**GHANA’S 3RD VALIDATION ASSESSMENT – MSG’S RESPONSES**

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| **S/N** | **REQUIREMENT NO.** | **INTERNATIONAL EITI SEC’S ASSESSMENT (PROGRESS MADE)** | **MSG RESPONSE(S)** |
| Review of two previous corrective actions | | | |
| 1.0 | Corrective action 1: Comprehensiveness (#4.1) | The International Secretariat’s preliminary assessment is that Ghana has not fully addressed the corrective action on comprehensiveness and has made meaningful progress with considerable improvements on Requirement 4.1. The 2017-2018 EITI Reports covering mining and petroleum address the main issue identified during previous Validations. For 2018 non-reporting companies accounted for 5.3% of the reconciliation target in the oil and gas sector (12% according to preliminary data), representing a significant improvement in coverage of company reporting. However, while most companies accounted for 0.3% of non-reported figures, one company, Anadarko, accounted for at least 3% of government extractive revenues and represents a considerable reduction in reconciliation coverage. The Secretariat was also unable to locate reliable data on Anadarko’s payments to government elsewhere. Still the report provides an assessment of comprehensiveness of the reconciled financial data | **i)Anadarko has been recalcitrant in reporting since inception and this was brought to the attention of the International Secretariat (IS). There have been several unsuccessful attempts by GHEITI to get them to report of which the I.S is aware, the IS did not recognize the effort made by GHEITI.**  **(ii) Anadarko is part of the Int’l EITI Board and an appeal was made for the Int’l Secretariat to intervene to encourage their participation but no feedback was received.**  **(iii)Government provided unilateral disclosure of payments made by Anadarko (Refer to Table 4.11: Unilateral Declaration for 2017/2018 Oil and Gas Report)**  **iv) As EITI remains a voluntary initiative, and with GHEITI’s efforts to ensure that Anadarko reports together with government’s unilateral declarations are well documented, it would be unfair for the IS to score meaningful progress for this requirement.** |
| 2.0 | Corrective action 2: Quasi-fiscal expenditures (#6.2) | The International Secretariat’s preliminary assessment is that Ghana has not fully addressed the corrective action on quasi-fiscal expenditures and has made meaningful progress in implementing Requirement 6.2.  Ghana’s 2017 -2018 EITI Report on mining and scoping study adequately document that no upstream state-owned enterprises existed in 2017 and 2018. As a result, no quasi-fiscal expenditures could take place. The International Secretariat is satisfied that Requirement 6.2 (QFE) is not applicable in Ghana’s mining sector in the period under review (2017–2018). For the oil and gas sector, Ghana’s EITI Report indicates that quasi-fiscal expenditures did not occur in 2017 and 2018, albeit without a clear justification for this finding. The MSG published additional related documentation - albeit published after the commencement of Validation – confirming that no QFE occurred in 2017-2018. The International Secretariat recognises efforts made by the MSG to capture progress made to settle two previously identified quasi-fiscal expenditures based on recommendations from the 2016 EITI Report.  While the MSG noted that caution by civil society did not represent actual activities, the 2018 PIAC report appears to suggest that GNPC undertook several expenditures on behalf of the Government of Ghana and other SOEs during the years under review. The International Secretariat’s assessment takes into consideration previous concerns raised during preceding Validations about the existence of QFEs and the specificity of current evidence of QFEs in the year under review (2017-2018). The inconsistency in information on QFEs provided in EITI Reports compared to other reliable source (such as PIAC and IFS) raises additional concerns on the comprehensiveness of QFE disclosures in EITI Reporting. Inconsistent information across the EITI Report and other official reports (such as PIAC and IFS) raise concerns that the wider objective of the requirement has not been fully met. | **(i) The conclusion by Int’l Sec. is based on conjecture.**  **(ii) EITI is based on data requisition from the reporting institutions of which GNPC & Ministry of Finance are part. There are records from Ministry of Finance corroborated by GNPC that no new QFEs took place during the period under review, the records were shared with the I.S as evidence.**  **(iii) The Int’l Sec. should see the work of PIAC & IFS as complementary and their definitions and understanding are different and same may not necessary apply in all situations and have the conclusions (PIAC is a statutory body & GHEITI is represented on PIAC).**  **(iv) The GNPC and its Foundation’s Work Programme and Budget, which includes the said expenditure, which entails social work (corporate social investment) is approved by Parliament.** |
| Other requirements assessed | | | |
| 3.0 | Assessment ofstate participation (#2.6) | The second Validation concluded that Ghana had achieved satisfactory progress on this requirement.  The International Secretariat preliminary assessment is that progress has fallen below the required Standard on Requirement 2.6 and warrants consideration by the EITI Board, to be assessed as meaningful progress. The 2017-2018 EITI Reports continue to confirm the non-applicability of state participation in the mining sector, as the government does not hold majority interests in any mining companies. EITI reporting continues to demonstrate that the state-owned enterprise, Ghana National Petroleum Corporation (GNPC), gives rise to material revenues in the oil and gas sector. The 2017-2018 oil and gas EITI Report does not seem to comprehensively list state participations in the oil and gas sector. Nonetheless, the government systematically discloses equity interests and terms associated with GNPC’s interests in contract areas. Some information on GNPC’s roles and financial relationship with the Government of Ghana is also lacking, especially its relationship with other SOEs that do not operate in the upstream extractive industries, such as Ghana National Gas Corporation (GNGC). The report no longer comments on GNPC’s practices related to seek third-party financing, and to reinvestment in its subsidiaries and joint ventures, however, GNPC *is* able to seek third-party financing as stipulated in the publicly accessible Ghana National Petroleum Corporation Law, 1983 (PNDCL 64).[[1]](#footnote-1) Some specific loans and guarantee arrangements are covered in EITI reporting, although audit reports of GNPC and PIAC’s annual reports imply that more exist. the publicly available data have not been covered to the level of granularity required for EITI reporting. Therefore, and in combination with the delay in publication of GNPC’s audited financial statements for 2018, it is not possible to conclude that EITI reporting or systematic disclosures respond comprehensively to all aspects of Requirement 2.6.  Requirement 2.6, State participation states that where state participation in extractive industries gives rise to material revenue payments, implementing countries must disclose:   1. An explanation of the prevailing rules and practices regarding the financial relationship between the government and state-owned enterprises(SOE’S)   Eg, the rules and practices governing transfers of funds between SOE(s) and the state, retained earnings, reinvestment and third party financing.   1. Disclosures from the government and SOE(s) of their level of ownership in mining, oil and gas companies operating within the country’s oil, gas and mining sector, including those held by SOE subsidiaries and joint ventures and any changes in the level of ownership during the reporting period. 2. This information should include details regarding the terms attached to their equity stake, including their level of responsibility to cover expenses at various phases of the project cycle, eg full paid equity, free equity, carried interest. Where there have been changes in the level of government and SOE(s) ownership during the EITI reporting period, the government and SOE(s) are expected to disclose the terms of the transaction, including details regarding valuation and revenues. 3. Where the government and SOE(s) have provided loans or loan guarantees to mining, oil and gas companies operating within the country, details on these transactions should be disclosed. | * **PIAC uses unaudited financial account whiles GHEITI uses audited financial account and that distinction needs to be re-emphasized.**   **The MSG wishes to respond directly to the issues raised in requirement 2.6 as follows:**  **(a) Section 2.6 of the 2017/18 provide details of the financial relationship between GNPC and the government under the heading (Financial Relationship (GNPC and Government). Possibility of third party financing are stipulated in the GNPC Law,1983: (PNDC Law 64)**  **(b) 1. The 2017/2018 report as well as the GNPC website details the subsidiaries as EXPLORCO and GNGC. The report also lists Prestea Sankofa as a mining subsidiary. There was no change in the ownership of these companies within the reporting period.**  **2. Joint ventures were Saltpond Offshore Producing Company(SOPCL); GNPC-Technip Engineering Ltd.**  **3. There was no change in ownership of joint ventures.**  **(c) Equity stakes are found in all the petroleum agreements listed at www.ghanapetroleumregister.com**  **(d) There was no provision of loans or loans guarantees to mining and oil/gas companies in 2017/ 2018.**  **It has to be noted that what has been indicated in the draft assessment report fell outside the 2016 Standards on which this validation is based.**  **In view of the above, the MSG is of the belief that overall, this requirement should be recognized/marked as satisfactory progress** |
|  | Assessment ofsales of the state’sshare and other in-kind revenues(#4.2) | The second Validation concluded that Ghana had achieved satisfactory progress on Requirement 4.2.  The International Secretariat preliminary assessment is that progress has fallen below the required Standard on Requirement 4.2 and warrants consideration by the EITI Board, to be assessed as meaningful progress.  The 2017-2018 EITI Report on oil and gas presents two main in-kind revenue flows in the oil and gas sector. It includes volumes and values associated with sale of the state’s in-kind revenues for oil, including a reconciliation of total liftings, and these are presented in the EITI Report. Significant differences between the values of the state’s share of in-kind sales, and the values transferred to the Petroleum Holding Fund (PHF), is not adequately described in the report, causing confusion as to which revenues were collected in 2017 versus 2018. Lastly, the EITI Standard requires that volumes collected and sold, and the proceeds of those sales are comprehensively and reliably disclosed, disaggregated by buyer. Even though no cash payments were lodged with GNPC or the PHF for the year under review, the physical deliveries of natural gas volumes have not been disaggregated to the same levels as oil sales. | **Req. 4.2 of the 2016 Standard which is the basis of this validation states that ‘Where the sale of the state’s share of production or other revenues collected in-kind is material, the government, including state-owned enterprises, are required to disclose the volumes sold and revenues received. The published data must be disaggregated by individual buying company and to levels** **commensurate with the reporting of other payments and revenue streams (Requirement 4.7.).**  **Requirements for EITI implementing countries**  **Reporting could also break down disclosures by the type of product, price, market and sale volume. Where practically feasible, the multi-stakeholder group is encouraged to task the Independent Administrator with reconciling the volumes sold and revenues received by including the buying companies in the reporting process’.**  **The MSG has a different view of the issues raised against Ghana with respect to the assessment on req. 4.2 for the following reasons:**  **Firstly, all the information required by the standard is already provided by the Ministry of Finance every quarter and is publicly** **available on its website**: [**http://www.mofep.gov.gh/publications/petroleum-reports?page=1**](http://www.mofep.gov.gh/publications/petroleum-reports?page=1)  **For sales of Gas, see table 3.10 and Figure 3.8. Please note that there were no receipts from GNGC in 2017 and 2018 on gas supplied.**  **Secondly, Section 3.2 of the 2017/18 report on Production and Exports under the heading Jubilee Crude Oil Liftings and Values in 2018 as well as TEN crude Oil Liftings and values in 2018, the fact that parcels lifted in December 2017 at Jubilee and TEN fields were not paid for until January 2018 had clearly been stated.**  **The requirement 4.2 states amongst others “where the sale of the State’s share of production or other revenues collected in- kind is material, the government, including state-owned enterprises, are required to disclose the volumes sold and revenues received.**  **The published data must be disaggregated by individual buying company and to the levels commensurate with the reporting of other payments and revenue streams.**  **Table 4.22 (Sales of Ghana’s Oil by GNPC in 2017 and 2018 provide details of the date of sale, Field, Buyer Volume, Revenue and unit price of oil sold. All the parts of the requirement as indicated above have been complied with.**  **The amount paid into the Petroleum Holding Fund (PHF) was not actually part of the requirement. Perhaps, there is need to organise a webinar to discuss how GNPC work is done especially in crude oil sales.**  **As already indicated above the fact that parcels lifted in December 2017 at Jubilee and TEN fields were not paid for until January 2018 has been indicated in the 2017/18 report. Please note that there is a 30-day lag in payment between liftings and payments.**  **Therefore, using that for analysis and concluding that the requirement for sales of the state’s share and other in-kind revenues has not been met is baffling.**  **Again the report has stated the contributions by the various IOCs’ towards state entitlements in 2017/2018, indicating the contributions of the IOCs’ towards royalty receipts. (see Tables 4.12 and 4.13). The International Secretariat requested that the contribution of the various IOC’s be indicated after the 2015 report. This was done in the 2016 report, ensuring satisfactory progress for requirement 4.2.**  **All the above were repeated in the 2017/2018 report, and it is our opinion that all the issues in requirement 2.6 have been fully complied with.**  **In the light of above, Ghana provided all the information in table 4.22 of 2017-18 oil and gas report. However, it was not practically feasible for the IA to reconcile volumes sold and revenues received by buyers, because (buyers) were not part of the reconciliation exercise.**  **The progress, therefore, should still be maintained as satisfactory**. |
| 5.0 | Assessment ofproject-levelreporting (#4.7) | The first Validation found that Ghana had achieved satisfactory progress on Requirement 4.7. Ghana’s first Validation indicated that 2014 EITI Reports disclosed revenue data by individual company, government entity, and revenue stream. Project-level reporting was not yet applicable, as reporting did not include fiscal years ending on, or after, 31 December 2018.  This requirement was assessed in accordance with the EITI Board’s decision of March 2017, that project-level reporting is required for all reports covering fiscal years ending on or after 31 December 2018 onwards.  The International Secretariat preliminary assessment is that progress has fallen below the required Standard on Requirement 4.7 and warrants consideration by the EITI Board, for an assessment of meaningful progress.  The most recent mining and petroleum EITI Reports disaggregate financial data by company, central government agency and revenue stream. While Ghana has begun its efforts to consider project-level disclosures, as required for all fiscal years ending on or after 31 December 2018, these considerations seem to be limited to tax payments only, while not considering project definitions for payments not ring-fenced or imposed on company levels. EITI reporting to date has been partial at a project level, given the materiality of non-tax payments levied at a project level.  (a) For the **mining** sector, the EITI Report does not attempt to clarify which payments may be imposed or levied on licenses, contracts, or Mineral Leases, although the report explicitly states that some of these agreements may alter the terms and payment obligations that companies are subject to. A review of the Minerals and Mining Act 2006 and its Minerals and Mining (General) Regulations 2012 reveals that some payments, such as Mineral Royalties, are levied on a per Mining Lease or Restricted Mining Lease  (b) Through consultations, the MSG contested the notion that Mineral Royalties were levied at lease level, referencing the practice note of GRA and their reporting. However, disclosures at the lease level are accessible for royalties and other payments through the Ghana Mining Repository.[[2]](#footnote-2) The MSG did confirm that Ground Rents are levied on a per-concession or -lease basis, but that no revenues were disaggregated as such.  (c) For **oil and gas** companies, the report does not clarify the relationship or difference between contract areas, fields, petroleum agreements, nor the development and production plans. The report does disaggregate surface rents by contract area in Table 4.16, while corporate income taxes, CAPI and royalties are disaggregated by fields. There arethussome disclosures by projects, albeit without comment or explanation. MSG consultations clarified that Surface Rental and Signature Bonuses are levied at contract area and petroleum agreement, respectively. | **The MSG’s view on the assessment of this requirement is that Ghana disagrees with the score of ‘meaningful progress’ for the following reasons:**  **1. Section 25 of the Minerals and Mining Act, 2006 (Act 703), Royalties are paid by the holder of the lease but not on lease basis.**    **2. Ghana uses a central processing plant as the basis. Hence, the bases of your conclusion are not applicable to Ghana.**  **3. The practice in Ghana is based on prospects/plants.**  **Therefore, the MSG still maintains that the assessment should not be done on the lease basis as it does not apply to Ghana.**  **Again, MSG consultations did not clarify that signature bonuses are levied on petroleum agreement. Signature bonuses were not applicable in Ghana in 2017/2018.**  **All material payments were reported appropriately, i.e. individual companies, government entity and revenue streams.**  **The basis for classifying Req. 4.7 as meaningful progress is trivial and not significant as the main issues were inconsistencies between the reporting systems.**  **The minutes of the meeting pointed to the fact that templates were developed by a working group.**  **The mining report indicated that the current reporting already satisfies project level reporting, as all material payments are reported appropriately.**  **(a) Which years have the repository indicated the payment of Mineral royalty is on lease basis? Note that this was during the time that the repository was being set up. Our belief is that this was done on** **computational basis, and has since not been done, as no receipt on mineral royalty payment has been made on lease basis. Indeed, the production of gold using a single processing facility which is fed (assuming without admitting) from different leases, will be impossible to identify which gold came from which concession.**  **(b) If the assessment indicated that the repository has provided payments including non-tax payments (mineral royalty) on project basis, then the country’s progress should be marked satisfactorily as the repository is part of the Ghanaian effort and also available on the internet.**  **(c) The only payment in the Oil/Gas sector that is made on project level basis is surface rental (though not material). This, as the assessment indicates has been shown on project level basis in Table 4.16.**  **All mining companies are subject to the same fiscal terms except in situation where a company has a binding investment with the state. In that case the fiscal terms may be varied in line with the agreement reached. The Independent Administrator has already provided instances where the government enters into investment agreement with some mining companies in the report.** |
| 6.0 | Assessment of dataquality (#4.9) | The previous Validation concluded that Ghana had made satisfactory progress in meeting Requirement.  The International Secretariat preliminary assessment is that progress has fallen below the required Standard on Requirement 4.9 and warrants consideration by the EITI Board, to be assessed as meaningful progress.  Aspects of the requirement have been implemented: there is MSG oversight in the procurement of the IA and agreeing measures to ensure adequate data quality and assurances in accordance with the standard procedures endorsed by the EITI Board. There is evidence to suggest that recommendations made through EITI reporting are followed up. There is evidence to suggest that an assessment of the impact of non-reporting by material companies and out-of-scope companies was conducted by the IA for both sectors. However, there is no evidence to suggest an independent assessment of data reliability in the oil and gas EITI Report. The oil, gas and mining reports also lack a clear statement from the IA confirming the comprehensiveness and reliability of the overall data presented. Nonetheless, as the IA indicated in consultations that all government agencies reported fully in adherence with the MSG’s approved assurance mechanism, reliability can be implied, even if not explicitly stated. Further, a complete and final summary data file was not provided at the time of writing the assessment. Given the importance of reconciliation and independent reliability and comprehensiveness assessments to EITI Reports, these gaps warrant consideration by the EITI Board, for an assessment of meaningful progress. | **Ghana disagrees with a ‘meaningful progress’ score on this requirement.**  **Ghana has consistently over the years been assessed satisfactory for the data quality because most of the companies are listed on various recognised Stock Exchanges, this provide another layer of quality check. This informed the MSG’s decision exclude ‘certification’ of the templates by the Independent Auditors (Refer to page 61, section 4 of the oil/gas report under reporting companies).**  **Additionally, all the measures outlined by the MSG to ensure data credibility and reliability checks were complied with.**   1. **As indicated in the report, majority of the companies that provided data for the report are quoted on stock exchanges in Johannesburg, London and Canada. This means that there is another layer of data assurance provided by these markets, i.e. twelve out of the sixteen mining companies that were required to participate in the 2017/18 report were quoted on stock exchanges for the mining sector. For the Oil/Gas sector the companies that reported were also listed on the London, New York, Italian and South African stock exchanges.** 2. **The above was one of the reason certification by Independent Auditors of participating companies was not considered in the reporting process.** 3. **The MSG requested that a) A senior Manager, preferably the Chief Executive Officer, the Managing Director or the Chief Financial Officer, signs and stamps the completed reporting templates for companies;**   **b) the submission of supporting documents for amounts stated on the templates.**  **c) For Government reporting Agencies and State owned enterprises, the completed reporting templates were to be signed by a senior manager and embossed with the entity’s stamp.**  **Find attached the names of signatories for both companies and government Agencies**   1. **The completed or filled templates fully satisfied the requirements, and noting the companies that reported together with the above mentioned measures showed that the data quality was assured.** 2. **The procedures followed in the 2017/2018 report were the same employed in 2016 report and earlier reports.** 3. **It is noteworthy that Ghana has not scored anything below satisfactory progress for requirement 4.9.**   **7. The 2017/18 summary data file was completed & shared with the I.S on February 19, 2020 long before the commencement of the validation. There were no outstanding issues as the portion that remained has to do with the provision of the links which we think is part of 2019 Standard. The 2017/18 reports were produced based on the 2016 Standard and same applies to this 3rd Validation.** |
| 7.0 | Assessment of sub-national transfers (#5.2) | The first Validation concluded that Ghana had made satisfactory progress in meeting Requirement.  The International Secretariat preliminary assessment is that progress has fallen below the required Standard on Requirement 5.2 and warrants consideration by the EITI Board, for an assessment of meaningful progress. Subnational transfers are not applicable in the oil and gas sector. However, the report indicates applicable subnational transfers in the mining sector and discloses the statutory and actual distributions according to the formula for some regions. However, District Assemblies or other entities located in several regions are not reported for in terms of ground rent and mineral royalties, even if material companies did operate in the regions. In addition, the addendum clarifies changes to the statutory rules for distributions as of 2017, but it is not coupled with improvements in financial disclosures.  (a) **Mineral royalties** are payable by all extractive companies to the consolidated government treasury. The 2017-2018 EITI reports do not contain much information regarding the statutory distribution of mineral royalties. | **The MSG’s comments on the assessment of this requirement are as follows:**  **Firstly, the Mineral Development Fund (MDF) Act, 2016 (Act 912) is a publicly available document and contains all the formula, this has been referred to in section 5.2.2 of the mining report.**  **Secondly, though the amounts disbursed to MMDAs are below the required threshold, the MSG still tasked the IA to compute what was due them (MMDAs) and compared with actual amount paid. All these were done.**  **Therefore, the statement in your draft assessment report that the 2017-18 reports did not contain much information regarding the statutory distributions of mineral royalties incorrect. This is because the MDF Act which contains all the formula of disbursement is publicly available document.**  ***Requirement 5.2: Where transfers between national and subnational government entities are related to revenues generated by the extractive industries and are mandated by a national constitution, statute or other revenue sharing mechanism, the MSG is required to ensure that material transfers are disclosed. Implementing countries should disclose the revenue sharing formula, if any, as well as any discrepancies between the transfer amount calculated in accordance with the relevant sharing formula and the actual amount that was transferred between the central government and each relevant subnational entity.***  **1. The computations on subnational distributions concentrated on areas where more than one districts share the disbursed amount and where the disbursements were material or close to material.**  **2. Note that the computations are made for only the district Assemblies within the operational areas of companies within the materiality criterion.**  **3. The computations involve all the disbursements in the year, i.e. the number of disbursement for a year are all indicated and for each year the accrued amount due to a district assembly.**  **4. The individual disbursements are then summed for the year for a district and compared with what the district received.**  **5. This is what has been done year in previous reporting years and was done for the 2017/18 report as well.**  **6. Note that MSG requests for these computations to be done for each districts despite the fact that some of the payments are not material. This is to ensure transparency at the subnational level.**  **7. The above procedures satisfy requirement 5.2 as indicated above.**  **8.The report indicated that the details of the distribution are stated in the Mineral Development Fund Act, 2016 (Act 912) which is available online. As far as the sub-national transfers is concerned this is consistent with previous practice, the distribution formula has not changed, in spite of the enactment of the MDF Fund Act, 2016 (Act 912).**  **9.Ghana hasn’t not score less than satisfactory with regards to this requirement.** |
| 8.0 | Assessment ofbeneficialownership (#2.5) | The Secretariat’s preliminary assessment is that Ghana has made meaningful progress on Requirement 2.5.  Elements of the initial criteria for assessing Beneficial ownership disclosure have been met. A clear government policy and legal basis have been given to beneficial ownership disclosure in Ghana. All material companies have been requested to disclose information based on a comprehensive template, that includes assurance mechanism. Actual disclosures show progress, albeit existing gaps and missing data points. While efforts have been undertaken to promote effective disclosures, there remain substantial gaps. No evidence exists of the MSG’s assessment of comprehensiveness and reliability as well as plans to overcome gaps or weaknesses in reporting. However, an opportunity remains for the MSG to identify the full scope of gaps and develop clear steps to address the requirement. The International Secretariat takes cognizance of the previous and ongoing efforts by the RGD, GHEITI and other stakeholders to systematically disclose beneficial owners through an online register. |  |

**In conclusion, the MSG’s responses to this draft assessment report together with our (MSG) earlier responses to the list of questionnaires sent by the I.S as well as GNPC’s responses to the questions sent to you should constitute Ghana’s position on the issues raised. It is the view of the MSG that all the responses provided and the requirements of the 2016 Standard which is the basis of this 3rd validation should be duly considered by the EITI Board in arriving at the final decision. The MSG is ready to provide further clarifications and/or engage the I.S when necessary.**

1. [↑](#footnote-ref-1)
2. Minerals Commission (2018), ‘Ghana Mining Repository: Payments’. Available at: <https://ghana.revenuedev.org/payment>. Accessed on 19 March 2020. [↑](#footnote-ref-2)