

Validation of Guatemala
Draft Validation Report
Cowater Sogema Independent Validator
16th September 2019

1. EXECUTIVE SUMMARY

The Government of Guatemala committed to implement the EITI on 19 March 2010 by a letter sent by Vice-President Rafael Espada to the Chair of the EITI Peter Eigen. The country was accepted as an EITI Candidate on 1 March 2011¹ at the 15th EITI Board meeting in Paris.

On 25 October 2016, the Board agreed that Guatemala's Validation under the 2016 EITI Standard would commence on 1 April 2018. 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 and applied the Validation Guide in assessing Guatemala's progress with the EITI Standard. While the assessment has not yet been reviewed by the MSG, the Secretariat's preliminary assessment is that 19 of the requirements of the EITI Standard have not been fully addressed in this Validation. Eight of these are unmet with inadequate progress and eleven are unmet with meaningful progress. The recommendations and suggested corrective actions identified through this process relate to the engagement of government and CSOs, the functioning of the MSG and some other issues on disclosures and impact of the EITI.

2. BACKGROUND

The government faces paralysis on all expansions plans for the extractive sector. Local communities and regional stakeholders fiercely oppose mining developments. There is a de-facto moratorium on new oil, gas and mining licenses resulting from the 2017's Constitutional court ruling on free-and-prior-informed-consultations as expected in the OIT 169 framework. Some pilot consultations with indigenous communities conducted by the Ministry of Labour related to hydroelectric projects have concluded with unclear outcomes. The fiscal contribution of the extractive industries has fallen from a peak in 2011 of USD 230m to USD 93m in 2015 (the last year reported). The largest mining project, Goldcorp's gold mine Marlin, is closed and oil exploration and development plans in the Petén region are also delayed. All in all, the extractives industries are in decline and the prospects for a recovery are slim in the short run.

Guatemala's extractive sector represented 2% of GDP for 2014 and 2015, according to the latest EITI Report. The main commodity is silver, which accounts for more than half of the value of mining production in 2015.

1. Work Performed by the Independent Validator

In line with the Validation Guide, the International Secretariat carried out the first phase of validation—initial data collection, stakeholder consultations, and preparation of their initial evaluation of progress against the EITI requirements (the "Initial Assessment"). Cowater Sogema was appointed as the independent Validator to evaluate whether the Secretariat's work was carried out in accordance with the Validation Guide. Cowater Sogema's principal responsibilities as Validator are to review and amend the

¹ See: https://eiti.org/sites/default/files/migrated_files/Papers_for_the_15th_EITI_Board_Meeting.pdf

Initial Assessment, as needed, and to summarize its independent review in this Validation Report for submission to the Board through the Validation Committee.

The Secretariat's Initial Assessment was transmitted to Cowater Sogema on 31st July, 2019. The 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, which was sent to the International Secretariat on the 16th September, 2019.

2. Comments on the Limitations of the Validation

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

3. Comments on the International Secretariat's Initial Assessment

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

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

A country visit took place on 21-24 August 2018. The secretariat met with the MSG and its members, the IA and other key stakeholders, including stakeholder groups that are represented on, but not directly participating in, the MSG. In addition to meeting with the MSG as a group, the International Secretariat met with its constituent parts (government, companies and CSOs) either individually or in constituency groups, applying appropriate protocols to ensure that stakeholders can freely express their views and that requests for confidentiality were respected.

2. GENERAL COMMENTS

- **Progress in EITI Implementation**

In recent years, EITI implementation in Guatemala has suffered from weak stakeholder engagement, gaps in reporting and lack of impact. The lack of engagement and progress relates to the wider context of the extractive industry in the country. Guatemala's extractive sector has declined significantly in recent years. Besides the closure of the largest mine (Marlin, owned by Goldcorp) and the suspension of another large mine (Minera San Rafael), there is a de facto moratorium on new oil, gas and mining licenses resulting from the 2017 Constitutional court ruling on Free Prior and Informed Consent (FPIC), as expected in the ILO 169 framework. Social opposition to mining activity is strong and prospects for a recovery of the sector are slim.

Stakeholders criticise the government, especially the Ministry of Energy and Mines, for lack of commitment and a tendency to dominate discussions in the MSG. The government could not get approval for its 2018 budget and is struggling to fund the EITI process. The MSG meets regularly but the constituencies lack clear nominations procedures and communications mechanisms.

- **Impact of EITI Implementation**

The 2014-2015 EITI Report includes inconsistencies and gaps on subnational payments and transfers, comprehensiveness and data reliability, among others. The report is not comprehensible and is not contributing to public debate.








Re-energising EITI implementation requires that the Ministry of Energy and Mines demonstrates commitment and considers stakeholders as partners in the process, the quality of EITI reporting is improved and the process is linked to public debate and on-going challenges in the extractive sector.

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)		Inadequate			
	Industry engagement (#1.2)			Meaningful		
	Civil society engagement (#1.3)			Meaningful		
	MSG governance (#1.4)		Inadequate			
	Work plan (#1.5)			Meaningful		
Licenses and contracts	Legal framework (#2.1)				Satisfactory	
	License allocations (#2.2)		Inadequate			
	License register (#2.3)			Meaningful		
	Policy on contract disclosure (#2.4)			Meaningful		
	Beneficial ownership (#2.5)					
	State participation (#2.6)					
Monitoring production	Exploration data (#3.1)				Satisfactory	
	Production data (#3.2)				Satisfactory	
	Export data (#3.3)			Meaningful		
Revenue collection	Comprehensiveness (#4.1)		Inadequate			
	In-kind revenues (#4.2)					
	Barter agreements (#4.3)					
	Transportation revenues (#4.4)					
	SOE transactions (#4.5)					
	Direct subnational payments (#4.6)		Inadequate			
	Disaggregation (#4.7)			Meaningful		
	Data timeliness (#4.8)				Satisfactory	
	Data quality (#4.9)			Meaningful		
Revenue allocation	Distribution of revenues (#5.1)				Satisfactory	
	Subnational transfers (#5.2)			Meaningful		
	Revenue management and expenditures (#5.3)					
Socio-economic contribution	Mandatory social expenditures (#6.1.)			Meaningful		
	SOE quasi-fiscal expenditures (#6.2)					
	Economic contribution (#6.3)			Meaningful		
Outcomes and impact	Public debate (#7.1)		Inadequate			
	Data accessibility (#7.2)					
	Follow up on recommendations (#7.3)		Inadequate			
	Outcomes and impact of implementation (#7.4)		Inadequate			

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

In accordance with **Requirement 1.1**, the government, especially the Ministry of Energy and Mines is required to demonstrate commitment to EITI implementation by ensuring that the MSG is supported by adequate human and financial resources and key documents and data are produced in a timely manner. The Ministry of Energy and Mines is encouraged to reiterate high-level commitment to EITI implementation and utilise the EITI to promote national objectives related to extractive sector governance. Reporting government agencies should comply with data assurances agreed by the MSG. The MSG is encouraged to engage with municipalities to ensure that they participate fully in EITI reporting.

In accordance with **Requirement 1.2**, industry must be actively and effectively engaged in the EITI process. Thus, the Chamber of the extractive sector should be proactive and encourage companies to participate and comprehensively disclose their payments to the government, even prior to receiving any official request.

In accordance with **Requirement 1.3**, the civil society constituency should fully and actively engage in overseeing EITI implementation and contributing to public debate related to extractive sector governance. The government should ensure that it treats civil society as an equal partner in the EITI process in both regulatory and practical terms.

In accordance with **Requirement 1.4**, the MSG should update its internal governance rules to cover all provisions of Requirement 1.4.b and publish procedures for nominating and changing MSG representatives, including the duration of mandates. Each constituency is required to select representatives to the MSG through an inclusive, transparent and well-documented process. The government is required to ensure that all constituency can effectively table issues for discussion.

In accordance with **Requirement 1.5**, the MSG must elaborate a new **work plan** including its sections (a) to (g). This new work plan must set EITI Implementation objectives and ensure that they reflect national priorities for Guatemala. In elaborating this work plan, the MSG may wish to consider applying for an adapted implementation in accordance with Requirement 8.1. The Board encourages the MSG in Guatemala to evaluate a recalibration of the scope of its EITI process for the future, to ensure it is useful and aligned with the concerns and national priorities of the country. The International Secretariat should offer and provide support to this end.

In accordance with **Requirement 2.2**, Guatemala is required to (1) disclose oil and mining licenses awarded or transferred in the year(s) under review, (2) describe the process of transferring a license, (3) highlight any non-trivial deviations in practice (4) clarify the technical and financial criteria used for assessing allocations and transfers of both oil and gas contracts and for mining licenses, and (5) disclose the list of applicants and bid criteria for licenses awarded through a bidding process. To strengthen implementation of requirement 2.2, the MSG may also wish to comment on the efficiency of the current contract allocation and transfer system as a means of clarifying procedures and curbing non-trivial deviations.

In accordance with **Requirement 2.3**, Guatemala should also ensure that the license holder names, dates of application, award and expiry, commodity(ies) covered and coordinates for all mining and petroleum

licenses held by material companies are publicly available. Where this information is already publicly available, it is sufficient to include a reference or link in the EITI Report. Where such registers or cadastres do not exist or are incomplete, the EITI Report should disclose any gaps in the publicly available information and document efforts to strengthen these systems.

To strengthen implementation of **Requirement 2.4**, Guatemala is encouraged to clearly document its policy on contract transparency and make voluntary royalty agreements publicly available.

In accordance with **Requirement 2.5**, the MSG is encouraged to start working more proactively regarding beneficial ownership, which will be mandatory as of 1 January 2020. It is suggested to start preparing a publicly available register of the beneficial owners of the entities operating and investing in extractive assets. MSG may wish to consider piloting beneficial ownership reporting in the forthcoming EITI Report. Thus, the MSG should start creating awareness on this issue among participating companies and other stakeholders.

In accordance with **Requirement 3.3**, the MSG is required to provide complete data on exports; specifically, on mining export volumes. Additionally, it is suggested to disclose how volumes and values documented in the EITI Report have been calculated.

In accordance with **Requirement 4.1**, in advance of the reporting process the MSG is required to agree which payments and revenues are material and therefore must be disclosed, including appropriate materiality definitions and thresholds. A description of each revenue stream, related materiality definitions and thresholds should be disclosed. In establishing materiality definitions and thresholds, the MSG should consider the size of the revenue streams relative to total revenues. The MSG should document the options considered and the rationale for establishing the definitions and thresholds. The MSG is also required to clearly define material companies based on the materiality decisions taken. The EITI Report should clearly document non-reporting companies and assess whether their omission materially affects the comprehensiveness of reconciliation.

The government is required to ensure that all relevant government entities participate in EITI reporting and that the total figure of all government revenues is comprehensive. If there are significant practical barriers preventing full government disclosure, these should be documented in the EITI Report.

In future reporting exercises it is recommended that the MSG affirms, justifies and explicitly agrees that **Requirements 4.2. to 4.5** are not relevant or applicable.

In accordance with **Requirement 4.6**, the MSG is required to map and clearly define direct payments from extractive companies to subnational government entities. The MSG should discuss whether it considers the payments material and clearly document the decision and its rationale. If material, the MSG should ensure that the payments are comprehensively reconciled.

In accordance with **Requirement 4.9**, the MSG is required to ensure that the EITI Report includes an assessment of whether payments and revenues are subject to credible, independent audits. The MSG is required to agree data quality assurances to be requested from reporting entities. The EITI Report should document whether reporting entities complied with the agreed assurances. The MSG is required to ensure that the Independent Administrator submits complete summary data based on the current template provided by the International Secretariat

In accordance with **Requirement 5.2**, the MSG must fully disclose revenues generated by the extractive industries which are transferred between national and subnational government entities. A more complete and understandable explanation of income's distribution should be described, including the legal and real role of FONPETROL and the flows between this fund, the CODEDES and the COCODES. Also, the MSG must

disclose the applicable revenue sharing formula, the amounts calculated according to such formula for transfers, and identify any discrepancy between the amounts calculated and the amounts transferred. Finally, if possible, these transfers should be reconciled.

In accordance with **Requirement 6.1**, where material social expenditures by companies are mandatory, these must be disclosed and disaggregated by type of contribution and beneficiary and reconciled where possible.

In accordance with **Requirement 6.3**, the EITI Report must disclose complete information about the contribution of the extractive industries to the economy. This information must include the employment in the extractive industries as a percentage of total employment (Requirement 6.3 (d)) and an estimate of informal sector activity (Requirement 6.3 (a)).

In accordance with **Requirement 7.1**, Guatemala should ensure that EITI Reports are consistent, comprehensible, actively promoted, publicly accessible and contribute to public debate. The MSG should continue to seek to carry out outreach events to spread awareness of and facilitate dialogue about the EITI Report across the country. The MSG is required to agree an open data policy and make EITI Reports available in open data format.

In accordance with **Requirement 7.3**, the MSG is required to take steps to act upon lessons learnt; to identify, investigate and address the causes of any discrepancies with a view to strengthen the impact of EITI implementation on natural resource governance. In particular the MSG should consider improving its procedures to analyse and process recommendations resulting from EITI reporting.

In accordance with **Requirement 7.4**, outcomes and impact of EITI implementation need to be reviewed; elaborating and approving the APRs for each year before each 1 July. The APR for 2017 must be prepared and approved, involving stakeholders in its elaboration. CSOs and extractive industries' involved organisations should contribute providing feedback on the EITI process and have their views reflected in the APR.
