

VALIDATION
of the
EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE
IN KAZAKHSTAN

Final Report
to the
National Stakeholder Council
prepared by
Hart Nurse Ltd

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ABBREVIATIONS

The following is a key to abbreviations appearing in this report.

CSO	Civil Society Organisation
EITI	Extractive industries Transparency Initiative
EITI Board	The international Board of the EITI
EITI Secretariat	The secretariat of the Kazakhstan EITI
IOC	International Oil and Gas Company
KMG	KazMunayGaz
MEMR	Ministry of Energy and Mineral Resources of the Republic of Kazakhstan
MINT	Ministry of Industry and New Technologies
MOG	Ministry of Oil and Gas
MOU	Memorandum of Understanding
NGO	Non-governmental organisation
NSC	National Stakeholder Council
PWYP	Publish What You Pay
TCO	Tengizchevroil LLP
TOR	Terms of reference
UNDP	United Nations Development Program
USAID	United States Agency for International Development

VALIDATION REPORT

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1 INTRODUCTION

1.1 Foreword

This report presents the findings of the 2009 Validation of the Extractive Industries Transparency Initiative (EITI) in the Republic of Kazakhstan.

The report is structured in the following sections:

- This section 1 introduces the report and provides summary background information on EITI validation; Kazakhstan's natural resource sectors; and an overview of the EITI. It also summarises the approach and methods of the validation exercise.
- Section 2 describes progress made against the implementation work plan.
- Section 3 assesses progress against each of the EITI Validation Indicators
- Section 4 presents the overall assessment of Kazakhstan's EITI status.
- Section 5 presents our recommendations.

The report is supported by annexes containing:

- List of Respondents
- the Company Self-Assessment Forms

1.2 The EITI Validation Process

Validation is the mechanism the EITI Board uses to determine a country's Candidate or Compliant status. The validation process comprises:

- Appointment of the validator
- Preparation for field work
- Validation field work, leading to a report
- Consideration of the validation report by the National Stakeholders Council (NSC),
- Presentation of the validator's report to the Validation Committee of the International Secretariat
- Finalization of the report addressing NSC and Validation Committee comments
- A decision by the EITI board as to whether Compliant status has been achieved.

The main objective of the validation field work is to provide an independent evidence-based assessment of the progress a country has made in meeting the EITI validation indicators (see EITI Validation Guide), and to make recommendations that may help improve or sustain EITI in future.

The decision as to whether a country is Compliant rests with the EITI Board.

Kazakhstan has previously been assessed by the EITI board as a Candidate country, prior to implementation of the Validation Criteria. As such, this validation includes a review of all indicators.

1.3 Validation Approach And Activities

The validation team comprised Chris Nurse and Dr Dmitry Pozhidaev with support from Dr Gulzhan Alimbekova of CIOM, Almaty.

The validation approach and methodology was founded on the EITI Validation Guide (April 2009). The validation employed a combination of research methods, namely:

- Document review (desk research)
- Key informant interviews
- Focus groups
- Questionnaires
- Company self-assessments

Having regard to the size of the country and possible limitations on civil society organisations to travel, we made available a web-based questionnaire to allow anyone to comment on the EITI process in Kazakhstan and to raise issues they regarded as important. The availability of this facility was made known through civil society associations. We treated this as a safety net in case our focus groups and interviews were not fully inclusive.

The people with whom we met and discussed the progress of the initiative are listed in Annex 1 of this report.

The validation field work took place from 23rd November to 2nd December 2009 and follow-up work with companies continued until 10th December 2009. To reconcile the NSC's timetable constraints with the validation work programme, certain activities took place in a different order from our proposal and plan, causing some inefficiency but not impacting the outcome.

After we presented the draft validation report to the NSC, a protracted period of debate ensued. The NSC has provided information about their activities and achievements that post date the validation field work and requested that these be noted in this report. We have done so, either by footnote or by supplementary explanation in the text. We have not, in most cases, received evidence of these matters nor sought to verify the additional information.

1.4 The Extractive Industries In Kazakhstan

Kazakhstan is a resource-rich country. According to the Ministry of Finance, in 2008 an estimated 54.1 % of government income was derived from the extractive sector (51.8% from oil and gas, and 2.3% from mining).

Chart 1.4 A

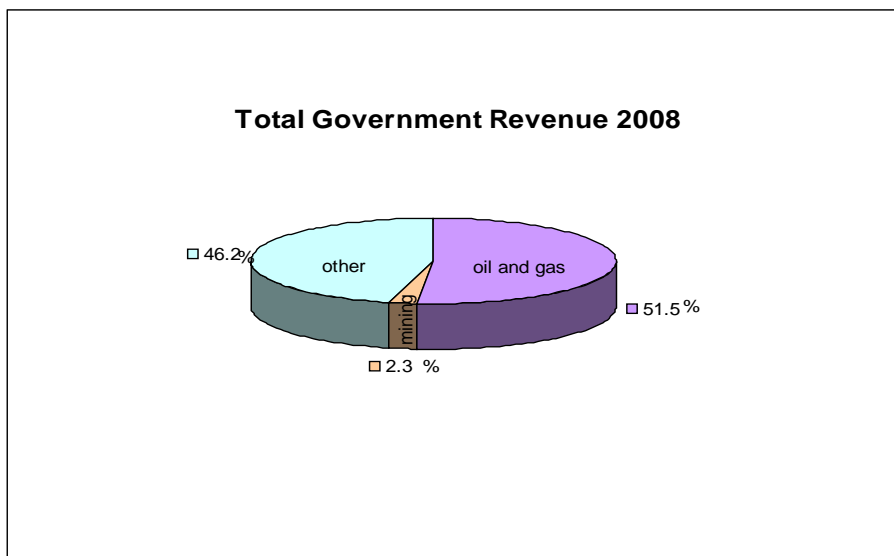
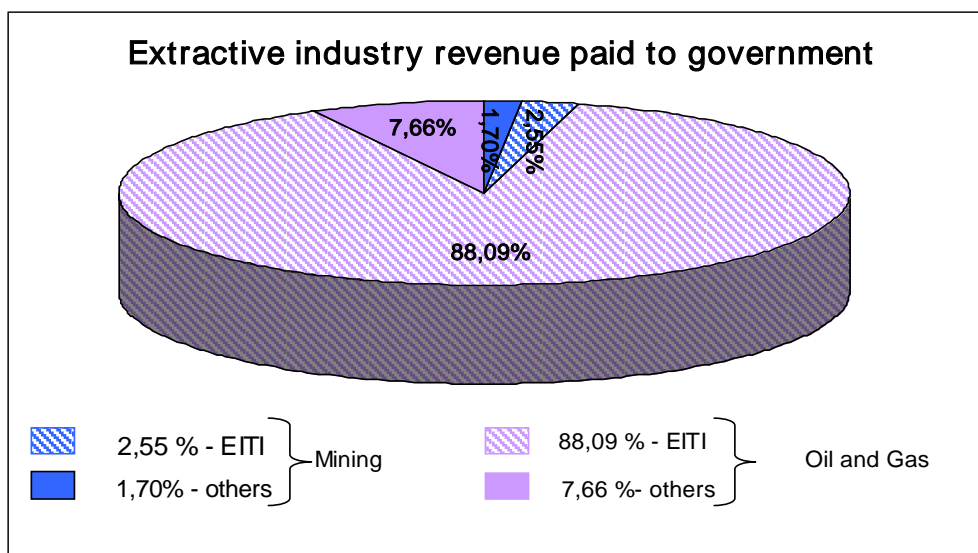


Chart 1.4 B



(charts provided by the NSC)

1.4.1 OIL AND GAS

Oil accounts for about 30% of the total production of energy resources in Kazakhstan and gas accounts for approximately 13-15% of the total. The confirmed strategic reserves include 169 carbohydrate fields, including 87 oilfields, 17 gas fields, and 30 oil and gas fields. Oil and gas was discovered in the Caspian

basin in the mid-20th century but major exploitation commenced only in 1993, with the establishment of Tengizchevroil. Significant growth of production occurred following major investment commencing 1993. According to the Ministry of Energy and Mineral Resources, investments in the oil and gas industry from all sources in 1996-2002 amounted to US\$ 17,879 million. In 2004, Kazakhstan produced about 60 million tons of oil with gas condensate, over 50 million tons of oil and 11.5 billion of gas. According to the Ministry of Finance, budget revenues from the gas and oil industry in 2004 equalled US\$ 2,926 million, or 70.6% more than in 2003.¹ Revenues from export of oil and gas accounted for 56.7% of all export revenues in 2004 (US\$ 11.4 billion) and for 62.6% in 2005 (US\$ 17.4 billion).²

The Tengiz field, with its nearby Korolev field, is now recognised as one of the largest fields, in terms of in situ resource, in the world.

The Karachaganak field, near Uralsk, whilst producing quantities of condensate and gas, continues under development. Other fields include Aktobe and North Buzachi.

The magnitude of investment required to develop the area has meant that the oil and gas sector is dominated by international oil companies, Tengizchevroil accounting for one third of the total oil production in Kazakhstan.³ The government, through KazMunayGaz, has an equity interest.

Oil and gas development takes place under two main fiscal regimes: a tax and royalty system and a production sharing system. Taxes and royalties are paid in cash. Government equity investment can yield dividend income. We were informed by the Chair of the Ministry of Finance Tax Committee that, under the production sharing arrangements, the operators / taxpayers sell the government's share of production and remit the proceeds to the account of the government.

1.4.2 MINING

Kazakhstan has long been known for its coal production, centered in the north east of the country. Deposits of iron ore, manganese, chrome ore, nickel, cobalt, copper, molybdenum, lead, zinc, bauxite, gold, uranium are being exploited, principally in the east but also in the north west. According to the World Bank, the mining sector accounts for over 30% of total export earnings, 10% of GDP, and 19% of total industrial employment.⁴

Some 233 mining enterprises produce a wide variety of mineral commodities, whose total value in 1999 was evaluated by the National Statistical Agency as the equivalent of approximately US\$ 2.7 billion.⁵ The economies of certain oblasts – Karaganda, East Kazakhstan, Pavlodar and Kostanai – are dominated by mining and metallurgy. Mineral development has taken place under a licensing system entailing profits tax and royalties, together with other minor taxes. The Government owns certain companies but does

² International Institute for Modern Policy (2006) *Analysis of the Dynamics of Revenues to the Republican Budget and the National Fund of the Republic of Kazakhstan*. <http://iimp.kz>.

³ *Oil and Gas Sector of Kazakhstan in 2002*. International business journal 'Kazakhstan', No 3 (2003).

⁴ World Bank (2002) *Kazakhstan Strategic Review of the Mining and Metallurgy Sector*. Washington, DC: World Bank.

⁵ Ibid.

not hold interests in the two largest revenue producing private mining companies in Kazakhstan, namely Arcelor Mittal and ENRC, and generally does not have equity interests in private sector mineral development projects. However, the government, through the National Welfare Holding Company "Samruk-Kazyna", owns 100% of Kazatomprom, the national nuclear and uranium production company.

1.5 Kazakhstan Implementation of EITI

EITI in Kazakhstan is directed by a National Stakeholder Council (NSC), chaired by a Vice Minister from the Ministry of Energy and Mineral Resources, which as a result of a recent government restructure has been renamed the Ministry of Oil and Gas. The NSC comprises representatives of government, civil society, the Parliament and companies operating in the extractive industry. As at the date of the validation field work, 122 extractive industry companies⁶ have signed the EITI MOU, including 67 oil and gas⁷ and 55 mining companies.

The NSC was established in November 2005 by simultaneous decrees of the Ministry of Finance and the Ministry of Energy and Mineral Resources.

The Secretariat is imbedded in the Ministry of Oil & Gas and provides modest administrative and logistical support to the NSC.

In September 2007, Kazakhstan was accepted as a Candidate country. In February 2009, Kazakhstan was awarded the EITI Implementing Country Award during the 4th International EITI Conference in Doha for its pace-setting achievements in implementation, the engagement of stakeholders, and the political will and commitment of the government.

Kazakhstan received an extension to complete the validation process by 9th September 2010.

⁶ The NSC states that the number of companies signed up has subsequently increased to 136 companies.

⁷ The NSC states that the number of oil and gas companies has subsequently increased to 81.

2 PROGRESS AGAINST THE COUNTRY WORK PLAN

The Government of Kazakhstan established an EITI Interagency Working Group under the Ministry of Energy and Mineral Resources (MEMR) on 14 April 2005 with the task to prepare a recommendation for EITI implementation in Kazakhstan. President Nazarbaev of Kazakhstan officially announced Kazakhstan's joining 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 Interagency Working Group representing the Government and three other parties: Parliament representatives of the Republic of Kazakhstan, foreign and local extractive industry companies and civil society representatives. The civil society organisations participating in the Coalition 'Oil Revenues Under Public Oversight' signed the MOU on 9 December 2005 after a number of additional talks and coordination of guidelines of the NSC.

EITI implementation in Kazakhstan has been governed by two work plans. The initial EITI Work Plan covering 2007-2009 was developed by the Government as per the agreement with the World Bank of 1 December 2006 and with the approval of the National Stakeholders Council (NSC). An updated annual plan was developed for 2009 and approved by the NSC on 2 June 2009.

The Work Plan for 2007-2009 identified a number of action areas, starting with the establishment of an EITI secretariat and ending with the country's validation (initially envisaged in 2008). EITI implementation covers nine main areas and the progress achieved so far includes:

Establishment of the EITI secretariat. The Secretariat was established at the Ministry of Energy and Mineral Resources as the government body in charge of EITI implementation. The Secretariat function is located in the MEMR International Department, with one full-time and other part-time staffers specifically tasked to support EITI. The Plan called for the establishment of a separate secretariat section in MEMR but it proved to be impossible due to the government downsizing, including MEMR.

Full participation of companies in EITI. The Plan set out a goal to ensure the participation of all (eight hundred+) extractive industry companies in the Initiative by the end of 2008. Although this goal has not been achieved, significant progress has been made. EITI participation has grown almost three times since 2005 when the MOU on EITI implementation was signed between the Government, Parliament, civil society and 41 companies. As at the date of the validation field work, 122 extractive industry companies had signed the EITI MOU, including 67 oil and gas and 55 mining companies. The secretariat, however, was not able to show us the signed MOUs. According to the NSC, the Ministry of Finance informed them that the participating oil and gas companies are collectively responsible for approximately 90% of receipts from the oil and gas sector in the government budget, which represents about 51% of the total revenue to the government (see chart 1.4 A), and the participating mining companies account for about 60% of revenues in the mining sector, which represent approximately 2.3% of the total government tax revenue.

Integrity of the EITI data. The Plan envisaged creation of a mechanism to ensure that the data submitted by the government and companies are reliable, complete, and accurate. The reporting forms developed and approved by the National Stakeholders Council require companies to state whether the data submitted have been audited (according to the international or national standard).

Sustainable funding of EITI. The Government made provisions for fund allocations for EITI implementation in its budgets in 2006-2009. The funding covered expenses for EITI reconciliation reports and validation, publication of EITI reports, and maintenance of the EITI secretariat. The Government has improved the sustainability of EITI funding by appointing the Ministry of Energy and Mineral Resources the authorized government body for EITI implementation (Decree No 498 of 10 April

2009). This allows MEMR to incorporate funding requirements for EITI implementation in its annual budgets. In addition, EITI implementation is supported from the Joint Economic Research Project (JERP) between the Government of Kazakhstan and the World Bank, from the World Bank's Multi-Donor Trust Fund (MTDF) and through funding allocated by some international non-government organisations, such as the Soros Foundation.

EITI reconciliation. As of the date of the validator field work, two reconciliation reports had been completed, the 2005 Report (published in 2007) and the 2006 Report (published in 2008)⁸. Deloitte was commissioned to conduct the first reconciliation whereas the second reconciliation was conducted by Inaudit LLP. The reconciliation reports were published in printed and electronic media and presented at national and regional conferences. An auditing company (Sapa Consulting) has been identified and contracted for the 2007 and 2008 reconciliation reports. Reporting forms, instructions to companies and other relevant documents for reconciliations have been developed with the active participation of the Ministry of Finance through the National Stakeholders Council.

Improved public awareness on EITI. Subsequent to our field visit, the NSC has informed us that the 2007-2008 Reports have been published and are available on the EITI website. The Plan envisaged a number of national and regional seminars and conferences to discuss EITI reports. Six conferences have taken place (two national and four regional)⁹ with the participation of civil society organisations from all over the country. In accordance with the Work Plan for 2009, several training sessions have taken place on reporting forms for 2007-2009, EITI validation, and information activities targeting civil society and companies. The awareness of general public was low attributed to the EITI reports accessibility and comprehensibility to non-specialists. The Plan for 2007-2009 also called for development of a communication plan to improve public awareness on EITI. In 2008, the Kazakhstan Press Club with the support of the World Bank developed a communication strategy as the basis for a future communication plan. The NSC agreed to the strategy as a reference document in the summer of 2009 but there was no communication plan or budget as of the end of 2009. A dedicated EITI website (www.EITI.kz) was established according to the 2007-2009 Work Plan but its updating is slow: as of the field visit in December 2, 2009, the latest update had been made in September 2009, and the protocols of NSC meetings after 7 July 2009 had not been published. Otherwise, materials on EITI in the Kazakh language were scarce. Less than 5% of the publications were in Kazakh, and even the government's EITI website, which purported to be tri-lingual (English, Russian, and Kazakh), at that time published no information in the Kazakh language, for certain technical reasons that were being addressed¹⁰.

Clarification of the NSC functions. The Work Plan stipulated that the MOU on EITI implementation as well as the guiding principles for the Council should be revised. This has not been done although neither the current composition of the NSC nor its current functions remain consistent with the MOU and the NSC guidelines: the Council acts as the approving authority on certain matters (such as the reconciler's TORs, reporting forms, instructions). This said, a consensus, albeit not formalized, exists between the NSC members over the expanded role and functions of the Council, which allows the NSC to carry out its functions. The Plan also envisaged the creation of NSC working groups to improve its efficiency. Four groups have been established since: on reporting, validation, communication and social payments, with two groups headed by representatives of civil society in the NSC.

⁸ The NSC informed us that, since the validation field visit, the 2007 Report and the 2008 Report have also been published]

⁹ The NSC requested us to note that further conferences have taken place subsequent to the field visit.

¹⁰ The NSC informed us that, during 2010, these matters have all been addressed.

Revision of the applicable legislation. Although this area was not covered by the Work Plan, the Government undertook a revision of the applicable legislation to make it compatible with EITI. In December 2006, the Government commissioned MEMR and the Ministry of Finance to develop amendments to the applicable law on sub-soil use to address EITI implementation. This work was completed with the participation of civil society organisations and the amendments were effected in January 2007 (Law of the Republic of Kazakhstan No 226).

EITI validation. Initially, validation and its associated activities (such as development of the validation plan, selection of the validator and so on) were planned for 2008. The validation exercise was rescheduled for 2009 according to the 2009 Work Plan. The NSC established a working group on validation in May 2009. In October 2009, Hart Group (UK) was commissioned to conduct validation, with the validation field visits taking place between 23 November and 2 December 2009.

Below is a summary of the main items listed in the 2007-2009 Work Plan (as adjusted in the 2009 annual plan). Next to each of the items listed is our summary assessment of the progress made against the item and comments.

Work Plan Item	Validator's assessment	Comments
1. Establish the EITI Secretariat	Completed	
2. Establish a special department in MEMR to perform secretarial functions	Completed	Done (subsequent to the validation field work)
3. Revise the Terms of Reference for the Secretariat	Completed	There is an internal decree outlining Secretariat responsibilities
4. Ensure participation of all international, local, and state companies of the extractive industry in EITI (modified to 60% of all extractive industry companies by the 2009 annual plan)	Not completed	The list provided by the NSC mentions over 800 companies. Currently, about 17% of the companies listed participate in EITI.
5. Modify the MOU on EITI implementation to engage a larger number of companies	Not completed	
6. Agree on the expanded composition of the NSC, voting procedures, etc. in the context of increased participation of extractive industry companies	Not completed	
7. Introduce a mechanism to indicate in the reporting forms whether the data submitted by the participant have been audited	Completed	This requirement has been included in the reporting forms for companies. However, no mechanism exists to either enforce this requirement or verify a company's statement.
8. Identify funding requirements through the NSC and ensure sustainable funding for EITI	Completed	
9. Conduct reconciliation for 2005 and/or 2006 by the end of 2007	Completed	The 2005 reconciliation report was completed and published in 2008
10. Conduct reconciliation for 2007-2008 by the end of 2009	Partly completed	Under implementation: the reconciler has been identified and contracted; the data was being collected ¹¹ .
11. Conduct a number of national and regional seminars to advance and discuss EITI in the context of reconciliation reports	Completed	Six conferences were held in 2008-2009 (two national and four regional)
12. Develop an EITI communication plan	Partly completed	A communication strategy was developed to ground a communication plan but no communication plan has been developed to

¹¹ Reports were published in June 2010

		date.
13. Maintain a dedicated website and publish information on reconciliation reports in an easy-to-read form	Partly completed	The website is regularly maintained and contains relevant information on EITI including past reports but the information on EITI reports was not readily approachable ¹²
14. Conduct seminars focusing on transparency in the extractive industry and local social issues and inform CSOs interested in the mining sector	Completed	In addition to six conferences, a seminar on EITI validation for CSOs and other stakeholders was conducted in June 2009.
16. Revise the functions of the National Stakeholders Council and the MOU between the Government, companies and civil society	Not completed	
17. Conduct EITI validation (initially envisaged in 2008, rescheduled for 2009)	In progress	Draft validation report was to be submitted to the NSC by 10 December

All the stakeholders consulted during the validation recognize that not all targets and tasks set in the Work Plan have been achieved or completed on time. At the same time, the stakeholders are unanimous in emphasizing Kazakhstan's progress against substantive targets, particularly EITI reconciliation reports, which, in their opinion, constitute the core of the Initiative.

¹² This has been further developed since the visit and EITI reports are now available.

3 REPORT ON PROGRESS AGAINST THE INDICATORS IN THE VALIDATION GRID

3.1 Grid Indicator #1: Has The Government Issued An Unequivocal Public Statement Of Its Intention To Implement EITI?

Progress to date

President Nazarbaev of Kazakhstan announced Kazakhstan's support for Kazakhstan's joining EITI at an international business conference in Almaty on 14-16 June 2005.

A memorandum of understanding (MOU) between the Interagency Working Group representing the Government and three other parties: the Parliament of the Republic of Kazakhstan, foreign and local extractive industry companies, and non-government organisations (NGO) including the Coalition 'Oil Revenues Under Public Oversight' commits all parties to cooperate with each other on EITI implementation through the mechanism of the National Stakeholders Council.

Speaking on behalf of the Government at the second meeting of the National Stakeholders Council on 20 October 2005, Minister of Energy and Mineral Resources Vladimir Shkolnik said: "Signing of the Memorandum is but the first step, and much will have to be done to further the EITI implementation process. We therefore call on all parties to practice a constructive approach to EITI implementation. EITI implementation in Kazakhstan must and will be absolutely open and transparent." In April 2009, the Government appointed the Ministry of Energy and Mineral Resources the authorized government body for EITI implementation by adding this responsibility to the MEMR Statute. Most recently, the government's commitment to EITI implementation was confirmed by the Prime Minister of the Republic of Kazakhstan at a special session of the Government convened on 4 June 2009 to discuss EITI implementation and preparations for EITI validation.

Stakeholder views

Some civil society groups expressed an opinion that the above actions undertaken by the Government do not amount to an unequivocal public statement of its intention to implement EITI since the MOU on EITI implementation signed of 5 October 2005 lacks a legal status and is not registered in the official register of Government orders and decrees. Registration is not requirement of EITI. The majority of civil society organisations engaged in EITI implementation and companies participating in EITI consider the statements made by the Government as unequivocal and sufficient.

Validator's assessment

This indicator has been met.

3.2 Grid Indicator 2. Has The Government Committed To Work With Civil Society And Companies On EITI Implementation?

Progress to date

The government is a party to the 2005 memorandum of understanding (MOU) on EITI implementation that commits the Government to working on EITI implementation with civil society and companies through the mechanism of the National Stakeholders Council. The MOU designates the NSC as the

principal body to oversee EITI implementation and assigns an equal number of seats to the representatives of industry and civil society.

As of today, 122 companies from the oil and gas and mining sectors as well as over 500 CSOs participating in the Coalition 'Oil Revenues Under Public Oversight' and the Kazakhstan's Civic Alliance are engaged in EITI implementation. The government maintains a permanent dialogue with companies and civil society organisations on EITI implementation. Between 2005-2009, the NSC organized six EITI conferences (four regional and two national) where government, companies and civil society organisations were invited to participate. Also, the government agreed at the request of CSOs to convene in 2007-2009 two special sessions with the participation of CSOs under the Prime Minister's chairmanship to discuss EITI implementation in Kazakhstan.

Stakeholder views

Some stakeholders from civil society consider that the government's commitment lacks scope and, in some instances, substance. They point out that though the MOU was signed by different NGOs, the MOU mentions only one civil society organisation (Coalition 'Oil Revenues Under Public Oversight') and is, therefore, not inclusive, leaving outside the formal implementation framework a number of CSOs from the oil-producing regions of West Kazakhstan, who at the time of signature were members of the Coalition "Oil revenues Under the Public Oversight".. Civil society organisations have unanimously voiced their concern that there is no mechanism to develop central government's commitment to work with civil society organisations on EITI implementation at the local (*oblast*) level. According to the civil society representatives, the Prime Minister's instruction issued in March 2009 to create local public councils with CSO participation at the *oblast* level to look into the social aspects of the activities of extractive industry companies has not been met by local administrations (*Akimats*). These stakeholders also mention the lack of governmental support to CSO efforts to improve public awareness on EITI as an example of insufficient government's commitment to work with civil society. Although the Prime Minister is reported to have instructed the Ministry of Culture and Information to launch a public information campaign on EITI with the participation of non-government organisations back in 2007, this has not been fully implemented to date.

Validator's assessment

This indicator has been met.

The government cooperates on EITI implementation with a large number of civil society organisations apart from the Coalition 'Oil Revenues Under Public Oversight'. Thus, the National Stakeholders Council also includes the Kazakhstan Civic Alliance, an association consisting of more than 500 CSOs. However, we support the suggested expansion of government's formal commitment beyond the Coalition 'Oil Revenues Under Public Oversight'. We recommend that the memorandum of understanding and the NSC Terms of Reference be reviewed. In our opinion, creation of local public councils could become a valuable contribution to EITI implementation in Kazakhstan (although their terms of reference appear to be much broader than the current EITI framework) by bringing more public attention and engaging local authorities in the process. We also recommend that specific measures to encourage participation of civil society and the private sector in EITI information campaigns should be included in the future EITI implementation plans.

3.3 Grid Indicator #3: Has The Government Appointed A Senior Individual To Lead EITI Implementation?

Progress to date

In 2005 the Government appointed the Minister of Energy and Mineral Resources as head of the EITI Interagency Working Group. Since then, either the Minister himself or one of Vice-Ministers acted as the Chairman of the National Stakeholder Council. In April 2009, the Government changed the MEMR Statute to officially designate it as the authorized body responsible for EITI implementation (Decree No 498 of 10 April 2009). Currently, the senior government official in charge of EITI implementation is MOG Vice Minister Mr. Aset Magauov. The National Stakeholders Council also includes another two senior government representatives: Vice Minister of Industry and Trade¹³ and Chairman of the Tax Committee. The EITI Secretariat is established and headed by Director of the MEMR Department of International Cooperation Mr. Zhassara Imandossov¹⁴.

Stakeholder views

All stakeholders we consulted agree that this indicator has been met.

Some civil society organisations suggest that the government's representation should be upgraded to the level of the Prime Minister's Office to ensure better interagency cooperation and to encourage further engagement of local authorities. Other stakeholders, whilst recognizing the administrative logic of the idea, considered that for practical reasons the present arrangement was probably more effective. The CSOs stressed the importance of annual meetings with the Prime Minister (which took place in 2007-2009) as a powerful and effective tool to advance the EITI agenda and ensure its progress in Kazakhstan.

Validator's assessment

This indicator has been met.

We praise the efforts of the Government to work closely with EITI stakeholders and the NSC, and recommend that annual meetings between the CSOs with the Prime Minister should continue. Direct engagement of the top government representatives in the process will help ensure a coordinated approach to EITI at the national level and will help overcome emerging challenges.

¹³ Now the Ministry of New Technologies

¹⁴ Since the validation field visit, this position is now Deputy director of the MOG Department of Strategic Development and International Cooperation

3.4 Grid Indicator #4. Has A Fully Costed Country Work Plan Been Published And Made Widely Available, Containing Measurable Targets, A Timetable For Implementation And An Assessment Of Capacity Constraints (Government, Private Sector And Civil Society)?

Purpose: The Country Work Plan is the foundation of the country Validation process. The sixth EITI criterion requires that a Work Plan be produced that is agreed with key EITI stakeholders and is publicly available.

Evidence: To give this indicator a tick, the Validator is expected to see evidence that The Work Plan has been agreed with key stakeholders and that it contains:

- measurable targets;
- a timetable for implementation;
- an assessment of potential capacity constraints;
- how the government will ensure the multi-stakeholder nature of EITI, particularly in terms of the involvement of civil society;
- a timetable for Validation during the stage at which a country is a Candidate. This should reflect country needs, but should take place once every two years;
- the Work Plan should also elaborate on how the government will pay for validation.

The Validator will need to assess progress on the implementation of the EITI against these targets and timetables, and assess whether a country has acted on the identified capacity constraints.

A key element in the country Validation process will be whether the timetable for implementation is being followed. If the timetable is not being met, the Validator – based on evidence from key stakeholders and others – will need to determine whether delays in meeting the timetable are reasonable. If unreasonable, the Validator will need to consider whether to recommend that the country be de-listed from the list of Candidate countries.

Progress to date

The initial EITI Work Plan covering 2007-2009 was developed and was endorsed by the NSC at the end of 2006. An updated plan for 2009 was approved by the National Stakeholders Council on 2 June 2009. Both plans allow for costing for some items to be financed by the Government (such as EITI reports and validation). Other items for which Government funding is required (for example, funds for the Secretariat) are not costed, as this cost is integrated and financed from the budget of the Ministry¹⁵. The 2009 Work Plan also identifies funding sources (but not required amounts) for those items that are to be financed from non-government sources (such as the World Bank and international civil society organisations). Both plans have been published on the EITI website (www.EITI.kz) and are publicly available.

For a thorough review of the 2007-2009 Work Plan see Section 2 of this report. Most of the targets set in the Work Plan were not measurable and focused on activities rather than results. Performance indicators were missing in most cases. Thus, the Work Plan for 2007-2009 called for bringing the EITI

¹⁵ Now the National Budget

process in compliance with EITI Indicators 1 and 5 (public availability and comprehensibility of EITI reports and engagement of civil society in EITI implementation) but did not establish any performance indicators. Where indicators were established (such as ‘measurable improvement of public awareness on extractive industries and financial flows’), no annual benchmarks and/or final targets were set for such indicators.

Both plans include a timetable but there are no systematic monitoring efforts through a specially designed monitoring plan. We were informed that monitoring was conducted at the NSC or Working Group meetings.

The work plans do not contain an explicit analysis of capacity constraints. The plan refers to a need to establish a Secretariat to coordinate the NSC activities. It is not possible to ascertain to what extent they address the existing capacity constraints in the government, private sector and civil society. The 2007-2009 Work Plan identifies only one potential constraint: that the companies that signed contracts prior to amendments to the national legislation making participation in EITI mandatory have the right not to join EITI using the confidentiality clause in their contracts¹⁶. The 2009 Plan does not mention any capacity constraints. The nature of both work plans is tabular, which is not a useful format for circumstances in which the plan should ideally include discussion of issues.

The Work Plans comment on the need to establish Working Groups with unrestricted membership to allow for participation of subject matter experts on specific topics, such as journalists and the Ministry of Culture, Information and Communication in the Communications Working Group, and additional tax experts in the Reporting Working Group.

The two plans take into account the multi-stakeholder nature of EITI and include some measures (although not always properly defined or measurable) to ensure participation of civil society and companies in the process. These include participation of civil society and companies in the NSC through their representatives; cooperation with civil society groups in information activities, regional and national conferences on EITI. The 2009 Plan also includes training for companies and civil society groups on reporting forms for EITI reconciliation reports for 2007-2008, EITI validation, and information activities.

Both plans include a timetable for validation although Kazakhstan did not conduct the validation process in 2008. The 2007-2009 Work Plan specified that validation will be paid from the annual budget of the Ministry of Energy and Mineral Resources.

Stakeholder views

All stakeholders consulted during validation recognized that:

- (a) the existing planning process and monitoring arrangements were not adequate for implementation; but that
- (b) Although the EITI work plans were not fulfilled in the designated timeframe, they believe that EITI was substantively implemented.

The NSC holds the view that this indicator did not exist at the time Kazakhstan was assessed by the International Secretariat as having achieved Candidate status in September 2007. Further, the NSC

¹⁶ The NSC comments that this issue did not, in the event, become a real constraint.

points out that the purpose of the work plan was to reach the start of the validation process and this was achieved, despite not having met individual plan items and regardless of the quality of the workplan.

The stakeholders believe the two Work Plans were:

- agreed with key EITI stakeholders
- were publicly available.
- contained:
 - some measurable targets;
 - a timetable for implementation;
 - an assessment of potential capacity constraints;
 - how the government will ensure the multi-stakeholder nature of EITI, particularly in terms of the involvement of civil society;
 - a timetable for Validation during the stage at which a country is a Candidate.
 - elaborated on how the government will pay for validation.

Validator's assessment

Insufficient effort was invested in planning of the EITI process. Since a situation analysis to identify capacity constraints of the stakeholders was not performed, the plans could not address these constraints in a systematic manner. This was exacerbated by poorly defined targets, which are not sufficiently specific, measurable, results-oriented and time-bound. On the implementation side, the plans lack resource requirements, including costing of some of the plan items. The plans lack specific monitoring and evaluation arrangements, that did not allow stakeholders to systematically monitor the progress of EITI implementation and take timely corrective action.

The planning flaws and lack of adequate monitoring and evaluation have contributed to the delayed EITI implementation as described in the section dealing with the country's progress against the work plan. For the future, we recommend the NSC to base further implementation of EITI on the principles of results-based management. This should include clearly defined performance indicators / milestones, identification of required resources (including financial and human resources) against each of the planned results; and monitoring and evaluation arrangements. We recommend that stakeholders with relevant experience of project management should provide assistance to the government and EITI Secretariat in the development of a better defined work plan for EITI implementation.

Despite the significant shortcomings in the work plan, Kazakhstan has initiated the validation process.

The indicator has not been met.

The NSC has taken the view that the purpose of the workplan is to progress the EITI process up to the point of validation. We do not share this view but consider that, for an undertaking as complex as EITI implementation with a multi-stakeholder group, a comprehensive workplan should always be in place, as we have described. We recommend the NSC to reinforce its planning processes.

3.5 Grid Indicator 5. Has The Government Established A Multi-Stakeholder Group To Oversee EITI Implementation?

Purpose: Implementation of the EITI should be overseen by a group comprising all appropriate stakeholders, including – but not limited to – the private sector, civil society (including independent civil society groups and other civil society, such as the media and parliamentarians) and relevant government ministries (including government leads). The group should agree clear, public terms of reference (TORs). These TORs should at least include: endorsement of the Country Work Plan – following revisions where necessary; choosing an auditor to undertake audits where data submitted for reconciliation by companies or the government are not already based on data audited to international standards; choosing an organisation to undertake the reconciliation; and other areas as noted in the Validation Grid.

Evidence: To give this indicator a tick, the Validator is expected to see evidence that a multi-stakeholder group has been formed, that it comprises the appropriate stakeholders and that its terms of reference fit the purpose. Evidence should include:

- stakeholder assessments where these have been carried out;
- information on the membership of the multi-stakeholder group:
 - Was the invitation to participate in the group open and transparent?
 - Are stakeholders adequately represented? (This does not mean stakeholders have to be equally represented.)
 - Do stakeholders feel that they are adequately represented?
 - Do stakeholders feel they can operate as part of the committee – including by liaising with their constituency groups and other stakeholders – free of undue influence or coercion?
 - Are civil society members of the group operationally, and in policy terms, independent of government and/or the private sector?
 - Where group members have changed, has there been any suggestion of coercion or an attempt to include members that will not challenge the status quo?
 - Do group members have sufficient capacity to carry out duties?
- Do the TORs give the committee a say over the implementation of the EITI? These TORs should at least include: endorsement of the Country Work Plan – following revisions where necessary; choosing an auditor to undertake audits where data submitted for reconciliation by companies or the government are not already based on data audited to international standards; choosing an organisation to undertake the reconciliation; and, other areas as noted in the Validation Grid.
- Are senior government officials represented on the committee?

Progress

An informal stakeholder assessment was carried out by the Ministry of Energy and Mineral Resources on behalf of the Government of Kazakhstan prior to the signing of the MOU on EITI implementation in October 2005.

MEMR invited companies and civil society groups to delegate their representatives to the National Stakeholders Council, which was formed in December 2005 based on the MOU. MEMR invited a large number of non-government organisations to discuss MOU. One organisation signed on behalf of civil

society – the Coalition ‘Oil Revenues Under Public Oversight’ representing 43 NGOs. MEMR decided to also incorporate representatives of the Civic Alliance of Kazakhstan in the NSC.

The current composition of the National Stakeholders Council includes three representatives from the Government, three from the Parliament, three from companies, and three from civil society. Each group individually decides how it will be represented, with no interference from the other groups.

According to the MOU, the National Stakeholders Council meets at least once every six months. From October 2005 to July 2009 the NSC held 16 sessions. The NSC Guidelines (Terms of Reference) describe its functions and powers as follows:

- Oversee the EITI implementation process in Kazakhstan and to promote continuous improvement of the EITI implementation process in Kazakhstan.
- Provide the Parties to the MOU with guidance on EITI implementation process in Kazakhstan based on the existing EITI criteria.
- Develop recommendations and provide guidance to the Parties to the MOU on the working plans for EITI implementation on an annual basis.
- Develop recommendations for the Parties to the MOU with respect to the reporting forms, which will be proposed by the auditing company.
- Develop recommendations for the Parties to the MOU with respect to a press release based on the audit company’s report.
- Develop any other recommendations for the Parties to the MOU aimed at further improvement of EITI implementation in Kazakhstan.
- Make every effort to coordinate its work with the International Advisory Group on EITI on the issues of the development of recommendations aimed to further improve the EITI implementation in Kazakhstan.

The Government is represented by the Vice Minister of Energy and Mineral Resources who chairs the NSC, the Chairman of the Tax Committee, and the Vice Minister of Industry and Trade.

Stakeholder views

All stakeholders feel that they are adequately represented in the NSC and can operate as part of the Council free of undue influence or coercion. At the same time, some civil society representatives consider that the present composition of the NSC is biased towards the Government since all parliamentary members of the NSC belong to the only governing party. The NSC members (with the exception of parliamentarians who were not available for consultation) confirm that the parliamentarians have not participated in the NSC work for the past four years. Other stakeholders suggest that the seats allocated for parliamentarians should be divided between them to allow for increased representation of other groups. Some civil society groups (in particular those operating in the Atyrau region and united in the Association ‘Azamattyk Kuryltay’) feel that they are not adequately represented in the National Stakeholders Council and would like NSC membership. These groups were originally part of the Coalition “Oil revenues Under the Public Oversight”. The NSC does not share the perception of inadequate representation.

NSC members agree that each group composing the NSC membership is individually responsible for the selection of its representatives, and cannot interfere with another group’s selection process.

Validator's assessment

This indicator has been met. Any perceived bias in the NSC composition is offset by the consensus-based decision-making process. We also note the lack of clarity and transparency in the representation of companies and civil society. It is not clear how the NSC members from the extractive industry and civil society were identified in the beginning, to what extent they represent other stakeholders within their respective sectors and what procedures are followed for their appointment and rotation. There have been several changes in the NSC composition since it was established in 2005, both individually and organisation-wise (for example, a number of organisations represented in the Council in the beginning, such as trade unions, do not participate any more). No documented mechanism exists for effecting these changes.

In our opinion, the NSC Terms of Reference do not reflect the Council's actual responsibilities. The Council acts as the approving authority on certain matters (such as the reconciler's TORs, reporting forms, instructions).

Recommendations:

We recommend that

- a) the NSC composition should be revised to remove any doubts about the adequacy and reasonableness of representation and to support the increased representation of companies and civil society in the NSC;
- b) the MOU and NSC Guidelines should be reviewed to specify the criteria for NSC membership for companies and civil society and procedures for their periodic rotation;
- c) To NSC Terms of Reference should be clarified; if the NSC is a decision-making and / or approving body this should be clear in the TOR;
- d) It should be seen as normal practice to review and if necessary update the NSC Terms of Reference as implementation progresses.

3.6 Grid Indicator 6. Is Civil Society Engaged In The Process?

Purpose: This indicator reinforces Indicator 5. The EITI Criteria require that civil society be actively engaged as a participant in the design, monitoring and evaluation of the process, and that it contributes to public debate. To achieve this, EITI implementation will need to engage widely with civil society. This can be through the multi-stakeholder group, or in addition to the multi-stakeholder group.

Evidence: To give this indicator a tick, the Validator will need to see evidence that the government, and the EITI multi-stakeholder group where appropriate, have sought to engage civil society stakeholders in the process of implementation of the EITI. This should include the following evidence:

- outreach by the multi-stakeholder group to wider civil society groups, including communications (media, website, letters) with civil society groups and/or coalitions (e.g. a local Publish What you Pay coalition), informing them of the government's commitment to implement EITI, and the central role of companies and civil society;
- actions to address capacity constraints affecting civil society participation, whether undertaken by government, civil society or companies;
- civil society groups involved in EITI should be operationally, and in policy terms, independent of government and/or the private sector;
- civil society groups involved in EITI are free to express opinions on EITI without undue restraint or coercion.

Progress to date

The NSC has sought to engage with civil society groups and the general public.

Civil society organisations have shot three documentaries demonstrated on the national 31st TV channel to promote EITI. Kazakhstan has two web-sites specially designed to provide information on EITI to wider civil society groups. The website maintained by the Ministry of Energy and Mineral Resources (www.EITI.kz) contains comprehensive information about EITI and the progress in its implementation, including the Memorandum of Understanding, the Country Work Plan, protocols of the National Stakeholders Council, reconciliation reports for 2005 and 2006 (the validator has been informed that the 2007 and 2008 reports have been added), the list of companies participating in EITI, press releases and such like.

The Coalition 'Oil Revenues Under Public Oversight' also has a regularly updated website (www.publicoversight.kz), which contains general information on EITI as well as annual reports on EITI implementation prepared by the Coalition.

EITI conferences with the participation of civil society groups (six conferences have taken place as of December 2009, two national in Astana and four regional in Atyrau, Aktau, Ust-Kamenogorsk and Karaganda) also play an important role in public outreach. Some companies have published articles on EITI and its implementation in Kazakhstan in mass media. ExxonMobil has funded an NGO Resource Center whose purpose it is to train NGOs in Atyrau and the surrounding regions. TCO has received a letter of gratitude for its support of NGOs on EITI activities. In addition to this, ExxonMobil and Statoil have provided translations in Russian and Kazakh of all major international and local materials for EITI awareness.

The six conferences on EITI implementation under the MEMR aegis in 2008-09 have contributed to developing the CSO expertise in EITI. In 2009, CSOs organized round table discussions and seminar for representatives of civil society on such issues as taxation of sub-soil users and measuring EITI progress. Government and industry have not addressed civil society's capacity constraints. There was no analysis of the civil society constraints in the beginning of the EITI implementation process and no capacity development plans were developed by the government to address civil society's constraints. Several companies have supported CSOs engaged in EITI implementation by providing IT and office equipment.

Civil society groups are operationally and in policy terms independent of government and/or public sector. No factors of undue restraint or coercion with regard to civil society groups involved in EITI have been established.

Stakeholder views

Civil society groups have expressed serious concern over the lack of efforts by the other stakeholders (primarily, the government and to lesser degree, the private sector) to ensure the sustainability of the engagement of civil society organisations in EITI. They point to the lack of government funding to promote CSO participation in EITI-related activities, particularly public awareness and information. Many CSOs lack necessary equipment, facilities (such as Internet access) and expertise to effectively participate in EITI implementation and public information activities. Insufficient funds for travelling are another major issue significantly hampering CSO engagement in the EITI process. Civil society organisations believe that the government should develop a specific program to address the CSO capacity gaps to enable their meaningful participation in EITI in a sustainable manner.

Validator's assessment

This indicator has been met.

We note the efforts undertaken by the Government of Kazakhstan, within the applicable national legal framework, to engage civil society groups in EITI.

We recommend that the Communications Plan should set out the mechanisms, including funding, for civil society participation.

3.7 Grid Indicator 7: Are Companies Engaged In The Process?

Purpose: This indicator reinforces Indicator 5. EITI implementation requires that companies are actively engaged in implementation and that all companies report under the EITI. To achieve this, EITI implementation will need to engage widely with oil, gas and mining companies. This can be through the multi-stakeholder group, or in addition to the multi-stakeholder group.

Evidence: To give this indicator a tick, the Validator will need to see evidence that the government, and the EITI multi-stakeholder group where appropriate, have sought to engage companies (oil, gas and mining) in the implementation of the EITI. This should include the following evidence:

- outreach by the multi-stakeholder group to oil, gas and mining companies, including communications (media, website, letters) informing them of the government's commitment to implement EITI, and the central role of companies;
- actions to address capacity constraints affecting companies, whether undertaken by government, civil society or companies.

Progress to date

There is satisfactory engagement in the process by oil and gas companies that are in production. 24 companies signed the MOU in October 2005. Tengizchevroil LLP, the largest producer of oil and gas, did not participate in the first EITI report. TCO commenced its participation in EITI in respect of the 2006 report. 122 extractive companies are expected to participate in the 2007 and 2008 reconciliations¹⁷.

Fifty-five mining companies participate in EITI. Participation in EITI by mining companies has been patchy. There is no mining company representative on the NSC. The mining industry association participated in the Second Annual EITI Conference in Astana in June, 2009 to encourage further participation in EITI and the NSC actively lobbied one of the leading mining companies to set the example by participating in EITI.

Government has sought to engage companies newly entering the sector in EITI, by means of legislation that makes engagement with EITI a condition of licensing.

MEMR publishes a catalogue containing a listing of companies in the extractive industry sector, which the NSC will use to target the remaining non-signatory companies: Mineral Users Operating in the Republic of Kazakhstan Reference Book, 33rd Edition, August 2009, published by the "Information & Analytical Centre of the Geology and Mineral Resources of the Republic of Kazakhstan.

Companies have been contacted by the NSC as a group and by individual groups and members, through targeted industry media, letters and individual meetings. The fruit of this approach is shown by the increase in participation in EITI signatories from 24 companies to over 100, representing (according to the NSC) almost all oil and gas government revenue and over half of mining revenue. They have been invited to participate in conferences, and have been provided with training to address capacity constraints on filling out the forms, in addition to having a help line to the reconciliation company during the reporting process.

¹⁷ We have been informed that this number has subsequently increased.

Stakeholder views

Companies did not report any capacity constraints hindering them from participating in EITI.

The reconcilers noted a capacity constraint in that company completion of the reporting forms was error-prone, which increases the burden on the reconciler and time necessary for the reconciliation process. The reconcilers believe that additional training for the companies is required.

Other stakeholders question the depth of commitment to EITI from companies. Those companies we spoke to see their commitment largely in terms of responding to the reporting form when requested.

The NSC has widely discussed and members agree that the interim coverage target should be companies representing over 90% of revenue paid to the government; it considers that, while 100% participation is required, significant progress has been made since 2005 to achieve the current representation.

Validator's assessment

When EITI is becoming established in a country, it is reasonable to commence engagement with the larger known entities, as has been done in Kazakhstan. This should not be an end point but can be viewed as a step towards comprehensive implementation. The ultimate aim is to include in the EITI process every company of whatever size that holds any extractive rights.

Engagement with EITI in Kazakhstan is demonstrated by signature of the MOU. It is not clear whether a company that signs the MOU does so on its own account only or also on account of all its affiliates.

There is good evidence of the engagement of oil and gas companies, representing a high proportion of revenues. The same is not yet clear for the mining sector. The NSC has not shown evidence of a formalised strategy to deepen the involvement of mining companies in EITI. Mining revenues to government are said to represent 2.3% of government revenues. We encourage the NSC to develop its membership in that direction.

During the period of the validation field work, a leading mining company wrote to indicate its interest in participating in the NSC as a company representative (although the same company failed to submit data for the 2006 reconciliation report).

We note the leading role played by companies in supporting the efforts of the NSC towards validation.

We conclude that companies are engaged in the process. The indicator has been met.

3.8 Grid Indicator 8: Did The Government Remove Any Obstacles To EITI Implementation?

Purpose: Where legal, regulatory or other obstacles to EITI implementation exist, it will be necessary for the government to remove these. Common obstacles include confidentiality clauses in government and company contracts and conflicting government departmental remits.

Evidence: To give this indicator a tick, the Validator should see evidence that the government has removed any obstacles. This might involve following a proactive assessment of obstacles, or through reactive action to remove obstacles as they arise. There is no one way of dealing with this issue – countries will have various legal frameworks and other agreements that may affect implementation, and will have to respond to these in different ways. The sort of evidence the Validator will want to see could include:

- a review of the legal framework;
- a review of the regulatory framework;
- an assessment of obstacles in the legal and regulatory framework that may affect implementation of the EITI;
- proposed or enacted legal or regulatory changes designed to enable transparency;
- waiver of confidentiality clauses in contracts between the government and companies to permit the disclosure of revenues;
- direct communications with, e.g., companies, allowing greater transparency;
- Memoranda of Understanding setting out agreed transparency standards and expectations between government and companies.

Progress to date

The Government of Kazakhstan initiated implementation of EITI as a voluntary process. In this manner, companies representing approximately 90% of the extractive industry revenue paid to and received by the government have voluntarily participated in the EITI process. In computing the 90% figure, the NSC has relied on a total figure provided by the Ministry of Finance.

One company, Tengizchevroil sought to participate in the EITI process and requested the government to provide a waiver of confidentiality for purposes of participating in the initiative. This waiver was provided promptly by the government and signed by the Prime Minister. No other companies have raised any obstacles for participation. The companies participating in EITI currently represent the majority of revenues paid to and received by the extractive industry to the government. There are no apparent obstacles to these companies participating nor for those who are not currently participating.

Additionally, the Government of Kazakhstan by its Decree No 1166 of 4 December 2006 instructed the Ministry of Energy and Mineral Resources together with the Ministry of Finance to develop amendments to the applicable law to ensure EITI implementation. A review of applicable law was completed with the participation of civil society organisations and the amendments were effected on 12 January 2007 (Law of the Republic of Kazakhstan No 226). Law No 226 amends the Law on Oil and Law on Subsoil and Subsoil Users to ensure that subsoil users:

- join the Memorandum of Understanding on EITI prior to signing the contract for subsoil use, with the exception of tenders for subsoil user rights for underground water and common natural resources
- respect the provisions of the EITI Memorandum of Understanding

- submit properly audited reports in accordance with the EITI requirements and procedures approved by the Government of Kazakhstan.

This law applies only to new applicants for subsoil rights. The law thus respects existing contracts and does not derogate from contractual rights of subsoil users that obtained rights under previous legislation. All current EITI participants have contracts pre-dating the amendments referenced in this paragraph, hence are voluntary participants. It is clear that a significant participation of industry has been achieved with no need for legislative or regulatory changes. The NSC is committed to continue recruitment of companies to participate in EITI; the remaining companies constitute more than 80% of the companies in the extractive sector but less than 10% of the revenue paid to and received from the extractive industry to the government.

In April 2009, the Government issued a decree appointing the Ministry of Energy and Mineral Resources the authorized government body for EITI implementation (Decree No 498 of 12 April 2009). This has strengthened the coordinating function of the Ministry and improved cooperation between government agencies, companies and civil society groups engaged in EITI implementation.

The Coalition 'Oil Revenues Under Public Oversight' in 2008 proposed additional amendments to the applicable law (including the Law on Production Sharing Agreements, Law on Concessions, Law on Investments) and suggested a number of changes into the regulatory framework, such as decrees of the Government and orders of the Ministry of Energy and Mineral Resources regulating preparation and organization of investment programs, preparation of tender applications and tender bids, rules of granting the right to use sub-soils and others. These proposals have not been considered by the Government as yet.

The way in which EITI is being implemented in Kazakhstan respects the confidentiality provisions in agreements. The EITI procedures in force in Kazakhstan do not make provision for mandatory waiver of confidentiality clauses in contracts to permit revenue disclosure. Instead, these clauses were waived to the extent necessary by agreement with the government. Waiving confidentiality clauses for submission of data for EITI reconciliation reports remains optional but has always been done by the government when requested by the company.

The disclosure of tax payment information by the Ministry of Finance to the reconciler required, under Kazakh law, a waiver of confidentiality by the taxpayer; this procedure has been followed and has not been an issue. We have been informed by the NSC that under the 2009 Tax Code revisions, the Ministry of Finance is no longer required to obtain a waiver of confidentiality to disclose tax information to the reconciler.

The MOU on EITI implementation signed in October 2005, states: 'Being committed to the further development of EITI in Kazakhstan and recognizing importance of the maximum transparency of information on revenues from the extractive industry, Parties, in the framework of the National Stakeholders' Council, shall continue discussion of other actions that would further the goal of transparency.' However, no special MOU on transparency standards or expectations between government and companies has been prepared to date.

Stakeholder view

In general, stakeholders agreed that this indicator has been met. However, civil society organisations are dissatisfied with the current legal status of EITI. They believe that although the Initiative is mentioned in a number of legislative acts, its status, responsibilities for EITI implementation/compliance with EITI requirements and procedures for revenue disclosure are not clearly defined. Civil society groups feel

that responsibility of individual companies for compliance with EITI requirements and disclosure of payments should be legally mandated.

The NSC, as a body, regards the voluntary approach as a positive feature of EITI.

CSOs also consider that the existing aggregated form of EITI reports does not ensure enough transparency and should be changed in favor of disaggregated reporting. Companies, however, consider that the existing arrangements fully meet the primary goal of the transparency initiative. Some companies do not have objections to publication of disaggregated reports in principle but others strongly resist disclosure of company-specific data, considering it a potential threat to legitimate business interests.

Validator assessment

We assess that the track record of successive rounds of EITI reporting indicates that no obstacles to EITI implementation remain.

The government has introduced legislation requiring participation in EITI for new entrants to the sector.

We agree with stakeholders that any formal obstacles to implementation have been addressed. This indicator has been met.

We recommend that Government should also consider, in cooperation with companies and civil society groups, further measures to engage the remaining companies (those with less significant benefit flows) that have not hitherto participated.

We recommend that the NSC consider the possible benefits of documented transparency standard for EITI supporting companies.

3.9 Grid Indicator 9: Have Reporting Templates Been Agreed?

Purpose: Reporting templates are central to the process of disclosure and reconciliation, and the production of the final EITI Report. The templates will define which revenue streams are included in company and government disclosures. The templates will need to be agreed by the multi-stakeholder group. The EITI Criteria require that “all material oil, gas and mining payments to government” and “all material revenues received by governments from oil, gas and mining companies” are published. EITI templates will therefore need to be defined by agreement of the multi-stakeholder group what these material payments and revenues comprise, and what constitutes “material”. It will also be necessary for the multi-stakeholder group to define the time periods covered by reporting. A revenue stream is material if its omission or misstatement could materially affect the final EITI Report. It is commonly recognised that the following revenue streams should be included:

- host government’s production entitlement;
- national state owned company production entitlement;
- profits taxes;
- royalties;
- dividends;
- bonuses (such as signature, discovery, production);
- licence fees, rental fees, entry fees and other considerations for licences and/or concessions;
- profit oil;
- other significant benefits to government as agreed by the multi-stakeholder group.

Evidence: To give this indicator a tick, the Validator will need to see evidence that the multi-stakeholder group was consulted in the development of the templates, that wider constituencies had the opportunity to comment, and that the multi-stakeholder group agreed the final templates. This could include the following evidence:

- draft templates provided to the multi-stakeholder group;
- multi-stakeholder group minutes of template discussions;
- communications to wider stakeholders (e.g. companies) regarding the design of the templates;
- arrangement to enable stakeholders to understand the issues involved;
- a statement by the multi-stakeholder group that they agreed the templates, including all revenue streams to be included.

Progress to date

In developing the first Reporting Form templates, the NSC made the decision that all payments made by extractive companies to the central government are material, regardless of how insignificant the payment. Therefore, with the input from the Ministry of Finance and CSOs, the Reporting Forms were developed to list all payments that are made on a national level (except for Value Added Tax), including both in cash and in kind, as well as in local and freely convertible foreign currency, and which included a catch-all phrase (“Other payments”) to ensure all payments were included. The Reporting Forms are agreed on an annual per report basis and have been clarified and updated for every yearly report. The Reporting Templates, like everything else, must be unanimously agreed by the NSC each time.

The NSC also decided to publish a report per year to ensure clarity. Four reports have been published, one for 2005, one for 2006. Subsequent to our field visit, we have been informed that reports have been published for 2007 and 2008.

A prerequisite for the design of reporting forms is a clear understanding of the various benefit streams, their source and destination and how they are monitored and managed. It is evident from discussion with stakeholders that the NSC has a general understanding of this issue. Details about the precise way in which the streams are received by government and accounted for were lacking.

The confidentiality of the agreements between the government and the companies limits the NSC's visibility of the benefit flows. The templates have been designed to allow transfers made to the government in kind or in cash to be reported.

During the validation visit, we received varying accounts of how the government accounts for extractive sector receipts. The government publishes summary financial information (income and expenditure) on a monthly and annual basis¹⁸. The NSC considers it is not able to act as auditor of government reports, nor does it have complete data available as not all companies report. The NSC has not given attention to comparing the reasonableness of the EITI reports compared to the government's published financial information.

The templates for the 2005 report were designed by the NSC and are modelled on the reporting summary set out in the EITI sourcebook. The NSC agreed on this template on September 15, 2006.

For the 2006 report, the Reporting template was agreed on June 10, 2008.

The reconciler made recommendations, and revised templates were designed by the NSC for the 2006 report. These templates were more successful. At no stage were the reconcilers directly engaged in the process of template design, as they could not be identified prior to the bidding process, based on the Terms of Reference, which had to include the Reporting templates to be used in the reconciliation. The reporting forms have however evolved to take account of reconcilers' recommendations and advice from the Ministry of Finance.

The NSC agreed on October 26, 2009 on the template for the 2007 and 2008 report.

The reporting forms allow for reporting of any in-kind payments of taxes, royalties, profit oil, etc.

KazMunayGaz NC (KMG) is the national oil and gas company indirectly 100% owned by the government and which until 2010 acted as regulator of the oil and gas sector. KMG promotes itself as operates as a private sector entity (note that this description of the arrangements was not universally accepted); KMG has a 60% subsidiary, KMG Exploration and Production Inc. that operates in the upstream sector (the remaining 40% is publicly listed); KMG also has non-extractive subsidiaries, such as in petrol retailing. We were informed that KMG receives dividends from its participations in other extractive operations, but the NSC has not been able to confirm this information. This income could be pooled with income from other non-extractive activities and could contribute to dividends if they are paid by KMG to Samruk-Kazyna, a government-owned holding company. Dividends, if any, received by KMG are not included in the reporting template as they would be paid to a holding company rather than to the Treasury. We would have liked to meet representatives from KMG to confirm the described structure and to discuss EITI issues. It was not possible during the validation field work, however, to arrange a meeting. In agreeing the templates, the NSC did not include for 2005 and 2006 dividends, if any, received by KMG from extractive operations.

¹⁸ EITI Sourcebook (March 2005)

However incomplete, publication of available revenue – preferably from the extractive sector – would serve as a baseline for judging progress in improving data quality. The government should ideally place this information on its website with a clear link to its EITI national website. This early reporting of these extractive industry revenues will provide tangible evidence of the government's commitment to transparency."

Sub-national payments (with the exception of local taxes) are not included in the reporting forms. The NSC does not possess data as to the magnitude of company benefit streams to sub national government. It is also unclear whether such benefits are delivered in kind or in cash as different companies report about different modalities.

Stakeholder views

Civil Society organisations have argued for the addition of other benefits to the template, namely: social investments made by companies, company contributions to local 'good causes'. They argue that the amounts involved are significant, which they judge from the nature of projects that companies advertise that they are undertaking for the community (an oil company reported annual investments of US\$ 21 million in local infrastructure and community development in the region of its operation). The inclusion of such items in the templates is considered by companies to be inconsistent with the existing template format in that the amounts are not paid to the government but rather to private contractors implementing the projects, so there is no basis for reconciliation. The NSC has formed a working group to develop a recommendation on how social investments could be addressed under EITI.

Civil Society organisations also argue for the inclusion in templates of dividends paid by extractive companies to government.¹⁹

Validator's assessment

Reporting templates have been agreed. We consider that the indicator has been met.

The NSC has not agreed that dividends are material. As a result of the question raised by the CSOs, a Working Group was formed to make a recommendation to the NSC on whether dividends should be considered to be "material payments and receipts" for EITI purposes and whether they might be included in future reconciliations. The nature and value of such flows appears to be a matter of considerable stakeholder interest. We conclude that the NSC has been actively addressing the issues involved and has made progress. The NSC agrees that the reporting forms might evolve further.

We recommend that the NSC prepare or commission a schematic of the flows to show diagrammatically, in particular, the entities involved.

¹⁹ We have been informed that this issue is currently under consideration by the NSC's Reporting working group.

3.10 Grid Indicator 10: Is The Multi-Stakeholder Group Content With The Organisation Appointed To Reconcile Figures?

Purpose: An organisation will need to be appointed to receive the disclosed company and government figures, to reconcile these figures, and to produce the final EITI Report. This organisation is variously known as an administrator, reconciler, or auditor. It is vital that this role is performed by an organisation that is perceived by stakeholders to be credible, trustworthy, and technically capable.

Evidence: To give this indicator a tick, the Validator will need to see evidence that the multi-stakeholder group were content with the organisation appointed to reconcile figures. This could include the following evidence:

- TORs agreed by the multi-stakeholder group;
- transparent liaison with the EITI secretariat and Board to identify potential Validators;
- agreement by the multi-stakeholder group on the final choice of organisation.

Progress to date

The process for appointing the reconciler was designed in each year to comply with relevant local procurement legislation. The selection process was managed by MEMR under the oversight of the NSC. The NSC has no power to procure in its own right.

The appointment of organisation to reconcile the figures has in each case been minuted by the NSC:

- 2005 report: PriceWaterhouse Coopers, followed by KPMG, followed by Deloitte
- 2006 report: Inaudit LLP
- 2007 and 2008: Sapa Consulting Ltd

The MOU of 2005 by which the initiative was established in Kazakhstan specified that the organisation should be selected from a shortlist of four entities. After 2005, however, none of the designated entities participated in the bidding process. One firm commented that the NSC imposed a fee ceiling that made the work unremunerative for them and expected that the same probably applied to other large firms; that firm accordingly declined to bid in subsequent years.

One firm also commented that, in their view, a reputational risk attached to the reconciliation work because the NSC had (at that time) not made their TOR widely known. When the firm made a public presentation of their findings, the firm was criticised by CSOs for not drawing attention to a range of social and environmental issues that were in fact outside their TOR. They considered that the NSC should have done more to ensure that the limited scope of their work was known.

The TORs for the reconciliation in each year were approved by the NSC. According to the NSC, under the Kazakh Law on State Purchases, those TORs had already been fixed by the NSC before appointing the firm. This resulted in a lack of flexibility to take advantage of the professional skills and experience of the reconciler which could have benefitted the process. By contracting the winning bidder for each exercise, as required by the Kazakh Law on State Purchases, the NSC has been unable to take full advantage of the experience gained by the firm in the preceding year. Further, the NSC does not have a say in the selection of the reconciler, who is selected in accordance with the procedures defined in the Law on State Purchases by a panel appointed by the Ministry of Energy and Mineral Resources. The NSC itself lacks legal capacity to enter into contracts and its role is limited to developing and approving the TOR and the Reporting templates, and reviewing and approving the Reconciliation Reports.

Stakeholder views

Civil Society organisations whom we met had not previously heard of either Inaudit LLP or Sapa Consulting Limited and were unable to comment on whether they perceived the organisation to be credible, trustworthy or technically capable.

Validator's assessment

We recommend that the NSC review its approach to selecting a Reconciler, by:

- a) Exploring whether, within the public procurement rules of Kazakhstan, it is possible to engage a reconciler for more than one year under a single contract;
- b) Exploring whether there is a means to provide the NSC with a greater role in the selection of the reconciler.

Whilst this appears not to have been an issue, the NSC should be aware that when the report acquires a higher public profile and if the contents were to be controversial the perceived credibility of the reconciler might be questioned. We would like to stress that this observation is not to be construed as a comment on the work of any of the firms. We recommend that the NSC seek to engage a reconciler with a stronger public profile that will support the credibility of the reconciliation report, for which suitable, enhanced qualification requirements should be included in the request for proposals.

The NSC has been content with the organisation appointed to reconcile the figures. The Indicator has been met.

3.11 Grid Indicator 11: Has The Government Ensured All Companies Will Report?

Purpose: The EITI Criteria require that all companies – public (state owned), private, foreign and domestic – report payments to the government, according to agreed templates, to the organisation appointed to reconcile disclosed figures. The government will need to take all reasonable steps to ensure that all companies do report. This might include the use of voluntary agreements, regulation or legislation. It is recognised that there might be good (albeit exceptional) reasons why some companies cannot be made to report in the short term. In this situation, government must demonstrate that they have taken appropriate steps to bring these companies in to the reporting process in the medium term, and that these steps are acceptable to other companies.

Evidence: To give this indicator a tick, the Validator will need to see evidence that the government has done one of the following:

- introduced/amended legislation making it mandatory that companies report as per the EITI Criteria and the agreed reporting templates;
- introduced/amended relevant regulations making it mandatory that companies report as per the EITI Criteria and the agreed reporting templates;
- negotiated agreements (such as Memoranda of Understanding and waiver of confidentiality clauses under production sharing agreements) with all companies to ensure reporting as per the EITI Criteria and the agreed reporting templates;
- where companies are not participating, the government is taking generally recognised (by other stakeholders) steps to ensure that these companies report by an agreed (with stakeholders) date.

Progress to date and stakeholder views

The government has taken reasonable steps to ensure that all companies will report. It has used voluntary negotiated agreement through the EITI MOU, which attracted over 100 companies to sign and participate, major companies which represent the majority of the revenues received by the government. It has introduced legislation prospectively requiring all new subsoil users to participate in EITI. It has proactively sent out individual letters to companies to participate in EITI, and has led every external event to attract more companies to the initiative. Additionally, it has promptly responded with the necessary contractual waivers of confidentiality allowing contractually bound companies to be able to participate in EITI.

Government responsibility for supervising the extractive sector is divided between the Ministry of Oil & Gas (MOG) (for oil and gas operations) and the Ministry of Industry and New Technology (MINT) (for mining operations). The cadastre of land interests and is maintained by the MINT. MOG also has detailed information on oil and gas operations. MOG publishes a catalogue document containing a listing of all companies in the extractive industries sector, including mining, which the NSC is using to target participation of the remaining non-signatory companies.

The MINT is responsible for registering the companies that are within the mining sector. They have provided a list of companies operating in the sector (about 180, with about 600 affiliates). MOG has a cadastre of oil & gas projects (said to number about 800) which we were told was comprehensive and up to date. Only very recently has the NSC attempted to reconcile the list of resource developments with the list of operating companies. It is also notable that the contact details of some of the companies on this project list have been found to be unreliable.

All the MOU signatory companies are currently reporting on a voluntary basis. Companies entering into new extractive contracts are legally required to participate in EITI.

Validator's assessment

The government has taken several steps along the lines of the evidence suggested to be necessary to give the indicator a tick:

- Legislation has been introduced making it mandatory that companies report prospectively
- The government has waived confidentiality clauses, when requested by companies.

All companies currently report on a voluntary basis, without legislative compulsion. The present legal requirements on companies to participate do not apply to those companies that already held licenses when the new legislation was introduced. In this, the government is respecting extant agreements. Nevertheless, of those 'legacy' companies, the most significant in terms of benefit streams do in fact participate. Additionally, if legacy companies enter into new licenses, they become subject to the legislative requirement.

We would expect the participation rate to increase more rapidly if the government were to raise the profile of its support for EITI and indicate its expectation that all companies would participate in the 2009 reconciliation.

We conclude that company participation in EITI is compulsory for companies newly entering the sector and for new license areas for companies holding pre-2008 licenses. For companies that were operating before the 2008 legislation, participation is voluntary and subject to legal agreements that were already in force and which are being respected.

We conclude that the indicator is being met and the government is making logical progress towards all companies reporting.

3.12 Grid Indicator 12: Has The Government Ensured That Company Reports Are Based On Audited Accounts To International Standards?

Purpose: The EITI Criteria require that all data disclosed by companies is based on data drawn from accounts which have been audited to international standards. This is a vital component of EITI implementation.

Evidence: To give this indicator a tick, the Validator will need to see evidence that the government has taken steps to ensure that data submitted by companies is audited to international standards. This could include the following:

- government passes legislation requiring figures to be submitted to international standards;
- government amends existing audit standards to ensure that they are to international standards, and requires companies to operate to these;
- government agrees an MoU with all companies whereby companies agree to ensure that submitted figures are to international standards;
- companies voluntarily commit to submit figures audited to international standards;
- where companies are not submitting figures audited to international standards, the government has agreed a plan with the company (including SOE) to achieve international standards against a fixed time-line;
- where figures submitted for reconciliation are not to audited standards, the group is content with the agreed way of addressing this.

Progress to date

The relevant international standards are International Auditing Standards, issued by the International Auditing and Assurance Standards Board, part of International Federation of Accountants.

The NSC informed us that most International Oil Companies were audited in accordance with International Auditing Standards.

The NSC informed us that they had considered the suitability of the present arrangements on several occasions²⁰ and concluded that the present method of addressing this is satisfactory. This opinion took into account that the most material payments were made by international oil companies that were audited globally in accordance with international auditing standards. Whilst that position has not been quantified in terms of audited revenue coverage, it represents a reasonable starting point for EITI implementation.

Legislation has been introduced requiring certain company financial reports for the purpose of reporting to shareholders to be audited. The legislation applies to Joint Stock Companies and Banks and does not refer to international auditing standards. The limited application of this legislation is not particularly helpful to EITI. It is relevant to note that some companies operating in the sector are incorporated outside Kazakhstan and are not therefore subject to Kazakh reporting legislation.

The reporting forms for 2006 were not supported by any declaration that the data was in conformity with financial statements that have been audited to international standards (but for more recent years, we understand that such a question has been asked on the forms). The reconcilers were not asked to undertake any audit work, except of a limited nature where the financial value reported by the company

²⁰ The NSC was not able to provide information as to the dates on which such discussions took place.

was not in agreement with that reported by the government. When the reconciler did ask for documentation, any checking they did cannot be considered to have amounted to an audit.

The 2006 report includes a statement that 51 companies were audited according to international standards of financial reporting (out of 119 companies listed as participating for 2006). The reporting templates for 2006, 2007 and 2008 include a tick box where the company is asked to state whether or not such an audit has been carried out.

Stakeholder views

The companies we met informed us that the standards used by their auditors were determined by the auditors and indirectly, where applicable, by their parent companies.

The NSC is cognizant that not all companies participating in EITI audit their accounts to international standards. However, the NSC is satisfied that the major companies in Kazakhstan, and those producing the majority of revenues, are international oil and gas companies that do audit their accounts to international standards. The NSC is satisfied that major local companies apply stringent accounting standards required under Kazakh law. The NSC is satisfied that it has now integrated a requirement to disclose whether accounts are audited to international standards, so it can track the gradual shift to international standard auditing. Lastly, the NSC is aware that there is a major project underway between the government and USAID to develop international accounting standards and practices, which will eventually be put into practice in Kazakhstan.

Validator's assessment

The NSC has considered the suitability of the present arrangements and concluded that the present method of addressing this is satisfactory. On this basis, the indicator has been met.

We recommend that the NSC develop a positive strategy for moving progressively towards compliance with EITI Criterion #2 which requires that payments and revenues are the subject of a credible independent audit, applying international auditing standards.

We recommend that the NSC consider how company audit arrangements can be made more meaningful at the level of Kazakhstan (rather than globally) by, for example:

- Introducing, as part of the EITI sign-up (MOU) process, a commitment that the company will provide audited financial statements.
- introduce a local audit requirement for branch operations.
- In the absence of any other audit requirement, defining a limited scope audit focussed on the most material payment streams that would be mandatory for EITI participating companies.

3.13 Grid Indicator 13: Has The Government Ensured That Government Reports Are Based On Audited Accounts To International Standards?

Purpose: EITI criteria require that all data disclosed by the government is audited to international standards.

Evidence: To give this indicator a tick, the Validator will need to see evidence that the government has taken steps to ensure that data submitted is audited to international standards. This could include the following:

- government passes legislation requiring figures to be submitted to international standards;
- government amends existing audit standards to ensure they are to international standards, and ensures compliance with these;
- where figures submitted for reconciliation are not to audited standards, the multi-stakeholder group is content with the agreed way of addressing this.

Progress to date

Government audit is managed by the Accounting Committee which is part of the Presidential Administration. We would have liked to meet a representative of the Committee to discuss their work but this could not be arranged.

According to the Statute of the Accounting Committee, one of its responsibilities consists of control over the completeness and timeliness of receipts to the national budget, and also loans, guaranteed by the state, funds given from the republican budget for redemption of government obligations, connected grants and government assets.²¹ Our interlocutors demonstrated a variety of understandings as to the scope of work of the Committee and generally agreed that the financial reports issued by the government are not accompanied by an audit report and it is unlikely that the Accounting Committee worked to international standards for 2005 or 2006.

Stakeholder views

The NSC was satisfied that all taxes and other obligatory payments received by the government are audited by the Accounting Committee in accordance with Kazakhstan national legislation and assessed that this represented a reasonable starting point for EITI implementation. The government EITI reporting forms however are not audited. The CSOs believe that a mechanism should be developed to take into account the audits by the Accounting Committee of revenues from extractive companies, for EITI purposes; this is under consideration by the NSC.

Furthermore, the NSC is aware that there is a major project underway between the government and USAID to develop international accounting standards and practices, which will eventually be put into practice in Kazakhstan.

Validator's assessment

The NSC considered the suitability of the present arrangements but did not minute its discussion. The NSC concluded that the present method of addressing this is satisfactory.

We consider that the NSC should give greater attention to the issue of government audit in accordance with international standards. We recommend that the NSC consider how national audit arrangements

²¹ Official website of the Accounting Committee of the Republic of Kazakhstan, www.esep.kz.

can be better focussed to support the data required for EITI. We recommend that the NSC explore the possibility of making use of existing audits for EITI purposes.

We recommend that the NSC develop a strategy for moving towards compliance with EITI Criterion #2 which requires that payments and revenues are subject of a credible independent audit, applying international auditing standards.

Subject to the NSC documenting an appropriate strategy for implementation, we consider that the indicator has been met.

3.14 Grid Indicator 14: Were All Material Oil, Gas And Mining Payments By Companies To Government (“Payments”) Disclosed To The Organisation Contracted To Reconcile Figures And Produce The EITI Report?

Progress to date

The NSC considered on several occasions the identification of financial flows that should be included within the scope of EITI. The NSC has also considered the identification of entities that should report.

In preparation for the Terms of Reference of the first EITI report, the NSC reached the decision that all payments as identified through the Tax Code and other applicable legislative requirements should be included as material, regardless of the amounts in question. To ensure coverage of all possible payments, a category of “Other payments” was included.

For its first report, to test the process and help identify process issues that would need to be addressed, the NSC limited the scope of the 2005 report to include the “oil and gas signatory companies that were in production”. The NSC was concurrently undertaking efforts to add the most important remaining producer that had not signed up to EITI. The reconcilers for 2005 did not indicate any material issues of evident material non reporting of transactions amongst companies that did report.

Deloitte, in 2005, drew attention in its report to the issue that the scope of work specified in the TOR issued by the NSC was insufficient to identify transactions that were omitted by both payer and recipient.

For 2006, the NSC expanded the scope of the reconciliation to all signatory companies (oil and gas companies in production plus oil and gas companies in the exploration and development stage plus any mining companies that had signed up to EITI). The reconcilers for 2006 reported that 6 out of 119 signatory companies did not report, including one major mining company. All other non-reporting companies were found to have either no transactions to report or in one case the company was not truly an extractive industry company and had signed the MOU in error.

The NSC accepted the report of the reconciler to the effect that revenues of government were in agreement with payments by companies subject to certain identified differences that were substantially explained to the satisfaction of the NSC members.

The NSC is satisfied that all material payments have been included in the reporting forms it has approved, and that these forms are provided by companies to the reconciliation company appointed²². There are two outstanding issues (the treatment of dividends and social payments) that have been sent to Working Groups for a recommendation on how to manage.

Stakeholder views

The NSC informed us that they had agreed that materiality was defined by:

- 1) all types of payments made to the national budget based on the Tax Code and other legislation, regardless of how small the payment

While some stakeholders felt that small amounts were not relevant, CSOs demanded all payments be included and the NSC did not object to this requirement.

- 2) the “percentage of payments/revenue between the extractive industry and the government”

The NSC has stated that for “the first Kazakhstan Validation Process”, materiality constitutes approximately 90% of payments/revenues currently represented by the extractive industry signatory companies. The NSC understands payments made by the oil and gas industry signatory companies to constitute approximately 90% of all oil and gas revenue and Oil and gas revenue to constitute over 50% of Kazakhstan’s total revenue. Payments made by the mining industry signatory companies are said to constitute approximately 60% of the total mining industry revenue. Mining revenue is said to constitute approximately 2.3% of Kazakhstan’s total revenue. Relevant graphics prepared by the NSC are included at paragraph 1.4.

The NSC has told us that they agreed to the above definition of materiality for the “first Kazakhstan EITI Validation Process”. The NSC’s ultimate goal is to include all extractive industry companies in the EITI process. However, the NSC recognizes that since there are over 800 companies in the extractive industry sector, the remaining 700+ companies comprise less than 10% of the extractive industry revenue, which is approximately 5% of Kazakhstan’s total revenue. While the NSC will adhere to its long term goal, it is aware that the continuing addition of signatories will eventually result in diminishing returns, both in time and cost for future reconciliation reports. At this stage the NSC is prepared to continue its commitment to add all remaining companies to EITI.

Validator’s assessment

As pointed out by Deloitte, there is no evidential basis for stating positively that there were no unreported material payments made by companies. However, there is no indication that any material payments were omitted. Within the intention of the nature of the EITI reconciliation, it seems that the indicator is asking whether the reconciliation indicated that government had reported transactions that the companies did not report. If this is the correct interpretation, then the NSC is content that the figures from companies have been materially reconciled with those from government and the work for 2005 and 2006 did not reveal omissions of that type.

The reconciliation did not reveal material differences.

²² The NSC has informed us that, after the Validators’ in-country visit, two further reports have been published, reconciling over 90% of the extractive industry payments with revenues to the government.

The key issue is the fact that in 2006 one major company was included within the scope of the work but did not report. The problem was addressed before the next reconciliation.

In the way in which the NSC has defined material payments, the indicator has been met.

3.15 Grid Indicator 15: Were All Material Oil, Gas And Mining Revenues Received By The Government (“Revenues”) Disclosed To The Organisation Contracted To Reconcile Figures And Produce The EITI Report?

Progress to date

See Section 3.14 Grid Indicator 14 for definition of materiality. Review of this indicator should be in conjunction with the previous indicator

The reconciliation reports for 2005 and 2006 did not indicate any material payments by companies that were omitted by the government.

The 2006 report left open a question as to whether there were differences between company and government figures where transactions that took place in US dollars were reported by the government in Tenge equivalents. Changes were made to the 2007 and 2008 reporting forms to avoid the issue recurring. It has been determined that because the companies only reported amounts in dollars, and the government reported in Tenge, the 2006 reconciler independently converted the dollar amounts to Tenge, using a different conversion date than the one used by the government. This led to discrepancies in the reconciliation exercise.

The reconciling firm reported in relation to 2006 that neither Companies nor the Authorised Body submitted data on the division of production.

Stakeholders’ views

It is the position of the NSC that the templates are based on the Tax Code and other relevant legislation that includes all required payments by companies to the government. In filling in these reporting forms, the government disclosed all material revenues to the reconciler.

The NSC understands the EITI reconciliation process to involve a parallel transaction in which company payments are compared to revenue received by the government from the corresponding company. As such, there is no purpose for government disclosure of revenues received by companies that are not participating in the EITI reconciliation process, as there is no information with which to conduct a comparison. For purposes of the definition of materiality for this indicator, the NSC considers that the definition must be the same as for companies, that is, the percentage of revenue received from the extractive industry.

Validator’s assessment

The reconciliations did not indicate any under-reporting by government. The indicator has been met.

We make the following recommendations:

1 The reported government data relates only to those companies that did report. The government did receive Revenues that were not reported, from companies that do not participate in the

EITI reconciliation process. Those revenues have been assessed by the NSC as amounting to less than 10% of the revenues received from the extractive industry. The NSC had set a materiality level of 90% of government revenues and relies on confirmation from the Ministry of Finance that this threshold would be achieved by the companies that were included in the reconciliation. Ordinarily, an income understatement of 10% would be regarded by data users as material. We recommend that NSC consider requesting government to report receipts from non-participating companies.

2 The EITI reconciliation has reported government revenues that are significantly greater than the revenues previously disclosed in Ministry of Finance published data²³. The Ministry of Finance reported for 2006 that Oil Sector direct National Taxes received in the National Fund amounted to 672,114 million Tenge whereas the EITI report for the extractive sector states 889,786 million Tenge (and this excludes non participating entities). There are several possible reasons for this, such as:

- Mining companies are not included in the Ministry of Finance figures, although the NSC figures suggest mining is too small to account for such a large difference;
- differences in the definition of financial flows
- changes in the way government accounts for oil and gas income.

We recommend that the NSC enquire into these issues and prepare and publish an explanation. We consider it should however be a routine element of the improvement of transparency to seek to understand why there are differences between various data sources. This could lead to an improved understanding of the benefit flows. Congruence of reported figures would help confirm that all material amounts received by the government were being reported to the reconciler.

3.16 Grid Indicator 16: Was The Multi-Stakeholder Group Content That The Organisation Which Was Contracted To Reconcile The Company And Government Figures Did So Satisfactorily?

Progress to date

The NSC has minuted its acceptance of the reports of the reconcilers for 2005 and 2006. The NSC was content that the reconcilers did their work in accordance with the approved Terms of Reference.

The NSC recognized its concerns about the 2005 Report were due to how the TOR had been written and the templates designed. Deloitte made recommendations for improvements and these were mainly adopted for the subsequent year.

The 2006 Report reflected discrepancies that could not be explained because of the issue that arose over the reconciliation of dollar and Tenge amounts. The NSC did not consider that this was a fault on the part of the reconciler.

Validator's assessment

The indicator has been met.

²³ EITI Sourcebook: Additional Action A3

3.17 Grid Indicator 17: Did The EITI Report Identify Discrepancies And Make Recommendations For Actions To Be Taken?

Progress to date

In the 2005 and 2006 Reports, discrepancies were identified and the reconciler commented on them. The 2005 Report contained recommendations aimed at improving the process of data collection and reconciliation.

The 2006 summary report was presented in accordance with the requirements of the TOR given to the reconciler. We have extracted the following data from the report:

Section		<u>Companies</u>		<u>Authorised</u>	<u>Difference</u>	
		Tenge 000	US\$ 000	body	Tenge 000	US\$
I	Taxes	584,863,097		889,786,542	- 304,923,445	
II	Special payments of subsurface users	184,929,181		323,383,309	- 138,454,128	
III	Fees	15,199,108		18,864,932	- 3,665,824	
IV	Customs payments	11,781,173		11,813,161	- 31,988	
	Payments specified in Tenge	796,772,559		1,243,847,944	- 447,075,385	
	Payments specified in US \$		355,250		-	355,250

The 2006 report referred to unreconciled differences between payments reported in US dollars by certain companies and revenues reported by the government in Tenge. The firm Inaudit LLP calculated a net difference of 174 million Tenge and stated “the competent body could not provide recalculation of foreign currency to Tenge regarding each payment and each date for verification. Due to this fact, the given difference has remained unexplainable”.

A similar difference arose for 2005 but the report did not elaborate, simply stating “the difference on payments in foreign currency (US dollars) of 423.48 million US dollars occurred. We confirmed this difference by obtaining confirmation letters from the Companies concerned.”

As described under Grid Indicator #14. the NSC set up a working group to consider this issue and recommend a solution, for future reporting periods. To avoid a recurrence, the reporting forms for 2007 and 2008 reflect payments in both Tenge and US dollars.

The NSC has provided the following additional explanation, drawing on work done on the 2007 and 2008 reports:

“During the 2007 and 2008 reconciliation, it was discovered that companies provided payment information in the foreign currency in which they make their payments; government provided that revenue in Tenge as required under Kazakh law. To enable a like comparison, the reconciliation companies made their own conversion for the payments made. The conversion rates used were different as the companies’ dollar amounts were converted on the date of payment, while the government revenues were converted on the dates the payments were booked, creating an exchange conversion. To avoid a false result, for the 2007 and 2008 Reports, the reconciliation company used the same conversion rate as the government, as companies do not document their revenues in Tenge.”

Validator’s assessment

This indicator has been met.

3.18 Grid Indicator 18. Was The EITI Report Publicly Available In A Way That Was Accessible, Comprehensive, And Comprehensible?

Purpose: the EITI is ultimately fully implemented when the EITI Report is made public and is widely disseminated and openly discussed by a broad range of stakeholders. The EITI Criteria require that the Report is publicly available in a way that is publicly accessible, comprehensive and comprehensible.

Evidence: To give this indicator a tick, the Validator will need to see evidence that the government has ensured that the Report was made publicly available in ways that are consistent with the EITI Criteria, including by:

- producing paper copies of the Report, which are distributed to a wide range of key stakeholders, including civil society, companies, the media and others;
- making the Report available on-line, and publicising its web location to key stakeholders;
- ensuring that the Report is comprehensive and includes all information gathered as part of the Validation process and all recommendations for improvement;
- ensuring that the Report is comprehensible, including by ensuring that it is written in a clear, accessible style and in appropriate languages;
- ensuring that outreach events – whether organised by government, civil society or companies – are undertaken to spread awareness of the Report.

Progress

The Internet has been the primary means of public information on EITI followed by electronic mass media (TV, radio and Internet). The period between January and September 2007 saw 57 articles in newspapers, 15 publications by news agencies, 9 TV programs and 7 Internet publications. Full EITI reports were published in major national printed media, such as the daily *Kazakhstanskaya Pravda* (the 2005 Report) and weekly *Panorama* (the 2006 Report). The second EITI report (2006) was also published in the *KazEnergy* magazine, which is distributed to government and the extractive industries community. According to the government representatives, paper copies of the 2005 and 2006 reports were produced and distributed to local libraries and at the national and regional conferences. The reports were also published on the EITI website (www.EITI.kz) and the website of the Coalition 'Oil Revenues Under Public Oversight'. The published versions of the reports are comprehensive and include recommendations for improvement suggested by the reconcilers.

The published versions of the first two reports are written in a technical language difficult for non-specialists to understand. The 2006 reconciliation Report was published disclosing the unreconciled difference of approximately 174 million Tenge.

No popular versions of the reports have been produced to make them more accessible to the public. Further, at the time of the validation visit, the EITI report for 2006 was not available from the NSC in the Kazakh language, which limited its accessibility to the Kazakh-only-speaking audience. We are informed that the translation has since been completed and is available, together with the entirety of other published materials, on the EITI website and on request from the EITI Secretariat. The NSC has invested considerably in generating these materials, over the past few months. The NSC reported that there were technical problems with the government website that prevented the web publication of the Kazakh materials. We have been informed that this issue has subsequently been resolved.

Outreach events to spread awareness of the EITI reports and EITI in general included four regional and two national conferences in 2008-09. The conferences were widely attended by government, industry and the CSOs directly involved in EITI implementation. Companies made no effort to publicise the reports individually, however the KazEnergy industry association published the 2006 report in its magazine. Outreach activities to date focused on civil society organisations directly engaged in EITI participation and have not reached the grass roots level. The general public appears to remain largely unaware of the Initiative. This situation was further complicated by the scarcity of materials on EITI available in the Kazakh language. Less than 5% of the publications were in Kazakh; and neither of the above mentioned websites had materials in Kazakh although the government's website (www.EITI.kz) purports to be tri-lingual (English, Russian, and Kazakh).

We recommend that the communication plan suggest practical measures to ensure materials are available in the Kazakh language, including standardization of the EITI terminology in Kazakh.

The NSC has not developed a communication plan and, therefore, outreach activities are planned and implemented on an ad hoc basis. Support of the World Bank, directly and through the Joint Economic Research Project with the Government of Kazakhstan, has been instrumental in supporting the EITI website as well as national and regional conferences.

Some civil society organisations are dissatisfied with the lack of support by the companies participating in EITI. These CSOs claim that the inadequate quality of the draft strategy developed by the Kazakhstan Press Club was the reason for the late approval of the communication strategy, which prevented development of a standalone communication plan as required under the 2007-2009 workplan.

The companies met during the validation see their role in information activities as limited. Some companies have published various articles on EITI and its implementation in Kazakhstan in mass media. ExxonMobil has funded an NGO Resource Center whose purpose it is to train NGOs in Atyrau and the surrounding regions. TCO has received a letter of gratitude for its support of NGOs on EITI activities. In addition to this, ExxonMobil and Statoil have provided translations in Russian and Kazakh of all major international and local materials for EITI awareness.

Stakeholder views

All stakeholders we consulted on this issue agree that this indicator had been met. The stakeholders agree that the first two reports were difficult for non-experts to understand.

The Coalition 'Oil Revenues Under Public Oversight' is of the opinion that so long as the reports provide aggregated information without breakdown of payments by company, they cannot be considered truly comprehensive and comprehensible.

The NSC, in response to concerns about Kazakh language materials, has actively arranged, with the support of IOCs, the translation of all relevant materials into Kazakh. Two CSOs have agreed to publish the Kazakh language materials on their websites.

Validator's assessment

A communication strategy has been developed and approved as a reference basis for the formation of a communications plan. Effective dissemination of the reports of the EITI reconciliations is seen by the NSC as a long term task.

We are concerned at the sustainability of the communications effort which currently appears to be dependent on donor support. The NSC should agree a financially sustainable communications plan.

We recommend that a distribution list should be prepared for dissemination of the paper copies of EITI reports, including government and non-government agencies and organisations as well as the private sector.

We also recommend the NSC to consider additional outreach methods (in addition to some mass media and the Internet) and encourage greater involvement of companies in outreach activities to disseminate information about EITI reports, including through the websites of KazEnergy (www.kazenergy.com), Kazakhstan Petroleum Association (www.kpa.kz) and the Association of Mining and Metallurgic Enterprises (www.agmp.kz).

The extent to which internet publication is a suitable medium to reach the Kazakh-speaking population should be considered in the NSC's communication plan.

Our reservations in relation to this Grid Indicator are:

- 1 the low penetration of Kazakh language materials, though we see that active efforts are being made to redress this; internet publication was a good step forward.
- 2 it is important that an authorized easy-to-read version of the reports should be commissioned by the NSC to make them more accessible for general non-technical readers.

We are informed that, subsequent to the validation field work, Kazakh language materials have been publicised on the website. Further steps would be required to disseminate these materials widely. On this basis, we consider the indicator will have been met.

3.19 Have Oil, Gas and Mining companies supported EITI Implementation

Purpose: In accordance with the EITI Principles and Criteria, all companies operating in the relevant sectors in countries implementing the EITI have to disclose material payments to the government in accordance with agreed reporting templates and to support EITI implementation. This includes: expressing public support for the Initiative; taking part in, or supporting, the multi-stakeholder process; disclosing agreed data, which is audited to international standards; and cooperating with the Validator where they have queries over Company Forms.

Evidence: This indicator does not require the Validator to provide an overall assessment. The Validator should provide a written assessment in the EITI Validation Report based on the self assessed Company Forms (below) which each company is required to complete. Where companies do not fill in forms, the Validator should note this in the final Report. In addition, the Validator should include in the final report any relevant information on the company concerned that is already in the public domain. The company should be given the opportunity to check this information. As well as using the forms to summarise company performance in the EITI Report, the forms should be publicly available and a table collating company responses should be included in the EITI Report. The Validator should contact all the companies required to fill in forms at the start of the Validation, inform them of the requirement to complete the form and request that the forms be returned to the Validator. In addition, the Validator should ask companies to comment on lessons learnt and best practice. Companies will have two ways of providing such comments:

- companies can use the space provided on the self assessment forms, or
- companies can provide verbal evidence to the Validator where issues the company wishes to note are of a sensitive nature. The Validator will summarise anonymised lessons and experiences in the Validation Report.

The self-assessment form should be filled in, in the first instance by the company, as follows:

Country-level:

- Each oil, gas or mining company active in the country being validated should complete a country-level Company Form as a self-assessment and should submit it to the Validator.
- The national Validator will collate responses and may contact companies if they have additional questions or require further supporting information. Companies should respond positively to such requests.
- Companies should make forms for each country of operation publicly available on their external websites

International level:

- Companies that have made international commitments to support the EITI should fill in an international-level self assessment form.
- The international Company Form should be completed by each company and this should be sent to the EITI secretariat who will put it on the EITI website.
- Companies should also provide clear endorsement of the EITI on their website.

This section should be read in conjunction with the Company Forms (Annex 2).

Validation approach

Company representatives on the NSC assumed the task of issuing self-assessment forms and collecting responses from companies. Companies submitted their forms to the representatives and they were forwarded to us. Some forms omitted basic information, such as the company name.

The Validator undertook a basic telephone survey of companies. This was structured into three groups of companies, as follows:

- Group A: companies that had signed the MOU and had submitted self-assessment forms
- Group B: companies that had signed the MOU but had not submitted self-assessment forms (sample of 15 companies)
- Group C: extractive companies identified by MEMR that were not participating in EITI (sample of 15 companies)

The aims were to verify that forms received from companies, via the representatives, were genuine and to provide an additional opportunity for companies to comment on EITI. Where the company had not signed up to EITI, the aim was to make a rapid assessment of the level of EITI awareness of the company.

Group A companies were asked:

- 1 to confirm that the form is genuine (has originated from the company and is not 'manufactured')
- 2 whether the company has posted a copy of the form on its website
- 3 whether the company has anything to say in the white box

Group B companies were asked:

- 1 why they did not submit the form
- 2 to complete the form and to post a copy of the form on its website
- 3 whether the company had anything to say in the white box
- 4 whether the company considered that its level of awareness of EITI is high/average /low.

Group C companies that had not signed the MOU were asked:

- 1 to confirm that the company is involved in oil & gas or mining
- 2 whether the company was engaged in production? (alternatives are: (1) exploration and development and (2) company ceased activities)
- 3 whether the company considered that its level of awareness of EITI is high/average /low.
- 4 Whether the company had been invited to participate in EITI? (Yes /no)
 - 1) No: If you were invited to participate, would you do so? (why / why not?)
 - 2) Yes: why did you not agree to participate?
- 5 Whether the company was aware how to obtain information about EITI? (yes / no)

Findings and Validator's assessment

The percentage of companies providing the self-assessment form was about 28%. This was despite energetic follow up by the company representatives on the NSC and sample telephone interviews by ourselves.

The self-assessment forms that were returned report a commitment to participate in EITI.

Our research indicated that most local companies did not have websites. The forms tended not to be published on company sites. We did not identify any public statements by local companies to the effect that they supported EITI. International companies tended to state, at group level, that they support the initiative.

Some companies having websites in Kazakhstan informed us that new legislation on the foreign control of media in Kazakhstan might (it appears, inadvertently) necessitate the closure of their sites. This was a new issue at the time of the validation visit and there was uncertainty as to the impact of the legislation.

The principal findings from the research were:

- 1 that the listing of companies provided to us by MEMR was inaccurate and incomplete, possibly out of date;
- 2 that the contact details in respect of companies that were not signed up to EITI, held by MEMR, were generally at a junior level; that the level of awareness of EITI amongst the respondents was very low, perhaps largely attributable to the contact details being inappropriate.

It is not appropriate to generalise the findings. It is clear from our meetings with a small number of international companies that they are highly committed to EITI implementation and do engage in EITI promulgation activities, support the secretariat and attend road shows etc. Companies that are less directly involved in EITI see their participation as limited to completion of reporting forms. The survey, limited as it was in scope, suggests that EITI awareness has not been mainstreamed in the companies' way of doing business in Kazakhstan. It also suggests that the contact persons whose names are held by MEMR as principal contacts for EITI purposes are not well informed or aware of EITI. It might be inferred that the campaign of publicity and the letters written by MEMR have not been effective in communicating to companies the basic messages of EITI. The way in which the dissemination / recruitment campaign is run should be reviewed in the light of these findings.

3.20 What Steps Have Been Taken To Act On Lessons Learnt, Address Discrepancies And Ensure EITI Implementation Is Sustainable?

Purpose: The production and dissemination of an EITI Report is not the end of implementation of the EITI. The value comes from the process as much as the product, and it is vital that lessons learnt in implementation are acted upon, that discrepancies identified in the EITI Report are addressed and that EITI implementation is on a stable, sustainable footing.

Evidence: The Validator should see evidence that a review mechanism has been established that takes account of the purpose outlined above. The Validator should comment on this in the Validation Report

Progress

Lessons learnt during the EITI implementation in Kazakhstan were considered in a number of forums, including national and regional conferences, seminars and workshops. The Government devoted two special sessions to EITI implementation in July 2007 and June 2009. Following these sessions requested by civil society representatives, the Prime Minister gave instructions to a number of government agencies to address a range of issues identified in the course of EITI implementation. These issues included lack of funding for EITI reconciliation, low capacities of the EITI Secretariat, lack of EITI implementation at the sub-national level, weak outreach activities and so on. Civil society organisations played a very important role in identification of outstanding issues and lessons learnt, including, among other things, through alternative annual EITI reports issued by the Coalition 'Oil Revenues Under Public Oversight'. These reports contain a thorough analysis of EITI implementation and are a valuable contribution to the lessons learning process. The recommendations include: to introduce transparent

and clear procedures for appointment and rotation of representatives in the NSC; to intensify outreach efforts to increase the number of participating companies, particularly those in the mining sector; to incorporate data on social payments in EITI reconciliation reports; to enforce legal provisions requiring new license holders to join EITI and others.

Many (but not all) recommendations of the independent reconcilers responsible for EITI reconciliation in 2005 have been acted upon. As a result, the reporting forms have been revised and budget codes added, instructions on completion of reporting forms detailed, payments in US dollars incorporated in the reporting forms to prevent discrepancies caused by exchange rate fluctuations between the US Dollar and Kazakh Tenge and so on.

Stakeholder views

All stakeholders we consulted consider that EITI reporting has significantly improved due to the steps taken by the NSC and the government.

Validator's assessment

This indicator has been met. However, we note the lack of a systematic analysis of issues and lessons learnt by the National Stakeholder Council and the Secretariat. This is related to the overall low quality of planning and monitoring and evaluation as described in Indicator 4. There is no lessons learnt and issues log and no action plans to incorporate lessons learnt, which results in a haphazard approach to problem solving and is not conducive to the creation of a knowledge base and systematization of best practices in EITI implementation. Review of EITI implementation does take place but in the absence of a particular mechanism. We recommend the NSC to introduce a mechanism to ensure systematic logging of issues and lessons learnt, regular review of the EITI implementation process (particularly in the wake of EITI reconciliation and validation reports) and action plans to act on the identified issues and lessons learnt.

4 THE VALIDATION GRID

Our assessment of whether the indicators have been met is set out below. This assessment takes into account information provided to us after the validation field visit and is in some cases subject to provisos as explained in the text.

Grid Indicator		Whether Met
SIGN-UP		
1.	Has the Government issued an unequivocal public statement of intention to implement EITI?	✓
2.	Has the government committed to work with civil society and companies on EITI implementation?	✓
3.	Has the government appointed a senior individual to lead on EITI implementation?	✓
4.	Has a fully costed workplan been published and made widely available containing measurable targets, a timetable for implementation and an assessment of capacity constraints (government, private sector and civil society)?	✗
PREPARATION		
5.	Has the government established a multi-stakeholder group to oversee EITI implementation?	✓
6.	Is civil society engaged in the process?	✓
7.	Are companies engaged in the process?	✓
8.	Did the government remove any obstacles to EITI implementation?	✓
9.	Have reporting templates been agreed?	✓
10.	Is the multi-stakeholder committee content with the organisations appointed to reconcile figures?	✓
11.	Has the government ensured that all companies will report?	✓
12.	Has the government ensured that company reports are based on audited accounts to international standards?	✓
13.	Has the government ensured that government reports are based on audited accounts to international standards?	✓
DISCLOSURE		
14.	Were all material oil, gas and mining payments by companies to government ("payments") disclosed to the organisation contracted to reconcile figures and produce the EITI report?	✓
15.	Were all material oil, gas and mining revenues received by government ("revenues") disclosed to the organisation contracted to reconcile figures and produce the EITI report?	✓
16.	Was the multi-stakeholder group content that the organisation which was contracted to reconcile the company and government figures did so satisfactorily?	✓
17.	Did the EITI report identify discrepancies and make recommendations for actions to be taken?	✓
DISSEMINATION		
18.	Was the EITI report made publicly available in a way that was: Publicly accessible; Comprehensive; and Comprehensible?	✓
Companies	How have oil, gas and mining companies supported EITI implementation?	N/A
Review	What steps have been taken to act on lessons learnt, address discrepancies and ensure that EITI implementation is sustainable?	N/A

5 CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusion Of The Validator On EITI Implementation In Kazakhstan

The Validation indicates that meaningful progress has been made and that in many areas the country has complied with the requirements of the Grid indicators.

We do not consider that Kazakhstan has met Grid Indicator #4. The work plan lacks several of the features suggested in the Indicator Assessment Tool.

The Grid indicators for which our 'tick' is subject to a proviso are:

Indicator 13: this indicator is met on the basis that the NSC documents a strategy designed to strengthen compliance with EITI Criterion 2 as regards government audit.

Indicator 16: this indicator is met on the basis that dissemination of the reports using Kazakh language materials has progressed considerably after the end of the validation field work.

Our finding in relation to the foregoing is that the Grid Indicators have been sufficiently met. In reaching this conclusion, we have been impressed by the ongoing and energetic activity of the NSC and its working groups in continuing to address these remaining issues as well as generally moving the initiative forward. It is clear that Kazakhstan has an active and effective EITI process.

Taking the foregoing into account, we consider that Kazakhstan has made substantial progress and is close to compliance.

5.2 Recommendations For The Further Implementation Of EITI In Kazakhstan

In the preceding review of progress, we have mentioned issues the NSC might wish to consider, in further implementing EITI in Kazakhstan. These are summarised here, for convenience.

5.2.1 WORKING WITH CIVIL SOCIETY ORGANISATIONS

Indicator #6: Meaningful participation of civil society in EITI is not just a formal EITI requirement, such participation is a necessary condition for EITI success. However, CSOs must develop certain capacities to be able to constructively contribute to EITI implementation. We recommend that the NSC develop a plan of action to address capacity constraints affecting civil society participation in EITI, We also recommend that the government and the NSC engage in sustained resource mobilization to ensure implementation of this plan, requesting cooperation of international organizations present in Kazakhstan (UNDP, World Bank and others) as well as support of the private sector.

5.2.2 NSC GUIDELINES

The Memorandum of Understanding has ceased to be a suitable document for companies to sign up to because, as an operational document, it has been superseded by the NSC Guidelines. We recommend that the NSC cease the practice of newly participating companies being required to sign the MOU and instead develop a simple accession document that reflects the reality of the commitment the new participant will be making.

- a) We also recommend that the NSC Terms of Reference (Guidelines) be revised to allow the NSC formally to play a meaningful role in the EITI implementation: the NSC composition should be revised to remove any doubts about the adequacy and reasonableness of representation and to support the increased representation of companies and civil society in the NSC;
- b) the MOU and NSC Guidelines should be reviewed to specify the criteria for NSC membership for companies and civil society and procedures for their periodic rotation;
- c) To NSC Terms of Reference should be clarified; if the NSC is a decision-making and / or approving body this should be clear in the TOR;
- d) choosing an auditor to undertake audits where data submitted for reconciliation by companies or the government are not already based on data audited to international standards;
- e) choosing an organisation to undertake the reconciliation

It should be seen as normal practice to review and if necessary update the NSC Terms of Reference as implementation progresses.

5.2.3 COMPOSITION OF THE NSC

Civil society: There is a need to determine a clear and fair mechanism of civil society representation in the NSC to ensure that the participating organizations reflect interests of civil society at large. We also recommend that civil society organisations develop a mechanism of cooperation, information exchange, nomination and rotation of their representatives in the National Council. There should be no external influence on this process but the rules of representation should be clear.

Parliamentarians: The Parliament represents the legislative branch of government. The lack of participation by MPs should lead to a review and consideration of providing those seats to other interested stakeholders in the NSC. In addition, the Parliament has other mechanisms for engagement, such as annual budget approval process, formal enquiries and interpellations, not available to the other stakeholders. We recommend that the issue of MPs' participation be reviewed.

Mining companies: At the time of the validation, mining companies were not represented in the NSC. We note that although the share of mining companies is not significant in the structure of government income derived from the extractive sector, in many locations, particularly in the north of the country, mining companies are the largest employers determining the economy of the so-called company towns. We recommend that the companies make provision for participation of mining companies to be identified through a procedure independently designed by companies.

5.2.4 EXTRACTIVE SECTOR COMPANIES

A list of legal entities, which are potentially covered by the EITI, should be reconsidered. The list should be checked and aligned with the license holders' registration data maintained by authorities. We recommend the NSC to set the deadlines, by which all extractive companies should sign up regardless of the scopes of their financial transactions with the government. All extractive companies, regardless of their phase (e.g. exploration, development, production) should participate in the EITI. A strategy with fixed deadlines should be developed to help ensure complete participation.

We recommend that the NSC consider the possible benefits of documented transparency standard for EITI supporting companies.

5.2.5 UNDERSTANDING THE BENEFIT STREAMS

We recommend that the NSC research in greater detail the mechanisms by which financial flows reach the government. It would be useful if the NSC were to publish a schematic diagram of the flows, showing the nature of each flow and its routing through the payments system.

The status of KMG should be clarified. The legal structure of the group does not fall neatly within the usual EITI definitions. The NSC working group that is reviewing this issue should report as soon as possible.

If a decision is taken to extend the scope of EITI reconciliation to sub national flows, a deeper understanding of how these flows occur, including the sources of data for confirmation purposes, will be very important.

5.2.6 OTHER PUBLISHED DATA

We recommend that the NSC take note of other data published by the government concerning extractive sector revenues. The NSC should seek to understand the reasons why EITI reports differ significantly from other published data.

To aid comparability, we recommend that the government be asked to report data on revenues from companies that did not themselves sign up to EITI or provide payment data.

5.2.7 SECRETARIAT

We recommend the NSC consider whether the secretariat requires strengthening. Resources seem insufficient at times of high activity. The terms of reference for the secretariat should be designed to specify the roles of the secretariat in planning, collection of information, liaising with other government and non-government organisations, including international organisations, monitoring and evaluation.

5.2.8 CHOICE OF RECONCILER

We recommend that the NSC review its approach to the selection of a reconciler. Whilst this has not been an issue to date, we are concerned that civil society respondents indicated a lack of public 'recognition' of two of the reconciler firms.

5.2.9 RECONCILER TERMS OF REFERENCE

Reconcilers have said that they had no input to their Terms of Reference, leading to a situation in which the reconciler was constrained to report in a particular manner that was less than helpful. We recommend that the knowledge and experience of the reconciler should be captured by including in the TOR of the reconciler a task to make recommendations for changes to the TOR for the subsequent year.

5.2.10 QUALITY OF DATA REPORTED BY COMPANIES

The NSC has included a question about audit in the 2007 and 2008 templates. This represents progress compared to the previous years. We recommend that the NSC should take further steps to endeavour to ensure the quality of data provided by companies:

- a) We suggest that the companies might be asked to confirm that the data they provide on the reporting forms is taken from books and records that formed the basis of their financial statements that were audited in accordance with international auditing standards; and
- b) We suggest that companies might be asked to request their auditors to confirm that the data on the reporting forms is consistent with the financial statements on which they reported.

Planning would be required to introduce these developments. They would however provide additional assurance as to the data supplied.

We recommend that the NSC consider how company audit arrangements can be made more meaningful at the level of Kazakhstan (rather than globally) by, for example:

- Introducing, as part of the EITI sign-up (MOU) process, a commitment that the company will provide audited financial statements; or
- defining a limited scope audit for larger EITI companies, focussed on material payment streams.

5.2.11 ASSURANCE AS TO DATA REPORTED BY GOVERNMENT

The EITI sourcebook and the validation grid place emphasis on the audit of government data. Whilst the terminology used might be clarified, the intention that government data should have been subject to audit is clear.

We recommend that the NSC obtain a better understanding of the procedures employed by the accounting committee and specifically ask about the degree of assurance that the accounting committee is able to provide in relation to revenues from extractive sectors, especially as to the completeness of recording of income. The NSC should consider the implications of the response in relation to the reliance that may be placed on the government reporting forms.

We recommend that the NSC consider how national audit arrangements can be better focussed to support the data required for EITI. We recommend that the NSC explore the possibility of making use of existing audits for EITI purposes.

We recommend that the NSC develop and document a strategy for moving towards compliance with EITI Criterion #2 which requires that payments and revenues are subject of a credible independent audit, applying international auditing standards.

5.2.12 PUBLIC ACCESS TO EITI INFORMATION

We recommend that the NSC reconsider the ways and methods of disseminating information on EITI, including EITI reports. Two aspects should be taken into account: comprehensibility of this information and its accessibility. We recommend that the NSC issue an authorised easy-to-understand version of each EITI report for public dissemination. Other materials explaining the purpose of EITI and its results should be developed for public dissemination. We also recommend that greater emphasis should be placed on the use of traditional means of communication (printed media, radio), given the fact that only 5% of the Kazakh population have access to the Internet.

We recommend that the Communications Plan be agreed by the NSC and it should set out the mechanisms, including funding, for civil society participation in dissemination.

5.2.13 REVIEW AND PROCESS IMPROVEMENT

We recommend that the NSC adopt a more systematic approach to capturing proposals for improving the EITI process and ensuring that innovative ideas are not lost. In particular, the NSC should formulate a workplan for its activities and use the plan as a monitoring tool.

ANNEX 1 – LIST OF RESPONDENTS

Key respondents were the following, to whom we are grateful:

Name	Position	Organization
Aset M. Magauov	Vice Minister, Chairman of the EITI National Stakeholders Council	Ministry of Energy and Mineral Resources
Zhassara Imandossov	Director, Department of International Cooperation, Head of EITI Secretariat	Ministry of Energy and Mineral Resources
Baurzhan Umirzakov	Expert, EITI Secretariat	Ministry of Energy and Mineral Resources
Daulet Ergozhin	Chairman, Tax Committee	Ministry of Finance
Umut Tolgautova	Deputy Chairman, Tax Committee	Ministry of Finance
Bolat Akchulakov	Managing Director	Samruk Kazana, Joint Stock Company 'National Welfare Fund'
Maira A. Kuandykova	Managing Director, Corporate Communications	Eurasian Natural Resources Corporation
Odd M. Instefjord	General Director, Astana Office	Statoil
Patricia Graham	Director of Representative Office	ExxonMobil
Arman Kashkinbekov	Director, Government Relations	JCS ArcelorMittal
Linsi N. Carin	Deputy Manager, Government and Public Affairs	Tengizchevroil LLP
Pavel Lobachev	Director	ECHO
Natalya Yantsin	NSC member, Director,	Social Fund 'Tax Standards Formation'
Anton Artemyev	Director, Kazakhstan Revenue Watch Program	Soros Foundation
Svetlana Ushakova	Coordinator	Coalition 'Oil Revenues Under Public Oversight'
Nadezhda Safonova	Expert	Public Association Centre for Development of Local Governance
Janar Jandosova	Director	Sange Research Centre
Saniya Kassabulatova	Director	Centre for Promotion of Democracy
Nina Yerkayeva	Director	Public Association "Education and Development"
Sholpan Aitenova	Executive Director, NSC member	Civic Alliance of Kazakhstan
Yuriy P. Krivodanov	Director	Public Association 'Blago'
Kevin Covert	Deputy Chief, Political-Economic Section	US Embassy
Manuel Hutama	Partner	Deloitte
Aitmukhambetov, Daulet	Partner	Inaudit LLP
Sergey Plyshevskiy	Energy Projects Officer	UK Embassy
Tatiana Sedova	EITI Consultant	The World Bank

In addition, a round table was held in Atyrau with representatives of Civil Society Groupings:

Name	Organisation
Galina Tchernova	Centre "GLOBUS"
Artur Shokhnazaryan	NKO "Caspil-info" and "Severo-Caspiiskiy Press club"
Azija Kurmanbaeva	Association "Asiattyku Kuryltai", republican representative of the organisation VKO OO Committee for public control over implementation of state programmes
T. Kizatova	Association Kuryltai, OO "Demos"
Assel Nurghalieva	OO "Zamon" Azamiatyk Kuryltai
Ulugbek Tnaliev	OO "Independent Generation of Kazakhstan"
Serik Utlikhaliev	OO "Ayaly orta"
Max Bokaev	NGO (Public Fund) "Arlan"
Makhambet Khakimov	NGO " Caspii Tabagaty"
Kudabai Mukhamedovitch Garzhauov	OO "Oralman-Zhaiyk", Chairman

ANNEX 2 – COMPANY SELF-ASSESSMENT FORMS

A summary of companies that returned Self Assessment forms is on the next page. Of the 122 companies said to be participating in the 2007-2008 reconciliations, a total of 34 supplied Self-Assessment forms.

No	Company Name	Self-assessment form returned?	Web address
1.	JSC NC "KazMunayGaz"	No	http://www.kmgep.kz/
2.	Nelson Petroleum Buzachi B.V.	No	n/a
3.	ExxonMobil Kazakhstan Inc.	Yes	http://www.exxonmobil.com
4.	Nations Energy (Karazhanbasmunai)	Yes	n/a
5.	Kazakhoil Aktobe	Yes	http://www.koa.kz/ru/
6.	Karakudukmunai	No	n/a
7.	JV Arman LLP	No	n/a
8.	Maersk oil Kazakhstan GMBH	Yes	http://www.maerskoil.com
9.	Chevron Texaco International Petroleum Co	Yes	http://www.chevron.com/countries/kazakhstan/
10.	Phillips Petroleum Kazakhstan Ltd	Yes	n/a
11.	Inpex North Caspian	Yes	www.inpex.co.jp
12.	B N Munai LLP (gas production since 2008), (2 nd Contract, exploration until 009 year)	No	n/a
13.	Total E&P Kazakhstan	Yes	www.total.com
14.	Repsol Exploration Kazakhstan	No	http://www.repsol.com/es_en/corporacion/conocer-repsol/presencia-global/kazajstan.aspx
15.	Shell Kazakhstan Development BV	Yes	http://www.shell.com/home/content/kz-kz/welcome.html
16.	BG Karachaganak Limited ("Karachaganak Petroleum Operating B.V.")		http://www.bg-group.com/OurBusiness/WhereWeOperate/Pages/Kazakhstan.aspx
17.	KKM Operating Company	No	n/a
18.	Aral Petroleum Capital LLP	No	n/a
19.	Ravninnoe Oil Ltd	No	http://www.roxipetroleum.com
20.	JV "PetroKazakhstan Kumkol Resources"	No	http://www.petrokazakhstan.kz/
21.	Statoil	Yes	http://www.statoil.com/en/About/Worldwide/Kazakhstan/Pages/default.aspx
22.	JV "CNPC – Aktobemunaigas"	No	n/a
23.	Agip Caspian Sea B.V. Agip Karachaganak BV	Yes	http://www.agipkco.com/wps/wcm/connect/agip+kco/AgipKCO+EN/Home
24.	Lukoil Overseas Service Ltd	No	n/a
25.	Degelen Ltd	No	n/a
26.	CNOOC Caspian (Kazakhstan) Ltd	No	n/a
27.	KazakhTurkMunai LLP	No	http://www.aktm.kz/
28.	Kazakhmys Corporation	No	n/a
29.	Kazakhstan Nickel Mining company	Yes	n/a
30.	Voshod-Oriel	Yes	http://www.orielresources.com/voskhod.asp
31.	Shinzhir LLP	No	n/a
32.	Zhaikhydrogeology	No	n/a
33.	Gyural LLP	No	n/a

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34.	Muzbel	No	n/a
35.	KhazarMunai LLP	Yes	n/a
36.	KazNefteChim _Kopa LLP	No	http://www.kazneftehim.kz/
37.	Samek International	Yes	n/a
38.	Adai Petroleum LLP	No	n/a
39.	Alties Petroleum International B.V.» Aktobe Branch	No	n/a
40.	Alties Petroleum International B.V.» Atyrau Branch	No	n/a
41.	Anaco LLP	Yes	http://www.anaco.kz/
42.	«ArnaOil » LLP	No	n/a
43.	Buzachi Operating Ltd.	No	n/a
44.	CNPC-International Buzachi Incorporation LLP	No	http://www.cnpc.com.cn/en/
45.	ДАО "CaspiNefTME" JSC	No	n/a
46.	ДТОО "ZhalgizTobeMunai" LLP (payments to budget from oil field operations started on January 2006) /Corporation Modular Technology LLP (in 2005 subsoil use rights were transferred to ZhTM)	No	n/a
47.	ZhaikMunai LLP	Yes	http://www.zhaikmunai.com/
48.	JV KazGerMunai LLP	No	n/a
49.	KazPolMunai LLP	Yes	n/a
50.	CaspiNefT JSC	No	n/a
51.	«Kor-Tazh» LLP	No	n/a
52.	«Lines Jump» LLP	No	n/a
53.	«Matin» LLP	Yes	n/a
54.	MangistauMunaigaz JSC	No	n/a
55.	MontajMalikMunai LLP	No	n/a
56.	North Caspian Petroleum ltd	No	n/a
57.	EP "KazMunaiGaz" JSC	No	http://www.kmg.kz/page.php?lang=3
58.	Sauts-Oil LLP	No	n/a
59.	Svetland-Oil LLP	No	n/a
60.	Tasbulat Oil Corp.	No	n/a
61.	Tenge LLP	Yes	n/a
62.	Tobearal-Oil LLP	No	n/a
63.	TolkinOilgaz LLP	Yes	n/a
64.	Tengizchevroil LLP	Yes	http://www.tengizchevroil.com/
65.	EmbavedOil LLP	No	n/a
66.	Alga Caspian Sea Gaz LLP(exploration)	No	n/a
67.	Golden KDT LLP(exploration, bituminous fields)	No	n/a
68.	JSC "KazTransgas"	No	http://www.kaztransgas.kz/
69.	Kumkol Trans service LLP(production since 2008)	Yes	n/a
70.	TOO Samek Development Enterpraise	Yes	n/a
71.	Tabinai LLP	No	n/a
72.	TetisAralGas LLP	Yes	http://www.tethyspetroleum.com/Template/?new
73.	Ural Oil and Gaz LLP(reconnaissance)	Yes	n/a
74.	AITI	No	n/a
75.	Alal JV	No	n/a
76.	Altyn Ken LLP	No	n/a
77.	Altyn Kulager GRK	Yes	n/a

No	Company Name	Self-assessment form returned?	Web address
78.	AltynAlmas JSC	No	http://www.altyn-alma.kz/index.php?page=48&lang=eng
79.	Aluminum Kazakhstan JV	No	n/a
80.	Aluminum Kazakhstan JSC	No	n/a
81.	Arman 100 LLP	No	n/a
82.	Balausa LLP	No	n/a
83.	Bast LLP	No	n/a
84.	Belogorski GOK LLP GRK	No	n/a
85.	Bentonit i K LLP	No	n/a
86.	Bes Tas LLP	No	n/a
87.	Bet bastau Nedra LLP	No	n/a
88.	Bogatir Access Komir	No	http://www.bogatyr.kz/page.php
89.	Vasilkovski GOK JSC	No	n/a
90.	Artel Stratelei Gornyak LLP	Yes	n/a
91.	Dzhenitek International Kazakhstan LLP	Yes	http://www.gentechintl.com/
92.	Diana-Alia LLP	No	n/a
93.	Eurasia Energy Corporation JSC	No	http://www.eurasiaenergy.com/
94.	Eurasia Energy Corporation JV	No	http://www.eurasiaenergy.com/
95.	Zhairem Ore-Mining Complex JSC	No	n/a
96.	Zhalair LLP	No	n/a
97.	Zherek LLP	Yes	n/a
98.	Inkai JV	No	http://www.cameco.com/mining/inkai/
99.	Kazatomprom RGP NK	No	http://www.kazatomprom.kz/
100.	Kaz Chrom JV Transnational company	No	n/a
101.	KazZinc	No	http://www.kazzinc.com/one.php?lang=1
102.	Karaoba LLP mining company	No	n/a
103.	Karazhyra LLP	No	n/a
104.	KATKO LLP	No	n/a
105.	Ken Shigis LLP	Yes	n/a
106.	Mittal Still Temirtau	No	http://www.arcelormittal.com/
107.	Narimaltin LLP GRK	No	n/a
108.	United Chemical Company LLP	No	n/a
109.	Sariarka JV	No	n/a
110.	(Satpayevsk Titanium Mines Ltd)	Yes	n/a
111.	“Severnyi koipar” LLP mining company	No	n/a
112.	Semizbai-U LLP	No	n/a
113.	Sokolovsk-Sarbay Ore-Mining Amalgamation	No	n/a
114.	Sirimbet JSC	No	n/a

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115.	JSC Tau-Ken Samruk	No	http://www.samruk-kazyna.kz/page.php?page_id=2843&lang=3&news_id=502&parent_id=2842
116.	Temiratu electrometallurgy combinat LLP	No	n/a
117.	Tort Kuduk LLP GOK	Yes	n/a
118.	Ulbinium metallurgical plant JSC	No	n/a
119.	Ferro Mountain LLP	No	n/a
120.	FML Kazakhstan LLP	No	n/a
121.	Tsvet Med Engineering LLP	Yes	n/a
122.	Shalkiya Zinc Ltd	No	http://www.zinc.kz/