

Validation of Myanmar
Response to MSG Feedback
CowaterSogema Independent Validator
18th February 2019

The Validator wishes to thank the MSG for their helpful feedback. What follows is the Validator's response to the feedback from the MSG.

Requirement 1.1: Government engagement

The Validator notes the comments from the MSG. The assessment remains unchanged. Increased seniority of government participation is already a recommendation in the Validation report (point 4.1)

Requirement 1.2: Industry engagement

The Validator notes the comments from the MSG. Stakeholder consultations showed that Oil and Gas companies outside the MSG were not aware of processes relating to approval of work plans, Annual Progress Reports, and some were not aware of how to send their comments on the EITI Report. While all oil and gas companies partner with MOGE through joint ventures, this cannot be taken to mean there is 100% participation. The Validator agrees with the MSG's note that the government needs to do more to ensure private sector stakeholders that are not members of the MSG fully engage with the EITI process and emphasise the need to secure the engagement of military affiliated companies, which closely matches recommendation 4.2 in the Validation report. The assessment of Meaningful Progress remains unchanged.

Requirement 1.3: Civil Society engagement

The Validator notes the comments from the MSG, including that the MSG does not recommend a change in assessment. The issue of legal restrictions on civil society activity, particularly at sub-national level, was noted in the initial assessment and is reflection in recommendation 4.3 in the Validation report. The assessment of Satisfactory remains unchanged.

Requirement 1.4: MSG Governance

The Validator notes the comments from the MSG and the agreement with the recommendation in the Validation report. The issue of including hydropower in the EITI report arose *after* validation had begun. The Validator notes that in the past, MATA's recommendations have been adopted by the MSG, such as the inclusion of forestry in EITI reporting, as well as the reconciliation of production data. The assessment remains unchanged.

Requirement 1.5: Work plan

The Validator notes the comments and agreement with the assessment from the MSG. It is a welcome development that a workshop will take place to reflect on the work plan and include the identification of capacity constraints as well as linking national priorities to work plan objectives.

Requirement 2.1: Legal Framework

The Validator notes the comments from the MSG – that the mining sector rules and regulations are already available online, and that substantial reforms of existing laws are required in Myanmar to ensure compliance with EITI. The assessment remains unchanged.

Requirement 2.2: Licence Allocations

The Validator notes the comments from the MSG regarding recent licence allocations and acknowledges that the MSG has worked hard to seek clarity on licensing process. The Validator also notes that M-7 and AD-10 blocks were not signed until 2015. The Validator notes the information regarding rules and regulations for the mining sector, and also notes that this is a recent development, so not applicable to the period being validated. The assessment of Meaningful Progress remains unchanged.

Requirement 2.3: Licence Register

The Validator notes the comments from the MSG regarding recent developments in providing additional data on oil and gas licences on the MEITI website, as well as the mining licence information also available online. However, these updates took place after validation commenced, in which case, the assessment of Meaningful Progress remains unchanged.

Requirement 2.4: Contract Disclosure

The Validator notes the comments from the MSG regarding the development of a financial model and the availability of model contracts online, as well as developments regarding the publication of mid-scale gems exploration and production contracts. The assessment remains unchanged.

Requirement 2.5: Beneficial Ownership Disclosure

The Validator notes the comments from the MSG regarding Beneficial Ownership Disclosure and the establishment of Corruption Prevention Units in each union-level ministry.

Requirement 2.6: State Participation

The Validator notes the comments from the MSG regarding the Treasury clarification that MOGE's budget is wholly from state contributions; that MOGE will disclose costs expended and recovered as well as cash calls in subsequent EITI reports and that under the 2016 Public Debt Law, all external debt receives a sovereign guarantee and is the responsibility of the MOPF.

However, as the initial assessment noted, the terms associated with the interests of MOGE, ME 1, 2, and 3 and MGE are not sufficiently described in the report. Furthermore, 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. Finally, Myanmar is required to clarify whether UMEHL and MEC are government- owned corporations. The assessment of Meaningful Progress remains unchanged.

Requirement 3.2: Production Data

The Validator notes the comments from the MSG explaining why there was a lack of disaggregated data in the gemstone sector (a failure to understand the IA's data templates). The assessment of Meaningful Progress remains unchanged.

Requirement 3.3: Export Data

The Validator notes the comments from the MSG, including that the MGE is committed to disclosing disaggregated sales and export data going forwards. The assessment of Meaningful Progress remains unchanged.

Requirement 4.2: In-kind revenues

The Validator notes the response from MSG regarding conflicting explanations between stakeholders and findings of EITI report and requirement for disaggregation of in-kind payments.

As per requirement 4.2, the data is required to be disaggregated by individual company and commensurate levels of revenue and payments streams. Reporting is also encouraged that disclosure be broken down by type of product, price, market and sales volume.

Reconciliation of volumes sold and revenues received by buying companies is also encouraged.

MSG response notes that from the forthcoming reports the data will be disaggregated by company for in-kind payments as it is not being done at present.

Also, there is no categorical assessment of materiality of in-kind payments.

Considering these and other points mentioned in validation report, the assessment of Meaningful Progress is retained.

Requirement 4.5: SOE transactions

The Validator notes the correction made by MSG regarding public disclosure of SOE related budget transfers. The MSG's response also states that data relating to payments to MPE will be disclosed and reconciled from the forthcoming reports.

It also states that information disclosure relating to SOE activities, including state participation and expenditure are incomplete and ambiguous.

As noted in Validation report that while significant aspects of requirement 4.5 have been addressed and broader objectives are being met, it cannot be concluded that all aspects have been satisfactorily addressed.

Thus, the assessment Meaningful Progress is retained.

Requirement 5.1: Distribution of Revenue

The response of MSG is acknowledged wherein it expects that disclosure of other accounts will be improved in future EITI reports. The clarification from SOE Budget department is also noted that revenues and expenses are included in citizen's budget and publicly disseminated.

While some of points of International Secretariat are not agreed to by MSG, it notes that there is some disclosure of OA but more detail is needed.

An important requirement under 5.1 is that implementing countries should indicate which extractive revenues, whether cash or in kind, are recorded in the national budget which is not complied fully.

In view of the above points assessment may be retained at Inadequate Progress.

Requirement 6.1: Social expenditures

The response from MSG with the request to upgrade the assessment from inadequate to meaningful progress is acknowledged. The response included some points in support of upgradation of the assessment.

The requirements under this provision for validator are to document definition of materiality with regards to mandatory social expenditure, disclose and reconcile these, if material.

As noted in the initial assessment, significant aspects of the requirements have not been implemented nor the broader objectives of the requirements have been fulfilled, so the original assessment of Inadequate Progress is maintained.

Requirement 6.2: SOE Quasi-fiscal expenditures

The MSG has requested to upgrade the assessment from inadequate to meaningful progress and pointed out some errors in the initial validation document while mentioning that MOGE was unaware of the requirements and corrective action will be taken in forthcoming EITI reports.

Considering response of MSG and other facts already mentioned in the initial assessment, the original assessment of Inadequate Progress is maintained.

Requirement 7.1: Public Debate

The Validator notes the comments from MATA that EITI reports be translated in Burmese – this has been added as a recommendation in the Validation report. The assessment remains unchanged.

Requirement 7.3: Follow-up on Recommendations

The Validator notes the comments from the MSG regarding the periodic consultation workshops and seeking reform plans from various government agencies. The assessment remains unchanged.

Requirement 7.4: Outcome and Impact of Implementation

The Validator notes the comments from the MSG regarding the establishment of Sub-National Units and the development of sub-national EITI in Myanmar. The assessment remains unchanged.