“EITI’s main problem in Kazakhstan is that the process’s main output – its annual report – is*

<sup>155</sup> 2016 APR, pp.9-11

<sup>156</sup> [http://egsu.energo.gov.kz/webapp/pages/administration/question\\_answer.jsf](http://egsu.energo.gov.kz/webapp/pages/administration/question_answer.jsf)

<sup>157</sup> <http://egsu.energo.gov.kz/webapp/pages/system.jsf>

<sup>158</sup> [https://online.zakon.kz/Document/?doc\\_id=39415981#pos=0;0](https://online.zakon.kz/Document/?doc_id=39415981#pos=0;0)

<sup>159</sup> Study available from the EITI International Secretariat.

<sup>160</sup> <http://www.eurasianet.org/node/82486>

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*significantly underutilized. Reports are produced, rushed through, presented during a news conference and then sit on a government website, rarely downloaded and indeed used. It is important to note that accountants prepare the reports. While accountants are very good with figures, many have a difficult time writing in a way that is interesting and easily understood by the average reader. This is why recent attempts to produce popular, comprehensible versions of EITI reports are so important and EITI sponsors should focus more on them."*

Despite the need for further efforts, some activities have been carried out by the NSC and other stakeholders that have to some extent contributed to ongoing debates:

- Media outreach by the WG on communications and AGMP has resulted in a number of EITI mentions in the media over the last years, including debates on topics such as the obligation of mining companies to disclose beneficial ownership<sup>161</sup>, access to data on geological reserves<sup>162</sup>, and the tax regime for the mining sector<sup>163</sup>.
- On 20 June 2017, CSOs organised a debate on the efficiency of state-controlled entities, or the so-called "quasi-public sector", discussing needs for more efficient, accountable and transparent state-owned entities<sup>164</sup>. Another debate was organised in October 2015 focused on the spending of the National Fund, including the need for better rules on targeted fund transfers and transparency in spending and investments<sup>165</sup>.
- The NGO "Gamo", located in Mangistau region, conducted a series of public meetings on the EITI, lectures on anti-corruption, and developed an anti-corruption video<sup>166</sup>.
- According to the EITI website, EITI has featured in several local public council discussions and local and regional foras over the last years, notably in Akmolinskaya, Aktyubisk, Atyrau, East Kazakhstan Region, Karaganda, Kastanay, Mangystau, South Kazakshtan Region, West Kazakhstan Region and Zhambyl in 2016, and in Aktobe, Atyaru, Ayuko, Karaganda and Pavlodar in 2016<sup>167</sup>.

## Stakeholder views

### *Dissemination and promotion*

In terms of contribution to dissemination of the EITI report and other promotional activities, company representatives explained that there was a reference to the EITI on the association websites and that it was sometimes referred to in the companies' sustainability reports. Industry contribution to dissemination also included support to organise the national EITI conference in the framework of the KazEnergy forum.

The national secretariat would typically send the EITI Report to all government ministries and agencies, as well as local and regional government. Contribution of the government in dissemination and promotion of the EITI mainly included media interviews and interventions at conferences.

<sup>161</sup> <https://www.kursiv.kz/news/vlast1/prozrachnye-standarty/>

<sup>162</sup> <https://www.kursiv.kz/news/industry/transparentnaa-geologia-rk/>

<sup>163</sup> <http://metalmininginfo.kz/archives/4671>

<sup>164</sup> <http://agkipr.kz/archives/1264>

<sup>165</sup> <http://agkipr.kz/archives/644>

<sup>166</sup> Gamo Report for the year 2015, <https://cloud.mail.ru/public/4bWS/97xKD3A3m>

<sup>167</sup> <http://eiti.geology.gov.kz/ru/about-us/meetings-in-akimats>

Civil society provided detailed accounts of their involvement in dissemination and awareness raising of the EITI. One representative had been active in her region, Mangistau, where it was estimated that some 5000 of the local population had been introduced to the concept. Their efforts had included training targeted at Kazakh speaking people, training for journalists, open days, information campaigns and distribution of leaflets, all supported by USAID. Another civil society representative described his involvement in developing a strategic communication plan, production of two EITI videos and developing infographics and brochures targeted at regional level.

In terms of format, there seemed to be general agreement that although the popular version had gone a long way in making the information more comprehensible to a wider audience. It existed both in a multi-media format as well as in hard copy, and the template had been made available to the secretariat so that they could easily update it annually. When data was first presented in the format of infographics, there had been some scepticism on behalf of the government given that oil revenue was compared and expressed in terms of e.g. amount of social services per citizen etc. While this was considered an effective way of communicating the real meaning of the financial figures, there was concern that it could be misinterpreted. However, eventually the government agreed to use the format without changing it. However, now most stakeholders were of the view that it had served its purpose and that it was necessary to now improve the format and think new.

#### *Public accessibility*

A civil society representative was of the view that given the technical nature of the EITI report, it was primarily targeted at an expert audience and not a product for the wider population. That said, the popular version of the EITI Report had improved people's receptiveness to learn about the EITI and investigate the data. Companies expressed support for a simplified, popular version.

The national secretariat explained that although the NSC had discussed open data at their NSC meeting in April 2017, there had been limited discussion and no development of an open data policy prior to 31 December 2016. It was considered that the government had already clarified this policy through the development of data.egov.kz and that there was no need for additional policies. Other stakeholders from industry and civil society had no recollection of the open data policy being discussed in the NSC.

#### *Public debate and awareness*

A government representative commented that the objective of the EITI should not necessarily be to inform every citizen about the existence of the EITI, but should rather be to increase the public trust in government data and systems. That said, in terms of opportunities for public debates, these could ideally be mainstreamed. Governors of all regions were required by law to establish public councils and to conduct annual debates and consultations. Rather than spending money and resources on organising separate EITI debates, the presentation of EITI reports and discussion of other extractive issues should form part of these existing foras for dialogue. The mandatory public dialogues at the outset of each extractive project could also be used for this purpose.

Civil society noted that the public meetings hosted so far by the akimats were very formal, and that the local NGOs that had something to say were typically not invited to these meetings. They also explained that based on a survey conducted last year, it was clear that hardly anyone knew anything about the EITI neither at a local nor at a national level, and that it was only a handful of people that knew what it was. One civil society representative who had been involved in organising public local hearings commented that even the concept of hearings and public participation in decision-making was not well understood.

They would publish information about hearings in local newspapers, but sometimes people would only find out after the hearing had taken place. Some did not understand the importance of hearings and how it can affect their lives. Another civil society said that his experience with working with akimats was that there was no knowledge of the EITI and that the few awareness raising events conducted had not contributed to improve the work of NGOs on introducing the EITI at the akimat level.

Another civil society representative explained that when conducting research of the social investment expenditures in his region, he had discovered that the investments had been spent on improving the company's own infrastructure. This had sparked considerable debate and conflict with the company concerned when the findings were published in the local newspaper.

When asked about their use of the EITI Report, some companies explained that they used the report as a source for drafting own industry reports and presentations, including Kazakhstan specific presentations for use by company headquarters. Other companies could not cite any example of how companies had used the data. Some companies did not seem aware that the report was in the public domain. Other companies said that the report was being used by investors and other experts and argued that Kazakhstan did not produce these reports simply for formality reasons, but because there was a demand for the information. A company representative gave an example of contributing to a public meeting in the area where the company was operating. The meeting had been convened by local government, and NGOs were also participating. At this meeting, the company representative had informed the participants about the EITI, including the outcomes of reporting and efforts to mainstream EITI. Although the audience had asked wider socio-economic questions, no EITI-specific questions or issues had been raised by the participants in response to this presentation but it was thought that the dialogue had nonetheless contributed to greater trust.

Civil society pointed to several examples of use of data including research on the tax burden of mining companies, and analysis of discrepancies, and analysis of dividend payments.

Several stakeholders commented that journalists were generally interested in what was going on in the extractive sector, in particular issues like beneficial ownership, social investments, contractual obligations such as any profits from Kashagan, inflowing investment in the sector, production levels etc. However, the EITI per se was a boring and technical topic and should be a reference point at the end, not the issue that was driving the discussions. A company representative explained that the NSC and the working group on communications had good relations with journalists. While responsiveness to press releases and press conferences initiated by the EITI was relatively good, it was rare that journalists would contact EITI stakeholders on their own initiative. The working group on communications had elaborated a media plan and as a result of that the number of EITI mentions in media had increased.

### **Initial assessment**

The International Secretariat's assessment is that Kazakhstan has made satisfactory progress in implementing this requirement. The NSC has ensured that the EITI Report is comprehensible, actively promoted, publicly accessible and contributes to public debate. Although no open data policy has been published, this does not seem to have affected the NSC practices of publishing all data in excel format (*see requirement 7.2 below*).

## **Data accessibility (#7.2)**

### **Documentation of progress**

Annexes to the EITI Report as well as disaggregated reports are available in machine readable Excel format. Additionally, the EGSU data portal provides information from the EITI reports also in xml format.

In 2016, Kazakhstan committed to participate in the EITI's mainstreaming pilot. Work on a mainstreaming feasibility study commenced in June 2017 and the report is expected to be finalised by mid-September 2017. The government has taken increasing steps towards online publication of data in open formats. As noted earlier in this assessment, an interactive cadastre hosts information on all contracts. Beneficial ownership disclosure is being piloted through the EGSU portal. Information on production and exports is available in excel format from the Committee on statistics. Revenue data, including social expenditures is available from EGSU. The objective of the mainstreaming study is to consider the reliability, comprehensiveness and timeliness of this data that is available online, and design a future EITI reporting process that takes this into account.

The 2015 EITI Report references national budget classification codes for each revenue stream.

### **Stakeholder views**

A government representative explained the background to the EGSU system, noting that a series of feasibility studies had been carried out in 2009 with system development taking place in 2010. The EGSU was primarily a tool for MoE and MID to monitor compliance with contractual terms of subsoil users. A secondary objective was to simplify reporting systems, improve responsiveness as well as timeliness of the data. The government had also emphasised the need for the system to ensure compliance with the EITI requirements in terms of data transparency.

All subsoil contract holders need to file EGSU reports quarterly, reporting on a wide range of issues related to their contractual obligations. This includes issues like investments made, financial obligations, taxes paid, exploration and production work undertaken, execution of social investments, compliance with local content, procurement information etc. EGSU reports are confidential to the government, however the EITI template which is filed annually in the EGSU system is publicly available. The template had recently been expanded to include beneficial ownership information.

It was noted that budget resources were available between now and 2019 to modernise the EGSU system. It would among other things be expanded to cover geological use permits and amendments to contracts. The idea was that all contact between subsoil use holders and government should happen electronically. As part of this modernisation process, there would be opportunities to improve the accessibility and user-friendliness of the portal. Beneficial ownership data could be added as a permanent feature of the portal, should it become part of the license requirements. Government representatives also suggested to transfer data to an open data /api format to facilitate use of data and associated applications. As part of this, the government was also considering adding open source data tools that could facilitate analysis and statistical presentations of the data in the portal in the form of graphs, charts, infographics etc.

Company representatives notes that it was now much easier to file their EITI data, thanks to EGSU. Civil society representatives appreciated open data being made available through EGSU. It had made it easier in particular for NGOs working at regional level to access the data. However, local people and akimats still

Validation of the Republic of Kazakhstan: Report on initial data collection and stakeholder consultation preferred that the local NGOs would print hard copies from EGSU for their use.

### **Initial assessment**

Requirement 7.2 encourages implementing countries to make EITI reports accessible to the public in open data formats. Such efforts are encouraged but not required and are not assessed in determining compliance with the EITI Standard. In the Secretariat's view, Kazakhstan has therefore gone beyond the minimum requirements by ensuring that financial EITI data is available in machine readable format from Kazakhstan's EITI website as well as from EGSU. Further steps are also underway with regards to mainstreaming and open data.

### ***Lessons learned and follow up on recommendations (7.3)***

#### **Documentation of progress**

The 2015 EITI Report included ten recommendations from the Independent Administrator. The majority of these recommendations are focused on improving the EITI Reporting process. This includes recommendations targeting improvements to the quality of the data in the reporting templates submitted by subsoil users and akimats, improvements to the TOR for the Independent Administrator and improvements in the presentation of data. According to the 2016 APR, most of these have been addressed through amendments to the methodological guide on compilation and submissions of reports through EGSU and through amendments to the TOR for Independent Administrator for the next EITI Report.

Two recommendations are focused on increasing public accessibility to information on the extractive sector. This relates firstly to state-owned enterprises, where the Independent Administrator recommends that the NSC should ensure that the EITI report exhaustively examines the role of SOEs, including substantial payments by SOEs and transfers between SOEs and other government agencies. According to the 2016 APR, this was partially addressed by the 2015 supplementary report. In addition, the NSC is considering carrying out a study on this subject. The second issue relates to contract transparency, where the Independent Administrator recommends that the NSC should raise the issue of contract disclosure with the government and parliament for debate and decision. According to the 2016 APR, the NSC discussed this topic at its meeting on 15 June 2017.

There is little evidence from NSC meeting minutes that the recommendations have been discussed by the NSC in detail, although the meeting minutes from the 15 June 2017 documents the NSC's approval of the updated methodological note, the NSC's discussion of contract transparency, as well as the NSC's discussion of further work on SOEs. The 2017-18 work plan includes a couple of activities related to these recommendations such as the NSC's June 2017 discussion of contract transparency. The 2015 EITI Report fails to provide an assessment by the Independent Administrator of the NSC's efforts to implement recommendations from previous EITI Reports.

In 2015, the civil society constituency presented their own recommendations for improvements of the EITI report. The 23 recommendations touch on issues such as (1) improving access to data on geological reserves; (2) ensure more comprehensive analysis of the legal framework; (3) better analysis and explanations for discrepancies; (4) disclosure of further information on the state's share in PSAs; (5) disclosure of revenue data per project; (6) ensure more comprehensive disclosure of information related to social investment and spending; (7) disclosure of income and expenditures related to environmental

payments. There is no evidence from NSC meeting minutes that these recommendations were considered by the NSC.

In terms of discrepancies, most initial discrepancies were resolved and unexplained discrepancies are negligible, constituting 0.395% in aggregate (2015 EITI Report, p.119). The largest unexplained discrepancy seems to be related to “individual income tax from incomes taxable at the source of payment”, which amounted to 13.8% (2015 EITI Report, p.114). In 2015, civil society carried out an analysis of the discrepancies in the 2014 EITI Report. The analysis draws few conclusions and presents limited recommendations, but suggests that most discrepancies were due to that companies had not provided the Independent Administrator with supporting documentation.

### **Stakeholder views**

In terms of the recommendations related to the EGSU, a government official explained that the strategic plans for 2019 include the possibility of making data more friendly for integration into other databases and systems, possibly by using API. Moreover, the possibility to disclose more data by changing the database licensing system and the need to present information in a more dynamic and interactive way was discussed.

Another government representative said that the recommendations had been discussed by the council, and some had been implemented others not. The recommendations were largely about the EITI and therefore different from the wider policy recommendations provided by e.g. IMF or the World Bank. Recommendations were therefore not discussed beyond the NSC and it was considered that as long as the EITI did not have a legal status, it would be difficult for the EITI to issue recommendations and directives that would have a bearing on other agencies and wider reforms. Other stakeholders had no recollection of the recommendations being discussed within the council. One civil society representative noted that everyone had a different understanding of the purpose of EITI recommendations, and only civil society understood how recommendations could potentially be formulated and used to drive reforms. Recommendations that pertained to EITI reporting were typically incorporated in the TOR for the next EITI Report. According to the national secretariat, all recommendations had been implemented.

The Independent Administrator said that their recommendations tended to be implemented. For example, previous recommendations related to EGSU had been implemented and although the system was still not perfect improvements were underway.

With regards to discrepancies, companies highlighted that although in the initial years there had been misunderstandings causing discrepancies, sometimes due to differences in accounting, hardly any discrepancies were observed these days. Electronic reporting had contributed to this. The Independent Administrator confirmed the reduction in discrepancies.

### **Initial assessment**

The International Secretariat’s initial assessment is that Kazakhstan has made satisfactory progress in meeting this requirement. Although the EITI Report does not include a stocktake of progress in implementing recommendations from previous reports, stakeholder consultations and other documents confirm that the NSC has considered the recommendations from the Independent Administrator, and the discrepancies are largely explained.

## *Outcomes and impact of implementation (#7.4)*

### **Documentation of progress**

The Annual Progress Report (APR) was published on the Kazakhstan EITI website<sup>168</sup> on 30 June 2017. The report provides information on the activities that took place in 2016. Section 1 of the report is a short summary of EITI activities that were undertaken in the previous year. Section 2 covers assessment of performance in relation to the objectives set out in the work plan. There were 9 main objectives set out for 2016-2017 work plan: preparation for Validation, activities of the NCS, release of the 2015 National Report, release of the 2016 National Report, analytical research, capacity building, raising public awareness and dissemination of information, strengthening the role of the Secretariat in the EITI implementation and additional relevant EITI activities. All objectives are addressed in the APR, which contains a sub-section on the progress in respect to each objective. However, it is not clear whether there were any workplan activities that were not realized, and if so – the reasons for that. Also, the APR does not include an assessment of the impact of implementation of EITI activities.

With regards to the assessment of performance against EITI requirements, the APR provides a table where the progress against meeting each EITI requirement is assessed. However, some of the requirements (e.g. quasi-fiscal expenditures) are not fully addressed in the 2015 EITI Report and the APR report does not provide specific actions to improve progress on these requirements beyond conducting research. While there is limited analysis of some “encouraged” aspects of the EITI such as e.g. disclosure of voluntary social payments, there is ample evidence in the APR and elsewhere of the NSC’s discussion of topics like beneficial ownership, contract transparency, environmental payments disclosures etc.

Section 4 of the APR provides the list of responses to the recommendations of the Validator and Independent Administrator. It also indicates the level of progress on each recommendation and provides relevant links. However, the level of progress is lacking more detailed information on next steps for some recommendations (e.g., recommendation on contract disclosure).

Section 5 reflects strengths and weaknesses of the EITI process. For instance, the APR mentions such strengths as existence of the EGSU portal, timely EITI reporting, BO disclosure developments. At the same time, weaknesses include only financial challenges and ways to tackle them, but do not specify any other possible weak sides of EITI implementation in Kazakhstan.

Total costs of implementation are covered in a brief summary of costs and donors. This does not include a comparison of actual costs with the budgeted costs, broken down by contributor and budget lines. Additionally, details of membership of the MSG during the period as well as additional commentary on EITI in the media are included to the APR.

The APR states that the report was published on 15 June 2017 on the national EITI website and stakeholders were encouraged to seek input from external stakeholders. Also, the APR invites feedback via the contact form on the EITI Kazakhstan website. However, no clear information on the contents and outcomes of these consultations are mentioned in the APR. In the lead up to Validation, the NSC ensured other opportunities for participating in reviewing and evaluating implementation including through a pre-Validation workshop in November 2016 as well as through the production of two shadow Validation reports.

<sup>168</sup> <http://eiti.geology.gov.kz/en/homepage/progress-reports-on-the-implementation-of-the-eiti>



## Stakeholder views

Stakeholders admitted that the APR is mainly produced in order to meet the EITI requirements, and does not currently serve as a useful tool for gathering stakeholder feedback on the impact and future direction of EITI implementation. The concept of impact was not well understood, and most stakeholders tended to think of it as a set of outputs rather than impact. That said, the NSC had discussed and understood the necessity of conducting an impact assessment. A company representative said that the association coordinated input to the APR and disseminated the APR to the wider constituency upon completion. The secretariat explained that they were in charge of putting together the APR, and that they always requested NSC members to provide input.

## Initial assessment

The International Secretariat's assessment is that Kazakhstan has made meaningful progress in meeting this requirement. The NSC has produced annual progress reports that take stock of the activities conducted, the execution of the workplan, the follow up on the recommendations of the EITI report, and strengths and weaknesses of the EITI process. However, the APR lacks an assessment of impact of the implementation of work plan objective and activities. Also, the broader objective of using the APR as a tool for seeking stakeholder input and feedback on the impact of EITI implementation and opportunities for improvements, and let that feedback guide the strategic direction of EITI in Kazakhstan, does not appear to be fulfilled.

Table 7 - Summary assessment table: Outcomes and impact

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Public debate (#7.1)	The NSC has ensured that the EITI Report is comprehensible, actively promoted, publicly accessible and contributes to public debate. Although no open data policy has been published, this does not seem to have affected the NSC practices of publishing all data in excel format.	Satisfactory progress
Data accessibility (#7.2)	Kazakhstan has ensured that financial EITI data is available in machine readable format from Kazakhstan's EITI website as well as from EGSU. Further steps are also underway with regards to mainstreaming and open data.	Beyond
Lessons learned and follow up on recommendations (7.3)	Although the EITI Report does not include a stocktake of progress in implementing recommendations from previous reports, stakeholder consultations and other documents confirm that the NSC has considered the recommendations from the Independent Administrator, and the discrepancies are largely explained.	Satisfactory progress
Outcomes and impact of implementation (#7.4)	The NSC has produced annual progress reports that take stock of the activities conducted, the execution of the workplan, the follow up on the recommendations of the EITI report, and strengths and weaknesses of the EITI process. However, the APR lacks an assessment of impact of the implementation of work plan objective and activities.	Meaningful progress
<b>International Secretariat's conclusions and recommendations:</b>		

1. Given that the disclosure of the EITI data is becoming more automated, the NSC could focus less on publication of data and more on analysing the data. This could help ensure that the EITI contributes more to public debate about policies and reforms in the extractive sector.
2. The NSC is encouraged to consider and implement the recommendations from the mainstreaming feasibility study. The ongoing work on open data, including modernisation of the EGSU database, should continue to be prioritised.
3. The NSC might wish to ensure that the recommendations from the EITI process are more oriented towards legal, administrative and other reforms by changing the current approach to the development of recommendations. This could be done by engaging the constituencies of the NSC in the formulation of recommendations for consideration by the government.
4. The NSC might wish to undertake regular impact assessments to inform the strategic direction of EITI implementation in the country.

## 8. Impact analysis

*(Not to be considered in assessing compliance with the EITI provisions)*

### a) The impact of the EITI process in-country to date

As noted in the assessment above, neither the work plan nor the Annual Progress Report have served as useful tools for stakeholders in Kazakhstan to identify objectives for implementation and assess the impact of those. Nonetheless, stakeholder consultations revealed the different outcomes and impact that stakeholders perceive to be the result of the EITI.

Firstly, the EITI has contributed to **increasing access to information**. Kazakhstan's EITI Reports have over the years developed from highly aggregate compilations of payments and revenues, to highly granular disclosure of revenue data, but also data on social investments, local content, production and exports etc. Most of this information has not been available to the public before, and EITI still remains the sole source for some of this data. Given the large and dispersedly populated territories of Kazakhstan, publication of the data online in open data formats has been important in facilitating this access to information.

Secondly, the EITI is helping **entrenching transparency in government systems**. Whereas the government did not typically use online websites and portals as an integral part of how they manage the sector, the EITI has contributed to inspire a culture of openness in government agencies. More processes are moved online, including the regular reporting against contractual obligations, submission of applications for various permits, announcements of tenders and tender results, data on geological information and licensed areas (cadastre) etc.

Thirdly, the EITI has caused and influenced certain **legal and administrative reforms**. EITI reporting has revealed lack of oversight and risks related to misappropriation of funds destined for social development. As a result, a new budget code was created to enable tracking of social investment payments by extractive companies to regions and districts. This has enabled better oversight of the social investment flows, even if challenges remain around decision-making on how these funds are spent. Furthermore, the EITI has also inspired revisions to the new draft Subsoil Code, by inspiring the inclusion of provisions on beneficial ownership transparency for contract and license holders.

Fourthly, the EITI was considered to have helped **improve dialogue and consultation mechanisms between government, industry and civil society**. Multi-stakeholder governance is relatively uncommon

in Kazakhstan and the EITI was thought to be the only forum where civil society participates at equal footing given their decision-making rights and veto powers. Some considered that despite the EITI the government was still not “used to” consulting with civil society, but that it would probably have been worse without the EITI. The dialogue had also helped increase capacity and understanding of civil society representatives.

Finally, the EITI is thought to have enhanced Kazakhstan’s **international image** in that EITI compliance and hosting of various EITI events such as the recent Board meeting, sent a positive signal to investors and the wider international community.

Despite these positive impacts, stakeholder consultations have revealed weaknesses in implementation. EITI is not known or engaging stakeholders beyond a very small and, according to some, controlled crowd of people, limiting the potential for impact. Notwithstanding ten years of implementation, corruption in the extractive sector was still considered rampant and the EITI not an effective tool for tackling that corruption. Because of this, government commitment was not always perceived as genuine, perhaps rather indicating a desire to “show-off”.

#### **b) Opportunities for increasing the impact of the EITI**

Stakeholder consultations identified several opportunities for increasing the impact of the EITI.

Firstly, given the focus on economic diversification, EITI Kazakhstan could place a **greater focus on revenue management, notably the management of the National Fund**. This could include disclosing the beneficiaries/recipients of targeted transfers, as well as minutes or other documents underpinning decisions behind such transfers. Information about who manages the investment portfolio on behalf of the National Fund, the fees charged, and return secured on the investments could also help citizens evaluate the efficiency of the fund.

Secondly, in light of the substantial equity shares held by SOEs like KazMunayGas in oil and gas projects and the recent oil-backed loan agreements entered into by KazMunayGas, Kazakhstan could consider joining the EITI’s global effort on **increasing transparency in commodity trading**. This would include publication of information related to KazMunayGas’ sales of its equity oil, the revenues received, and the name of the buyers. It could also extend to transparency in how buyers are selected and how the proceeds from the sale of oil are reinvested and spent.

Thirdly, although there is now increased transparency in the amounts of social investments, there are still concerns about **opacity in the decision-making behind the spending on social investments and contracting of the firms carrying out these investments**. Kazakhstan EITI could make transparent decision-making practices, i.e. the proposals and rationale behind the suggested social investment spending, enabling the local population to hold local authorities to account for the social investment spending.

Fourthly, stakeholders noted **governance challenges associated with environmental payments**. Specifically, there are concerns that environmental rehabilitation payments and environmental fines are not spent on environmental reclamation as intended, but on other budget needs. According to research undertaken by some companies in one mining region only 20-25% of the payments were actually spent on rehabilitation. Further transparency in these transactions would be desirable, notably tracking payment and receipt of environmental fees and fines as well as transparency in spending of the money earmarked for environmental rehabilitation through the EITI.

Fifth, Kazakhstan is encouraged to **continue conversations about contract transparency**, and in particular consider the merits of disclosure of new contracts. Different stakeholders have pointed to different challenges stemming from not knowing the content of the contracts. Companies have highlighted that research and development obligations are part of the contracts, and that although the legal framework specifies what activities can be attributed to research and development, there are different practices when it comes to attributing research and development activities in practice. Civil society have expressed a desire for all contractual terms, in particular annexes and addendums, to be disclosed and at a minimum, the exact social and environmental obligations. In their view, this would enable holding government and companies to account. It has also been argued that this could be extended to Address relevant supply chain reporting and transparency provisions for contractors and sub-contractors to enhance performance and accountability.

Sixth, if the forthcoming new Subsoil Code is adopted, there is an **opportunity to ensure transparent bidding processes** for the contracts awarded through tenders. This could include disclosure of pre-qualification and evaluation criteria, information on bidders and the details of the winning bids, enhancing public trust in that contracts are awarded to the companies with the most appropriate technical and financial expertise.

Finally, given the considerable influence and ownership in extractive assets held by state-owned companies and the challenges with SOE disclosures highlighted in this initial assessment, Kazakhstan could take a leading role in **increasing transparency in SOE governance, ownership, financial transactions, lending and spending**, drawing on the OECD guidelines for state-owned enterprises and other best practices.

### c) Sustainability of the process

From a financial and governance perspective, EITI in Kazakhstan appears to be broadly on a sustainable footing. Implementation is relatively lean and cost-effective and is delivering increased transparency year on year without imposing bureaucratic constraints in terms of reporting, governance and costs. This will be further enhanced as Kazakhstan takes the next steps towards fully mainstreamed disclosures in accordance with the recommendations of the mainstreaming feasibility study.

Notwithstanding this direction of travel, stakeholders appear to see value in continued multi-stakeholder dialogue and oversight of the process. This could more effectively focus on overseeing analytical studies, findings and recommendations from the data becoming available. It could also to a greater extent set the strategic direction for further implementation by engaging in a dialogue about longer term strategic goals for EITI implementation, leaving the day to day execution in the hands of the government agencies in charge, supported by the national secretariat. Civil society will need to identify financial and human resources to provide more effective oversight and engagement of the process.

## Annex A - List of MSG members and contact details

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<i>Civil society</i>		

<sup>169</sup> Based on the NSC members list, published on the EITI Kazakhstan website: <http://eiti.geology.gov.kz/en/the-national-council/council-members>

## Validation of the Republic of Kazakhstan: Report on initial data collection and stakeholder consultation

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## Annex C - List of reference documents

(All electronic sources accessed June-September 2017)

### **National Stakeholder Council documents**

NSC members (June 2017), [http://eiti.geology.gov.kz/images/stories/ipdo2/protocol/sn2\\_20160930.pdf](http://eiti.geology.gov.kz/images/stories/ipdo2/protocol/sn2_20160930.pdf)

NSC meeting minutes, <http://eiti.geology.gov.kz/ru/the-national-council/minutes-of-meetings>

2005 NSC MoU (obsolete), 2005 NSC MoU,

[http://eiti.geology.gov.kz/images/stories/IPDO/norm\\_baza/memorandum.doc](http://eiti.geology.gov.kz/images/stories/IPDO/norm_baza/memorandum.doc)

2013 NSC MoU, [http://eiti.geology.gov.kz/images/stories/IPDO/norm\\_baza/memorandum2013.pdf](http://eiti.geology.gov.kz/images/stories/IPDO/norm_baza/memorandum2013.pdf)

2017 NSC MoU Annex, [http://eiti.geology.gov.kz/images/stories/ipdo2/norm\\_baza2/20042017.doc](http://eiti.geology.gov.kz/images/stories/ipdo2/norm_baza2/20042017.doc)

2017-2018 NSC work plan (April 2017),

[http://eiti.geology.gov.kz/images/stories/ipdo2/work\\_plan/WP20172018.pdf](http://eiti.geology.gov.kz/images/stories/ipdo2/work_plan/WP20172018.pdf)

2015 EITI Report,

[http://eiti.geology.gov.kz/images/stories/ipdo2/national\\_reports2015/national\\_reports\\_fot\\_eiti\\_2015\\_eng.pdf](http://eiti.geology.gov.kz/images/stories/ipdo2/national_reports2015/national_reports_fot_eiti_2015_eng.pdf)

2015 EITI Report – popular version,

[http://eiti.geology.gov.kz/images/stories/ipdo2/national\\_reports2015/Report\\_EITI\\_RUS\\_Optimized.pdf](http://eiti.geology.gov.kz/images/stories/ipdo2/national_reports2015/Report_EITI_RUS_Optimized.pdf)

2015 Supplementary EITI Report,

[http://eiti.geology.gov.kz/images/stories/ipdo2/national\\_reports2015/Report2015.pdf](http://eiti.geology.gov.kz/images/stories/ipdo2/national_reports2015/Report2015.pdf)

2015 Terms of Reference for Independent Administrator,

[http://eiti.geology.gov.kz/images/stories/IPDO/Otchet/2015/tech\\_specification2015.rar](http://eiti.geology.gov.kz/images/stories/IPDO/Otchet/2015/tech_specification2015.rar)

2016 Annual Progress Report, <http://eiti.geology.gov.kz/images/stories/ipdo2/reports/reports-2016.pdf>

EITI Kazakhstan Glossary (2017), <http://eiti.geology.gov.kz/ru/homepage/glossarij-terminov>

Hart Group (2013) Validation Report,

[http://eiti.geology.gov.kz/images/stories/IPDO/validation/Validation\\_report\\_2013\\_RU.pdf](http://eiti.geology.gov.kz/images/stories/IPDO/validation/Validation_report_2013_RU.pdf)

NSC media plan (2017) <http://eiti.geology.gov.kz/images/stories/IPDO/mediaplan/mediaplan2017.pdf>

### **Constituency documents and reports**

Esilbaev, M. (2015) Analysis of the contextual information of the national report "On the implementation of the Extractive Industries Transparency Initiative in the Republic of Kazakhstan for 2014", available from the EITI International Secretariat.

Kasabulatova, S. (2015) The analysis of tax revenues under Production Sharing Agreements, available from the EITI International Secretariat.

KazEnergy (28.12.2015) Letter no 11-999 to A.O. Isekeshov, Chairman of the EITI National Council, available from the EITI International Secretariat.

KazEnergy EITI working group (2017) list of working group members, available from the EITI International Secretariat.

KazEnergy EITI working group (10.07.2017) Meeting minutes, available from the EITI International Secretariat.

Krivodanov, Y. (2016) Readiness Assessment and Risk Evaluation for Kazakhstan's EITI Validation in 2016 and the Development of Practical Data-based Recommendations, available from the EITI International Secretariat.

NGO Dialogue Platform Terms of Reference, 15 July 2014,  
<https://www.facebook.com/groups/eitikz/1657631474482707/>

No name (2016); Analysis of discrepancies between tax and nontax payments in accordance with the National Report on the Implementation of the Extractive Industries Transparency Initiative (EITI) for 2014", available from the EITI International Secretariat

No name (2106) Tax burden of Kazakhstan's mining sector. Available from the EITI International Secretariat.

No name; Study of the practice of calculating dividends from companies with state participation under the EITI and displaying dividends in the EITI reports for 2013-2014, available from the EITI International Secretariat.

Ushakova, S. (2025) Civil society presentation on regional implementation of the EITI,  
<http://eiti.geology.gov.kz/images/stories/IPDO/conference/vzgl.pptx>

### **Legal sources**

Constitution of Kazakhstan (1995, amended 2017),  
[http://online.zakon.kz/Document/?doc\\_id=1005029#pos=197;-155](http://online.zakon.kz/Document/?doc_id=1005029#pos=197;-155)

European Parliament (2016) European Parliament resolution of 10 March 2016 on freedom of expression in Kazakhstan, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2016-0083&language=EN&ring=B8-2016-0337>

Government of the Republic of Kazakhstan (2015) Orders of the Prime Minister of the Republic of Kazakhstan on the approval of the National Plan for the Development of Interaction between Non-Governmental Organizations and the State in the Republic of Kazakhstan for 2016-2020,  
<http://www.government.kz/ru/rasporyazheniya-premer-ministra-respubliki-kazakhstan/rasporyazheniya-premer-ministra-rk-za-dekabr-2015-goda/31496-ob-utverzhenii-natsionalnogo-plana-po-razvitiyu-vzaimodejstviya-nepravitelstvennykh-organizatsij-i-gosudarstva-v-respublike-kazakhstan-na-2016-2020-gody.html>

Law on Access to Information (2015, amended 2016),  
[https://online.zakon.kz/Document/?doc\\_id=39415981#pos=0;0](https://online.zakon.kz/Document/?doc_id=39415981#pos=0;0)

Law on Combating Money Laundering Obtained Through Criminal Means and Financing of Terrorism (2009, amended 2016) [https://online.zakon.kz/Document/?doc\\_id=30466908#pos=0;0](https://online.zakon.kz/Document/?doc_id=30466908#pos=0;0)

Law on Communications (2004, amended 2017),  
[https://online.zakon.kz/Document/?doc\\_id=1049207#pos=0;0](https://online.zakon.kz/Document/?doc_id=1049207#pos=0;0)

Law on Non-Commercial Organisations (2001, amended 2017)  
[https://online.zakon.kz/Document/?doc\\_id=1021519#pos=0;0](https://online.zakon.kz/Document/?doc_id=1021519#pos=0;0)

Law on Public Associations (1996, amended 2016),  
[https://online.zakon.kz/Document/?doc\\_id=1005615#pos=0;0](https://online.zakon.kz/Document/?doc_id=1005615#pos=0;0)

Law on State Registration of Legal Entities and Record-Registration of Branches and Representative Offices (1995, amended 2017), [https://online.zakon.kz/Document/?doc\\_id=1003592](https://online.zakon.kz/Document/?doc_id=1003592)

Law on Subsoil and Subsoil Use (2010), [https://online.zakon.kz/Document/?doc\\_id=30770874#pos=0;0](https://online.zakon.kz/Document/?doc_id=30770874#pos=0;0)

Tax Code of Kazakhstan (2008, amended 2017),  
[https://online.zakon.kz/Document/?doc\\_id=30366217#pos=0;8](https://online.zakon.kz/Document/?doc_id=30366217#pos=0;8)

**EITI publications**

Minutes of the 3<sup>rd</sup> EITI Board meeting (September 2007),  
[https://eiti.org/sites/default/files/documents/boardmeeting\\_003\\_minutes.pdf](https://eiti.org/sites/default/files/documents/boardmeeting_003_minutes.pdf)

Minutes of the 25<sup>th</sup> EITI Board meeting (October 2013),  
[https://eiti.org/sites/default/files/documents/boardmeeting\\_025\\_minutes.pdf](https://eiti.org/sites/default/files/documents/boardmeeting_025_minutes.pdf)

**News items, articles and other media**

Agkipr.kz (20.10.2015) Efficiency of using the funds of the National Fund of the Republic of Kazakhstan,  
<http://agkipr.kz/archives/644>

Agkipr.kz (20.06.2017) Efficiency of the quasi-sector: questions and suggestions,  
<http://agkipr.kz/archives/1264>

Eurasianet (20.02.2017) Drowning in Data – EITI in Kazakhstan Must Mean More,  
<http://www.eurasianet.org/node/82486>

Financial Times (02.12.2015) Vitol in \$3bn deal with Kazakh state oil group KMG,  
<https://www.ft.com/content/02273d4e-98da-11e5-95c7-d47aa298f769?mhq5j=e2>

Human Rights Watch (28.11.2016) Kazakhstan: 2 activists sentenced to 5 years,  
<https://www.hrw.org/news/2016/11/28/kazakhstan-2-activists-sentenced-5-years>

Kursiv.kz (23.02.2017) Extractive companies will be forced to disclose the final beneficiaries,  
<https://www.kursiv.kz/news/vlast1/prozracnye-standarty/>

Kursiv.kz (26.02.2016) Transparent geology of the Republic of Kazakhstan,  
<https://www.kursiv.kz/news/industry/transparentnaa-geologia-rk/>

MetalMininginfo.kz (12.04.2017) Shafkat Kudabaev: "The EITI - the initiative of transparency in extractive industries is fully consistent with the current Tax Code", <http://metalmininginfo.kz/archives/4671>

MetalMininginfo.kz (29.05.2017) Zhenis Kasymbek: "We are ready for dialogue for the benefit of the country's development", <http://metalmininginfo.kz/archives/4743>

OSCE (25.09.2015) OSCE Representative raises concern about recent media freedom developments in Kazakhstan, <http://www.osce.org/fom/185401>

Pricom (31.10.2014) Population is still passive, <http://pricom.kz/?p=36861>

Reuters (16.08.2016) UPDATE 2-Vitol wins right to export Kazakhstan share of Kashagan output,  
<http://www.reuters.com/article/kazakhstan-kashagan-vitol/update-2-vitol-wins-right-to-export-kazakhstan-share-of-kashagan-output-idUSL8N1AX26D>

Tengrinews (06.03.2017) [https://tengrinews.kz/kazakhstan\\_news/glava-komiteta-mir-rk-sozdal-ogp-natsbyuro-313626/](https://tengrinews.kz/kazakhstan_news/glava-komiteta-mir-rk-sozdal-ogp-natsbyuro-313626/)

US Mission Kazakhstan (06.10.2016) Statement on the Conviction of Kazakhstan Union of Journalists President Seitkazy Matayev, <https://kz.usembassy.gov/statement-conviction-kazakhstan-union-journalists-president-seitkazy-matayev/>

**Websites**

Civil Initiatives Support Centre, <http://cisc.kz/en/cisc/about-us/>

EITI Kazakhstan website (2017), <http://eiti.geology.gov.kz/en>

KazEnergy Forum (2017), <http://www.kazenergyforum.com/index.php/en>

Ministry of Investment and Development (04.12.2015) Auction results competition for subsurface use right, <http://dep-nedra.mid.gov.kz/kk/pages/zher-koynauyn-paydalanu-kukygyyn-alu-ushin-aukcion-turindegi-konkurstyn-kortyndysy>

Ministry of Investment and Development (25.05.2017) Notification the Ministry of Investment and Development of the Republic of Kazakhstan, as the competent authority of the Government of the Republic of Kazakhstan, announces auction (hereinafter - auction) for a subsurface use right, <http://dep-nedra.mid.gov.kz/kk/pages/habarlama-kazakistan-respublikasynyn-investiciyalar-zhne-damu-ministriligi-kazakistan-1>

Ministry of Religious Affairs and Civil Society (2017) NGO database, <https://infonpo.kz/>

Natural Resource Governance Institute (2017) 2017 RGI data explorer, <http://resourcegovernanceindex.org/about/data-and-source-documents>

Soros Foundation Kazakhstan (2017) <https://www.opensocietyfoundations.org/about/offices-foundations,/soros-foundation-kazakhstan>

Unified State System of Subsoil Use Management of the Republic of Kazakhstan (2017), [http://egsu.energo.gov.kz/webapp/pages/administration/regulatory\\_docs.jsf](http://egsu.energo.gov.kz/webapp/pages/administration/regulatory_docs.jsf)

### ***Other publications***

Amnesty International (2017) Annual Report Kazakhstan 2016/2017, <https://www.amnesty.org/en/countries/europe-and-central-asia/kazakhstan/report-kazakhstan/>

BP Statistical Review (2017), <https://www.bp.com/content/dam/bp/en/corporate/pdf/energy-economics/statistical-review-2017/bp-statistical-review-of-world-energy-2017-full-report.pdf>

Freedom House (2016) Freedom in the world 2016: Kazakhstan, <https://freedomhouse.org/report/freedom-world/2016/kazakhstan>

Freedom House (2017) Freedom in the world 2017: Kazakhstan, <https://freedomhouse.org/report/freedom-world/2017/kazakhstan>

Human Rights Watch (2016) Kazakhstan events of 2016, <https://www.hrw.org/world-report/2017/country-chapters/kazakhstan>

Gamo (2016) Report for the year 2015, <https://cloud.mail.ru/public/4bWS/97xKD3A3m>

ICNL (2017) Civic Freedom Monitor: Kazakhstan, <http://www.icnl.org/research/monitor/kazakhstan.html>

Kapparov, K. (2016) Invisible Public Debt: the Case of Kazakhstan; New voices from Central Asia – Political, Economic and Societal Challenges and Opportunities; George Washington University.

Kazatomprom (2015) Integrated annual report for 2015 [http://docs.google.com/gview?url=http://www.kazatomprom.kz/sites/default/files/corpfiles/integrated\\_annual\\_report\\_for\\_2015.pdf&embedded=true](http://docs.google.com/gview?url=http://www.kazatomprom.kz/sites/default/files/corpfiles/integrated_annual_report_for_2015.pdf&embedded=true)

KazGeology (2015) Annual report, <http://kazgeology.kz/kz/corporate-governance/year>

KazMunayGas (2015) 2015 Annual Report [http://www.kmg.kz/upload/corporate\\_management/equity/2015/kmg\\_annual\\_report\\_2015\\_ru.pdf](http://www.kmg.kz/upload/corporate_management/equity/2015/kmg_annual_report_2015_ru.pdf)

KazMunayGas (2016) 2016 Annual Report, <https://www.kmgep.kz/details/ndownload.php?fn=768&lang=eng>

KazTransGas (2015) Annual Report, <http://docplayer.ru/38871272-Godovoy-otchet-ao-kaztransgaz-za-2015-god.html>

KazTransOil (2015) Annual Report, <http://www.kaztransoil.kz/doc/ru/2983.pdf>



NRGI (2017) Resource Governance Index: Kazakhstan, <http://resourcegovernanceindex.org/country-profiles/KAZ/oil-gas>

Tau-Ken Samruk (2015) Annual Report, [http://raexpert.kz/docs/annual\\_contest/tau\\_ken\\_samruk/TKS\\_AR\\_2015\\_RU\\_0920\\_1545\\_spread.pdf](http://raexpert.kz/docs/annual_contest/tau_ken_samruk/TKS_AR_2015_RU_0920_1545_spread.pdf)

Themir Zholy (2015) Annual Report, [http://www.railways.kz/sites/default/files/kfo\\_2015\\_g\\_po\\_msfo\\_rus\\_horoshego\\_kachestva\\_zhivaya\\_podpis.pdf](http://www.railways.kz/sites/default/files/kfo_2015_g_po_msfo_rus_horoshego_kachestva_zhivaya_podpis.pdf)

US State Department (2015) Kazakhstan 2015 Human Rights Report, <https://www.state.gov/documents/organization/253177.pdf>

World Bank (2017) Kazakhstan - The economy has bottomed out : what is next? - country economic update (Spring 2017) (English), <http://documents.worldbank.org/curated/en/585891494402103086/Kazakhstan-The-economy-has-bottomed-out-what-is-next-country-economic-update-Spring-2017>