

Validation of TIMOR-LESTE
Validation Report
Sustainable Development Strategies Group (SDSG), Independent Validator
11 November 2016

1. BACKGROUND

Among the EITI pioneers in 2003, Timor-Leste formed its first Multi-Stakeholder Working Group (MSWG) in 2007, became an EITI Candidate in 2009 and the first EITI compliant country in Asia in 2013. The EITI Board agreed on 2 June 2016 that Timor-Leste's Validation against the 2016 EITI Standard should commence on 1 July 2016. Pursuant to the Validation Guide, the Secretariat carried out the first phase of validation – initial data collection, stakeholder consultations, and preparation of their initial evaluation of progress against the EITI requirements (the "Initial Assessment"). SDSG was appointed as the independent Validator to evaluate whether the Secretariat's work has been carried out in accordance with the Validation Guide. SDSG will review and amend the Initial Assessment, as needed, and has summarized its independent review in this Validation Report for submission to the Board.

- **Work Performed by the Independent Validator**

The Secretariat requested submission of the Validation Reports for Timor-Leste and four other countries prior to the Board meeting in Astana in late October. Both PDF and editable versions of the Initial Assessments for these countries were transmitted to the SDSG Validation Team in September 2016, with MSG comments for most of these pending. The Validation Team committed to undertake this task through: (1) In-depth review and marking up of the EITI Assessment by the team; (2) Detailed review and comments by the Multi-Stakeholder Specialist of Requirements 1 and 7; (3) Detailed review and comments by the Financial Specialist of Requirements 2 through 6; and (4) Overall review, management, and drafting lead by the Team Leader.

- **Comments on the Limitations of the Assessment**

The most significant challenge for the Validation Team is the compressed time frame within which to undertake its review of EITI implementation in Timor-Leste. Stakeholder outreach was not practicable and detailed review of documentation beyond the Initial Assessments is necessarily limited. It should be noted, however, that the Independent Validator is not expected to duplicate the data collection and consultation work completed by the Secretariat. Neither is it permitted to consider activities conducted after 1 July 2016, per express directive of the Board. Notwithstanding these limitations, the Validation Team has carefully reviewed the Secretariat's Initial Assessment and applicable references to determine Timor-Leste's level of progress against the different requirements of the 2016 Standard.

- **Comments on the Initial Assessment**

The initial data collection, stakeholder consultations, and drafting of the Initial Assessment were undertaken by the Secretariat in accordance with the 2016 Validation Guide. This entailed a desk review of relevant documents from 21 June-17 July 2016, a country visit by a three-person team from the Secretariat that conducted stakeholder consultations from 18-21 July 2016, and the production of the Initial Assessment. The Secretariat's team was identified by name, though it would be helpful to also indicate each member's level of familiarity or engagement with TL-EITI to confirm the appropriate balance in perspectives and experience.

Despite the relatively short country visit, it appears the team was able to conduct meetings with different stakeholders, especially members of the MSWG. On the whole, the entire process appears to have been transparently undertaken and stakeholders consulted were given opportunities to provide comments. However, the Secretariat noted that its assessment covers views of key stakeholders engaged in the EITI process and of other key actors representing wider stakeholders, thus, there does not appear to be evidence of wider outreach to, and consultations with, stakeholders not involved in the EITI process. In general, the Initial Assessment is well organized and clear. It thoroughly discusses the requirements and evaluates Timor-Leste's level of progress. Supporting documents and stakeholder input are cited, where appropriate and available. Many more acronyms are used than are presented at the outset, and a consistent approach to the use of acronyms will help facilitate reading of the document.

2. GENERAL COMMENTS

- **Progress in EITI Implementation**

A pioneer since 2003, Timor-Leste's implementation of EITI may be said to have taken some steps back in recent years. While areas of concern relate to specific EITI requirements – among others, lack of MSWG agreement on a definition of materiality, lack of disaggregated reporting of revenues, various challenges with reporting procedures, limited disclosures of mandatory social expenditures, and lack of impact assessment – the underlying source of much of this appears not to be a lack of data but rather strained relations among stakeholder groups, lack of trust, and lack of capacity. Implementation of EITI recently may even be said to be driven more by the desire to 'check the boxes' and avoid suspension rather than reflectively pursuing the overall objectives of disclosure and transparency. Thus, while Timor-Leste's progress in implementing specific requirements has not been inadequate, it quite often falls short of satisfactory. We agree with the Secretariat's findings that the country's progress has instead been meaningful with respect to 1.2 on industry engagement, 1.3 on civil society engagement, 1.4 on MSG governance, 4.7 on level of disaggregation, 4.9 on data quality and assurance, 6.1a on social expenditures, and 7.4 on outcomes and impacts. In addition, we find that progress is likewise meaningful with respect to 1.5 on the work plan, 2.3 on register of licenses, 3.2 on production data, 3.3 on export data, and 4.1 on comprehensive disclosure of taxes and revenues.

- **Impact of EITI Implementation**

As an early adopter of EITI, Timor-Leste has been regionally influential through its hosting of EITI study tours and conferences. While not always smooth and ideal, the EITI's contributions in Timor-Leste may be seen principally in greater transparency through the disclosure of data relating to the extractive sector and to increased public debate in Timor-Leste on extractive sector management and the future of the country's oil sector. Most government agencies in the country publish the information required to be disclosed under the EITI Standard on government websites and in their own quarterly and annual reports. With respect to public debate, this has been through dissemination events and workshops especially on the regional level. The tripartite nature of discussions, demonstrated principally through the MSWG, has raised awareness about the extractive sector and enabled discussions about revenue management, distribution, and use. Given stakeholder issues in the last five years, however, important opportunities for greater transparency have been delayed. The national secretariat has been key in moving EITI implementation forward despite stakeholder challenges and even resistance to new requirements, and TL-EITI's objective to further strengthen their capacity is well founded and necessary. Broader and deeper impact of EITI will also be facilitated if, as various stakeholders have suggested, greater emphasis is placed on issues around revenue management and ensuring that any benefits from extractive industries accrue to local communities.

- The Independent Validator's Assessment of Compliance

Figure 1 – Validator's assessment

EITI Requirements		LEVEL OF PROGRESS					Note
		No Progress	Inadequate	Meaningful	Satisfactory	Beyond	
Categories	Requirements						
MSG oversight	Government engagement (#1.1)						
	Industry engagement (#1.2)						
	Civil society engagement (#1.3)						
	MSG governance (#1.4)						
	Work plan (#1.5)						
Licenses and contracts	Legal framework (#2.1)						
	License allocations (#2.2)						
	License register (#2.3)						1
	Policy on contract disclosure (#2.4)						
	Beneficial ownership (#2.5)						
	State participation (#2.6)						
Monitoring production	Exploration data (#3.1)						
	Production data (#3.2)						
	Export data (#3.3)						
Revenue collection	Comprehensiveness (#4.1)						2
	In-kind revenues (#4.2)						
	Barter agreements (#4.3)						
	Transportation revenues (#4.4)						3
	SOE transactions (#4.5)						
	Direct subnational payments (#4.6)						
	Disaggregation (#4.7)						
	Data timeliness (#4.8)						
Data quality (#4.9)							
Revenue allocation	Revenue management & expenditures (#5.1)						
	Subnational transfers (#5.2)						
	Distribution of revenues (#5.3)						
Socio-economic contribution	Mandatory social expenditures (#6.1.a)						
	Discretionary social expenditures (#6.1.b)						
	SOE quasi-fiscal expenditures (#6.2)						
	Economic contribution (#6.3)						
Outcomes and impact	Public debate (#7.1)						
	Data accessibility (#7.2)						
	Follow up on recommendations (#7.3)						
	Outcomes & impact of implementation (#7.4)						

1-3: Please see Detailed Findings.

3. Detailed Findings

- 1.1 Government engagement.** We agree Timor-Leste has made **SATISFACTORY** progress.
- 1.2 Company engagement.** We agree that Timor-Leste has made **MEANINGFUL** progress. The MSWG may wish to review and consider different approaches adopted by other EITI countries in addressing company concerns around confidentiality and the disclosure of disaggregated revenue and production data.
- 1.3 Civil society engagement.** We agree that Timor-Leste's progress is **MEANINGFUL** and note that the country appears to have moved backwards in this regard. There appears to be an enabling environment for civil society engagement; there do not appear to be obstacles to CSO participation nor do there appear to be restrictions on their activities. However, CSOs were far more engaged in EITI implementation until some years ago and currently appear to be more passive and even apathetic. While several possible reasons were noted, it would be helpful to more deeply analyse the factors behind this development.
- 1.4 MSG Governance.** We agree that Timor-Leste's progress is **MEANINGFUL**. The Secretariat provided an exhaustive and rigorous review noting, among others, that civil society members of the MSWG may not have the capacity to carry out their duties due to language barriers and lack of technical information.
- 1.5 Work Plan.** While we agree that Timor-Leste's progress is satisfactory, the Work Plan can be improved by clearly articulating how it addresses comprehensiveness and data reliability, i.e. through discussions between the MSG and IA on the design of the report, the reporting template, and how information will be disclosed.
- 2.1 Legal Framework and Fiscal Regime.** We agree that Timor-Leste has made **SATISFACTORY** progress.
- 2.2 License Allocations.** We agree that Timor-Leste has made **SATISFACTORY** progress. We note, however, that information that was first provided in the Supplementary Report (issued in April 2016) was necessary to meet this satisfactory progress. Such information does not technically satisfy the timeliness requirement of Requirement 4.8.
- 2.3 Register of Licenses.** We disagree with the Initial Assessment and find that Timor-Leste's progress has been **MEANINGFUL**. Although most of the information required under 2.3.b was either included in the EITI Report or on a government website, not all of the required information was publicly available. The unavailability of pre-independence application dates is understandable and is not within MSWG's direct control. However, with regard to coordinates that are only available from the relevant government agency, 2.3.b.ii requires that the EITI Report include guidance on how to access the coordinates and the cost, if any, of accessing the data, and must document plans and timelines for making this information freely and electronically available through the license register. Timor-Leste is implementing significant, but not all, aspects of 2.3, and the broader objective of the requirement – the maintenance of a publicly available registry – has not yet been fulfilled.
- 2.4 Contract Disclosures.** We agree that Timor-Leste has made **SATISFACTORY** progress, noting that the MSWG is encouraged to consider policy recommendations to enshrine the practice of contract disclosure.

2.5 Beneficial Ownership. Implementing countries are not yet required to address this and progress on this requirement does not yet have implications for a country's EITI status. Per Timor-Leste's latest Annual Progress Report, however, they have included a scoping study on this issue in the next reporting round.

2.6 State Participation in EI. We agree that this requirement is **NOT APPLICABLE** to Timor-Leste.

3.1 Exploration. We agree that Timor-Leste has made **SATISFACTORY** progress, though the Initial Assessment implies some doubt as to the comprehensiveness of the significant exploration activities disclosure.

3.2 Production Data. While we agree with the Initial Assessment that Timor-Leste's progress here has been **SATISFACTORY**, there clearly continues to be resistance around disclosure in light of the protracted discussions that even led the MSWG to make the request for adapted implementation in the first place. As discussed under 1.2, the rationale of industry in its previous and possibly continuing resistance should be analysed more deeply, especially given that many other EITI countries do not have similar controversies. There is reason to be concerned about whether the broader objective around transparency and public accessibility to such information is genuinely being accomplished.

3.3 Export Data. While we agree with the Initial Assessment that Timor-Leste's progress has been **SATISFACTORY**, it remains unclear to significant segments of the country's oil and gas industry why such disclosures are required, and resistance around disclosure continues. More meaningful discussions appear warranted among stakeholders and particularly for industry on the broader objectives and rationale for these specific disclosures.

4.1 Comprehensive Disclosure of Taxes and Revenues. We disagree with the Initial Assessment and find that Timor-Leste's progress is **MEANINGFUL**. We recognize there is no evidence to suggest that any payments were omitted. However, the MSWG has not, as required, agreed on their definition and threshold for materiality; nor did it discuss or document the options considered and the rationale for establishing the definitions and thresholds. Although, in this case, all payments appear to have been reported, the concept of materiality is so fundamental to the EITI process that we do not believe this requirement can be considered fully implemented without more explicit discussion and decisions by the MSWG regarding materiality and reporting thresholds.

4.2 In-Kind Revenues. We agree that this requirement is **NOT APPLICABLE**.

4.3 Infrastructure Provisions and Barter Arrangements. We agree that this requirement is **NOT APPLICABLE**. Although the lack of infrastructure and barter agreements appear to have been clear enough that formal consideration of their existence was not necessary, the first evidence of any consideration by the MSWG cited in the Initial Assessment is the 2015 Annual Activity report – a document that does not technically satisfy the timeliness requirement of Requirement 4.8.

4.4 Transportation Revenues. We agree that this requirement is **NOT APPLICABLE**. It should be noted that this provision requires the MSWG to consider the issue of disclosing transportation revenues and to document its discussions, and that the Initial Assessment confirms this was accomplished.

4.5 Transactions Related to SOEs. We agree that Timor-Leste has made **SATISFACTORY** progress.

4.6 Subnational Payments. We agree with the Secretariat’s finding that this requirement is **NOT APPLICABLE** to Timor-Leste. Although the lack of subnational payments appears to have been clear enough that a formal determination of immateriality was not necessary, the first evidence of such determination by the MSWG cited in the Initial Assessment is the 2015 Annual Activity report – a document that does not technically satisfy the timeliness requirement of Requirement 4.8.

4.7 Level of Disaggregation. We agree that Timor-Leste’s progress is **MEANINGFUL**, noting that the opinions expressed on this issue by both industry and civil society underscore concerns about their engagement as stakeholders, as reflected in our findings on 1.2 and 1.3.

4.8 Data Timeliness. We agree that Timor-Leste’s progress has been **SATISFACTORY**, but note that information that was not timely was required as the basis for several of the conclusions reached in the Initial Assessment. See, for example, 2.2, 4.3, and 6.3. Given that some companies have acceded to reporting disaggregated data provided it is at least two years old, although others have not, it bears noting that this is yet another requirement that appears to be impacted by industry’s level of engagement.

4.9 Data Quality and Assurance. We agree that Timor-Leste’s progress is **MEANINGFUL**, though we stress that the evidence could very well warrant a finding of inadequate progress as it is questionable that the broader objective of this disclosure is being achieved. We agree with the current finding, however, given that most of the aspects under this requirement are addressed.

5.1 Distribution of Extractive Industry Revenues. We agree that Timor-Leste’s progress is **SATISFACTORY**.

5.2 Subnational Transfers. We agree that this requirement is **NOT APPLICABLE** to Timor-Leste, noting however that its inapplicability has bearing on the impact of EITI. The MSWG is therefore encouraged to discuss whether and to what extent EI revenues do or can impact local communities. This is pertinent to the concerns as well around revenue management; further discussions can contribute to public debate, inform outreach efforts, and help broaden the impact of EITI.

5.3 Revenue management and expenditures. Disclosure under this requirement is encouraged and is thus not taken into account in the overall assessment of compliance. We find the MSWG discussions with respect to these issues and plans to address them in future reports to be commendable.

6.1 Social Expenditures by Extractive Companies. We agree the Timor-Leste’s progress is **MEANINGFUL** in meeting this requirement.

6.2 Quasi-Fiscal Expenditures. We agree that this requirement is **NOT APPLICABLE**.

6.3 The contribution of the extractive sector to the economy. We agree that Timor-Leste’s progress is **SATISFACTORY** in meeting this requirement, however, it is recommended that more efforts be taken to obtain and verify data on the informal sector activity. We also note that employment information that was first provided in the Supplementary Report (issued in April 2016) was necessary to determine satisfactory progress. Such information does not technically satisfy the timeliness requirement of Requirement 4.8.

7.1 Public debate. We agree that Timor-Leste’s progress has been **SATISFACTORY**.

7.2 Data accessibility. Disclosure under this requirement is encouraged and is thus not taken into account in the overall assessment of compliance. Timor-Lest has, however, taken significant steps to render data more accessible.

7.3 Discrepancies and recommendations from EITI Reports. We agree that Timor-Leste has made **SATISFACTORY** progress in complying with this requirement.

7.4 Outcomes and Impact of EITI Implementation on NR governance. We agree that Timor-Leste's progress is **MEANINGFUL**. In addition to the Secretariat's rationale, it does not appear that all stakeholders were able to participate in the annual progress report and in reviewing the impact of EITI implementation. Nor does it appear that stakeholders not on the MSWG were given the opportunity to give feedback on the EITI process. Given the challenges concerning industry and civil society engagement, the MSWG should consider and document efforts to strengthen impact of EITI implementation on natural resource governance, including actions to increase engagement with stakeholders.

4. RECOMMENDATIONS.

We agree with the recommendations discussed in the Assessment, and note below, in italics, modified or additional recommendations.

Below are the Secretariat's overarching recommendations for improving EITI implementation in Timor-Leste, with the Validation Team's modifications and supplements in italics.

4.1 *The MSWG should examine ways to improve stakeholder engagement and capacity. It may wish to review and consider different approaches adopted by other EITI countries in addressing company concerns around confidentiality and the disclosure of disaggregated revenue and production data. It would also be helpful to more deeply analyse the factors behind the decreased involvement of civil society, and it should address known obstacles to such engagement such as language barriers.*

4.2 *The MSWG should place greater focus on linking the work planning process and plan to national priorities, ensuring that it sufficiently address comprehensiveness, data reliability and other technical aspects, and ensuring the plan is fully costed and made widely accessible.*

4.3 *The MSWG should agree on their definition and threshold for materiality as this impacts other disclosure requirements. The MSWG is encouraged to further entrench extractive sector transparency in government systems, and take steps to move towards quarterly EITI reporting based on the routine disclosures provided by relevant government agencies and companies. It is recommended that the MSWG undertakes a feasibility study to identify what information required to be disclosed under the EITI Standard is already publicly available and what information is not yet routinely disclosed. Opportunities for providing more EITI data in open data formats could also be explored.*

4.4 *The MSWG is encouraged to consider strengthening the national EITI Secretariat to take a more active role in supporting implementation and the work of the MSWG, including building capacity with a view to supporting more mainstreamed EITI implementation. The MSWG is also encouraged to review the governance arrangements of the MSWG with regard to national secretariat participation in the MSWG and the role of the Chair.*

4.5 *The MSWG is encouraged to review whether conditions expressed by stakeholders on disclosure*

requirements are reasonable, and strive to prevent these from causing delays. The MSWG should ensure that reconciliation is undertaken by the Independent Administrator applying international professional standards, and that the Independent Administrator is endorsed by the MSWG which should view it as credible, trustworthy, and technically competent.

- 4.6 While considering the feasibility of mainstreamed disclosures and in preparing for the next EITI Report, it is recommended that the MSWG reviews the confidentiality arrangements between the Independent Administrator and reporting entities with a view to identifying a procedure that safeguards confidential information but that does not disadvantage any stakeholders or create obstacles and delays to EITI Reporting. The MSWG should ensure that future confidentiality agreements, if any, and the reporting templates, are developed in consultation with the Independent Administrator.
- 4.7 In preparing for the next EITI Report, the MSWG should find a workable solution to industry concerns about disclosing disaggregated production, export, and revenue data to ensure compliance with the EITI Standard. *The MSWG should stress the broader objectives around transparency and public accessibility of such information. Given the apparent resistance of some in industry around such disclosures, it is recommended that the MSWG further analyse this concern and review options to address these, including engagement with other EITI countries that have successfully navigated these issues.* The government may also wish to consider introducing or amending legal requirements.
- 4.8 *The MSWG is encouraged to consider policy recommendations to enshrine the practice of contract disclosure.*
- 4.9 The MSWG should consider whether to take a more active role in developing recommendations from EITI Reports, and agree relevant follow-up measures and implementation.
- 4.10 It is recommended that civil society undertakes a capacity building needs assessment and that actions to address civil society capacity constraints are implemented.
- 4.11 The MSWG should consider extending disclosures to include spending of oil and gas revenue allocated to the infrastructure fund for infrastructure developments that are aimed at supporting the oil and gas sector.
- 4.12 The MSWG should ensure that future social expenditure reporting provides the deemed or actual value of the in-kind transactions.
- 4.13 *The MSWG is encouraged to discuss whether and to what extent extractive industry revenues do or can impact local communities. This is pertinent to the concerns as well around revenue management; further discussions can contribute to public debate, inform outreach efforts, and help broaden the impact of EITI. It is also recommended that more efforts be taken to obtain and verify data on the informal sector activity.*
- 4.14 TL-EITI may wish to consider undertaking an impact assessment, with a view to identifying opportunities to increase impact. This could also include exploring whether to extend EITI disclosures to other areas of national priority and interest, including for example budget expenditures, contract transparency, SOE governance, and sovereign wealth fund investments.
