

**Validation of Myanmar**  
Draft Validation Report  
CowaterSogema Independent Validator  
24<sup>th</sup> December 2018

## 1. EXECUTIVE SUMMARY

The government of Myanmar committed to implement the EITI in December 2012 by enacting Presidential Decree No. 99/2012. A permanent multi-stakeholder group (MSG) was appointed in December 2012. The country was accepted as an EITI Candidate in July 2014 at the EITI Board's meeting in Mexico. On 25 October 2016, the Board agreed that Myanmar's Validation under the 2016 EITI Standard would commence on 1 July 2018.

This draft validation report follows on from a quality assurance review of the International Secretariat's initial assessment. The Validator agrees with the initial assessment from the International Secretariat's data gathering and stakeholder consultations that Myanmar has currently not met all the requirements of the EITI Standard, with eight requirements assessed as meaningful progress and three requirements assessed as inadequate progress.

## 2. BACKGROUND

Myanmar is one of the fastest growing economies in Asia in terms of GDP growth, growing at 6.8% per annum in 2017 and 2018.<sup>1</sup>

Due to its diverse and untapped geological resources, mining is widely considered as one of the strengths of the country's economic development in the years to come. Mineral deposits in Myanmar include both base metals (gold, copper, silver, lead, zinc, tin, manganese and antimony) and industrial minerals (cement, clays, gypsum, fertilizer bases, dolomite, limestone, salt and barite).<sup>2</sup> Myanmar's mining sector is made up of both large and small-scale mining as well as significant informal mining.<sup>3</sup> From the metallic minerals being extracted in the country, copper makes up the largest export metal in the mining sector. Commodities such as gold, iron and steel, limestone and other industrial minerals are being produced for domestic consumption.<sup>4</sup>

Myanmar is also the primary commercial source of high-quality jade in the world, with 90% of the world's jade coming from Hpakant.<sup>5</sup> Myanmar's main gem-producing areas are geographically located along the North-Eastern mountainous regions. Jadeite, which is the most valuable variety of jade, is generally found in Kachin and Sagaing. Other gemstone deposits are in Shan, Mandalay, Kachin, Kayin and Tanintharyi.<sup>6</sup> It is estimated that 80%-90% of the world's rubies, including the most valuable ones, are found in Myanmar. In

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<sup>1</sup> ADB (2018), 'Myanmar: Economy', accessed [here](#) in October 2018.

<sup>2</sup> U.S. Geological Survey (2012), 'Minerals Yearbook, Burma', cited in the 2015-2016 MEITI Report.

<sup>3</sup> MEITI (March 2018), 'April 2015-March 2016 MEITI Report', accessed [here](#) in September 2018, pp.59, 63-64.

<sup>4</sup> MEITI (December 2015), 'April 2013-March 2014 MEITI Report', accessed [here](#) in September 2018, p.32.

<sup>5</sup> Emma Irwin (July 2016), Gemstone Sector Review.

<sup>6</sup> MEITI (March 2018), 'April 2015-March 2016 MEITI Report', accessed [here](#) in September 2018, p.60.

May 2015, a rare, untreated, 25.59 carat ‘pigeon’s blood’ Mogok ruby known as the ‘sunrise ruby’ sold for a world record USD 30.33 million at a Sotheby’s auction in Geneva, the equivalent of over USD 1m per carat.<sup>7</sup>

The mining and gems sector are however beset by governance challenges, thus limiting the potential of these sectors to contribute to the national economy. Lack of updated geographical information limits the country’s attractiveness to investments despite the wide recognition of its significant untapped gems and mineral resources. Various independent studies show discrepancies between official production and export data and other sources of information. According to the Gemstone Sector Review published in support of Myanmar EITI,<sup>8</sup> a Report published in July 2013 by the Harvard University Ash Centre/ Proximity Designs Report estimated the value of jade exported in 2011 to be USD 7.8bn, three times higher than official figures.<sup>9</sup> New Cross Roads Asia’s ‘Myanmar Business Update’ cites Chinese Customs data which shows that China imported USD 12.3bn of jade and gems in 2014.<sup>10</sup> International NGO Global Witness’s report on Myanmar’s jade sector in 2015 estimated the value of the production of jade in 2014 to be up to USD 30.9bn.<sup>11</sup> The absence of systematic means of monitoring production has fuelled speculations of revenue leakages and corruption. Myanmar’s gemstone sector scored 27/100 (“failing”) in the 2017 Resource Governance Index published by NRGi. The country ranked 83<sup>rd</sup> among 89 assessments made, mainly due to lack of transparency in the licensing process.<sup>12</sup>

With regard to Myanmar’s oil and gas sector, Myanmar’s first oil exports started in 1853, making the country one of the world’s oldest oil producers.<sup>13</sup> It is the second-largest producer of natural gas in South-East Asia, with consistent increases in production over the last decade.<sup>14</sup> In 2014-2015, Myanmar produced over 650bn cubic feet (bcf) of gas, rising to 700 bcf in 2015-2016. Myanmar earned over USD 4.3bn from natural gas exports to China and Thailand in 2015.<sup>15</sup>

The Government of Myanmar has worked to enhance oil and gas exploration and foreign direct investment (FDI). Myanmar’s oil and gas sector ranks as one of the top FDI attractions, preceding manufacturing, communication, power and transport. As of January 2017, USD 22.4bn of FDI (out of a total of USD 69bn) is attributed to the oil and gas sector.<sup>16</sup> Based on IHS Global Insights estimation, Myanmar possesses 18 trillion cubic feet (tcf) of natural gas reserves and 3.2bn barrels of oil reserves.<sup>17</sup>

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<sup>7</sup> Emma Irwin (July 2016), Gemstone Sector Review.

<sup>8</sup> Ibid.

<sup>9</sup> Ash Center for Democratic Governance and Innovation; John F Kennedy School of Government, Harvard University (July 2013), ‘Creating a Future: Using Natural Resources for New Federalism and Unity’, accessed [here](#) in September 2018.

<sup>10</sup> New Crossroads Asia (June 2015), ‘Myanmar Business Update’, accessed [here](#) in September 2018.

<sup>11</sup> Global Witness (October 2015), ‘Jade: Myanmar’s Big State Secret’, accessed [here](#) in September 2018.

<sup>12</sup> NRGi (2017), ‘Resource Governance Index 2017: Myanmar’, accessed [here](#) in September 2018.

<sup>13</sup> MEITI (March 2018), ‘April 2015-March 2016 MEITI Report’, accessed [here](#) in September 2018, p36.

<sup>14</sup> Ibid.

<sup>15</sup> U.S. Department of Commerce (July 2017), ‘Burma Country Commercial Guide’, accessed [here](#) in September 2018.

<sup>16</sup> Ibid.

<sup>17</sup> NRGi (June 2016), ‘Country Strategy Note: Myanmar’, accessed [here](#) in September 2018.

Myanmar had 67 oil and gas projects (including 29 onshore and 38 offshore) in 2016 that were in the exploration and production phases. The offshore natural gas projects Yadana (developed by a consortium of TOTAL, Chevron and PTTEP) and Yetagun (Petronas, PTTEP) are operated by the Thai state oil company PTT, producing a daily rate of 910m cubic feet (mcf) and 250 mcf respectively. The “Shwe Gas project” produces around 500 mcf and has sold natural gas to China National Petroleum Corporation. The offshore Zawtika (PTTEP) produces 360 mcf.<sup>18</sup>

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

### **1. Work Performed by the Independent Validator**

The Secretariat’s Initial Assessment was transmitted to CowaterSogema on 10 December, 2018. Our Validation Team undertook this phase of the Validation process through: (1) In-depth review and marking up of the EITI Assessment by each team member; (2) Detailed review and comments by the Multi-Stakeholder Specialist of Requirements 1 and the Civil Society Protocol; (3) Detailed review and comments by the Financial Specialist of Requirements 4, 5 and 6; (4) Consolidation of reviews and the production of this draft Validation Report, sent to the International Secretariat on the 24<sup>th</sup> December, 2018.

### **2. Comments on the Limitations of the Validation**

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

### **3. Comments on the International Secretariat’s Initial Assessment**

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

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

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<sup>18</sup> MEITI (March 2018), ‘April 2015-March 2016 MEITI Report’, accessed [here](#) in September 2018, p.36.

- Any other information of relevance to Validation.

Secondly, a country visit, which took place from 8-17 August 2018. All meetings took place in Naypidaw and Yangon. 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 International Secretariat met with its constituent parts (government, companies and civil society) either individually or in constituency groups, with appropriate protocols to ensure that stakeholders are able to freely express their views and that requests for confidentiality are respected.

Finally, the International Secretariat prepared a report making an initial assessment of progress against requirements in accordance with the Validation Guide. The initial assessment did not include an overall assessment of compliance.

## **2. GENERAL COMMENTS**

- **Progress in EITI Implementation**

This report concludes that while government engagement appears satisfactory, there are opportunities for improvement in terms of company constituency coordination and engagement. Industry could do more in engaging their wider constituency and in supporting the process beyond merely disclosing data. The strengths of the EITI process in Myanmar include well-functioning multi-stakeholder oversight of implementation, evident in the MSG's formulation of concrete recommendations to improve natural resource governance and EITI reporting, clear leadership provided by government, capacitated civil society organisations that engage in meaningful debates about the extractive sector, and companies that cooperate fully in disclosing information.

The recommendations from the three MEITI Reports published to date focus on substantial policy reforms such as improvements to the management of the gemstone sector and governance of state-owned enterprises (SOEs), as well as improvement of public finance management systems such as the adoption of tax identification numbers and the establishment of an online mining cadastre. There are also recommendations that capitalise on EITI requirements to improve the accountability of companies, such as the push for full contract disclosure and to establish a legal framework for beneficial ownership transparency.

- **Impact of EITI Implementation**

There is evidence of the MSG's discussion and follow-up on almost all recommendations, with varying degrees of success in implementation together with relevant ministries.

Nevertheless, there are weaknesses in Myanmar's EITI implementation. Weak government systems raise issues related to data quality, particularly in the gemstone sector where the quality of production and export data has been publicly questioned. The absence of a public register of oil, gas and mining also raises concerns about the comprehensiveness of publicly-accessible licensing information. Opacity in the operation and accounting of state-owned enterprises is another concern that cuts across several EITI Requirements related

to state participation and the management of revenues. While the government's policy related to contract disclosure is clearly described in the report, the lack of contract disclosure in practice has led to misunderstandings over the existence of key contractual terms, such as those related to mandatory social expenditures.








Without detracting from the quality of Myanmar's EITI implementation to date, there is clear demand for public information on other issues of national concern that are not currently covered by the existing scope of EITI reporting. For example, the EITI could provide more clarity on the operations of two military affiliated companies (UMEHL and MEC), which are recognized as having substantial interests in the extractives sector but have not been sufficiently engaged in EITI implementation to date. The EITI could also further explain the extent of sales transactions outside of the gems emporium in order to ensure comprehensive production and export data in the gemstone sector to prevent revenue leakages. Finally, there is also scope for the EITI to provide greater clarity on SOEs' financial management, including retained funds managed through their 'Other Accounts'.

## The Independent Validator's Assessment of Compliance

Figure 1 – Validator's assessment

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	Mandatory social expenditures (#6.1)		■			
	SOE quasi-fiscal expenditures (#6.2)		■			
	Economic contribution (#6.3)				■	
Outcomes and impact	Public debate (#7.1)				■	
	Data accessibility (#7.2)	■				
	Follow up on recommendations (#7.3)				■	
	Outcomes and impact of implementation (#7.4)				■	

*Legend to the assessment card*

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

### 3. DETAILED FINDINGS

The Validator agrees with the findings of the Initial Assessment and therefore requires no further clarification.

### 4. RECOMMENDATIONS

This validation report includes recommendations for specific improvements Myanmar may wish to consider implementing and a list of strategic corrective actions that could help Myanmar make even greater use of the EITI as an instrument to support reforms, as follows:

1. In accordance with Requirement 1.1, Myanmar is encouraged to ensure that more senior government officials with authority to take decisions participate in MSG meetings.
2. In accordance with Requirement 1.2.a, Myanmar must ensure that companies particularly the military-affiliated companies, as well as oil and gas companies outside of the MSG are fully, actively and effectively engaged in the EITI process. If there are barriers to the participation of these companies, the government must, in accordance with Requirement 1.2.b ensure that there is an enabling environment for company participation with regard to relevant laws, regulations, and administrative rules as well as actual practice in implementation of the EITI.
3. To strengthen implementation, the MSG is encouraged to closely and regularly monitor whether there is a continued enabling legal, regulatory and administrative environment for civil society to effectively engage in all aspects of EITI implementation, including by reviewing legal provisions considered by many CSOs to be obstacles to the constituency's broader freedom of expression and operation. The government could consider amending laws that impose restrictions to civic space, including the right to assembly and to free speech. It could further expand the opportunities for constructive dialogue with civil society to address perceptions of restraint to freedom of expression and fear of reprisal.
4. To strengthen implementation under Requirement 1.4, Myanmar is encouraged to agree and publish a clear procedure for selecting and changing MSG representatives for each constituency pursuant to Requirement 1.4.b.vi. Each constituency is also encouraged to ensure that the level of seniority of their representatives to MSG meetings is adequate to ensure swift decision-making. Oil and gas companies are encouraged to adopt a formal consultation and feedback mechanism within their constituency.
5. To strengthen implementation under Requirement 1.5, Myanmar may wish to identify a mechanism for canvassing input and feedback of the broader constituency groups in developing the work plan. The MSG could also consider including a discussion on how the work plan objectives are linked to national priorities, as well as identifying specific capacity constraints of the MSG members that may affect effective EITI implementation. Moreover, sources of funding for each activity could be included in future work plans.
6. To strengthen implementation under Requirement 2.1, the government is encouraged to make information about the legal and regulatory framework of the extractive sector, including reforms in



Myanmar available in public platforms such as government websites, with the same level of detail adopted when this information is discussed in MEITI Reports.

7. In accordance with Requirement 2.2.a.ii of the EITI Standard, Myanmar is required to disclose the technical and financial criteria used in awarding licenses in the mineral and gemstone sector. The MSG should also include a discussion of non-trivial deviations from the applicable legal and regulatory framework governing license awards pursuant to Requirement 2.2.a.iv. Lastly, the MSG should clarify the rules on transfer of licenses, particularly whether it is allowed in the mineral sector. The MSG is encouraged to systematically disclose all information required by Requirement 2.2 of the Standard, in accordance with the level of detail required by the Standard.
8. In accordance with Requirement 2.3 of the EITI Standard, Myanmar is required to publicly disclose the following information that were missing the EITI Report: the coordinates of several ME3 blocks, the dates of application, awards and duration of all oil and gas and mining licenses, and the commodities for each oil and gas block. To strengthen implementation, Myanmar should ensure that license information as required under Requirement 2.3 of the Standard are disclosed through a public register as part of the government's routine and systematic disclosure of information.
9. To strengthen implementation under Requirement 2.4, Myanmar may wish to consider fully disclosing all extractive contracts as recommended in their past three EITI Reports. It is also recommended that confidentiality clauses in PSCs and mining contracts be reconsidered.
10. In accordance with Requirement 2.6, Myanmar is required to disclose the details regarding the terms attached to the equity stake of all SOEs in extractive projects. It should also disclose the SOE's responsibility to cover expenses at various phases of the project cycle, including the details of payment of taxes in behalf of joint venture partners and miscellaneous revenues in the case of oil and gas. MOPF should also disclose the details of the loan guarantees it provided to SOEs as well as prevailing rules on retained earnings. Finally, Myanmar is required to clarify whether UMEHL and MEC are government- owned corporations. If they are, the MSG is required to engage them in the EITI process in accordance with Requirement 1.2, include them in the scope of the EITI reporting process and assess the comprehensiveness of its interests in extractive projects as disclosed in the MEITI Report. To strengthen implementation, the MSG is encouraged to consider examining the alleged miscellaneous revenues of MOGE.
11. To strengthen implementation under Requirement 3.1, the government might wish to regularly and systematically disclose the details of Myanmar's extractive activities in the websites of relevant government agencies such as MONREC and MEE.
12. In accordance with Requirement 3.2 of the EITI Standard, Myanmar is required to disclose production volume and value by commodity for jade and gems. To strengthen implementation, the MSG should consider including export data from transactions outside of the gems emporium in the scope of the EITI Report. Government is encouraged to regularly disclose this information through government platforms.
13. In accordance with Requirement 3.3 of the EITI Standard, Myanmar should disclose comprehensive data for export volumes and value for gems and jade, disaggregated by commodity. To strengthen implementation, the MSG should consider including export data from transactions outside of the gems emporium in the scope of the EITI Report. Government is encouraged to regularly disclose this information through government platforms.

14. To strengthen implementation under Requirement 4.1, the government is encouraged to regularly and systematically disclose revenue data through government platforms. The MSG should also consider clearly documenting the considerations for determining rationale and the options considered for the materiality thresholds for revenues and companies.
15. In accordance with Requirement 4.2, Myanmar should categorically assess the materiality of in-kind payments for the three sectors. It should also be clarified in the next report whether there are in-kind payments for oil and gas. The sales of the state's share for oil and gas should be disclosed including the volumes sold and revenues received. For mining and gems, in-kind payments should be disaggregated by paying company to the SOE, and by buying company in the case of sales of the government's share. To strengthen implementation, the government is encouraged to systematically disclose data on on-kind revenues through government platforms.
16. In accordance with Requirement 4.5, government should ensure that all transfers from government to SOEs are comprehensively and publicly disclosed in government platforms. Myanmar should review the comprehensiveness of information disclosed regarding SOE transactions in view of what is revealed from other sources of information, including whether there are material transfers made between the SOE's other accounts to other entities.
17. To strengthen implementation under Requirement 4.7, Myanmar is encouraged to adopt project-level reporting for its next report. MEITI might wish to consider the extent to which it can make progress in implementing project-level reporting ahead of the deadline of EITI implementing countries to report on a per project basis by 31 December 2020. The MSG can start by doing a scoping of revenues streams that are levied on licenses and can be disclosed per project.
18. To strengthen implementation under Requirement 4.8, Myanmar is encouraged to regularly and systematically disclose up-to date data in government platforms and require companies to do the same.
19. To strengthen implementation under Requirement 4.9, the government might want to consider publishing the audited financial statements of government entities, including SOEs to provide additional assurance regarding the reliability of government data. Considering the IA's observation that there remains room for significant improvement to improve the level of assurance generally on SOE and company figures, the MSG is encouraged to revisit their agreed upon data quality assurance mechanisms and consider other options that would remove enhance data quality.
20. In accordance with Requirement 5.1, Myanmar is required to provide further explanation regarding the extractive revenues that are not recorded in the national budget. The MSG should consider expanding the scope of EITI reporting to further examine the details of these Other Accounts, such as tracing the exact extractive sector revenues that go to these accounts and how these revenues are spent, as well as explaining the rules in maintaining these accounts.
21. In accordance with Requirement 6.1 of the EITI Standard, companies are required to disclose social expenditures when mandated by law or contract. Where such benefits are provided in-kind, it is required that companies disclose the nature and deemed value of the in-kind transaction. The beneficiaries and their functions should also be disclosed. Where possible, these payments should be reconciled. The companies are further encouraged to disclose discretionary social expenditures where material. The MSG is encouraged to develop a reporting process with a view to achieving a level of transparency commensurate with the disclosure of other payments.

22. In accordance with Requirement 6.2, Myanmar is required to include disclosures from SOE(s) on their quasi-fiscal expenditures including SOE(s) payments for social services, public infrastructure, fuel subsidies and national debt servicing, etc. outside of the national budgetary process. The multi-stakeholder group is required to develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams, and should include SOE subsidiaries and joint ventures.
23. To strengthen implementation under Requirement 6.3, the government is encouraged to regularly and systematically disclose the extractive sector's contribution to the economy, including official employment data, through government platforms.
24. To strengthen implementation under Requirement 7.1, the MSG is encouraged to fully implement their communication strategy and improve the comprehensibility of EITI reports through publication of less technical summary reports. It could also increase the use of EITI data by extending its regular outreach to policy makers, parliament, and other individuals in key positions of influence in Myanmar.
25. To strengthen implementation under Requirement 7.2, Myanmar is encouraged to do an analysis of the report aimed at improving public understanding of the EITI data and information. Myanmar might also wish to tag EITI Reports and data files so as to enable EITI data to be compared with other publicly available data.
26. To strengthen implementation under Requirement 7.3, the MSG is encouraged to adopt a mechanism for following up and monitoring the progress of implementing the recommendations. It might also want to consider doing a stakeholder mapping to identify the key people whose support they need to secure to ensure political commitment especially for the long-term recommendations that would require political backing. The MSG is also encouraged to identify the technical and financial resources needed to implement these recommendations.
27. To strengthen implementation under Requirement 7.4, the MSG is encouraged to evaluate EITI impact in Myanmar and assess how such impact could be increased both at the national and subnational level through concrete measures. The MSG could also consider investigating other issues and areas where it could potentially create impact.

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