

Afghanistan EITI Multi-Stakeholder Group (AEITI MSG)

Clarifications to the Draft Second Validation Report of Afghanistan

Context:

Following its first EITI Validation Afghanistan was suspended from the EITI in January 2019 as a result of “inadequate progress” in implementing the 2016 EITI Standard. Nineteen corrective actions were identified following Afghanistan’s first EITI Validation,¹ which the AEITI had to implement in eighteen months to reverse the suspension. An improved 6th AEITI Report was published, which addressed several of the gaps previously identified during Afghanistan’s first EITI Validation. An Addendum to the 6th AEITI Report² also describes in detail the activities that were undertaken to address these corrective actions and the technical assistance that facilitated them.

Afghanistan’s second validation under the EITI Standard, 2016 commenced on July 1, 2020. The International EITI Secretariat has shared with the AEITI MSG an initial draft validation assessment for comments. The AEITI MSG notes that the proposed validation report has noted overall improvements in AEITI’s performance across several indicators and recommended a reversal of Afghanistan’s suspension from EITI to “*meaningful progress with considerable improvements*”. However, AEITI MSG also notes that Afghanistan’s performance across certain requirements of the EITI Standard, 2016 is actually better than those reflected in the validation indicator ratings.

Therefore, the AEITI MSG makes the following clarifications for the consideration of the International EITI Secretariat, based on data already published under the 6th AEITI Report, its Annexes, Addendums and direct online disclosures.

Clarifications:

1. Requirement 2.2: Contract and License Allocations

The AEITI MSG makes reference to Requirement 2.2 of the EITI Standard, 2016, in terms of which Afghanistan’s progress has been rated as ‘meaningful progress’. The AEITI MSG hereby confirms that the total number of licenses allocated in the years under review, i.e. Afghanistan years 1395 and 1396 were actually 120 as clarified in the Addendum to the 6th AEITI Report, and not 187 as reported earlier in the 6th AEITI Report. No licenses were allocated for oil and gas, and no licenses were transferred either in the mining or the oil and gas sector for the said reporting years. Furthermore, the technical and financial criteria used to award the said licenses are published online here: https://momp.gov.af/sites/default/files/criteria_1395.pdf. The AEITI MSG confirms that there were no further detailed technical and financial criteria used for the award of the said licenses, as these were awarded under the 2014 Minerals Law and the 2008 Mining Regulations. However, detailed technical and financial criteria for the award of mining licenses have now been adopted under the 2018 Minerals Law and 2019 Mining Regulations. As also noted in the AEITI draft Validation Report, these have already been

¹ See: <https://eiti.org/document/afghanistan-validation-2017>

² <http://aeiti.af/Content/Media/Documents/6thAEITIAddendumReport20200515185202014115081553325325.pdf>

published on the MoMP website ahead of the required disclosure time period, and are available here: <https://momp.gov.af/laws-and-regulation>.

2. Requirement 6.2: State Owned Enterprises (SoE) Quasi-Fiscal Subsidies

The AEITI MSG makes reference to Requirement 6.2 of the EITI Standard, 2016, in terms of which Afghanistan's progress has been rated as 'inadequate progress'. The AEITI MSG has noted three possible quasi-fiscal expenditures in Afghanistan that have been published under EITI. These are now being quantified as below:

- (i) **SoE Loans to Private Companies:** North Coal Enterprise and Afghan Gas Enterprise, the two sector SoEs, have given loans at 0% interest to various private sector companies without a clear term/tenure for the loans. When compared with the average bank lending rate for the years 1395 and 1396, which was 15%,³ these might be described as a subsidy. The exact amounts of this subsidy per beneficiary have been described in the attached excel file. Overall, the amounts of this subsidy were AFN 191,530,752 (US\$ 2,901,981) in Afghanistan year 1395 and AFN 217,913,935 (US\$ 3,301,726) in the Afghanistan year 1396.⁴ The details of the beneficiaries are also contained in the attached excel file.
- (ii) **Sales of Subsidized Gas:** Subsidies have been discovered in the sales of gas from Afghan Gas Enterprise to Kod-e-Barq and Pradafca Wells. These have been described in detail in the attached excel sheet. The commercial reference price for the sale of gas was calculated using the proposed price of Gas supply to the Mazar IPP which is at market rate, as reference price. The Mazar IPP is being developed with support from the IFC, MIGA and the World Bank. Accordingly, the prices at which gas was sold to Kod-e-Bard and Pradafca Wells was found to be subsidized. Based on the reported volume of gas supplied and revenues received by Afghan Gas Enterprise from these entities, the average price per unit of gas sold was calculated. While this differs from the price points for the sale of gas identified in the 6th AEITI Report, it was an estimation mechanism used to calculate the subsidies as the exact volume of gas supplied at each aforementioned price point is not known. The difference between the market reference price and the price per unit of gas sold to the subsidized entities, multiplied by the total volume of the gas supplied to them, provided the amount of total subsidies in the sale of gas for the Afghanistan years 1395 and 1396. Accordingly, the amount of gas subsidy for the Afghanistan year 1395 is approximately \$6.17 million and the subsidy for Afghanistan year 1396 is approximately \$ 6.88 million (*See: attached excel sheet for calculations*).
- (iii) **Subsidized Sales of Coal from North Coal Enterprise:** North Coal Enterprise sells coal from its mine-gate at the a price that is considered subsidized. The sale price is AFN 2100 per ton of coal produced by the NCE and AFN 1500 for coal that is procured by the NCE. However, as no other company sells coal at the mine gate, but rather at the market, it is impossible to make a market-based comparison to calculate the amount of subsidy. Instead, a 'cost plus' method is more appropriate in this case to calculate subsidy. Such a calculation would require significant efforts

³ See: Lending interest rate (%) – Afghanistan; International Monetary Fund; International Financial Statistics and data files.

⁴ At the then prevailing exchange rate of 1 USD= 66 AFN.

by North Coal Enterprise as well as the State Audit Agency, and the AEITI MSG will encourage them to calculate it.

In sum, the total calculated subsidies were approximately \$9.17 million for the Afghanistan Year 1395, and \$ 10.18 million for the Afghanistan Year 1396. This excludes the subsidies from the sale of coal, which the AEITI MSG will calculate moving forward as explained hereinabove.

3. Requirement 6.1: Social and Environmental Expenditures by Extractive Companies

The AEITI MSG makes reference to Requirement 6.1 of the EITI Standard, 2016, in terms of which Afghanistan’s progress has been rated as ‘meaningful progress’. The AEITI MSG would like to clarify its reporting of mandatory social and environmental expenditures in the 6th AEITI Report.

The AEITI MSG has noted that it has published two separate datasets on mandatory social expenditures for the Afghanistan years 1395 and 1396 and clarifies that the final dataset on mandatory social expenditures are available at the MoMP website⁵. The report, titled ‘Report on social mandatory expenditures activities of Extractive Companies – Years (1395 & 1396)’ contains an official audit of mandatory social expenditures by the General Directorate of Mines Inspection - MOMP. Thus, AEITI has gone beyond the EITI Standard in assessing what was paid in relation to what should have mandatorily been paid and published the results.

In terms of environmental expenditures, the National Environmental Protection Agency (NEPA) receives environmental license fees, envt. license renewal fees and waste management fees from extractives companies. In aggregate, the amounts received by NEPA amounted to [] in 1395 and [] in 1396. These were not reported, as even in aggregate, they were far below the materiality thresholds for reporting revenues which are described in detail in the 6th AEITI Report.

4. Requirement 7.1: Public Debate

The AEITI MSG makes reference to the draft validation assessment of ‘meaningful progress’ in terms of Requirement 7.1 of the EITI Standard, 2016.

The AEITI MSG would like to clarify that despite limited involvement of the entire AEITI MSG in each of the outreach events, robust public debate was stimulated, despite impediments due to the security situation in Afghanistan and the COVID-19 crisis which has prevailed globally for 6 out of the 18 months available for the fulfillment of corrective actions.

As mentioned in the Addendum to the 6th AEITI Report, robust online debates were stimulated. Outreach events were also conducted by the AEITI MSG members on behalf of the AEITI MSG in various regions of Afghanistan despite security impediments. In addition, wider constituencies such as CSO organizations and private sector associations have also conducted various outreach events. The following are a few examples of the events, their dialogue and the results:

Public Awareness Debate creation

Type of Event	Event Location	Purpose of the event	Presenters	Event Report’s Link
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⁵ Available here: <https://momp.gov.af/eiti-disclosures>

Outreach and Public Awareness Workshop by CSOs through Support of GIZ and AEITI	Herat	Communicate Engagement in EITI Process	AEITI, CSOs (FETWO , ENRMN) and GIZ Representatives	http://aeiti.af/en/documents/category/provincial-and-outreach-reports
	Kabul			
	Mazar-e-Sharif			
	Nangarhar			
Journalist Training	Kabul	To Publicize EITI Messages and Requirement through Local Media outlets	AEITI and Government	http://aeiti.af/en/documents/category/provincial-and-outreach-reports
Public Awareness and gathering Private sector	Kunar province	To Strengthen Coordination between Mining Companies and extractive activists in the eastern zone	Eastern Zone Gemstone Traders Association	https://www.facebook.com/104864957626101/posts/308836177228977/ https://www.facebook.com/410028809088452/posts/3144222772335695
Outreach by CSOs	Orzgan	Engage Civil Society in extractive sector and boost public awareness about Transparency portal and discloser	FETWO and OFRD	https://www.fetwo.org/en/mining
	Nemroz			
	Pajsher			

MSG Comments on 2nd Validation assessment report

Following are the MSG comments on the 2nd validation assessment report that AEITI has received. The G-1 (Validation and Reconciliation) Working Group of the MSG is requested to incorporate the below-mentioned comments and present it to MSG for approval and finalization:

A. GIZ MinGov Comments:

The following comments have been made by GIZ MinGov project and we would like to request the EITI Secretariat to address these comments;

1. Page 7: All GIZ names should be changed to GIZ-MinGov project.
2. Page 11 – Paragraph 2: this should be amended as;

Finally, AEITI is considering innovative approaches to outreach and dissemination of EITI findings in a socially inclusive manner. The MSG has agreed a gender policy in 2020, which covers both balanced representation in EITI activities (and the MSG) as well as the collection and publication of gender-disaggregated data. Building on civil society organizations' experience and networks at the subnational level, GIZ-MinGov signed a contract with Integrity Watch Afghanistan to support AEITI by developing a community-based monitoring programme to support the AEITI process, which will strengthen citizen oversight of issues including extractive industry management.

B. Special Anti- Corruption Secretariat (SACS) comments o 2nd Validation Assessment Report are following:

SCAS received "Second Validation of Afghanistan: Draft assessment by the EITI International Secretariat" on August 23, 2020. Since we have attended only one MSG meeting and was not invited to the last two MSG meetings, following comments are made for consideration in the report:

1. Regaining EITI membership is essential for GoIRA before December 2020 as it is part of the H.E the President's actions for moving forward in the letter sent to SIGAR on 27 October 2019. [It will be highly appreciated to reflect this in the report, where it looks appropriate for insertion. Regaining membership of EITI is an activity of the follow-up plan for H.E. the President's responses to SIGAR report, which shows GoIRA's commitment in Anti-Corruption.]
2. Requirement (#2.5): the Beneficial Ownership Regulation is prepared in coordination between the Ministry of Industry and Commerce (MoIC), the Ministry of Justice (MoJ), and SACS. The regulation is approved in principle by the Law Committee on 2nd of Sunbula 1399 (August 23, 2020)⁶. Currently, it is with the MoJ for minor revisions and considering Law Committee members' comments. The Beneficial Ownership Regulation is a benchmark of 2018 Afghanistan National Strategy for Combating Corruption⁷.
3. Page 3, report summary, paragraph 3: The new Afghanistan National Strategy for Combating Corruption (2020-2024), has covered the illegal mining activities in a benchmark on pillar 6. The benchmark clearly indicates that: "Adopt an action plan to increase government control over illegal mining and prevent it, in coordination with MEC". Inserting this paragraph will strengthen GoIRA's commitment in decreasing corruption in the mining sector.⁸
4. Page 11, Sustainability, institutionalization part: It is highly recommended to add some light on new amendment proposal of some articles of the Minerals Law, which was discussed in the Cabinet on Thursday 13th of Sunbula 1399 (September 3, 2020)⁹.

⁶ <https://www.facebook.com/2vp.af/photos/pcb.1499741790229939/1499740193563432> (Accessed on September 03, 2020)

⁷ https://sacs.gov.af/uploads/strategy_pdf/Strategy_en.pdf (Accessed on September 03, 2020)

⁸ The National Anti-Corruption Strategy will be approved soon by GoIRA.

⁹ <https://www.facebook.com/ARG1880/photos/pcb.3237950906281129/3237947306281489/> (Accessed on September 05, 2020)

C. AEITI National Secretariat comments:

1. Page 11: AEITI National Secretariat raised issue of lack of working space for AEITI National secretariat to operate and conduct its daily activities and working groups meetings.

D. Global Witness comments on the Draft Assessment of the 2nd EITI validation for Afghanistan

1. **State owned enterprises** the report notes the progress in supplying audited statements for key extractive SOEs. To be effective, this cannot just be a one-off. The report should encourage the government to require annual audits by a reputable international provider and their publication along with all supporting data on payments, production and other financial obligations. It is good to see the report note the need for more information on page 21. The published audits should include the Pul e Khumri cement plant and other companies. Even if their payments are not material this should be seen as a matter of basic good practice and transparency – especially given the rumours of corruption around the cement plant. It is also important to include all loans etc – as the report notes.
2. The report notes on page 10 that: “There is also scope for the EITI to collate different estimates on illegal mining and unrecorded trade in extractive commodities. With formalised mining accounting for only a share of actual mining activities in the country, the EITI could start by providing an overview of various estimates of illegal mining activities to support the government’s efforts to formalise a greater share of mining activities countrywide.” We would very much support this.
3. The report does not touch on the failure of the EITI process to consider the emerald sector, despite extensive reports of widespread mining and indications this is taxed by the local government in Panjshir. Although technically illegal, if these payments are taking place the extraction might fall under EITI rules. In any case, the EITI process should include a request to the government to give a clear statement on this important part of the mining sector
4. We do not understand what security reasons there could be for non-disclosure of production (page 23) except in extremely exceptional circumstances. The report should be careful not to imply acceptance of this argument.
5. The report should encourage the EITI to request a statement for each EITI report from the government on illegal production – including estimates of its scale and shape as best as possible.
6. As the report notes, it is good that the EITI contains some export data. It should request the government to include not just export data but all export taxes paid on individual minerals. This can expose illicit flows.
7. In relation to section 5.12, we are aware of significant discrepancies between EITI and TP data for contracts, at least for those that are in the past. On specific example had substantial differences between the two.
8. We have some concern about materiality. For example we are aware of a company that allegedly deeply underpaid its royalties – this could allow similar companies to avoid meeting the threshold in future. The report should recommend keep the system of adding a selection of smaller companies in response to stakeholder concerns, which are often based on specific research.

9. A critical point – the report does not so far as I can see mention the need for the government to respond seriously to previous points and questions raised in EITI reports. This follow up is essential.
10. The report should make further recommendations on policy changes. For example in relation to the provision of company accounts (pg 28), this could be changed to require such account be prepared and published.
11. We would indeed like to express our concern over the reliability of reconciled financial data in the past (page 32). We remain of the view that a requirement for all extractive sector payments to flow through a single account which would be published remains needed and should be embedded in law. A stronger requirement for audits to be carried out and the publication of the accounts would make sense as well.
12. We support the point on use of information that is provided – that is as important a challenge as ensuring transparency in the first place.
13. It is unclear if the transparency portal includes contracts issued in the provinces
14. The report should note that BO publication is largely about the legal owners – there is little effective action on BO so far.

E. Integrity Watch Afghanistan’s comments on the Draft Assessment of the 2nd EITI validation Report

1. The AEITI must start publishing the estimates and figures on the illegal mining in Afghanistan and it should work for linking the illegal mining, its impacts on community with the AEITI Standards.
2. The transparency portal has technical issues, such as the link to the Nangarhar province appears to be not working. Furthermore, the data, licenses, and the contracts published are in English language mostly and are not published in national languages. This will not help the local community members who are working to hold the government accountable.
3. The SOEs should publish their financial statements regularly and should publish disaggregated information regarding their revenues and payments made to the government. This was lacking in the 6th reconciliation report.
4. Most of the improvements are only meaningful which would indicate that they are only one time or in the very initial stage - such as publication of the financial statements by the SOEs, and the data publication on beneficial ownership.
5. The data on the production of the extractive sector should be properly updated and published in a disaggregated for all the mining sites.
6. People and the local community must be given room to share their concerns and comments regarding the extractive that would take at their district/province.

F. MoMP Policy Department’s comments on the Draft Assessment of the 2nd EITI validation Report are following:

1. Page 14 second paragraph comment is: Since the assessment report indicates that the government has met all corrective actions in this area, then what is this recommendation? In addition, if the secretariat has still remarks in this regards, clear and scenario based recommendation shall be provided to open the floor for improvement.
2. Page 16 Second Paragraph at sentence “Thus, while the different constituencies have formalised their nomination procedures, MSG membership had not been renewed on the basis of these

procedures as of the commencement of Validation.” Comment is “Is this obligatory? Since MSG operations remain intact”.

3. Page 18, Paragraph 5 at sentence “There is however conflicting information between the EITI Report and its May 2020 addendum over the number of mining licenses awarded in this period, with the former listing 187 new license awards and the latter citing the number of 120 (construction materials) mining license awards”. The comment is “This can be crossed checked with the Cadastre. The reason could be number of expired contracts could have been subtracted and not reported in the addendum”.
4. Page 19 Paragraph 2, sentence “The 6th AEITI Report and its addendum describe the statutory procedure for awarding and transferring licenses in 2016-17, under the 2014 Mining Law and 2008 Mining Regulations for mining and under the 2009 Hydrocarbons Law and its 2014 implementing regulations for oil and gas” the comment is “It is 2010 Hydrocarbons Regulations not 2014”.
5. Page 21 paragraph 3 at sentence “The EU and GiZ have supported the gradual roll-out of the MOMP’s cadastral management system to provincial MOMP branches. By July 2020, the MCAS system had been rolled out to 10 of 34 provincial branches of MOMP, with three branches having completed training and actively using the system. One of the EU benchmarks involves roll-out to five more provinces by the end of 2020. Comment is “This has been extended to end of March 2021 due to Covid19 impact, so it can be corrected accordingly”.
6. Page 26 Paragraph 3 at sentence “To strengthen implementation, Afghanistan may wish to consider additional disclosures on the underlying assurances procedures underpinning official mineral export statistics with a view to addressing widespread concerns over the reliability of official export data” comment is “How? Example of other countries help in identifying specific and workable strategies”.
7. Page 39 paragraph 3 sentence “To strengthen implementation, Afghanistan may wish to consider additional work in mapping illegal mining activities across the country and estimating mining revenues collected by non-state actors” comment is “How to estimate this since the mining activities are carried out in unsecure areas where government has no control over?”.
8. Page 44, Paragraph 3 at sentence “To strengthen implementation, Afghanistan may wish to consider undertaking a comprehensive impact evaluation study to better document the extent to which Afghanistan EITI has contributed to reforms, changing behaviour and improving the management of the extractive sector for the benefit of all citizens after a decade of implementation”. Comment is “An example of successful country in this endeavour is highly helpful”.
9. Page 47, paragraph 5 at sentence “Afghanistan may wish to consider revisiting its definition of PEP and ensuring that the legal definition of beneficial ownership is aligned across different legislation and with international best practice” comment is “This requires amending the minerals law again”.
10. Page 49, Paragraph 2 at sentence “To strengthen implementation, Afghanistan is encouraged to expand its engagement with extractive companies and relevant government entities to ensure routine systematic disclosures of data required under the EITI Standard in an open data format” comment is “An example of a successful country is highly helpful in this regard”.

Request from the International Secretariat:

Based on the above clarifications, the AEITI MSG requests the EITI International Secretariat to kindly upgrade their assessment of AEITI on Requirements 2.2, 6.1, 6.2, 7.1 and at all related areas.

