

**Extractive Industries Transparency Initiative (EITI)**

**Validation of Kyrgyz Republic**

**Report on initial data collection and stakeholder consultation by the EITI International Secretariat**

**16 November 2016**

DRAFT

## Abbreviations

AAR	Annual Activity Report
APR	Annual Progress Report
CSO	Civil Society Organisation
EBRD	European Bank for Reconstruction and Development
EITI	Extractive Industries Transparency Initiative
IA	Independent Administrator
KGS	Kyrgyzstani Som
KR	Kyrgyz Republic
MDTF	Multi-Donor Trust Fund
NGO	Non-Governmental Organisation
NRGI	Natural Resource Governance Institute
PSA	Production-Sharing Agreement
PWYP	Publish What You Pay
SAGMR	State Agency for Geology and Mineral Resources (old name)
SB	Supervisory Board
SCIES	State Committee on Industry, Energy and Subsoil (new name)
SOE	State-owned Enterprise
ToR	Terms of Reference
USD	United States Dollar

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## Executive Summary

The government of Kyrgyz Republic committed to implement the EITI in January 2004 by issuing Government Decree #317 on measures to ensure increase of extractive industries transparency and Resolution #361 on accepting the principles of the EITI, approving an action plan and creating two bodies to oversee implementation: the Consultative Assistance Council and the Implementing Committee. The Kyrgyz Republic was accepted as an EITI Candidate on 27 September 2007. The government established the Supervisory Board and its regulation by issuing Resolution #317 on 8 December 2010. Following their first Validation, and a subsequent Secretariat Review, the EITI Board designated Kyrgyz Republic compliant with the EITI Rules in March 2011.

On 2 June 2016, the Board agreed that Kyrgyz Republic's Validation under the 2016 EITI Standard would commence on 1 July 2016. This report presents the findings and initial assessment of the International Secretariat's data gathering and stakeholder consultations. The International Secretariat has followed the Validation Procedures<sup>1</sup> and applied the Validation Guide<sup>2</sup> in assessing Kyrgyz Republic's progress with the 2016 EITI Standard. While the initial assessment has not yet been reviewed by the Supervisory Board (SB) or been quality assured, the Secretariat's preliminary assessment is that requirements 1.1, 1.4, 2.2, 2.3, 2.4, 2.6, 3.2, 3.3, 4.3, 4.4, 4.5, 4.6, 4.9, 5.2, 6.1, 6.2, 6.3, 7.1, 7.3 and 7.4 are unmet.

The major areas of concern relate to government engagement (#1.1), MSG functioning, notably the civil society nomination procedures (#1.4), sub-national transfers (#5.2), coverage of state-owned companies (#2.6, #4.5 and #6.2) and social expenditures (#6.1) and the procedures for data collection and assurance (#4.9). Corrective actions for each sub-requirement are suggested in the assessment tables for each requirement.

## Overall conclusions

Kyrgyz Republic was one of the first countries to commit to the EITI, and started producing EITI Reports already in 2004 as part of the EITI pilot. In the years after achieving candidate status in 2007, the government ensured strong support of EITI implementation, including attempting to extend it to the fuel and energy sector. Participation of other stakeholders was also consistent, and included actors such as Parliamentarians.

However, over time stakeholder engagement seems to have gradually faded. Senior government officials stopped attending meetings of the multi-stakeholder group, and delegated this responsibility to lower ranking officials. The oversight of EITI implementation was largely left to the national secretariat and became detached from other government reforms efforts related to the extractive sector. While civil society participation remained relatively consistent, it has been confined to a small group of NGOs and there has been limited focus on strengthening civil society engagement through continuous outreach to wider groups such as parliament, media, academia etc. In the last couple of years, civil society participation has also been hampered by lack of funding. With regards to industry, support for the EITI seems to have waned as the process became more bureaucratic and disconnected from other reporting to the government. From being broadly supportive of EITI implementation, there is now a strong industry lobby against the EITI as companies already file similar data with various government bodies and therefore regard the EITI as duplication of work. Companies are also disappointed that the EITI has not resulted in any benefits for business, neither in terms of improving the investment climate nor in terms of

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<sup>1</sup> <https://eiti.org/document/validation-procedures>

<sup>2</sup> <https://eiti.org/document/validation-guide>

reducing mining conflicts.

Although stakeholder interest in the EITI has improved somewhat in the last six months following the reshuffle of the SB in Q1 2016, this engagement is clearly fragile. It will be important that the State Committee for Industry, Subsoil Use and Energy (SCIES) remains strongly engaged and helps set the agenda for implementation so that it fits better with the government's priorities for the mining sector. At the same time, implementation also needs to be modernised in order to address industry concerns of duplication. Civil society engagement should be broadened and become more proactive in terms of use of data. It is also important that the SB takes responsibility for resolving the funding challenges of the past years, by ensuring that there is a sustainable strategy for fundraising that includes some elements of domestic funding.

EITI reporting has been consistent for many years. It seems that the SB has mainly focused on two aspects: disaggregated reporting, and increasing the number of reporting companies. The former was achieved with the removal of the secrecy clause in the tax code in 2012, and the latter has been a continuous process of ever increasing numbers of reporting companies for each EITI Report. There has not been any significant interest in trying to implement the recommendations from EITI reporting, or to improve the reporting process to address the discrepancies that have mostly come about because to the way the EITI reporting process has been designed, not because of any wrongdoing on behalf of the government or the companies. It was only with the adoption of the 2013 EITI Standard that stakeholders in the Kyrgyz Republic decided to take on a broader scope in terms of EITI implementation. While the first work plan prepared under the EITI Standard included an impressive range of challenges related to the mining sector and suggestions for how the EITI could help address these, lack of funding and implementing capacity and weak stakeholder engagement made it impossible to deliver on the work plan ambitions. Although the 2013-14 EITI Report, Kyrgyz Republic's first under the EITI Standard, was more extensive than previous reports, it was to some extent a missed opportunity for delivering on some of the work plan objectives.

For these reasons, it is perhaps not surprising that there has also been limited interest in using and disseminating information from EITI Reports. Although there have been efforts to explain the broader concept of the EITI to extractive regions, and some launch events and selected dissemination campaigns, it does not appear that any stakeholders are actually using, analysis or trying to interpret the data in the EITI reports. While mining issues are debated daily in the media and Parliament, the local EITI has shied away from being part of those discussions, again contributing to reduce its relevance.

Despite the impasse that the EITI currently finds itself in in the Kyrgyz Republic, there is little doubt about the potential contribution of the EITI to the national debate about mining sector governance:

- A key opportunity for making the EITI more relevant and useful would be to move towards more timely and mainstreamed transparency. Government entities in Kyrgyz Republic already publish much of the information required to be disclosed under the EITI Standard on government websites and portals on monthly and yearly basis, in particular licensing and financial data. On many aspects, this information is considerably more up to date and comprehensive than the information provided in the EITI reports. Rather to continue with "regular" EITI reporting, stakeholders should be encouraged to assess any transparency gaps in government systems and means of addressing these. This would also reduce the reporting burden on the companies and in the longer term also the cost of implementation.

- The government and the SB could consider devoting more attention to increasing transparency in the governance and spending of regional development funds. As documented in this report, these are funds to which a share of mining sector revenue is transferred in order to be spent on social and infrastructure developments. At the moment, there is considerable confusion about how the funds should work and no transparency mechanisms have yet been established to ensure that citizens can know how much has been transferred to which regional development fund, the basis for calculating the transfers, confirmation of receipt by local government, transparency in expenditure decision-making as well as actual disclosures on what the money has been spent on. The SB could produce annual reports on this issue, documenting the preceding years' transfers, or alternatively, establish an online disclosure mechanism.
- Further efforts could be devoted to beneficial ownership transparency. It is clear from the conversations with government and civil society that this is an issue of great stakeholder interest. With beneficial ownership disclosure already enshrined in legislation and the technical infrastructure established, i.e. a license register linked to the Ministry of Justice company database, the EITI could help ensure that the information is collected and published for all oil, gas and mining companies bidding for extractive licenses in the Kyrgyz Republic.
- Finally, the SB could devote more time to increasing transparency on other topics of stakeholder interest, notably:
  - State-owned companies, in particular understanding the efficiency of these companies and their role in providing subsidies and other quasi-fiscal expenditures.
  - Social expenditures, including establishing a disclosure mechanism to ensure transparency in companies' provision of the so-called "social package". This could include understanding the terms of the social package and ensure disclosure of amounts spent and the nature of the expenditures.

## Recommendations

While the following report includes recommendations for specific reforms the Supervisory Board may wish to consider implementing the following list of strategic recommendations that could help Kyrgyz Republic make greater use of the EITI.

1. The Supervisory Board is encouraged to entrench extractive sector transparency in government systems, and take steps to move towards online EITI reporting based on the routine disclosures provided by relevant government agencies and companies. It is recommended that the SB 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.
2. While considering the feasibility of mainstreamed disclosures and in preparing for the next EITI Report, it is recommended that the SB reviews the data collection procedures.
3. The SB is recommended to explore further the management and expenditures of the regional development funds as well as the social package.

4. The SB should consider whether to take a more active role in developing recommendations from EITI Reports, and agree relevant follow-up and implementation.
5. KEITI 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 development funds expenditures, beneficial ownership, contract transparency and SOE governance.
6. The SB should discuss and secure sustainable funding model for the EITI implementation in terms of the national secretariat functioning and preparation of the reports. This may include partially government's funding and diversified donors support.

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Figure 1 – assessment card

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

## Introduction

### Brief recap of the sign-up phase

The Kyrgyz Republic was among the first countries to commit to implement the EITI in 2004. Through Government Resolution #361 the government established a Kyrgyz multi-stakeholder group “Consultative Assistance Council” to address issues around the governance of the extractive sector.<sup>3</sup> The 2005 Revolution that led to a government change resulted in a stalled EITI process, which was picked up again in 2008. In December 2010 the Government passed Resolution #317 establishing the definition of materiality threshold and further refinements to the reporting process and the governance of the MSG.<sup>4</sup>

### Objectives for implementation and overall progress in implementing the work plan

The national objectives for EITI implementation in the Kyrgyz Republic are set out in the 2016 EITI work plan. The 2016 EITI work plan has three objectives linked to national priorities:

1. Improvement of natural resource governance.
2. Transparency and accountability of the government in managing the extractive sector.
3. Attracting foreign investment.

Despite these big picture objectives, the main focus of EITI implementation activities to date have been around EITI report preparations, dissemination to extractive regions, and efforts to make EITI reporting mandatory by law through suggested amendments to the Law on Subsoil Use.

The Supervisory Board usually updates its work plans annually but been delayed in finalising the 2016 work plan due to the MSG renewal in the first half of 2016. The 2016 work plan was approved and made available online in June 2016. An overview of the completed and outstanding actions in the work plan are usually listed in the Annual Progress Report.

### Summary of engagement by government, civil society and industry

The first multi-stakeholder group in the Kyrgyz Republic was established in 2004, consisting of a high-level government committee supported by a technical advisory council. It was then re-structured in 2008 with the creation of a multi-stakeholder Supervisory Board (SB) tasked with overseeing EITI implementation. The SB was governed by the Government Resolution #317 from 2010. The current Supervisory Board elected in May 2016 is working on a new Memorandum of Understanding. The new MoU in accordance with the 2016 EITI Standard stipulates roles and responsibilities of the SB. The Supervisory Board meet on average three times per year. The minutes of these meetings are available on the website of SAGMR. As noted above, while the early stages of the EITI in Kyrgyz Republic were characterised by momentum and high interest by all stakeholders, stakeholder interest decreased in the period 2011-2015, and is now picking up speed again.

### Key features of the extractive industry

The Kyrgyz Republic has substantial deposits of gold and coal. Mining has decreased since the breakup of the Soviet Union<sup>5</sup> but still remains a major contributor to the Kyrgyz Republic’s economy. According to the 2013-14 EITI Report mining constituted about 10.1% of GDP in 2013 and 8,4% of GDP in 2014. It also

<sup>3</sup> About EITI. State Agency on Geology and Mineral Resources of the Kyrgyz Republic <http://www.geology.kg/index.php/pi/pi-5>

<sup>4</sup> Kyrgyz Republic’s country page on international EITI website: [https://eiti.org/implementing\\_country/39#implementation-](https://eiti.org/implementing_country/39#implementation-)

<sup>5</sup> Medium and Long Term Mining Strategy 2014 p.17

[http://mineconom.gov.kg/Docs/nedropolzovanie/Medium\\_and\\_Long\\_Term\\_Mining\\_Strategy\\_Eng\\_02042014.pdf](http://mineconom.gov.kg/Docs/nedropolzovanie/Medium_and_Long_Term_Mining_Strategy_Eng_02042014.pdf)

contributed to 47,1% of total export. The decrease of revenue is due to a drop in production of gold at Kumtor, the most significant gold mining company in the country. The export of gold in 2013 was USD 736.8 m, or 78% of extracting industries total export. 70% of the government's revenue from mining is generated by a gold mine Kumtor operated by Centerra Gold. It is Kyrgyz Republic's largest taxpayer and biggest investor. A number of conflicts have been associated with the Kumtor gold mine, including dissatisfaction by the local communities and continuous conflict between the government and the company with regards to the contract terms. The second largest gold deposit Jerooy mine with an estimated 97 tons of gold is not yet operational due to lack of infrastructure.

### **Explanation of the validation process (objectives, timeline, ToR, etc.)**

The EITI International Board agreed at its 33rd Board meeting in Oslo 2016 that fifteen countries, including Kyrgyz Republic will undergo validations starting 1 July 2016.

Validation is an essential feature of the EITI process. It is intended to provide all stakeholders with an impartial assessment of whether EITI implementation in a country is consistent with the provisions of the EITI Standard. The Validation report will, in addition, address the impact of the EITI in the country being validated, the implementation of activities encouraged by the EITI Standard, lessons learnt in EITI implementation, as well as any concerns stakeholders have expressed and recommendations for future implementation of the EITI.

Validation procedure. In February 2016 the EITI Board approved a revised Validation system. The new system has three phases:

1. Data collection undertaken by the International Secretariat
2. Independent quality assurance by an independent Validator who reports directly the EITI Board
3. Board review.

In May 2016, the Board agreed the [Validation Guide](#), which provides detailed guidance on assessing EITI Requirements, and more detailed [Validation procedures](#), including a standardised procedure for data collection and stakeholder consultation by the EITI International Secretariat and standardised terms of reference for the Validator. As previously, there are extensive opportunities for stakeholder participation, as set out below. The Validation Guide includes a provision that: "Where the MSG wishes that validation pays particular attention to assessing certain objectives or activities in accordance with the MSG workplan, these should be outlined upon the request of the MSG". The SB in Kyrgyz Republic did not request any activities or objective for particular attention during the Validation.

Data collection by the International Secretariat. The International Secretariat's work will be conducted in three phases:

**1. Desk Review.** Prior to visiting the country, the Secretariat will conduct a detailed desk review of the available documentation relating to the country's compliance with the EITI Standard, including but not limited to:

- \* The EITI work plan and other planning documents such as budgets and communication plans;
- \* The multi-stakeholder group's Terms of Reference, and minutes from multi-stakeholder group meetings;

- \* EITI Reports, and supplementary information such as summary reports and scoping studies;
- \* Communication materials;
- \* Annual progress reports; and
- \* Any other information of relevance to Validation.

This work will include initial consultations with stakeholders, who are invited to submit any other documentation they consider relevant. Without prejudice to the ability of the Board to exercise their discretion to consider all available evidence, the Secretariat will not take into account actions undertaken after the commencement of Validation.

**2. Country visit.** The country visit took place 22-26 August 2016. The Secretariat met with the multi-stakeholder group and its members, the Independent Administrator and other key stakeholders, including stakeholder groups that are represented on, but not directly participating in, the multi-stakeholder group.

In addition to meeting with the MSG as a group, the Secretariat met with government, companies and civil society representatives either individually or in constituency groups, with appropriate protocols to ensure that stakeholders were able to freely express their views and that requests for confidentiality are respected.

**3. Reporting on progress against requirements.** Based on these consultations, the International Secretariat will prepare a report making an initial evaluation of progress against requirements in accordance with the Validation Guide. The report will not include an overall assessment of compliance. The report was submitted to the Validator on 25 November 2016. The multi-stakeholder group was invited to comment on the draft report on 25 November 2016.

The International Secretariat's team comprised: Sam Bartlett, Dyveke Rogan, and Oliana Valigura.

**4. Independent Validation.** The EITI Board will appoint a Validator, who will report to the Board via the Validation Committee. The Validator will assess whether the Secretariat's initial validation has been carried out in accordance with the Validation Guide. This will include: a detailed desk review of the relevant documentation for each requirement and the Secretariat's initial evaluation for each requirement, and a risk-based approach for spot checks, and further consultations with stakeholders. The Board may request that the Validator undertake spot checks on specific requirements. The Validator will amend or comment on the Secretariat's report as needed. The Validator then prepares a short summary (the Validation Report) for submission to the Board. This will include the Validator's assessment of compliance with each provision, but not an overall assessment of compliance. The multi-stakeholder group will be invited to comment on the Validation Report.

**Board Review.** The final stage in the process is the review by the EITI Board. The Validation Committee will review the Validator's assessment and any feedback from the multi-stakeholder group. The Validation Committee will then make a recommendation to the EITI Board on the country's compliance with the EITI Requirements. The EITI Board will make the final determination of whether the requirements are met or unmet, and on the country's overall compliance in accordance with provision 8.3.a.ii of the EITI Standard. There is an appeal process, as per requirement 8.8.

## Part I – MSG Oversight

### 1. Overview

This section relates to government oversight of the EITI process, stakeholder engagement and the environment for implementation of EITI in country, the governance and functioning of the multi-stakeholder group (MSG), and the EITI work plan.

### 2. Assessment

#### 2.1 Government oversight of the EITI process (#1.1)

##### Documentation of progress

The Kyrgyz Republic first announced its intention to implement the EITI in May 2004 by issuing Government Decree #317 On measures to ensure increase of extractive industries transparency<sup>6</sup>. Further to this Decree, Prime Minister Nikolai Tanaev signed Resolution #361 on accepting the principles of the EITI, approving an action plan and creating two bodies to oversee implementation: the Consultative Assistance Council and the Implementing Committee<sup>7</sup>. The resolution also assigned responsibilities for EITI reporting and established the Advisory Council and Implementation Committee to oversee the implementation process.

The Kyrgyz Republic obtained EITI Candidate status at the EITI Board meeting in Oslo on 27 September 2007<sup>8</sup>. In 2010, Decree 317 was passed to revamp implementation following the 2010 revolution and to establish a new multi-stakeholder group - the Supervisory Board - within the Ministry of Natural Resources which was assigned responsibility for coordinating implementation of the EITI<sup>9</sup>. Kyrgyz Republic gained EITI Compliant status in March 2011 based on a Validation against the 2009 EITI Rules<sup>10</sup>.

EITI implementation in the Kyrgyz Republic is currently led by the State Agency for Geology and Mineral Resources (SAGMR)<sup>11</sup>. The Director of SAGMR, a position currently held by Duyshenbek Zilaliev, is the EITI Champion and Chair of the Supervisory Board.

The Government of the Kyrgyz Republic was actively engaged in the EITI implementation at early stages of the process. From 2010, under the leadership of President Roza Otunbaeva, the Kyrgyz Republic made good progress with EITI reporting and established the Transparency Initiative for Fuel and Energy Sector (FESTI) modelled in part on the successful experience with the EITI.

However, from 2012 onwards government engagement in the EITI process seem to have dropped. There are likely several factors that contributed to this. First of all, the political sponsorship destabilised as the EITI Champion changed four times in the period 2012-2013 as the government dismissed and appointed new people to the position of Director of SAGMR. Other key government officials and MPs were also

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<sup>6</sup> Institutional Set Up Report, January 2016, available in English, p.8.

<sup>7</sup> Institutional Set Up Report, January 2016, available in English, p.8.

<sup>8</sup> Minutes of the EITI International Board meeting Oslo, p. 3,

[https://eiti.org/sites/default/files/documents/boardmeeting\\_003\\_minutes.pdf](https://eiti.org/sites/default/files/documents/boardmeeting_003_minutes.pdf)

<sup>9</sup> Decree 317, 8 December 2010.

<sup>10</sup> 2015 Annual Progress Report of Kyrgyz Republic, available in Russian.

<sup>11</sup> The Ministry of Natural Resources was reorganised to the State Agency of Geology and Mineral Resources (SAGMR) in 2011 after the 2010 revolution that led to a change of the government. In August 2016, SAGMR became the State Committee on Industry, Energy and Subsoil Use. This report will refer to SAGMR throughout.

frequently reshuffled. The institutional set-up study notes that “Unfortunately, the responsible authority today [SAGMR] has no understanding of the EITI benefits for Kyrgyzstan, although they have conducted similar work since 2010. Our meeting with the SAGMR management indicated that they had no understanding and they had no interaction with the Secretariat. In spite of the fact that the Secretariat is located in the SAGMR building and uses their premises both as an office and a meeting room for the Supervisory Board.” (Institutional set-up study, p.35).

Secondly, the EITI was not targeting the main problem areas of the mining industry. While there was fairly regular aggregated EITI reporting on revenues, the largest challenges and need for transparency were in the areas of licensing and production. Thirdly, there was a shift towards a more nationalist approach to mining as tensions over Kumtor Gold increased. Finally, lack of external and internal funding started to affect progress with implementation and further reduced the government’s ownership of the process. It may also be that, as in other countries, there was a perception that the ‘job was done’ given that compliance had been obtained in 2011.

Supervisory Board meetings minutes show that representatives from government participate and engage in Supervisory Board meetings and have contributed to the EITI process by providing data for the EITI Reports. The Institutional set-up study notes that although sub-national governments did not provide all data, “the central government authorities have fulfilled their obligations by 100%” (Institutional set-up study, p.16). It should also be noted that the EITI is mentioned in the National Sustainable Development Strategy 2013-2017, which states that one of the priorities for the development of the mining industry is to fulfil the EITI commitments<sup>12</sup>. The Medium and Long Term Strategy of Mining Industry Development in the Kyrgyz Republic, adopted in 2014, also includes as one of its objectives to “ensure compliance with the standards of transparency in mining revenue according to EITI and Budget transparency for large companies”<sup>13</sup>.

Nonetheless, there has been limited engagement by the government in terms of resolving bottlenecks to EITI reporting. The lack of enabling legislation supporting EITI implementation has been a repeated challenge discussed by the Supervisory Board. Despite reportedly numerous inputs by the Supervisory Board to legal amendments aimed at addressing this issue, there appears to have been limited intervention from senior government representatives to advocate for such legislation. The amended Law “on Subsoil” passed on 24 May 2014 containing a somewhat confused reference to the EITI<sup>14</sup>. Furthermore, since 24 April 2014 it is required by legislation that all grants are ratified by Parliament<sup>15</sup>. This resulted in a delay of more than 18 months for the government’s approval of the third EITI WB MDTF grant. Despite several high level conversations, there were no interventions by the government to speed up the approval process.

There is little evidence that government representatives have in recent years made use of the data generated by EITI reports to promote public debate and inform reform processes in the extractive sector. Furthermore, the government does not appear to have attempted to resolve funding challenges related

<sup>12</sup> National Sustainable Development Strategy 2013-2017, p.107, approved by Presidential Decree on 21 January 2013.

<sup>13</sup> Medium and Long Term Strategy of Mining Industry Development in the Kyrgyz Republic (2014), p.24;

[http://mineconom.gov.kg/Docs/nedropolzovanie/Medium\\_and\\_Long\\_Term\\_Mining\\_Strategy\\_Eng\\_02042014.pdf](http://mineconom.gov.kg/Docs/nedropolzovanie/Medium_and_Long_Term_Mining_Strategy_Eng_02042014.pdf)

<sup>14</sup> Article 35, provision 5: “Subsoil users are entitled to provide presentation, within the framework of the EITI implementation, on an annual basis until the end of the first quarter of the year following the reporting year, to the authorized state body for the implementation of the state policy on subsoil use their reports on all taxes and payments made by the subsoil users on a cash basis”.

<sup>15</sup> <http://www.mfa.gov.kg/contents/view/id/213>

to implementation but has relied solely on one development partner, the World Bank. Despite interest from other development partners, the government has not taken responsibility and acted on such opportunities<sup>16</sup>. This means that there have been relatively long periods of funding gaps, affecting EITI implementation. For example, the process was completely unfunded in the period January 2014-September 2015, and again from January 2016 to date.

Although senior government officials were initially nominated to be members of the Supervisory Board<sup>17</sup>, in practice the meetings have mainly been attended by lower ranking civil servants (Institutional set up study, p.27). According to Supervisory Board minutes, the Chair of the Supervisory Board has neither attended, nor chaired the meetings since 2011 (Institutional set up study, p.29). Key government agencies such as the Ministry of Economy, responsible for mining sector policy, or the Department of Industry, Fuel-Energy and Mining under the Government of the Kyrgyz Republic have not been represented on the Supervisory Board and rarely been engaged in EITI work.

At the end of 2015, SAGMR requested an institutional set-up study to assess the functioning of the multi-stakeholder group and the governance of EITI implementation in the Kyrgyz Republic. The institutional set-up study which was finalised in January 2016 revealed a number of weak sides of the process including limited interest and engagement of the government, governance challenges of the Supervisory Board, and unclear responsibilities of the national EITI Secretariat. Among other findings, the study concluded that the EITI process was mainly led by the national EITI secretariat, which had exceeded its mandate by taking on a role that should be played by government (Institutional set up study p.30). The study recommended that these roles and responsibilities be clarified (Institutional set up study, p.51).

The release of the institutional set-up study seems to have sparked renewed interest in the EITI from the government. In February 2016, at the EITI Global Conference in Lima, deputy Director of SAGMR Ulanbek Ryskulov reaffirmed the government's commitment to implement the EITI<sup>18</sup>. In March 2016, SAGMR commenced a process of renewing the Supervisory Board and re-staffing the national secretariat including with SAGMR staff rather than externally hired consultants funded by the World Bank. Given the funding constraints, SAGMR has indicated that it intends to allocate internal resources to hire staff members to the secretariat and to include EITI in the 2017 budget process.

### Stakeholder views

Government officials lamented that there had been a long period of standstill that was caused both by lack of funding and by lack of sufficient communication and outreach by the secretariat. Now, a decision had been taken to appoint an independent person to work with the SB as well as a technical assistance who would be employed by the SAGMR.

In terms of an enabling legal framework for implementing the EITI, the government expressed support for

<sup>16</sup> One example includes a proposal by one donor for a USD 500k grant to support implementation, which was rejected by the government.

<sup>17</sup> According to Resolution 317, the following were nominated to represent the government on the Supervisory Board: the Minister of Natural Resources of the Kyrgyz Republic, the Deputy Minister of Finance of the Kyrgyz Republic; the Deputy Chairman of the State Tax Service under the Government of the Kyrgyz Republic; the Deputy Chairman of the State Customs Service under the Government of the Kyrgyz Republic; and the Deputy Chairman of the Kyrgyz Republic National Statistical Committee.

<sup>18</sup> Other recent government statements of support to the EITI include the statement by Ulanbel Ryskulov at the launch of the 2013/14 EITI Report in December 2015

([http://24.kg/ekonomika/25189\\_v\\_kyrgyzstane\\_otchetnost\\_po\\_programme\\_initsiativyi\\_prozrachnosti\\_dobyivayushey\\_otrasli\\_stanet\\_obyazatelnoy/](http://24.kg/ekonomika/25189_v_kyrgyzstane_otchetnost_po_programme_initsiativyi_prozrachnosti_dobyivayushey_otrasli_stanet_obyazatelnoy/)), as well as the statement by Vice Prime Minister Valery Dil at the launch of the 2012 EITI Report on 14 April 2014 (<http://www.kabar.kg/rus/economics/full/76311/www.kabar.kg/rus/economics/full/>).

making the EITI mandatory by law and commented that the 2014 amendments to the Law on subsoil had not ensured that all companies reported. The subsoil law was currently being revised and now included a stronger proposal for mandatory EITI reporting.

Some civil society representatives lamented that the government had not provided leadership by passing legislation making EITI mandatory. Some also commented that SAGMR's leadership had not been strong and that the EITI Champion had never attended a SB meeting. It was noted that SAGMR was undergoing significant institutional changes. Local government were in need of trainings,

A company representative said that there was no political leadership and companies had not observed active government participation in the EITI. Another company representative noted that the government is involved because existing decrees mandate them to participate, however there had been poor communications between SAGMR and the national secretariat for some time. The State Committee had lately been taking a more active role in the supervision of the EITI. However, some questioned whether such change was due to the upcoming validation and the desire of the government to do well in validation.

### **Initial assessment**

While the initial stages of EITI implementation were characterized by strong government commitment, implementation over the last four years have been affected by a lack of political support. This has resulted in a lack of political oversight of implementation and a process that is not effectively addressing the governance challenges in the mining sector. Although the government has in recent months shown renewed initiative and engagement and should be commended for initiating a renewal of the MSG, assuming chairmanship of the MSG and integrating the national secretariat in the State Committee, it is difficult to conclude that the government has been fully, actively and effectively engaged in the design, implementation, monitoring and evaluation of the EITI process in recent years. The International Secretariat's initial assessment is therefore that the Kyrgyz Republic has made meaningful progress in meeting this requirement.

## **2.2 Company engagement (#1.2)**

### **Documentation of progress**

Although the Kyrgyz Republic has substantial mineral deposits and mining activity, the occasional violent and nearly permanent conflictual relationship between local communities and mining companies over many years continue to have a noticeable impact on the development of the mining sector and continues to hinder investment. Anti-mining sentiments are widespread. Lack of jobs, unseen benefits, environmental concerns, lack of understanding of how the sector works, ethnic diversity and political agendas, including strong resource nationalism rhetoric in recent years coupled with frequent changes to the legal and regulatory regime for the sector, are factors that contribute to fuel the opposition to mining.

Kumtor Gold Company, owned by Canadian Centerra Gold, is the main industry player in the Kyrgyz Republic contributing about 8% of country's GDP, 65.6 %<sup>19</sup> of mining revenues and 45%<sup>20</sup> of total industrial production according to the 2014 EITI Report. The General Agreement on Kumtor gold field was signed in 1992 between the government, the Kyrgyz State Group Kyrgyzaltyn and Canadian Cameco

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<sup>19</sup> The calculation was made based on the revenue reconciliation for 2014 data received from mining companies for the 2013-14 EITI Report. See table 21 on p. 144 of the 2013-14 EITI Report, <https://eiti.org/node/7778>

<sup>20</sup> The 2013-2014 EITI Report, p.53, <https://eiti.org/node/7778>

Corporation. The Concession Agreement from May 1993 stipulated the provisions on taxes and operational procedures. For a number of years, Kumtor was a painful topic for the Kyrgyz Republic. According to the State Commission on Kumtor, the agreement of 1992 was signed without a tender and contravened the Law on Subsoil, the Law on Concessions, the Law on Joint Stock Ventures<sup>21</sup>, etc. In addition to this, the cyanide spill<sup>22</sup> in 1998 fuelled public concern about the environmental impacts of mining.

In April 2009, the government signed the Agreement on New Conditions with Centerra Gold Inc. extending the concession zone of Kumtor Gold Company, enacting a new tax regime and mandating a contribution of 1% of gross income to the Issyk Kul development fund<sup>23</sup>. The new agreement sparked further debates on whether the Kyrgyz Republic was receiving a fair share<sup>24</sup>. Following continuous discussion of revisions to the Kumtor agreement since 2009 and increasing calls for nationalising the mine, the government failed to re-negotiate a new agreement and withdrew from further negotiation in December 2015. In May 2016, Kumtor was fined around USD 100 million for environmental damage by a court of the Kyrgyz Republic, while another regulator filed a USD 230 million lawsuit<sup>25</sup> against it and conducted a search of its local office. Despite ongoing discussions, the government has issued all required permits<sup>26</sup> to Kumtor Gold Company to enable smooth operation of the gold mine until the end of 2016.

In 2014, the government commenced work on a new medium-term mining strategy for the country<sup>27</sup>, presenting recommendations aimed at among other things improving the investment climate. The Law On Making Amendments to the Law of the Kyrgyz Republic “On Subsoil” was also issued in May 2014, simplifying the rules for license allocations and bidding<sup>28</sup>. The government has also initiated further amendments to the Law that could give the EITI legal backing and to ensure mandatory annual reporting by companies, although to date such efforts have not been successful<sup>29</sup>. Despite the lack of legal backing, the largest tax payers have so far been willing to disclose their payments for EITI purposes.

Industry participation and engagement in the EITI has been inconsistent. As noted in the institutional set-up study: “Functioning of the business community with the exception of Kumtor and JSC Kyrgyzaltyn was nominal. The minute’s analysis shows that representatives of mining associations were not the initiators and innovators in their sector of business in the Supervisory Board. Since 2008 new associations and companies appeared who were not involved in the work of the Supervisory Board. Big and quite influential organizations such as IBC, which has a Committee on mineral resources, represented by operating mining companies, is also not the member of the Supervisory Board and was not involved in the EITI process. While many government agencies today agree and increasingly involve in decision-making those organizations which are not represented in the Supervisory Board such as IBC, CC KR, JK.” (Institutional set-up study, p.38).

As noted above, the government launched a reconstitution of the Supervisory Board in early 2016 and as

<sup>21</sup> The public hearing of the report from the State Commission on Kumtor, available [here](#).

<sup>22</sup> [http://ec.europa.eu/health/ph\\_projects/2003/action3/docs/2003\\_3\\_09\\_cs4\\_en.pdf](http://ec.europa.eu/health/ph_projects/2003/action3/docs/2003_3_09_cs4_en.pdf)

<sup>23</sup> The 2013-2014 EITI Report, pp. 119-120, <https://eiti.org/node/7778>

<sup>24</sup> <http://www.mining.com/centerra-gold-seeks-international-arbitration-for-dispute-with-kyrgyzstan/>

<sup>25</sup> <http://www.mining.com/kyrgyzstan-ratchets-up-dispute-against-canadas-centerra-gold/>

<sup>26</sup> <http://www.mining.com/kyrgyz-authorities-hand-centerra-gold-final-permit-to-keep-kumtor-mine-running/>

<sup>27</sup> [http://mineconom.gov.kg/Docs/nedropolzovanie/Medium\\_and\\_Long\\_Term\\_Mining\\_Strategy\\_Eng\\_02042014.pdf](http://mineconom.gov.kg/Docs/nedropolzovanie/Medium_and_Long_Term_Mining_Strategy_Eng_02042014.pdf)

<sup>28</sup> The Law on Amendments to the Law of Kyrgyz Republic On Subsoil, 24 May 2014, Article 30, provision 10 on beneficial ownership disclosure <http://cbd.minjust.gov.kg/act/view/ru-ru/205298?cl=ru-ru>

<sup>29</sup> [http://24.kg/ekonomika/25189\\_v\\_kyrgyzizstane\\_otchetnost\\_po\\_programme\\_initsiativyi\\_prozrachnosti\\_dobyivayushey\\_otrasli\\_stanet\\_obyazatelnoy/](http://24.kg/ekonomika/25189_v_kyrgyzizstane_otchetnost_po_programme_initsiativyi_prozrachnosti_dobyivayushey_otrasli_stanet_obyazatelnoy/)

of August 2016, company representation on the Supervisory Board includes Manas Resources/Zet-Explorer, Kyrgyz Mining Association, Kyrgyzaltyn - a state-owned company, Kumtor Gold Company - and a representative from the International Business Council<sup>30</sup>.

Lack of access to Supervisory Board membership is not the only cause of the existing company misconception of the EITI. There is no evidence of continuous dialogue or outreach efforts by the former Supervisory Board industry members or the national secretariat vis-à-vis the broader industry constituency. Furthermore, the lack of outreach and engagement seems to have contributed to some misunderstandings of the EITI requirements among the wider industry. Vary of red tape, some industry representatives were of the impression that the EITI included mandatory annual financial audits for all companies, which is not currently required by Kyrgyz laws.

Despite inconsistent support from the wider industry constituency, Supervisory Board meetings minutes confirm that industry has mostly been present at Supervisory Board meetings and contributed to discussions (Supervisory Board meeting minutes, 2013–2016). Of the 402 companies considered for the 2014 reporting<sup>31</sup>, 136 companies met the materiality threshold of KGS 1 million [USD 18621] required for participation in EITI reporting. 47 of these companies did not submit reporting templates. The reason for their non-participation is unclear. According to the 2013-14 EITI Report the Independent Administrator could not find some companies due to a change of address, cease of operation, etc. (p. 216)

There is only limited evidence that companies participated in outreach activities or made use of the data from the EITI Report. According to the SB meeting minutes<sup>32</sup> the company representatives took part in a seminar in Chatkal region in 2012 on Tendencies of collaboration between extractive companies and local communities in frames of the EITI. The seminar aimed at strengthening trust between local communities and extractive companies. In terms of engagement on other issues such as input to legislative reform related to the EITI, industry appears to have endorsed Supervisory Board submissions but there is no evidence that industry has made use of their wider networks and influence to advocate for such changes.

### **Stakeholder views**

A government official said that the companies were previously against the EITI, but that the attitude had now improved. There had been many misunderstandings and fears that the EITI would be burdensome for the companies.

Civil society representatives lamented that companies were against the EITI, including those on the SB who openly shared their position against the EITI. Some CSOs raised concern that IBC, one of the largest business interest lobbyist group in the country, said they did not need the EITI.

A company representative highlighted that the tax secrecy clause that had previously prevented disaggregated reporting had been removed in 2012, facilitating more detailed EITI Reports.

An extractive industries representative said that the IBC was advocating for the EITI 10 years ago when the process had just started and the mining activities were promising. However, the attitude had changed over years as industry did not see any benefits of implementation. On the contrary, the EITI was perceived as yet another layer of bureaucracy, duplicating the 3-4 other financial and other reporting that the companies are already required to submit to various government entities on monthly, quarterly and

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<sup>30</sup> Industry participation on the Supervisory Board until 2016 included Kyrgyzaltyn, Kumtor, the Kyrgyz Mining Association, the Association of Miners and Geologists and the “Guild of Miners” Association.

<sup>31</sup> 2013-14 EITI Report, p. 16, <https://eiti.org/node/7778>

<sup>32</sup> The SB meeting minutes, 06 December 2012, available in Russian, <http://www.geology.kg/images/IPDO/15.pdf>

yearly basis. The companies did not understand why the government could not simply compile and publish the data that they had already collected.

The IBC was also sceptical to mandatory EITI reporting and saw it as a burden for the many small companies. Voluntary EITI reporting was working well since the biggest companies like Kumtor Operating Company and Kyrgyzaltyn had been willing to disclose their payments and had capacities to produce reports. When it comes to small companies, the investors try to optimise their resources and given the challenging times for mining, companies would seek to cut any costs and reduce other burdens.

Companies also said that other stakeholders would often voice arguments in favour of EITI implementation, but failed to present any evidence to back up their statements. For example, there was no evidence that EITI had helped attract investment. The EITI had not affected the image of business attractiveness of the Kyrgyz Republic. It was noted that an EITI impact assessment could have helped to convince the companies of the need to implement the requirements.

Finally, companies noted that local communities did not have capacity to understand EITI reports. Presenting communities with the big figures in the EITI Report could further hurt business as it could generate more protest and distrust among local governments and communities. Infographics and simplified reports should be developed and tailored for local communities.

### **Initial assessment**

Although EITI reporting is not mandatory by law in the Kyrgyz Republic, there do not seem to be any legal obstacles preventing company participation in the EITI. The 89 largest extractive companies voluntarily reported under the EITI Standard in 2014. Although this did not include all companies that met the materiality threshold, it nevertheless includes all the major tax payers in the Kyrgyz Republic.

Companies are also participating in Supervisory Board meetings, even if industry representatives may not be actively providing input to the design, monitoring and evaluation of the EITI process. There is certainly a strong scepticism towards the EITI within the business community and limited interest from most companies in participating in the EITI. However in practice this does not appear to have significantly affected the EITI reporting process. Thus, the International Secretariat's initial assessment is that Kyrgyz Republic has made satisfactory progress in meeting this requirement. However, it is recommended that the government and the Supervisory Board takes step to address industry concerns, in particular regarding duplication of reporting and the need to tailor publications to the various audiences.

## **2.3 Civil society engagement (#1.3)**

### **Documentation of progress**

“The civil society sector in the Kyrgyz Republic is one of the strongest in Central Asia. CSO representatives are engaged with the government at the national and local levels through numerous consultative public councils at the state ministries and agencies. There are currently over 14,880 CSOs registered in the country (only around 4,700 of them are operational) working in a wide range of areas, including human rights, support to vulnerable groups, culture and art, health, protection of the environment, youth and sport, education and advocacy” (ICNL, 2016).

The NGO Consortium on EITI, hereinafter ‘the Consortium’, a coalition of civil society organisations actively engaged in natural resource governance issues, was founded in 2004. The Consortium has been

involved in the EITI process since the very beginning. The Consortium includes 22 members. It supports six regional public receptions that aim at building dialogue and cooperation between local governments, local extractive companies and communities. The Consortium is affiliated to the Publish What You Pay global coalition. The NGO “the Tree of Life”<sup>33</sup> facilitates and coordinates member organisations, raises funds, ensures capacity building trainings and advocacy. There are also NGOs outside the Consortium who are interested in and participates in the EITI process. The recently elected civil society representatives to the Supervisory Board include the following organisations:

- NGO “Forum on official aid to development” <http://www.oda.kg/>
- Public Fund “Marendan”, public reception in Chon–Alay, Osh (member of Consortium)
- Public Fund “Nash Vek”: <http://www.nashvek.kg/obshhestvennyj-fond-nash-vek/>
- Public Reception in Talas (member of Consortium)
- Public organisation partner group “Precedent” <http://precedent.kg/>

### Expression

Kyrgyz Republic is ranked “partly free” by Freedom House’s Freedom in the World rankings<sup>34</sup>. The organisation notes that the situation for civil society deteriorated in 2014 in response to the Ukraine events, including on issues such as freedom of expression and press freedom. “In April 2014, the parliament passed a law criminalizing “false information relating to a crime or offense” in the media with penalties of up to five years in prison, which nullifies the 2011 decriminalization of defamation, according to international monitors” (Freedom House, 2016)<sup>35</sup>. According to ICNL, there are no legal barriers to speech and advocacy (ICNL, 2016)<sup>36</sup>.

Minutes from Supervisory Board meetings, annual reports<sup>37</sup>, press releases<sup>38</sup> and participation in events<sup>39</sup> show that civil society is able to speak freely about the EITI process without restraint or coercion. Evidence of this includes critical articles<sup>40</sup>, online forum discussions<sup>41</sup>, open letters to the President and government<sup>42</sup>, recommendation to authorities and researches that Tree of Life together with other Consortium members<sup>43</sup> have produced in relation to the management of the mining sector, especially on environmental aspect of mining and Kumtor gold mine<sup>44</sup>. The Consortium members maintain an online forum<sup>45</sup> on issues related to the mining industry, management of natural resources and the EITI implementation. According to the Human Rights Watch 2016 World Report<sup>46</sup> some journalists “face interference in their work”. However, there is no evidence of such interference related to EITI issues, nor is there any evidence of self-censorship or self-imposed restrictions related to freedom of expression on

<sup>33</sup> NGO the Tree of Life was founded in 2001 to focus on environmental issues, website available in Russian, <http://www.treelife.org.kg/index.php/en/about-us>

<sup>34</sup> <https://freedomhouse.org/report/freedom-world/2015/kyrgyzstan>

<sup>35</sup> <https://freedomhouse.org/report/freedom-world/2015/kyrgyzstan>

<sup>36</sup> <http://www.icnl.org/research/monitor/kyrgyz.html>

<sup>37</sup> <http://eiti.org.kg/index.php/en/inc/136-soveteiti>

<sup>38</sup> <http://eiti.org.kg/index.php/en/news/100-eiti->

<sup>39</sup> <http://slovo.kg/?p=52267> ; <http://eiti.org.kg/index.php/en/news/118-2013-10-09-13-41-04>

<sup>40</sup> <http://treelife.org.kg/index.php/ru/national-eco-conference>

<sup>41</sup> [Online forum discussion](#) on disaggregated EITI reporting,

<sup>42</sup> Open letter to the President and the government of the KR, <http://eiti.org.kg/index.php/en/news/107-2013-04-01-17-45-34>

<sup>43</sup> Open statement on Kumtor from Consortium members, <http://treelife.org.kg/index.php/ru/kumtor/37-2013-09-11-13-32-40>

<sup>44</sup> Kumtor case investigation by the Tree of Life? <http://treelife.org.kg/index.php/ru/kumtor/35-press-dvijenie-otval-kumtor>

<sup>45</sup> <http://forum.eiti.org.kg/>

<sup>46</sup> Human Right Watch Report 2016, [https://www.hrw.org/sites/default/files/world\\_report\\_download/wr2016\\_web.pdf](https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf)

EITI issues among civil society organisations substantively engaged in the EITI.

### Operation

In terms of developments regarding the legal and regulatory framework governing NGO activities, ICNL provides the following summary:

In 2013, there were also efforts to limit civil society space, including the introduction of the draft Law on Money Laundering, which would provide for new reporting requirements for CSOs; the draft Law on Unregistered CSOs, which would prohibit unregistered CSOs; and the draft Law on Treason, which would allow for the designation of any person working with a foreigner as a traitor. However, these initiatives were rejected due to the advocacy efforts of CSOs. In 2014, a group of parliamentarians proposed the draft Law on Foreign Agents, which is similar to the so-called Russian "Foreign Agents" Law. This draft law was adopted in first reading by Parliament and is still pending in the second and third readings. Even before the draft Law on Foreign Agents was officially submitted to the Parliament, it was obvious that some politicians do not trust CSOs, are suspicious of foreign funding, and are ready to restrict foreign funding. Recent years have seen numerous media assaults on CSOs as well as public campaigns by activists calling for the adoption of discriminative draft laws that limit the activities of foreign-funded CSOs, especially those that work in the area of democratization.

Despite these negative trends, in May 2014, a new Law on Public Councils of the State Bodies was signed by the President. It guarantees the establishment of citizen advisory bodies in all government agencies and greatly improves the mechanisms for their operation and the selection of their members. This was a positive development for civil society. In September 2014, the Selection Commission responsible for forming new public councils was elected according to the new Law on Public Councils of the State Bodies. As of September 2015, the Selection Commission has formed 29 out of 36 public councils.

On May 12, 2016, the Kyrgyz Parliament voted on the draft law formerly known as the "Foreign Agents Law (FA Law)." 46 MPs voted in favor of the draft FA Law, and 65 MPs voted against it. Thus, the draft FA Law was rejected and, according to the Procedures of Parliament, it can be reintroduced in Parliament only after 6 months. Civil society hopes, however, that this will signal the end of the draft FA Law. (ICNL, 2016).

There are no suggestions of legal, regulatory, administrative or practical barriers affecting the ability of civil society to participate in the EITI process.

### Association

As noted above, civil society participation in the EITI has mainly been coordinated through the Consortium. NGOs outside the Consortium are also engaged in the EITI and have been represented on the Supervisory Board. However, there has been little change in civil society participation in the Supervisory Board in recent years. The Institutional set-up study found that "According to survey results, a large number of respondents were dissatisfied with the participation of the civil society in the process. After holding personal meetings and discussions in groups we have learned that discontent is related to the lack of rotation of the civil society representatives in the Supervisory Board since 2008. There is no procedure of re-election of the Supervisory Board members. It is not possible for organizations or just civil society activists to be represented in the composition of the Supervisory Board." (International set-up study,

p.21). The 2016 elections of new civil society representatives to the Supervisory Board resulted in the election of two Consortium members and three non-Consortium members.

The Consortium currently has 22 member organisations<sup>47</sup> active in diverse areas such as ecology and environment, natural resources governance, budget transparency and human rights, representing all extractive regions of the Kyrgyz Republic. The goals of the Consortium are to increase public awareness over the EITI implementation, governance of natural resources and their revenues; adapting and sharing experiences of other countries in terms of the EITI and multi-stakeholder cooperation; and developing a dialogue platform for civil society, government, media, MPs and companies to form a common understanding and provide recommendations on transparent and responsible management of mining industries<sup>48</sup>. The Consortium is currently coordinated by its founding NGO –Centre for Human Development “The Tree of Life”. The Consortium coordinator is appointed during the general meetings and the Tree of Life was appointed in 2011 and since then remains main coordinating body and focal point with international organisations such as PWYP. The major governance issues are discussed and approved during the Consortium general meetings. The last general meeting was held in 2013<sup>49</sup> and since then the secretariat of the Consortium consisting of six public receptions<sup>50</sup> and the Tree of Life was in charge of decision-making related to the Consortium. The Consortium became affiliated with PWYP<sup>51</sup> in 2013 and following a PWYP self-assessment seminar in Issyk Kul has developed a strategic plan<sup>52</sup> focused on increased communications and involvement of youths. In terms of membership, any interested NGO can fill in an application form and send it to the Tree of Life. The decision on the membership could be made by the Consortium’s secretariat and does not require approval by the general meeting. According to the stakeholder consultation, the Consortium plans to have a meeting by the end of 2016 and review its membership and the strategy. For the last two years, the Consortium has faced serious funding difficulties that according to the constituency view restrained Consortium members from more active participation in the EITI.

Communication among Consortium members is made through the list serve coordinated by the Tree of Life. Communication between Consortium members and other civil society representatives can be done through the mailing list and online forum <http://forum.eiti.org.kg/> where anyone can start a topic in Russian or Kyrgyz. Representatives of local communities and activists are particularly encouraged to take part in the online discussions and bring up local cases and issues related to the mining industry. In addition to this, the SB has a wider mailing list for a broader circle of stakeholders that can take part in the discussions without a right to vote. The Consortium has included other NGOs, donor organizations and media in that list.

There are frequent contacts with international groups such as Publish What You Pay and NRGi, mainly via Tree of Life, which again shares all information and updates with the Consortium members and provides open access to information via its Facebook page and the forum. There is no evidence of that any communication channels are being restricted, or that civil society members of the Supervisory Board

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<sup>47</sup> NGO Consortium Facebook page [here](#).

<sup>48</sup> NGO Consortium [Facebook page](#).

<sup>49</sup> <http://eiti.org.kg/index.php/en/news/100-eiti->

<sup>50</sup> Public receptions were established by the NGO Consortium in 2012 and are open information offices in extractive regions, that provide support to the local citizens concerning their rights related to extractive industries and local governance. They aim at conflict reduction and multi-stakeholder dialogue.

<sup>51</sup> <http://www.publishwhatyoupay.org/members/kyrgyzstan/>

<sup>52</sup> NGO Consortium strategic plan

groups are facing any restrictions in terms of cooperation with wider civil society.

### Engagement

Civil society is involved in the design, implementation, monitoring and evaluation of the EITI through participation in Supervisory Board meeting, CSO forums, public hearings, conferences, dissemination events etc.

The minutes from Supervisory Board meetings<sup>53</sup> point to active engagement over the years. The minutes of the SB meetings confirm that civil society members fully contribute and provide input to the EITI process, namely discussions on work plan and related activities, the scope of the EITI reporting process<sup>54</sup>, approval of EITI Reports, annual self-assessment of the EITI process through the annual progress reports<sup>55</sup>, Validation etc. Civil society is regularly participating in Supervisory Board meetings, ad-hoc working groups and other EITI events<sup>56</sup>, and that their views are taken into account and documented in SB meeting minutes.

However, the Institutional set-up study documents some challenges with civil society engagement in the Supervisory Board: “Although there were no obstacles to existence and implementation of the ideas in the Supervisory Board, the civil society has not taken the full advantage of its mandate. Personal relationships between members of the civil society have led to difficulties for formation of a unified position in the Supervisory Board. For about two years, two members of the five do not attend the meeting of the Supervisory Board and one of them has lost any interest, the second organization is boycotting the Supervisory Board meetings. However, they are still considered as nominal members of the Board due to the absence of the procedure of delisting members from SB extractive sector” (p.37).

The NGO Consortium explained in its comments to the study that limited involvement was caused by funding constraints<sup>57</sup>. The minutes of Supervisory Board meetings<sup>58</sup> provide evidence that civil society mentioned the funding issues and consequential restraints in comprehensive contribution to the process. However, despite these funding constraints, civil society continued to maintain the online forum on EITI and worked in six public receptions to disseminate EITI report and raise local capacities<sup>59</sup>. It is unclear whether the Consortium have any plans for addressing such constraints.

In terms of capacity to participate in the EITI, civil society did not face any restrictions and took active part in the SB meetings, working groups and trainings. According to the SB meeting minutes from 12 June 2014<sup>60</sup>, one CSO representative was appointed as member of the tendering commission to select the IA for the 2013-14 EITI Report. The work plan for 2016<sup>61</sup> contains a section on capacity building for the multi-stakeholders that includes regional trainings for civil society working with the extractive industries. According to the civils society SB representatives from the regions when coming to Bishkek for the SB

<sup>53</sup> Supervisory Board meetings minutes, available online on SAGMR website, in Russian, <http://geology.kg/index.php/pi/pi-5>

<sup>54</sup> Discussion of the scope of the EITI reporting companies, the SB meeting minutes, 25 March 2015, available in Russian <http://www.geology.kg/images/IPDO/22.pdf>

<sup>55</sup> The SB meeting minutes, 12 June 2014, available in Russian, <http://www.geology.kg/images/IPDO/20.pdf>

<sup>56</sup> <http://slovo.kg/?p=52267>

<sup>57</sup> A letter of Kalia Moldogazieva to the national secretariat and the SB members with comments to the Institutional set up study from 26 January 2016, available in Russian.

<sup>58</sup> The SB meeting minutes, 31 March 2016, available in Russian.

<sup>59</sup> Civil society report on the achievements in the EITI process is available in Russian here - <http://eiti.org.kg/index.php/en/inc/136-soveteiti>

<sup>60</sup> The SB meeting minutes, 12 June 2014, available in Russian, <http://www.geology.kg/images/IPDO/20.pdf>

<sup>61</sup> 2015 work plan for the EITI implementation in the Kyrgyz Republic, provision 5.3, p.3

meetings they had their transportation expenses covered by the national secretariat in late 2015.

### Access to public decision making

There are several examples of that civil society is able to use the EITI process to generate public debate through public events, workshops and conferences and to inform the public about the EITI process and outcomes. For example, the NGO Consortium maintains an online forum<sup>62</sup> to ensure public debate and discussions on natural resources governance, inform about the EITI and disseminate reports and related data as well as initiate recommendation to the government on legal amendments, etc. The forum website is available in Kyrgyz and Russian languages that allow users from regions that do not speak Russian to actively participate in discussions.

Civil society representatives are able to engage in analysis and advocacy on natural resource issues<sup>63</sup>, and influence public policy. Some examples include:

- In November 2015, the CCA "Tree of Life, and several members of the Consortium sent a letter to the Government with the proposal to promote electronic reporting of EITI in Kyrgyzstan<sup>64</sup>.
- In 2013, the CCA "Tree of Life" with the support of the Soros-Kyrgyzstan Foundation, held a National Forum formulating recommendations on various issues related to the extractive sector, including the establishment of regional development funds; a definition of the "social package" to be provided by mining companies and what such funds should be spent on; and mandatory preparation of social and environmental mining assessments. These recommendations were sent to the Ministry of Economy, SAGMR, and the Presidential Administration<sup>65</sup>.
- From 2008-2011, the CCA "Tree of Life" and the Consortium members advocated for disaggregated EITI reporting. This was done through a letter to the Government of the Kyrgyz Republic, and at all events, conferences, etc. Since 2012 EITI reports in Kyrgyzstan were published not in the industry as a whole and individually by companies<sup>66</sup>.

### **Stakeholder views**

With regards to the ability of CSO to express opinions related to the EITI, civil society confirmed that they faced no restrictions and were not afraid of speaking their minds. It was noted that it could perhaps be a bit different in the regions where villagers could sometimes be bribed to keep quiet, but this was not about government restricting freedom of expression. A CSO representative gave an example of a meeting where civil society had been invited alongside senior government officials and all were welcome to state their opinions.

Another CSO representative commented that journalists are free in terms of expression and there were no prohibited topics. There was a broader challenge of lack of independent media in the sense that media outlets were often paid by companies or pushed by government in order to promote certain issues. There is a certain self-censorship inside media outlets caused by a desire to attract funding rather than fear of repression.

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<sup>62</sup> <http://forum.eiti.org.kg/>

<sup>63</sup> 2015 Annual Progress Report of Kyrgyzstan, p. 33, <http://www.geology.kg/images/IPDO/ot/2.pdf>

<sup>64</sup> A letter of the Consortium members to the government of the KR regarding online reporting, 02 December 2015. Available in Russian and English.

<sup>65</sup> NGO Consortium recommendations to the government on the regional development funds from 26 August 2013, available in Russian and English.

<sup>66</sup> An open discussion on a disaggregated EITI Reporting on the [forum](#)

A journalist confirmed that media is free and there were no prohibited topics. On the other hand, journalists often see extractive industries as a means to make money and in case of Kumtor both the government and the company tend to pay for criticism and praise. This has led to citizens' mistrust of the media.

A civil society representative said the situation for NGOs had changed significantly after the second revolution. In 2009, there had been a push from civil society for contact transparency however companies and government had refused. Civil society had then launched a peaceful demonstration, resulting in the arrest of five people. This would be unthinkable today. According to the representative, civil society was not facing any restrictions and could express their views freely including in the media.

In terms of ability to operate freely in relation to the EITI, civil society representatives said that they did not have any problems. It was noted that evidence of that was that the Foreign Agents Law that was attempted introduced in 2015, had been rejected. There were no signs that the government would make another attempt at introducing this law as it would likely cause social unrest and tension.

Civil society representatives said that there were no restrictions on freedom of association. They were working freely with any members of civil society at the national, regional and international level, as well as with other stakeholders.

With regards to CSO engagement in the EITI, civil society gave examples of their active input to drafting the work plan and the annual activity report as examples of their ability to engage. Although capacity building was needed, civil society was also taking responsibility for organising trainings, such as the recently completed beneficial ownership training. On the ability of civil society to contribute to public policy making, a civil society representative gave the example of a CSO campaign related to the Andash gold and copper deposit in Talas region. SAGMR had issued a "state ecologic expertise" based on the environment impact assessment, concluding that there were no issues and that the project could go ahead. However, the development of this deposit had been of concern to local communities. Firstly, the deposit was located only 500 m from the village. All machinery that would be used for the mining would have to cross the local cemetery, considered a sacred place for the villagers. Secondly, according to research by local experts, the project could severely impact the forest and fauna and endangered species. Based on this, local community representatives, NGOs and international experts had worked together on a "public expertise" concluding that the project should not go ahead. As a result, the Parliament had decided to put the project on hold while further evidence was gathered.

Another civil society representative noted that CSOs often submitted input and proposals to policy making processes. Although these proposals were not always considered or taken into account, this was mostly due to that the civil society proposal were not well enough aligned with e.g. the visions of certain Parliamentarians, and sometimes civil society did not do a good enough job in lobbying and influencing the right people.

### **Initial assessment**

Evidence such as Supervisory Board meetings minutes and conversations with stakeholders show that civil society is involved in the design, implementation, monitoring and evaluation of the EITI process. In the last years, funding constraints have affected civil society participation, having an impact in particular on the technical capacity and interest of civil society to engage in e.g. EITI reporting questions. There is no evidence that the CSOs have sought to address this concern. Civil society has also played an active role in outreach and efforts to promote public debate especially at the regional level. It is also clear that there is

an enabling environment for civil society participation in the EITI, although recent attempts at legislative changes calls for continuous monitoring of the civil society space. The International Secretariat's initial assessment is that Kyrgyz Republic has made satisfactory progress in meeting this requirement.

## 2.4 MSG governance and functioning (#1.4)

### Documentation of progress

#### *MSG composition and membership:*

The first multi-stakeholder group in the Kyrgyz Republic was established in 2004, consisting of a high-level government committee supported by a technical advisory council.<sup>67</sup> It was then re-structured in 2008 with the creation of a multi-stakeholder Supervisory Board (SB) tasked with overseeing EITI implementation.<sup>68</sup> Further changes were made after the revolution in 2010<sup>69</sup>. The Supervisory Board is currently working on revisions to the 2010 Resolution<sup>70</sup>.

The current Supervisory Board is composed of six government members, including Duyshenbek Zilaliev, Director of State Agency for Geology and Mineral Resources (SAGMR) who is also the Chair of the SB and Ulanbek Ryskulov – deputy Director of SAGMR, who is the deputy Chair of the SB. The other government members of the SB include representatives from the Ministry of Finance, the National Statistics Committee, the State Tax Service, and the Customs Committee. Industry is represented by five members: Manas Resources/Zet-Explorer, the Kyrgyz Mining Association, the state-owned company “Kyrgyzaltyn”, the International Business Council, and Kumtor Gold Company. Civil society has five representatives: Forum on official development aid, NGO “Marendan”, EITI Consortium member from Talas, Public foundation “Meredian” and “Partner Group Precedent”. According to the recently revised ToRs, the composition of the SB should consist of five representatives and two alternates from each constituency. However, given that the ToRs were only endorsed on 30 June 2016, the SB has not yet appointed alternates.

- Nomination of government representatives

Resolution #317 from 2010 still defines the government's representation on the SB, as government representatives are appointed by position/institution. Thus, although the other two constituencies reshuffled their members in early 2016, the government constituency has not yet revisited the membership beyond replacing some government representatives with new representatives from the same institutions.

The institutional-set up study suggests that the government should involve the Department of Industry, Fuel-energy and Mining under the Government of the Kyrgyz Republic in the SB, given the access to high-level government officials and their role in coordinating issues and developing strategies on the sector. The study also recommends to engage the Ministry of Economy given their role in formulating and implementing policies in the mining industry, and the State Agency for Local Self-Governance in order to support outreach at local level (Institutional set-up study, p.22).

<sup>67</sup> Government Resolution #361, 14 May 2004.

<sup>68</sup> Government Resolution #382, 18 July 2008.

<sup>69</sup> Government Resolution #317, 8 December 2010.

<sup>70</sup> The SB has approved the ToRs for the MSG based on the 2016 EITI Standard and the State Committee for Industry, Energy and Subsoil started to draft a new Decree to regulate the EITI oversight. The government yet needs to approve the new Decree.

- Nomination of civil society representatives

As noted in section 1.3 above, there has been limited rotation of civil society SB members in the period 2008-April 2016. Resolution 317 from 2010 notes that CSO representatives on the SB can invite new members and re-elect them by a simple majority vote in an open and transparent manner, and in compliance with the concept of equal (numerical) representation to the SB (Resolution 317, annex 2, §8). It is unclear whether civil society had own rules for election and replacement of SB members prior to 2016.

In response to the institutional set-up study, nominations and elections of new CSO members to the SB took place in the period March-May 2016. The process was subject to a lot of controversy. A call for submission of new representatives was first issued by the SAGMR on 18 March 2016. Prior to this the SAGMR has asked companies and civil society to provide nomination criteria. Civil society members of the SB provided criteria<sup>71</sup> as following:

- Have some experience of work on transparency and accountability;
- Have an understanding of the EITI and experience in this field of work;
- Have experience in networking and good communication with communities experiencing the impact of the mining industry;
- Be free from conflict of interest, meaning not to receive funding from mining companies and / or not to be depending on the government.

SAGMR uploaded the advertisement on its website and few other public portals. In agreement with civil society, SAGMR would collect the applications from civil society. On 29 March the SAGMR had received a total of six applications from NGOs, notably from:

- Alymov Adylbek, OO Centre for strategic budgetary process.
- Doolotkeldyeva Asel, Researcher.
- Dyykanov Taalaybek, Institute of community development and mining industry.
- Temyrberdyev Abdylida, Maredan.
- Toktakunov Nurbek, OO Affiliate Group Precedent
- Musabekova Dinara, EFCA.

It is not clear whether anyone evaluated these applications against the initial criteria.

On 31 March the SB met for endorsement of the new members from government, companies and civil society. All 6 nominees from CSOs made introductory speeches about their work and had a Q&A session with the outgoing SB members. Given that there were six nominees from CSOs and only five MSG seats for CSOs, one of CSO nominees, Alymov Adylbek, withdrew his candidature in order to give way to EFCA. However, the outgoing CSO members on the SB raised questions about the operational independence of EFCA, claiming that the organisation received funding from extractive companies and could not represent civil society. EFCA explained that the funding was for a social project for youth and was not related to extractive industries, even if the funding was provided by Kumtor. However, the outgoing CSOs SB members opposed EFCA's membership in the SB, claiming that they felt pressured by government and

<sup>71</sup> Civil society election criteria, available in Russian

companies to accept the membership. They left the SB meeting to discuss among civil society only. When the meeting resumed a little later, the CSO nominee Alymov Adylbek reinstated his nomination, only to withdraw it again at the end of the meeting.

The debate on EFCA's membership in the SB continued via e-mail correspondence where outgoing CSO SB members continued to oppose EFCA's membership. In response, EFCA provided a letter showing that only 32% of its funding was from Kumtor Gold Company and aimed at social project for youth. Also EFCA clarified EFCA's legal status as an NGO and explained that the organisation had to fundraise for all its projects. Outgoing CSO SB members were not satisfied with this explanation and continued to argue that EFCA had a conflict of interest and could not serve on the SB. They also claimed that in facilitating the nomination process, SAGMR had changed one of the nomination criteria from "not to have a conflict of interest – meaning do not receive funding from companies and to be independent of the government" into "not to have a conflict of interest – meaning do not receive funding *for EITI* from companies and to be independent of the government".

Eventually, SAGMR instructed civil society to come to an agreement and submit a list of 5 members by 29 May. This second attempt at nominating civil society members to the SB was led by the NGO Consortium coordinator Tree of Life, who was also a member of the SB for the last five years. A call for nominations was launched on 7 May and contained a short description of the EITI and 4 criteria mentioned above. The call for nominations was distributed to the EITI NGO Consortium's 22 members and some fellow organisations. It was also uploaded to the Consortium forum website and SAGMR website. The deadline for application was 19 May. The second round gathered nine applications, and all applicants were invited to an open meeting of civil society. According to the CSO protocol of 22 May 2016, there were seven NGOs present including Consortium members, outgoing SB CSOs representatives and nominees. It seems that at this meeting, the members of Consortium together with outgoing CSOs SB members selected five of the applicants to be members of the SB. Two of these were members of the Consortium. The three others are independent organizations with limited experience in extractive industries and EITI related topics.

Provision 3.5.b of the MoU governing the Supervisory Board, revised and agreed in June 2016, underlines that civil society is responsible "to create an opportunity for the involvement of other interested civil society organizations that are not members of the Supervisory Board to improve the EITI process". The institutional set-up study suggests that it might be useful to involve mass media, academic and research institutions and trade unions in the work of the SB (institutional set-up study, p.21). There is no evidence that civil society made any efforts to ensure wide outreach, including to new actors, as part of the nomination process.

The MoU does not cover provisions on the need for CSO members of the multi-stakeholder group to be operationally and in policy terms, independent of companies and government. There is no evidence that any of the current SB members have any operational or policy ties to companies or government.

- Nomination of company representatives

Resolution 317 from 2010 notes that companies on the SB can invite new members and re-elect them by a simple majority vote in an open and transparent manner, and in compliance with the concept of equal (numerical) representation to the SB (Resolution 317, annex 2, §8). The institutional set-up study identified the following challenge with the industry representation to the SB: "The analysis of the current structure of business representatives in the Supervisory Board has shown that, due to the absence of a

rotation system, there was no change in the Supervisory Board for the last seven years. During this time there was a lot of changes in the business community. There appeared new players in the industry, affecting on decision-making in the industry. But until now, they did not have access to membership in the Supervisory Board. As a result, the majority of them have become opponents to the EITI implementation in Kyrgyzstan. The influential associations such as IBC and Chamber of Commerce are not represented in the Supervisory Board, while on all important matters the Government and the Jogorku Kenesh KR listen to opinions of these business associations” (p.20).

The International Secretariat is not aware of any official procedures or other evidence documenting the nomination and election procedures for the company constituency. The views of company representatives on the recent nomination process are reflected in the stakeholders views section below. It remains unclear whether an actual vote took place. There is no evidence of government interference in company nominations.

Terms of reference:

The Supervisory Board has recently approved a new Memorandum of Understanding<sup>72</sup> in accordance with recommendations of the Institutional set-up study. The MoU was drafted by SAGMR based on recommendations from the Institutional set-up study, then adjusted by the working group of the SB and approved online on 30 June 2016.

The MoU outlines roles, responsibilities and rights of the Supervisory Board and includes requirements for the SB to oversee the EITI reporting process, namely agreeing the Terms of Reference for the Independent Administrator, overseeing the appointment of the Independent Administrator and approving EITI reports; as well as approving annual work plans and Annual Progress Reports (MoU 2016, Provision 2.1, pp.2-3). Provision 3.1 of the MoU requires the members of the SB to have an ability to carry out their duties. Provision 2.1 specifies responsibility to conduct effective outreach activities through media, websites, emails and other tools. Provision 3.3 states that SB members are responsible for keeping in touch with their constituencies.

The following provisions outline the internal rules and procedures for the Supervisory Board:

- Provision 6.1-6.6 outlines the organisation of SB meetings, specifying that the Supervisory Board should meet at least once in a quarter but can meet more often if needed; that meetings; that any SB member can ask for an extraordinary meeting; policies on distributions of meeting agendas, as well as circulation and publication of minutes<sup>73</sup>. Any SB member can table an issue for discussion (provision 6.6).
- Provision 6.9 explains that decisions are made by consensus and Supervisory Board members have to take all measures to enable consensus. However, it is also noted if a vote is required, decisions will be made by qualified majority requiring the support of two thirds of the total votes cast and must include at least one third of the votes cast by members from each constituency – government, companies and civil society. Provision 7 establish quorum rules.
- Provision 5 outlines rules for SB membership, including the number of representatives and alternates per constituency, recognising the right for companies and civil society to appoint their

<sup>72</sup> The Memorandum of Understanding was drafted in consultation with all stakeholders by SAGMR and working group established among the SB members. The MoU was endorsed in June, available in Russian.

<sup>73</sup> The SB meetings minutes must be uploaded online on [www.geology.kg](http://www.geology.kg) no later than 21 days after the SB meeting.

own representatives, to change their representatives by submitting a letter to the national secretariat, and the right to withdraw from SB membership. Members can serve two terms and one term consists of 3 years (provision 5.2-5.3). Provision 6.9 allows observers to attend the MSG meetings without a voting right.

- Provision 2.1 includes a policy on disclosing information in cases where “the members of the Supervisory Board raise financial and other support for fulfilment of activities related to the implementation of the EITI, in addition to those regulated by the MoU.” Though this provision does not clearly say that the SB members should disclose per diem information, it requires a certain level of financial transparency of the members. The MoU also refers to the EITI Code of Conduct and states that SB members agree to follow it (provision 8.3).
- Provision 7 of the MoU identifies roles and responsibilities of the national secretariat.

The MoU is new and it is too early to assess whether it is followed by the Supervisory Board.

As documented in the institutional set-up study, governance of the SB prior to 2016 was a subject of concern. The study showed that the SB was functioning without governing documents such as memorandum of understanding or ToRs. The only governing document was the Resolution 317 from 2010 that contained a brief ToRs for the SB, covering general provisions. It indicated rights and functions of the SB members, however the responsibilities of members from each constituency were not included. Furthermore, according to the institutional set-up study, several provisions in the resolution were not followed in practice (Institutional set-up study, p.29). According to the ToRs, the SB should meet at least four times a year, however on average meetings were held only three times a year. Representatives from government did not attend SB meetings but rather delegated this responsibility to lower ranking officials. The Chairman of the SB did not attend meetings, but rather delegated this responsibility to the national secretariat. Finally, the ToRs did not include detailed procedures for SB operations.

## **Stakeholder views**

### *MSG composition and membership*

Government officials explained that Resolution 317 from 2010 is still in force and determines which government institutions should be represented on the SB. Government entities named in the Decree decide themselves who should be their representatives. Usually it would be a senior official such as a Deputy Minister that would be formally listed as the SB member, and this senior official would typically be represented in meetings by a person that is responsible for particular technical area relevant to EITI reporting. In terms of the recent nomination process, SAGMR had issued a letter earlier this year asking government entities to nominate new representatives from their institutions. Government representatives considered their current representation sufficient as the key agencies were engaged.

Companies had a simple election process that lasted for one week. However, when asked of the details of the election process companies representatives were inconsistent in describing the process. One company representative explained that nomination and election process was facilitated by the Committee on Mineral Resources of the International Business Council (IBC) that unites oil, gas and mining companies. The companies were free to nominate any candidate. Once nominations had been received, the Committee circulated a list of 5 or 6 nominees on the list serve for online voting. Five candidates were elected. However, the election was passive and many companies were against the EITI. The company representative said: “For the last three years, business has not supported the EITI. In 2015-2016 we [companies] discussed this issue and honestly we don’t understand the EITI and why we need it.

For this reason the election to the SB was very passive.” Another company representative believed that the business is adequately presented at the Supervisory Board, and that the elected members are active and in general understands the importance of EITI implementation.

Another company representative gave a slightly different account of the nomination process, noting that the IBC recommended three nominees including a representative from Kumtor Operating Company to the SB, whilst the Mining Association and Kyrgyzaltyn nominated their representatives.

A civil society representative admitted some challenges with the civil society candidates’ election. The first round of nomination in February 2016 had raised questions about conflict of interest and generally civil society was not happy with the election process. Therefore, a second round of election conducted in May 2016 resulted in selecting 5 members from CSOs that currently sit on the SB. The civil society representatives were considered to be pro-active and adequately represented on the SB.

Another civil society representative complained that during the CSOs election process, civil society had felt pressure and interference from the government and companies as they openly supported one nominee from civil society.

In terms of the invitation to wider civil society to participate in the SB, one CSO representative said that the call for election process was not widely and publicly distributed and remained within NGO Consortium members. There was no constituency guidelines, nor was there a process of civil society elections agreed with wider civil society. The nomination and election was considered to be centered in the hands of a few, restraining other NGOs from the process. Moreover, it was noted that the elected members from civil society did not meet all the selection criteria such as experience in networking and fundraising capacity.

Another CSO representative claimed that the call for nominations had been circulated via an NGO list comprising some 800 NGOs and was also posted in the news and on the SAGMR website. The announcement included eligibility criteria for applicants. Applicants were also requested to submit a resume and at least two letters of recommendation. Once the deadline for applications had expired, some applicants had been called in for interview. It was not clear how many applied and whether all applicants were interviewed. The interviews were carried out by four of the existing SB CSO members. During the interview they had been asked questions such as the motivation for working on the EITI, previous experience with the EITI, regional networks and conflicts of interest. On 24 May, they had received a letter confirming that they had been successful in their applications. This information was also shared more widely across the CSO network.

One of the newly elected CSO representatives commented that the process could be improved in the future, for example by inviting to a broader meeting of civil society to properly explain the EITI process and the role and responsibilities of civil society in the EITI and on the SB.

Civil society consulted were not aware of any conflicts of interest or other issues affecting the operational and policy independence of CSO SB members.

A representative of business community commented that the selection process of civil society members had taken much of the SB’s time. It was not clear why a CSO discussion on election of its members took place during the SB meeting and kept other stakeholders there for 1,5 hours.

It was also noted by some old SB members that the SB now consists mostly of new members and their understanding of the EITI and capacities is limited. Full rotation of the SB members without leaving institutional knowledge was considered poor practice.

### *MSG TOR and functioning of the Supervisory Board*

New SB representatives from civil society said that roles and responsibilities of SB members had been discussed at the first meeting of the SB, and that these were outlined in the recently adopted SB MoU. Civil society had not yet agreed a mechanism for how to liaise with their broader constituency, and confessed that previous CSO SB members had not developed any structured way of consulting and engaging the wider civil society constituency. One CSO representative acknowledged the need for civil society to strategize and caucus ahead of SB meetings.

With regards to organisation of SB meetings, some new civil society representatives commented that national secretariat often asked them to draft papers for the SB, for example the ToRs for the Independent Administrator and they were interested to help. An old CSO member of the SB commented that in the past the SB received notification of the meeting together with all documents from the national secretariat two weeks in advance of any meeting. A representative of company noted that communications had significantly improved and the new national secretariat was cooperative and experienced. A number of company representatives noted that e-mails with updates and documents for approval were constantly circulated. SB meeting minutes were circulated within two weeks after the meeting for comments and approval. A representative of government said that the agenda and relevant documents are circulated a week or a couple of days before the SB meeting. The previous staff of the national secretariat did a good job, prepared all papers in advance, nonetheless the new staff is performing decently. Other government official commented that every SB meeting had minutes that would usually include a list of attendees. Those who did not attend had to send a letter of explanation and that was reflected in the minutes. The previous national secretariat interacted well with SB members from the government, and the agenda and papers were sent in hard copies in advance.

When asked about the decision making process, a civil society representative said the SB tried to reach consensus but sometimes voted. Sometimes if there was no consensus decision-making was postponed. A company representative noted that in the past the decision making was done by voting. First, the SB approved the meeting agenda, then fixed the quorum, which consisted of the majority of SB members. Each agenda item was discussed and voted upon. The national secretariat took minutes and the head of the secretariat signed them. If a meeting was important all SB members signed the minutes. As for the current procedures, there had only been one meeting of the new SB. Decisions outside the meeting were taken by non-objection via email.

A representative from the national secretariat said that the new SB was very active. The SB and the Secretariat has established good understanding of the need to work together and in the same direction. There was also strong agreement that SAGMR needed to be part of the process.

Capacity building was considered a priority by several stakeholders consulted.

### **Initial assessment**

A multi-stakeholder group - the Supervisory Board - has been established, and there have been commendable recent steps to refresh membership. Although a key government entity - the Department of Natural Resources in the Prime Minister's Office - is not represented on the SB, this is somewhat offset by the fact that the State Committee in charge of EITI implementation recently assumed mining policy responsibilities in addition to regulatory responsibilities. The SB appears to comprise relevant and appropriate actors from other stakeholder groups, although the refreshment process was somewhat rushed and did not take into account recommendations from the institutional set up study to consider

including Parliamentarians, media and academia on the SB. None of the stakeholders consulted raised major concerns about the current composition or stakeholder representation.

While the ToRs suggest that civil society and companies are free to elect their members in a fair manner according to their criteria, there are no firm rules and procedures for selection and election of candidates. This is particularly apparent when it comes to the civil society election process. Despite re-launching the nomination process for civil society, there are several question marks around how the process was conducted. Although attempts were made to circulate the call for nomination to a wider group of civil society, there was limited outreach in advance of the nomination process and no attempts to gather civil society to discuss the EITI representation at the SB and the role of civil society, and agree on guidelines and procedures for selection of candidates. For example, EFCA did not participate in the second round of nominations and claimed it was excluded from the second nomination round. It is not clear how the seven CSOs who eventually decided on the CSO SB membership obtained their mandate to run the election process. This raises concerns about the transparency and inclusiveness of the nomination process for civil society. The Supervisory Board may wish to be more precise about the election procedures, including how to replace SB members during a term. It may also be useful to have a broader and more nuanced discussion about what constitutes conflict of interest.

With regards to the functioning of the SB, it seems that the lack of a clear ToRs led to inconsistency in membership and stakeholders' participation, frequency of meetings and decision making. This has now been partially addressed through the adoption of a new MoU that addresses most of the requirements of the EITI Standard. The SB is encouraged to apply the MoU in practice and continue to improve its functioning and governance practices.

The International Secretariat's initial assessment is that the Kyrgyz Republic has made meaningful progress in meeting this requirement.

## 2.5 Workplan (#1.5)

### Documentation of progress

The Supervisory Board approved a work plan for 2016 in December 2015<sup>74</sup>, however funding constrains and changes to the governance of KEITI prevented implementation of most of activities. The new Supervisory Board revisited the work plan for 2016 and a revised version was shared among members for approval on 30 June. The work plan received no objection<sup>75</sup> from the SB members via email<sup>76</sup>.

The work plan outlines three national priorities linked to the EITI principles, notably (1) Improvement of natural resource governance; (2) Transparency and accountability of the government in managing the extractive sector; and (3) Attraction of foreign investment. In developing these priorities, it appears that the Supervisory Board consulted the National Strategy for Sustainable Development of the Kyrgyz Republic (2016 work plan, p.1). It is unclear what further consultations and stakeholder input were provided.

The work plan also contains a list of objectives that aim at regular EITI implementations tasks, such as:

1. Ensuring transparency of the government and mining companies and improving state financial management and accountability.

<sup>74</sup>Supervisory Board meeting minutes #24, 16 December 2015, decision #3.2 on the work plan approval

<sup>75</sup> An e-mail from Chingiz Beksultanov with final version of the 2016 work plan.

<sup>76</sup> See ref 74.

2. Assuring data quality by applying international standards.
3. Introduction of high standards of transparency, follow-up to the EITI, its institutional set-up and improving the regulatory basis.
4. Information dissemination.
5. Building capacities for the EITI multi-stakeholders.
6. Efficient functioning of the Supervisory Board and the national EITI secretariat.
7. Validation
8. International collaboration on EITI.

There is no clear link between these objectives and the three national priorities.

Each objective is complemented by a set of activities. Even though all activities are time bound, it seems unclear how the Supervisory Board intend to carry out all activities within the stipulated timeframes, not least given the current lack of funding. Timelines could also be more specific. For example, some activities such as development of the ToRs for the IA, data collection from companies and government entities for the next EITI Report, publishing and disseminating the next EITI Report, assessment of extractive industries contribution to the economy and involvement of Members of Parliament in the work of the SB are intended to continue all year around without specific deadlines, while other activities have more defined deadlines such as Q2 or Q3 of 2016.

In accordance with requirement 1.5.c.i, the work plan provides for capacity building activities for stakeholders (2016 work plan, activities 5.1-5.3), but it does not assess the potential capacity constraints that these activities aim to address. The work plan also mentions the need to consider the materiality thresholds and identify the companies that should be included in the 2015 EITI report (2016 work plan, activity 2.8). In terms of addressing legal or regulatory obstacles, the work plan does not specifically comment on the obstacles but comments on the need to implement the amendments to the Law on Subsoil Use with regards to mandatory EITI reporting and data disaggregation. Objective 7 mentions the need to implement any recommendation from Validation (2016 work plan, activity 7.3), but does not specifically comment on recommendations from EITI Reporting.

The work plan includes activities related to beneficial ownership (2016 work plan, activity 3.5), publication of license agreements (2016 work plan, activity 3.6), and studying of the functioning of regional development funds related to the extractive sector (2016 work plan, activity 3.7). It does not contain further activities related to revenue management and expenditure or discretionary social expenditures.

With regards to funding, some of the activities are costed, with funding sources specified as “donors” and “government”. It is not clear who the donors are, nor does the work plan include any fundraising activities. The Institutional set-up study stressed the need for more diversified funding, and suggested a new funding scheme drawing on both government and donor resources (p.49).

The work plan in Russian is uploaded to the SAGMR website<sup>77</sup>. The International Secretariat is not aware that the work plan is published elsewhere.

As for previous work plans, the Supervisory Board agreed the 2014-2015 work plan on 23 December

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<sup>77</sup> <http://geology.kg/index.php/pi/pi-5>

2013<sup>78</sup>. This work plan contained highly pertinent objectives for implementation with clear links to national challenges, and also included a rationale for each objective and activity. However, the work plan did not contain measurable activities and actions ensuring that the work plan would be operational, nor had the Supervisory Board given sufficient consideration to funding for the work plan activities. In May 2014, the Supervisory Board received consultancy support to improve the work plan and develop a funding proposal<sup>79</sup>. At the Supervisory Board meeting on 22 May 2014 it was noted that the work plan was ambitious, but that due to lack of financing many of the activities could not be implemented. However, all work that did not require funding was ongoing. The Supervisory Board recommended that the Secretariat accelerate efforts on attracting funding (Supervisory Board meeting minutes, 22 May 2014, p.4). The meeting minutes include an annex with a detailed stocktake of progress against each Supervisory Board activity (Supervisory Board meeting minutes, 22 May 2014, pp.5-9).

A final evaluation of the 2014-2015 work plan activities was provided at the Supervisory Board meeting on 25 December 2015, indicating which activities had been completed, which ones were outstanding and why (Supervisory Board meeting minutes, 25 December 2015, pp.11-21). According to the national secretariat, 39 of 55 work plan activities were either partly or fully completed, while 16 activities were not executed at all (Supervisory Board meeting minutes, 25 December 2015, p.8). Some of the activities that were not implemented included monitoring of funds for environmental protection and remediation (no reason for lack of implementation given); Consultations and recommendations on improving tax rates (no reason for lack of implementation given); Training for accountants on how to fill in reporting templates (lack of funding); and Organisation of an international conference (lack of funding) (Supervisory Board meeting minutes, 25 December 2015, pp.11-21).

### **Stakeholder views**

A representative from the national secretariat said that the SB had been pressed for time when developing the 2016 work plan. Thus the SB decided to include activities that were considered feasible to implement between June 2016 and the end of the year. Members of the SB had been invited to draft the work plan together with the national secretariat, however only civil society representatives had stepped forward.

A civil society representative explained that civil society was responsible for development of the new work plan for 2016 and despite a short time and lack of knowledge of the EITI, the work plan turned out to become a solid document. The draft work plan was shared with the Supervisory Board for comments via email. It was also discussed in person, Civil society had tried to include the most important issues like transparency in development funds and development of a national strategy on the natural resource sector in the work plan. They had also sought support on the work plan development from the national secretariat, international consultants, previous SB members and the EITI International Secretariat.

Another civil society representative commented that the draft work plan used to be developed by the national secretariat whilst the SB members provided comments and feedback.

A representative of companies noted that the 2016 work plan looked similar to the work plan from previous years. There were no comments or feedback on the work plan from companies during the discussion process. Another company representative admitted he was approached to join the working group on development of the work plan, and was surprised about this request as he would have expected

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<sup>78</sup> Email from Karybek Ibraev, Head of Kyrgyzstan EITI Secretariat, 24 December 2013.

<sup>79</sup> Ref. Documents from 2014

it to be the secretariat that drafts such documents, with the SB then discussing, providing feedback and approving such drafts.

### Initial assessment

The SB has an up to date work plan for 2016, which is publicly accessible. Although drafting of the work plan commenced in December 2015, it was only finalised in June 2016 once new SB members had been appointed. The work plan contains objectives aligned with national priorities, as well as activities and actions aimed at ensuring delivery against the objectives. The work plan includes a broad timeline for achieving the objectives, as well as costings and proposed funding sources.

On balance, the 2016 work plan appears to sufficiently address the EITI Requirements and the International Secretariat's initial assessment is that Kyrgyz Republic has made satisfactory progress in meeting this requirement. Future work plans could be clearer about the link between the work plan activities and the work plan objectives. Future work plans could benefit from having more specific deadlines for each activity. Previous delays in work plan implementation are mainly due to funding constraints. Although the 2016 work plan outlines potential funding sources, it does not include fundraising activities and the International Secretariat understands that several work plan activities are currently on hold due to lack of funding. Given the extent to which funding shortage has affected implementation in the Kyrgyz Republic in the past, it is recommended that the SB urgently agrees a fund raising strategy including plans for partial government funding in the future.

Table 1 - Summary assessment table: MSG oversight

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Government oversight of the EITI process (#1.1)	The government was actively engaged in the EITI implementation at the early stages, and has recently taken more ownership and resumed a more active role. However, in the period 2012-2015, government engagement was low and this significantly affected progress with implementation. Although the renewed government sponsorship is commendable, it is not possible to conclude that the government has been fully, actively and effectively engaged in implementation over the last years.	Meaningful progress
Company engagement (#1.2)	Although there is significant scepticism and to some extent active lobbying against the EITI within parts of the company constituency, some companies have been actively engaged through participation in SB meetings. Many companies, including all large tax payers, participate in EITI reporting.	Satisfactory progress
Civil society engagement (#1.3)	There is an enabling environment for civil society to operate in the Kyrgyz Republic, and no concerns about civil society's	Satisfactory progress

	ability to participate in the EITI process.	
MSG governance and functioning (#1.4)	The Supervisory Board comprises relevant actors and all stakeholders feel adequately represented. However, stakeholder consultations raised concerns as to whether the recent civil society nomination to the SB was open and transparent. A recently updated MoU, including a ToR, for the SB addresses the requirements of the EITI Standard, although it is too early to assess implementation of the MoU.	Meaningful progress
Work plan (#1.5)	The SB has agreed an up to date work plan for 2016, with objectives for EITI implementation that are linked to national priorities for the extractive sector, as well as costed and time bound work plan activities and actions. Future work plans could be clearer about the link between the work plan activities and the work plan objectives, and include more specific deadlines for each activity. It is also recommended that the SB urgently agrees a fund raising strategy including plans for partial government funding in the future.	Satisfactory progress

**International Secretariat's conclusions and recommendations:**

1. The government must be fully, actively and effectively engaged in the EITI process, including by chairing the SB meetings, ensuring government participation in the SB, exploring opportunities to contribute financially and technically to implementation, hosting a national secretariat, and providing overall political and strategic direction to implementation. The government is encouraged to maintain and build on the recent renewed engagement in the process. The government is also encouraged to ensure that all key government actors are represented on the SB.
2. The SB is encouraged to consider strengthening the secretariat through capacity building and further recruitment.
3. The SB should task each stakeholder group with developing and agreeing nominations and representation procedures to ensure that there is no lack of clarity on how stakeholders can be nominated to the SB, including replacements during a term.
4. The civil society constituency should take steps to improve their constituency coordination, including ensuring that there are opportunities for broader civil society to participate and by establishing consultation and feedback mechanisms between CSO SB representatives and wider civil society.
5. The SB, including company representatives, should discuss company concerns with EITI implementation and how to overcome these in order to reduce the negative perception of industry towards the EITI.
6. When preparing the work plan for 2017 the SB is encouraged to include clearer links between the work plan objectives and work plan activities, identify funding sources, costs and feasible timeframes for work plan activities.
7. The government and SB is recommended to urgently review the financing for EITI implementation to ensure sustainability over the longer term. This should include exploring domestic funding.

DRAFT

## Part II – EITI Disclosures<sup>80</sup>

### 1. Award of contracts and licenses

#### 1.1 Overview

This section provides details on the implementation of the EITI requirements related to the legal framework for the extractive sector, licensing activities, contracts, beneficial ownership and state-participation.

The Kyrgyz Republic has published EITI Reports covering 2004-2014. One of these reports, covering financial years 2013-2014, has been completed in accordance with the EITI Standard and is assessed here.

#### 1.2 Assessment

##### Legal framework (#2.1)

###### Documentation of progress

The 2013-14 EITI Report contains a comprehensive overview of the legal framework (pp. 62-73), including a detailed overview of changes to the legal framework and proposals before the Parliament that have not yet been adopted (pp.73-78). The fiscal regime applicable to extractive industries is well covered and lists types of taxes defining rates, procedure of payment, timeframes, deadlines for tax returns and tax benefits (pp.78-87). Along with a policy on tax benefits for extractive industries, the 2013-14 EITI Report includes an overview of the Central Treasury system of tax and non-tax collections (pp.89-91). Roles and responsibilities of the government entities are outlined on pp.91-93. The fiscal system of the Kyrgyz Republic is highly centralized, with local governments receiving only property tax and land tax (p.101). Finally, the 2013-14 EITI Report provides a comprehensive and detailed explanation of mining sector reforms (pp.36-38).

###### Stakeholder views

A government official said that what needed to be covered was covered. In terms of the ongoing revisions to the Law on Subsoil, discussions were focused on mandatory EITI reporting, beneficial ownership, outsourcing, provision of geological data, electronic reporting.

Other government officials commented on the recent changes in government management of the extractive sector, noting that as of August 2016, SAGMR had been renamed into the State Committee for Industry, Energy and Subsoil Use, and had taken over responsibility from the Ministry of Economy for mining policy issues. It was also noted that the Ministry of Finance was no longer responsible for fiscal policy related to the sector. Rather this had been transferred to the Ministry of Economy.

###### Initial assessment

In accordance with requirement 2.1, the 2013 EITI Report contains an overview of the legal framework and fiscal regime governing the extractive sector, including reforms that are underway. The International Secretariat is not aware of any key laws or relevant information that is missing from the overview. The role and responsibilities of government agencies are described. In light of this, the International Secretariat's initial assessment is that Kyrgyzstan has made satisfactory progress in meeting the requirement.

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<sup>80</sup> Note that all page numbers refer to the English-language version of the 2013-2014 EITI Report of Kyrgyz Republic

## License allocations (#2.2)

### Documentation of progress

The licensing system in the extractive industries is described on pp.109-117 of the 2013-14 EITI Report. According to the report there were 1359 active extractive licenses in Kyrgyz Republic at the end of 2014 which is 30.4% more than at the end of 2013 (p.39). In 2014, 409 new licenses were issued (p.39). License allocation procedures include tender, auction or direct negotiation depending on the type of field. The 2013-14 EITI Report explains the process for awarding a license including the technical and financial criteria used for tenders, auctions and direct negotiations (pp.110-114).

14 of the 409 licenses were issued through auction (p.39). The government earned USD 6.6 m (KGS<sup>81</sup> 354.8 m) from the auction of these licenses (p.39). The 2013-14 EITI Report includes an overview of the auction results, including the date of the license award, the name of the company winner, the type of mineral, starting bid and last bid (pp. 40-42). This information is complemented by links to the State Agency of Geology and Mineral Resources (SAGMR) for further details such as the auction conditions, list of bidders and minutes for the 14 licenses auctioned in 2014 (pp.40-42). The 2013-14 EITI Report does not fully disclose whether all auctions followed the stipulated procedure, or whether there were any deviations.

International Secretariat understands that no licenses were issued through tender in 2014, and that the remaining 395 licenses were awarded based on direct negotiations. Although the EITI Report does not list these 395 licenses, they can be identified in the online license register<sup>82</sup>. It is not possible to ascertain whether there were any deviations from the legal and regulatory framework governing direct negotiations for these licenses.

The 2013-14 EITI Report includes information on procedures for suspension and termination of licenses as well as transfers (pp. 114-116).

The 2013-14 EITI Report includes extensive information on weaknesses in the licensing system as well as government plans for improving the licensing system (pp.116-118).

### Stakeholder views

Government officials said that they were not aware of any licenses that had been allocated without following the applicable procedures. Each decision of the Licensing Committee is minuted. For allocations via auction, the auction condition and the minutes were available online. Observers and media were welcome to attend these auctions. As for allocations via direct negotiations, these were minuted but the minutes were not published. However, details about the processing of applications was available online so that applicants and other interested people could track progress.

A government official explained that only exploration permits could be allocated via direct negotiations.

Civil society representatives said that although only exploration permits can be issued via direct negotiations, the government can also allocate other licenses through direct negotiations if a tender or auction fails. They said that there were sometimes rumours that tenders were failed on purpose in order to allow the government to conclude deals via direct negotiations. Direct negotiations were considered

<sup>81</sup> KGS – Kyrgyzstani Som. Exchange rate in 2014 was 1 USD = 53,7 KGS <http://www.customs.kg/index.php/ru/news/1069-2015-02-13-10-46-36>

<sup>82</sup> <http://info.geology.kg/Licenses/LicensesList?isLicense=True>

prone to corruption. Civil society noted that the Jerooy tender in 2015<sup>83</sup> was widely discussed and considered unfair. In their view, the minutes from the tender commission were short and did not explain the rationale behind the decision for the award.

A company representative explained that the Licensing Commission was now working much more efficiently than in the past, with regular meetings every two weeks enabling more swift processing of license applications.

### **Initial assessment**

In accordance with requirement 2.2, the EITI Report includes comprehensive information the licensing system in the Kyrgyz Republic. Information on licensing procedures and technical and financial criteria are disclosed. Detailed information on the 14 auctions that were carried out in 2014 has been provided, including details on auction conditions, starting and winning bids, applicants, minutes from the auctions etc. In addition, the EITI Report provides extensive additional information on reform needs in the licensing system. Although stakeholders consulted were not aware of any deviations, the EITI Report does not confirm that all auctions and direct negotiations that took place in 2014 were done in accordance with the applicable legal and regulatory regime and standard technical and financial criteria. The International Secretariat's initial assessment is that the Kyrgyz Republic has made meaningful progress in meeting this requirement.

## **License registers (#2.3)**

### **Documentation of progress**

According to the 2013-14 EITI Report there were 1359 active extractive licenses in Kyrgyzstan at the end of 2014 (p.39). A breakdown of number of licenses per commodity is provided on p.43, and an overview of licenses per regions is available on p.45 of the 2013-2014 EITI Report.

The 2013-2014 EITI Report states that Kyrgyz Republic does not have a mining cadastre with information on registration of subsoil use rights (p.117). The State Agency of Geology and Mineral Resources (SAGMR) maintains a register of mining licenses, which is accessible to the public for free<sup>84</sup>. According to the 2013-2014 EITI Report, this register includes the name of the deposit, the name of the license holder, the location of the license area, the type of mineral for which the license is valid for, and the expiry date of the license (p.116). The register also includes the date of award of the license, the size of the licenses area and contact details of the license holder<sup>85</sup>.

It does not seem that the register contains the date of application for the licenses, nor the coordinates of the licenses area for all active licenses. The EITI Report does not stipulate this for all license holders included in the EITI Report. For the 14 licenses that were auctioned in 2014, coordinates are included in the auction conditions which are available online (2013-14 EITI Report, p.40-42). For these licenses, the deadline for application is also indicated although this does not necessarily equal the dates that the license holders actually applied.

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<sup>83</sup> [http://www.geology.kg/geol/index.php?option=com\\_content&view=article&id=633:announcement-of-tender-on-the-jerooy-gold-deposit&catid=75&Itemid=238&lang=en](http://www.geology.kg/geol/index.php?option=com_content&view=article&id=633:announcement-of-tender-on-the-jerooy-gold-deposit&catid=75&Itemid=238&lang=en)

<sup>84</sup> [www.geology.kg](http://www.geology.kg)

<sup>85</sup> [www.geology.kg](http://www.geology.kg)

### **Stakeholder views**

Government representatives explained that a reform project supported by USAID had recently been completed, resulting in a license management system and an online interactive map. It was now possible to access information in an online map pertaining to the license holder, type of activity, duration of the license etc. This information did not include the coordinates of the license area and the data of application. Although both were collected by the government and included in the license management system, it had not been deemed relevant to include it in the online map. In addition, coordinates could be considered secret if located close to military bases. Also, according to the law, the contours of the license area 1:100 000 has to be disclosed, not the exact coordinates and this was available in the current map. According to the government, the map had helped reduced conflicts in the region. Government officials and parliamentarians were also active users.

Some civil society representatives expressed concern that the new license register was already out of date and that the government did not have the necessary financial and human resources to maintain the register.

### **Initial assessment**

In accordance with requirement 2.3, the government has disclosed considerable information on license holders online, including the name of the license holder, the duration of the license, the applicable commodities, the name and size of the license area and contact details for the license holders. Coordinates of the licenses and the date of application are not disclosed. Whilst available with SAGMR, the International Secretariat was not able to obtain confirmation that this information is available to the public without restriction. Thus, the International Secretariat's initial assessment is that the Kyrgyz Republic has made meaningful progress in meeting this requirement.

## **Contract disclosures (#2.4)**

### **Documentation of progress**

The 2013-14 EITI Report explains that extractive rights can take the form of licenses, governed by the Subsoil Law, concessions, governed by the Concessions Law, and Production Sharing Agreements (PSAs) governed by the PSA Law (p.67-68).

The 2013-14 EITI Report does not describe the government's policy or reforms underway with regards to contract transparency. The report confirms that although the license itself is public, the associated license agreement(s) that set out the obligations of the license holder are not public (p.118). In addition, the report describes the main terms of the 1992 and 2009 Kumtor Gold Company CJSC concession agreement (pp. 119-120).

The SB's work plan for 2016 includes disclosure of license agreements (2016 work plan, activity 3.6).

### **Stakeholder views**

The government explained that licenses and agreements are currently not published. There is nothing in the law that is preventing the publication, and government representatives confirmed that they were working on finding a solution to enable disclosure. The challenge was mainly technical. Although all license agreements have been scanned and are available in an electronic format on the internal part of the license database, the current IT system does not have capacity to load such big files. A government

official noted that there might be some sensitivities around the disclosure of the agreements. Some companies might agree to publication, others might not. The proposed disclosures would include companies' work programmes and this was one of the concerns of the companies. Companies also feared that people did not have sufficient capacity to understand the financial terms of the agreement and this could create further misunderstandings and conflicts. It would be necessary for the SB members to work with local communities on this.

A civil society representative said that with regards to the Jerooy deposit, they had asked the company to disclose the contract, but the company had refused.

A company representative noted that Centerra's Kumtor contract is public and uploaded to its website, and that in general industry had no concerns with contract disclosure.

### **Initial assessment**

Although the 2013-14 EITI Report describes the actual practice on contract transparency, the government's policy is not fully explained and lacks references to relevant legal provisions and commentary on reforms underway. The International Secretariat's initial assessment is that the Kyrgyz Republic has made meaningful progress in meeting this requirement.

## **Beneficial ownership disclosure (#2.5)**

### **Documentation of progress**

The 2013-2014 EITI Report notes in accordance with Article 30 of the Subsurface Law (amended in 2014), companies have to disclose their beneficial owners when applying for a license and notify the government in case of changes in beneficial ownership (p.121). Failure to do so constitute grounds for revoking the license in accordance with Article 27.3 of the Subsurface Law (p.114). This concerns not only new licenses but also previously issued licenses as the Law stipulates re-issuing of all licenses before 31 December 2014<sup>86</sup>. The International Secretariat understands that SAGMR currently collects such information from license holders, but that it is not made public. It is also unclear whether the information has actually been collected for license holders whose licenses were issued before the 2014 law came into force.

The Kyrgyz Republic participated in the EITI beneficial ownership pilot and undertook work setting out the preliminary scope of the beneficial ownership disclosures. The scoping note suggested the following definition of a beneficial owner:

"Beneficial owner - a natural person who has the title to property, influences transactions, obtains a certain benefit from transactions, and who has an ownership stake of at least 5%. If the beneficial owner is a politically exposed person their stake must be disclosed irrespective of the size of the stake."<sup>87</sup>

The SB attempted to collect beneficial ownership data from the companies that participated in the 2013-14 EITI Report, and the IA distributed the beneficial ownership declaration form<sup>88</sup>. The 2013-14 EITI Report states that "33 companies out of 136 companies responded to the request for information about beneficial interest. In addition, information on shareholders' interest was provided by 21 (twenty one) companies." (p.121). Having reviewed the data in the report, the International Secretariat concludes that

<sup>86</sup> Beneficial ownership scoping note 2014, p.8, available in English.

<sup>87</sup> Beneficial ownership scoping note 2014, p.13, available in English.

<sup>88</sup> Evaluation Report for the pilot project on BO in the KR, 2015, available in English, p. 11.

only four companies – New Soft LLC, Polybeton, Kyrgyzaltyn OJSC and Southern Integrated Part of construction materials LLC – disclosed their ultimate beneficial owners as part of the EITI reporting process in 2015 (pp.122-126).

According to the Evaluation Report for the pilot project on BO in the KR, it was recommended that SAGMR includes information about beneficial owners in the publicly accessible database of licenses (p.12).

### **Stakeholders view**

Government representatives explained that according to the new law, any license applicants have to submit beneficial ownership information in order to obtain a license. However, there was not widespread support for this requirement. Many companies were of the view that it should be taken out of the draft new subsoil use law because it could create problems for industry. Many government officials were supportive of maintaining the current requirement given that beneficial ownership disclosure is a global trend and would help fight corruption. Parliament tended to defer to business interest on many legal matters related to the mining industry.

Government officials explained that there were also practical challenges with implementation of the beneficial ownership information. For example, the law required disclosure of beneficial ownership information during the application process. However, this was not sufficient to cover disclosure of changes in beneficial ownership during the year, nor was it clear to companies how they should report on such changes. Another challenge was to identify the beneficial owner when there were multiple layers of companies. Furthermore, the provisions in the Law on Subsoil related to beneficial ownership could also be improved. At the moment it was only valid for licenses issued via tender, while the majority of licenses in the Kyrgyz Republic were allocated via direct negotiations.

It was confirmed by government staff that technically it would not be difficult to add beneficial ownership data to the existent license management system hosted by SAGMR. The system was already linked to the database of the Ministry of Justice (MoJ) showing company registrations. The main challenge was capacity of staff to manage this process. Another government representative commented that it is better to have the MoJ to deal with beneficial ownership disclosure and use their company register.

A representative of companies said that the beneficial ownership disclosure would be good for the Kyrgyz Republic, not least as it would touch on an area that was prone to corruption. At the same time industry said that mandatory disclosure of beneficial owners could hamper investment, as companies would be reluctant to provide this information. One company representative was of the view that public disclosure of beneficial owners could be difficult if it contradicted the Civil Code which protects against disclosing asset information.

Some civil society representatives confirmed that there was momentum around the issue of beneficial ownership and were optimistic in moving the conversation forward. At the same time, it did not seem that civil society was engaged in the ongoing discussions related to potential removal of the beneficial ownership provisions in the 2014 Subsoil Law. Some civil society representatives argued that the government was not supportive of beneficial ownership transparency and would seek to hide behind the Civil Code.

### **Initial assessment**

Implementing countries are not yet required to address beneficial ownership. Nonetheless, the Kyrgyz

Republic took part in the beneficial ownership pilot. Although few companies provided details on beneficial ownership as part of the EITI reporting process, the Kyrgyz Republic has a good legal basis for further work on beneficial ownership transparency. The government and other stakeholders should be encouraged to maintain the current legal requirement for license holders to disclose their beneficial owners and work to integrate this information in the publicly accessible license register.

## State-participation (#2.6)

### Documentation of progress

The 2013-2014 EITI Report lists 11 companies with the state share of participation (p.95), four of which are joint stock companies (JSCs) with the remaining being 100% government owned. The report only describes one state-owned enterprise, Kyrgyzaltyn Open Joint Stock Company (OJSC) (p.96), noting that Kyrgyzaltyn OJSC produces over 97% of gold in Kyrgyz Republic and contributes 10% to the country's GDP (p.96).

The State Property Management Fund (SPMF) is the government entity that oversees state-owned enterprises and companies with state participation. This oversight includes receipt of dividends in accordance with the procedure established by the legislation of Kyrgyz Republic (p.96). The 2013-2014 EITI Report does not disclose rules and practices governing the financial relationship between the State and the companies in which the State has an interest.

In terms of government ownership in mining projects, the 2013-14 EITI Report states that the government owns 100% of Kyrgyzaltyn OJSC (p.122). The report further explains that "Kyrgyzaltyn OJSC owns 32.7% of shares in Centerra Gold Inc., a legal entity established under Canadian legislation which in turn is the sole shareholder of Kumtor Gold Company CJSC and Kumtor Operating Company CJSC" (p.97). Kyrgyzaltyn also OJSC holds 40% shares in Altynken LLC (p.122). The report does not confirm if these are the only mining companies that Kyrgyzaltyn OJSC holds shares in. The company has 6 affiliates listed on its website<sup>89</sup>, however there is no information of the level of ownership.

The government's share in the remaining 10 SOEs/joint stock companies is not disclosed, nor is it clear whether these companies have any subsidiaries that operate in the mining sector or have ownership in mining projects. The report provides no details on changes in government ownership in 2014.

The 2013-2014 EITI Report does not include detail on loans or guarantees from the government/SOEs to companies operating in the country.

### Stakeholder views

A government representative explained the role of the SPMF, noting that it implements the functions of a shareholder in JSCs on behalf of the State. In accordance with the Law on JSCs, this includes electing the management body, approving budgets and other monitoring functions. The Law on JSCs regulate the functions between JSCs and the State. With regards to the financial relationship between JSCs and the government, JSCs operate on a commercial basis and usually without state support. JSCs pay dividends to the State, but shareholders decide on other matters such as e.g. reinvestments. With regards to SOEs, the relationship between SOEs and the State is usually regulated through government decrees with SOEs reporting directly to the line ministry. Although such decrees would typically stipulate that 50% of the

<sup>89</sup> Subsidiaries of Kyrgyzaltyn, <http://kyrgyzaltyn.kg/wp-content/uploads/2015/09/struktura.png>

profit from SOE activities should be transferred to the budget, the government may decide on a case by case basis that the SOEs should retain 100% of profits. The representative noted that there was no comprehensive legal framework addressing the management of SOEs, but that legal reforms clarifying the role and authority of the SPMF and the line ministries in overseeing SOEs were underway.

Representatives of Kyrgyzaltyn confirmed these arrangements, noting that the company pays the same taxes as any other company and pays 10% of dividends to its shareholders in December every year.

A government official explained that the 100% government-owned Kyrgyz Komur<sup>90</sup> produces and sells coal on behalf of the state, and that this company reports to SAGMR. Civil society representatives noted that with regards to Kyrgyz Kumur, the company was responsible towards the ministry and there was nothing in their statutory documents on transparency. "I have tried to find information about the financials of the company, but I was not successful". Civil society noted that joint stock companies like Kyrgyzaltyn are more open, with e.g. financial information available to the public.

With regards to government ownership in oil, gas and mining companies and changes in levels of ownership, a government official explained that in 2014 Gazprom bought 100% of state-owned Kyrgyzgas<sup>91</sup>, in which the government previously held 85% interests. No other stakeholders commented on this issue.

With regards to loans and loan guarantees, it was noted by several government representatives that while not receiving budget-support, several state-owned companies had loans provided by the state. These would all be on commercial terms. One government representative said that such loans could only be provided in exceptional circumstances and most likely if the SOE's activities had an impact on the social sphere, e.g. provision of electricity. Kyrgyzaltyn confirmed that they received loans from the Ministry of Finance with the condition to refund with interest.

The Independent Administrator confirmed that in accordance with the TOR for the report, their task was limited to outlining the role of state-owned extractive enterprises and any reforms in respect of state participation in extractive projects.

### Initial assessment

The 2013-14 EITI Report provides only limited information on state-owned companies, and does not provide a comprehensive picture of the financial relationship between the government and SOEs, nor a comprehensive overview of the level of ownership held by the government in oil, gas and mining projects. The International Secretariat's initial assessment is that the Kyrgyz Republic has made inadequate progress in meeting this requirement.

*Table 2 - Summary assessment table: Award of contracts and licenses*

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI

<sup>90</sup> <http://kyrgyzkomur.gov.kg/analitika/>

<sup>91</sup> <https://themoscowtimes.com/articles/gazprom-buys-kyrgyzgaz-for-1-plus-debt-33828>

		provisions (to be completed for 'required' provisions)
Legal framework (#2.1)	The 2013-14 EITI Report contains a comprehensive description of the legal framework including a detailed overview of the fiscal regime, changes to the legal framework, and reforms underway. Responsibilities of government entities involved in the management of the extractive sector are described. The fiscal system is centralised, with local governments only collecting property tax and land tax.	Satisfactory progress
License allocations (#2.2)	The 2013-2014 EITI Report includes an overview of licensing activity in 2014, and an explanation of the process for allocating licenses. This includes the technical and financial criteria used for tenders, auctions and direct negotiations. Procedures for transferring, suspending and revoking of licenses are described. Although the report provides significant information on the 14 tenders, it lacks full disclosure of whether all license allocations in 2014 followed the stipulated licensing procedures and standard technical and financial criteria. The 2013-2014 EITI Report includes extensive information on challenges in the licensing system as well as government plans for improving the licensing system.	Meaningful progress
License registers (#2.3)	Although the 2013-2014 EITI Report states that Kyrgyz Republic does not have a mining cadastre, the State Agency for Geology and Mineral Resources (SAGMR) has an online register of mining licenses that includes the name of the deposit, the name and contact details of the license holder, the location and size of the license area, the type of mineral for which the license is valid for, and the award and expiry dates of the license (p.116). It does not include coordinates or the date of application for the licenses. This information is maintained by SAGMR, but not available to the public.	Meaningful progress
Contract disclosures (#2.4)	The 2013-2014 EITI Report does not describe the government's policy or reforms underway with regards to contract transparency. It notes that in practice, details on the obligations contained in the license agreement are not public.	Meaningful progress
Beneficial ownership disclosure (#2.5)	The Kyrgyz Republic took part in the beneficial ownership pilot, but only four companies disclosed their ultimate beneficial owners. The 2013-2014 EITI Report confirms that as of 2014, companies have to disclose their beneficial owners when applying for a license and notify the government in case of changes in beneficial ownership. Failure to	

	do so constitute grounds for revoking the license in accordance with the Subsurface Law.	
State-participation (#2.6)	The 2013-2014 EITI Report notes that the State has interests in 11 state-owned companies engaged in the extractive sector. Only one of these companies – Kyrgyzaltyn OJSC – is described in some detail. There is no information about the rules and practices governing the financial relationship between the State and the companies in which the State has an interest, nor does the report disclose the level of ownership of the State in the 11 companies and their subsidiaries (if any). It is unclear if there are any changes in government ownership in SOEs or mining projects in 2014. Finally, there is no information on loan or loan guarantees provided by the State or by SOEs to other oil, gas and mining companies.	Inadequate progress
<p><b>International Secretariat's conclusions and recommendations:</b></p> <ol style="list-style-type: none"> <li>1. The SB should ensure that the publicly accessible license register includes the coordinates of license areas and the date of application for the licenses. Since this information is maintained by SAGMR and can be accessed internally, the SB together with SAGMR should explore and address any technical and legal challenges to make this data available to the public.</li> <li>2. With regards to license allocations, the government already publishes minutes from tenders online. These minutes could in the future include a confirmation of whether the applicable legal and regulatory procedures were followed when awarding the license. The government should explore opportunities for publishing minutes from licenses awarded through direct negotiations.</li> <li>3. The SB is encouraged to discuss the government's policy or reforms underway with regards to contract transparency and reflect the findings in the next EITI Report.</li> <li>4. It is recommended that the SB incrementally includes information on beneficial ownership in the EITI Report in preparation for the requirement for full disclosure in 2020. In parallel, the government is encouraged to make beneficial ownership data that is already being collected publicly available as part of the license register.</li> <li>5. The SB should ensure the rules and practices governing the financial relationship between the State and the companies in which the State has an interest are disclosed in the next EITI Report. The report should also clarify the level of ownership of the State in extractive companies, including any subsidiaries. Finally, any loans or loan guarantees provided by the State or by SOEs to oil, gas and mining companies must be disclosed.</li> </ol>		

## 2. Monitoring and production

### 2.1 Overview

This section provides details on the implementation of the EITI requirements related to exploration, production and exports.

### 2.2 Assessment

#### The overview of the extractive sector, including exploration activities (#3.1)

##### Documentation of progress

The 2013-14 EITI Report provides an overview of mineral resources and deposits including a reference to

an interactive map of mineral resources of the Kyrgyz Republic<sup>92</sup> (pp.24-27). The 2013-14 EITI Report also introduces an overview of major gold deposits under production (pp.28-32). In addition, there is a list of economically attractive natural resources deposits and fields with description of potential reserves, most of which are significant exploration projects (pp. 45-47). For example, the report highlights the reserves of the Jerooy gold deposit of 83.98 tons with an estimated value of USD 5 bn (KGS 268.5 bn) (p.45). According to the report, 409 licenses were issued in 2014, 90 % of which were exploration or prospecting licenses (p.41).

### **Stakeholder views**

A civil society representative noted that the map of mineral resources was not up to date. Other stakeholders did not express a view on this issue.

### **Initial assessment**

In accordance with requirement 3.1, the 2013-14 EITI Report provides a comprehensive overview of the extractive sector, including exploration activities. The International Secretariat's initial assessment is that the Kyrgyz Republic has made satisfactory progress in meeting this requirement.

## **Production data (#3.2)**

### **Documentation of progress**

The 2013-14 EITI Report provides production data for the minerals extracted by the companies in the EITI Report (pp.34-35). The data provided shows production volumes by commodity, but not by state or region. The State Agency for Geology and Mineral Resources did not have 2014 production data for all companies participating in the EITI report, nor for the companies that fell below the materiality threshold for EITI reporting, which makes the provided data incomplete (p.35).

The Independent Administrator also collected production data from an alternative source - the National Statistical Committee of the Kyrgyz Republic - and presents alternative data on production volumes by commodity on p.35 in the report.

It does not seem that the 2013-14 EITI Report provides production value for any commodities.

### **Stakeholder views**

Government representatives explained that companies report production volumes and values to SAGMR annually. SAGMR relies on the companies' declarations and sometimes carry out site expectations to verify production levels. Companies declare the volumes produced by license. The data is not published on the SAGMR website but can be provided for EITI reporting purposes. Production value is not available from SAGMR.

A company representative explained that they publish production volumes and values on their website and also file production reports with SAGMR on a quarterly basis. Another company representative said that they submitted production data quarterly to the Ministry of Economy. It was also noted that the reliability of production data was a challenge. There was no independent verification of production volumes and losses, and the data could easily be manipulated.

Civil society representatives commented that gold production data from Kumtor was available.

<sup>92</sup> Interactive map of mineral resources in not currently available on <http://www.geology.kg/index.php/2016-02-02-02-56-14>.

### Initial assessment

The 2013-14 EITI Report appears to disclose comprehensive production volumes for all commodities. The production volumes are disaggregated by commodity, but not by producing region. Production values are not provided. The International Secretariat's initial assessment is that the Kyrgyz Republic has made meaningful progress in meeting this requirement.

### Export data (#3.3)

#### Documentation of progress

According to the 2013-14 EITI Report, the extractive industries provide about half of export revenues of the Kyrgyz Republic (p.59). Kyrgyzstan mainly exports gold and coal, whilst export of oil is immaterial and natural gas is only consumed internally (p.60).

The 2013-13 EITI Report contains limited export statistics. It discloses the value of exported gold in 2013 (USD 736.8 million; KGS 39.566 billion) and coal export volumes for 2014 (241.4 thousand tons) (pp.59-60). However, comprehensive disclosure of export volumes and values per commodity are not provided.

#### Stakeholder views

A government representative explained the State Customs Service is responsible for tracking export data. However, since 13 August 2015 the State Custom Service does not control export to the Custom Union and there is no tracking of the volumes of commodities exported to the Union. Nonetheless export values are still available. For 2014, both export volumes and values are available from the State Customs Service.

Another government official claimed that companies still needed to obtain an export permit from the Ministry of Economy and submit documentation to customs on how much minerals they export, even to Customs Union member countries. This view was also shared by some of the companies consulted. Civil society representatives lamented that export data was missing, and expressed suspicion that Chinese companies were bribing customs officers on the boarder.

#### Initial assessment

The 2013-14 EITI Report provides only limited information on export data. There is limited evidence that the SB has discussed the gaps in the EITI Report related to export data. The International Secretariat's initial assessment is that the Kyrgyz Republic has made inadequate progress in meeting this requirement.

Table 3 - Summary assessment table: Monitoring and production

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Overview of the extractive sector, including exploration activities (#3.1)	The EITI Report provides a comprehensive overview of mineral resources and deposits, including "attractive" extractive projects, most of which are significant exploration projects.	Satisfactory progress
Production data (#3.2)	The 2013-14 EITI Report provides	Meaningful progress

	production volumes by commodity. The data is not disaggregated by state or region. Production values are not disclosed.	
Export data (#3.3)	Kyrgyzstan exports gold and coal, and some other minerals. Only limited export statistics are available in the report. Comprehensive disclosure of export volumes and values per commodity are not provided.	Inadequate progress
<p>International Secretariat's conclusions and recommendations:</p> <ol style="list-style-type: none"> <li>1. The SB should ensure that production value is disclosed and the production data is disaggregated by state or region in the next EITI Report.</li> <li>2. The SB should ensure the next EITI Report contains comprehensive disclosure of export volumes and values per commodity.</li> </ol>		

### 3. Revenue collection

#### 3.1 Overview

This section provides details on the implementation of the EITI requirements related to revenue transparency, including the comprehensiveness, quality and level of detail disclosed. It also considers compliance with the EITI Requirements related to procedures for producing EITI Reports.

#### 3.2 Assessment

##### Comprehensiveness (#4.1)

###### Documentation of progress

###### *Materiality and revenue streams*

The 2013-14 EITI Report includes a list of 33 material revenues flows that were approved by the Kyrgyz Republic Government decree No 317 on 8 December 2010 as material for EITI reporting purposes (pp. 13-14). It does not seem like any revenue streams listed in requirement 4.1.b are missing. The government's production entitlement and national state-owned company production entitlement are not included, but it is unlikely that these are applicable to the Kyrgyz Republic. The 2013-14 EITI Report does not seem to provide a rationale for including or excluding any revenue streams.

The 2013-14 EITI Report does not provide description for all 33 revenue streams. However, section 6.2.1 on taxes and non-tax payments of mining entities contains a table that defines income tax, tax on income of mining and processing entities, tax on interest, profits tax, VAT, sales tax, bonus, royalty, land tax, property tax and personal income tax (pp.79-86).

###### *Reporting entities*

The 2013-14 EITI Report describes the process for establishing materiality thresholds for 2013 and 2014 data reconciliation (p.16). The approach was different for 2013 data compared to 2014 data. With regards to 2013, any company with annual income of USD 1 million in 2013 was eligible for reporting (2013-14 EITI Report, p.16). This threshold was established by Resolution 317 in 2010, and has been applied by the

SB since (Resolution 317, p.1). The rationale behind the approach is not clear. As in previous EITI Reports, the SB considered that the USD 1 m threshold resulted in an insignificant number of companies. As in previous EITI Report, the SB therefore decided to expand the list of companies to include a total of 73 major extractive companies (2013-14 EITI Report, p.16). It is not clear what criteria was used in order to select the companies that were added to the list.

For 2014, the Supervisory Board decided that any company paying taxes and other payments amounting to KGS 1 million or more should be eligible for EITI Reporting (2013-14 EITI Report, p.16)<sup>93</sup>. According to research undertaken by the SB, this would cover 99.38 % of total extractive industry payments (2013-14 EITI Report, p.16). The SB used data on taxpayers from [www.budget.okmot.kg](http://www.budget.okmot.kg) to identify the companies that met the threshold, and this resulted in a list of 136 companies to be included in the report (2013-14 EITI Report, p.16). It should be noted that the data used to identify material taxpayers did not include all extractive companies. While payments from 402 extractive companies were available, payments from another 62 subsoil users were not considered when establishing the threshold and list of companies for inclusion in the EITI Report (2013-14 EITI Report, p.16).

The 2013-14 EITI Report notes that of the 136 companies identified as material in 2014, 97 submitted the reporting templates. As for the 2013, only 6 companies out of 73 failed to report (p.130). The 2013-14 EITI Report does not provide an explanation why these companies did not report, nor any action taken by the Supervisory Board to address this issue. The government has unilaterally disclosed the revenues received from the companies that failed to report showing that the revenues from the 39 missing companies in 2014 were insignificant, amounting to only KGS 246 422 (USD 4588) (p.130). Revenues from the 6 missing companies in 2013 were also insignificant, amounting to KGS 5 364 510 (USD 110 836). Annex 7 highlights those companies that have not reported for both 2013 and 2014 fiscal years.

The 2013-14 EITI Report identified 44 government entities to report in 2014, and 38 government entities in 2013 (2013-14 EITI Report, p.17). The government entities that were added in 2014 were five local governments and the State Inspection on Environmental and Occupational Safety under the KR Government (2013-14 EITI Report, p.17). It is not clear from the EITI Report why these were considered to collect material revenues in 2014 but not in 2013.

27 of the 44 government entities submitted reporting templates in 2014 (p.128). Two central government agencies did not report – the State Registration Authority and the State Property Management Fund (p.128). However, the report confirms that the former did not receive any revenues in 2014 and the revenues collected by the latter were actually included with the reports of the State Social Fund (p.128). The other 15 non-reporting entities were local governments. 23 out of 38 government entities submitted data for 2013 (p.128). The government entities that failed to report were all local government (p. 128).

The report does not estimate the materiality of the omitted revenues received by non-reporting local government authorities, but given that local governments only collect land tax and property tax. Total government revenues are not provided.

#### *Assessment of comprehensiveness*

The Independent Administrator provides the following statement on comprehensiveness of the EITI reporting (p.11):

“We have not performed any procedures to verify the accuracy, completeness and reliability of

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<sup>93</sup> Decision taken by the SB on 9 December 2014.

received information, unless it is directly stated in the EITI Report.

Because the above agreed upon procedures do not constitute either an audit or a review made in accordance with International Standards on Auditing or International Standards on Review Engagements, we do not express any assurance on the amounts of taxes and other payments made by the extractive industry companies. Had we performed additional procedures or had we performed an audit or review of the financial statements in accordance with International Standards on Auditing or International Standards on Review Engagements, other matters might have come to our attention that would have been reported to you.

The purpose of the EITI Report is to increase the transparency in the extractive industry of KR. Our procedures do not provide for the detection of fraud or mistakes made by companies or state authorities of the Kyrgyz Republic. EITI Report relates only to amounts of taxes and other payments made by extractive industry companies indicated in Section 3.1.1, does not apply to the financial statements of KR extracting companies as a whole.”

### Stakeholder views

With regards to the reporting templates, several stakeholders confirmed that although the template was based on the template issued with the 2010 Resolution, it had been updated to include new revenue streams that had subsequently been introduced. Although some stakeholders expressed uncertainty as to whether all revenues were covered in the template, the majority said that the templates were up to date. The Independent Administrators for both the 2012 and the 2013-14 EITI Reports also confirmed that although they had not been tasked with reviewing the template against the legal framework and fiscal regime, there was no indication that any revenue streams were missing from the template. Another government representative explained there are four custom payments and no change was made since 2010 when a reporting template was approved by government Decree. However, the government is currently discussing to introduce export duties on export of ores of precious metals. The government also plans to introduce export duties on shell rock and lime stone. Thus, revisions might be needed in the future.

According to the former staff of the national secretariat, the SB had decided in December 2014 that the KGS 1 million threshold should be based on payments to the government rather than annual turnover. The secretariat had used data from the portal [www.budget.okmot.kg](http://www.budget.okmot.kg) to identify the companies meeting the threshold. This data included all payments, not only tax payments. According to the secretariat, the portal includes up to date payment data for all extractive companies. However, there is a need to know the tax identification number in order to access the data. In the future, the EITI could draw on this portal rather than duplicate EITI reporting.

The secretariat also explained that the revenue streams entitled “support to social infrastructure” and “support to education” were voluntary social payments and that there was not always a government recipient of these streams. Furthermore, the revenue stream entitled “reclamation fund charges” was money deposited by the companies on special accounts to be used for environmental reclamation purposes, and was not actually payments to the government.

Civil society representatives commented that the report covered all the revenues streams and the low threshold ensured comprehensive company coverage. At the same time, they thought it would be important for EITI reports to continue to include companies extracting construction materials such as

sand and gravel, and exploration companies.

The Independent Administrator for the 2013-14 EITI Report commented that the reporting template should be in an electronic format for future reports. With regards to the non-reporting companies, the Independent Administrator was of the view that they were not significant tax payers. Concerning the description of the revenue stream, the Independent Administrator explained that they had provided a detailed description of how the main taxes were paid and calculated, but not described the other revenue streams. The Independent Administrator also noted that some government entities wrongly completed the template, leading to discrepancies.

### **Initial assessment**

In accordance with requirement 4.1, the SB has agreed a list of material revenue streams. Some, but not all are described in the EITI Report. The SB has also agreed reporting thresholds for companies, and identified the reporting entities. Although the Independent Administrator was not consulted on the templates, neither the Independent Administrator nor other stakeholders have expressed any concern about the revenues covered in the template. Some government entities and companies did not report. The government has not disclosed total government revenues. However, according to consultations with the Independent Administrator, the omissions appear to be immaterial and payments by companies can be accessed online from the portal [www.budget.okmot.kg](http://www.budget.okmot.kg).

In light of this, the International Secretariat's assessment is that the Kyrgyz Republic has made satisfactory progress in meeting this requirement. However, stakeholder consultations reveal a need for modernising the reporting format currently in use, moving away from hard copy format to an electronic system. The scope of the reconciliation could then be reduced to cover the main revenue streams and companies only, with further details available online.

### **In-kind revenues (#4.2)**

#### **Documentation of progress**

The 2013-14 EITI Report does not provide information on whether the government collects revenues in-kind. There is no mention of in-kind revenues in SB meeting minutes. The ToRs for the IA<sup>94</sup> includes tasking the IA to indicate the SB's decision on "The sale of the state's share of production or other revenues collected in-kind in accordance with Requirement 4.1(c)." However, the 2013-14 EITI Inception Report does not document SB's decision regarding in-kind revenues, neither does it provide any commentary on in-kind revenues.

#### **Stakeholder views**

A senior government official confirmed that there were no payments in-kind, and no other stakeholders highlighted this as an issue of relevance in the Kyrgyz Republic.

#### **Initial assessment**

The International Secretariat's initial assessment is that this requirement is not applicable in the Kyrgyz Republic.

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<sup>94</sup> The 2013-14 ToRs for the IA, available in English and Russian

## Barter and infrastructure transactions (#4.3)

### Documentation of progress

The 2013-14 EITI Report does not provide information on infrastructure and barter transactions. While the SB has discussed infrastructure provision in terms of social expenditures, there is no evidence that the SB has discussed infrastructure or other barter transactions in exchange for access to oil, gas and minerals. The 2013-14 ToRs for the IA<sup>95</sup> tasks the IA with clearly indicating the SB's decision on "The coverage of infrastructure provisions and barter arrangements in accordance with Requirement 4.1(d)." However, the 2013-14 EITI Inception Report does not document SB's decision regarding barter and infrastructure transactions.

### Stakeholder views

Government representatives said that they were not aware of any cases where a license had been given to a company in exchange for infrastructure, or a case where a company was providing infrastructure in exchange for tax holidays.

A company official thought that the Law on PSA included a provision on barter provision. It was noted that, in 2007, a gold mining company had been granted rights to a deposit of 20 tons of gold in return for a USD 25 m investment in road construction. The company was exempted from paying for the license but not from other payments and taxes.

### Initial assessment

Although there are no strong indications that infrastructure and barter arrangements exist in the Kyrgyz Republic, it does not seem like the SB nor the Independent Administrator have properly considered the relevance. In light of this, the International Secretariat's initial assessment is that the Kyrgyz Republic has made no progress in meeting this requirement.

## Transport revenues (#4.4)

### Documentation of progress

The 2013-14 EITI Report does not disclose revenues from transportation of oil, gas or minerals material, and no transportation related payments seem to be included in the list of revenues covered by the EITI Report (p.16). However, the Request for information for the Report – the reporting template sent to the National Statistics Committee - includes transportation revenues from oil and solid mineral raw materials, and their volume and tariffs (p.224). Transport revenues were not included in the ToRs for the IA.

### Stakeholder views

The Independent Administrator explained that it had not been possible to obtain data on transportation revenues. Most of the minerals were transferred by trucks and railway, run by private companies. The Independent Administrator had met with the National Statistics Committee to ask for transportation data. According to the Independent Administrator, the main reason for why the data had not been provided was due to shortage of time. In addition, the National Statistics Committee had explained that some of the statistical information might be confidential.

A government official confirmed that the government collected some tariffs from the use of the pipeline to China. The agreement related to the pipeline was overseen by the Ministry of Economy, and the

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<sup>95</sup> The 2013-14 ToRs for the IA, available in English and Russian

payments were collected by the Tax Service. According to the National Statistics Committee representatives, the Committee did not have the transportation data requested by the Independent Administrator.

### **Initial assessment**

The 2013-14 EITI Report does not include any information or revenue data related to transportation of oil, gas and minerals. The 2016 EITI Standard says the following: “Where revenues from the transportation of oil, gas and minerals are material, the government and state-owned enterprises (SOEs) are expected to disclose the revenues received.”

The Validation Guide states that “Disclosure of material transportation revenues is expected, but not required for compliance with the EITI provisions. Where transportation revenues are material but not disclosed, the validator is expected to evaluate whether the MSG has documented and explained the barriers to provision of this information and any government plans to overcome these barriers” (Validation Guide, p.11). The International Secretariat finds no evidence of any such discussion by the SB. In light of this, the International Secretariat’s initial assessment is that the Kyrgyz Republic has made no progress in meeting this requirement. It is recommended that the SB considers the existing transportation systems and evaluates the materiality of any transportation revenues collected by the government.

## **Transactions between SOEs and government (#4.5)**

### **Documentation of progress**

As noted in the assessment of Requirement 2.6 above, the 2013-14 EITI Report provides only limited explanation of state-owned enterprises and joint stock companies (JSCs). The report establishes that the State Property Commission collects dividends from SOEs (p.95). The EITI Report discloses dividend transactions for Kyrgyzneftegas OJSC in 2013, and from Kyrgyzneftegas OJSC and Khaidarkanskoye Rtutnoye JSC in 2014 (p.190). There are some rather large discrepancies related to these payments in 2014, with the government disclosing considerably less than companies. The Independent Administrator notes that almost 80% of the total discrepancy in the 2014 EITI Report is related to an unexplained discrepancy in the payment of dividends by Kyrgyzneftegas OJSC: “Unfortunately, the Independent Administrator has not been provided with an answer from this company with explanations and confirmations of the amounts on this payment” (2013-14 EITI Report, p.130).

The 2013-14 EITI Report does not clearly explain whether there are other transactions between the government and SOEs.

### **Stakeholder views**

The Independent Administrator confirmed that no special reporting template was sent to SOEs, rather the Independent Administrator collected any information that could be found in the public domain. The reporting template sent to companies included dividends, but would not capture other transactions between SOEs and government, if any.

A civil society representative seemed to recall that the relationship between the government and SOEs was discussed at the SB meetings, and that transactions related to Kyrgyz Kumur used to be included in

previous EITI Reports.

### **Initial assessment**

As noted in the assessment of Requirement 2.6, the 2013-14 EITI Report does not fully explain the financial relationship between the government and state-owned enterprises. There is no evidence in SB meeting minutes of any SB discussions about this issue. Although the 2013-14 EITI Report discloses dividends paid by some companies, it is not possible to ascertain that this constitutes the total universe of transactions between the government and state-owned companies in 2014. In light of this, the International Secretariat's initial assessment is that the Kyrgyz Republic has made limited progress in meeting this requirement.

## **Subnational direct payments (#4.6)**

### **Documentation of progress**

The EITI report does not clearly explain the role of local governments in collecting taxes from the extractive sector. The 2013-14 EITI Report notes that land tax and property tax are remitted to local budgets (p.84). At the same time, the 2013-14 EITI Report reconciles aggregate amounts paid by company in land tax and property tax to the state tax authority (p.135), without reporting by subnational governments. Nonetheless, the revenues collected from land tax and property tax appear insignificant, amounting to KGS 25 033 (USD 466) and KGS 18 101 (USD 377) only (p.137).

### **Stakeholder views**

A local government official said that every year they receive about KGS 1 million in retention of mining license. This money is transferred to local government special accounts. Apart from that, there are some non-extractive industry specific local taxes that are remitted to local budgets such as income tax, land tax and property tax.

Civil society claimed that all taxes that are remitted to local budgets are transferred from the central government, apart from land taxes and support to social infrastructure which is paid directly to local governments. They explained that when talking to local authorities, it was clear that local authorities were not well informed about the EITI. Local authorities lack capacity to register payments and to participate in EITI reporting.

The Independent Administrator said that no local governments reported, likely because there was no legal instrument compelling them to do so. A representative of the national secretariat said that outreach visits to three regions were planned for October and November in order to learn more about regional development funds, spread awareness of the EITI and establish better relationships with local governments.

### **Initial assessment**

It has been difficult to ascertain what type of payments, if any, are collected by local governments and the materiality of such payments. 15 subnational government units failed to report in 2013-14 EITI Report, and 5 did not report in the 2012 EITI Report (2012 EITI Report, p.21). It does not appear that the SB has adopted a systematic approach to defining payment flows from companies to subnational governments nor identified a workable approach to EITI reporting. Stakeholder consultations also illustrate some confusion around subnational payments. In light of this, the International Secretariat's initial assessment

is that the Kyrgyz Republic has made inadequate progress in meeting this requirement.

## Level of disaggregation (#4.7)

### Documentation of progress

The 2013-14 EITI Report contains data disaggregated by individual payment, individual company and individual government entity, except from subnational governments (annex 8). The data is not presented by project.

### Stakeholder views

Civil society expressed satisfaction that the reports were disaggregated by company, but noted that if there were several subsidiaries, payments should be disaggregated by subsidiary.

### Initial assessment

The 2013-14 EITI Report is disaggregated to the levels required by the EITI Standard, i.e. by individual revenue stream, company and government entity. The International Secretariat's initial assessment is that the Kyrgyz Republic has made satisfactory progress in meeting this requirement.

## Data timeliness (#4.8)

### Documentation of progress

The draft 2013-2014 EITI Report was published online on 31 December 2015, having been approved as a draft by the Supervisory Board on 16 December 2015 and presented at the national conference on 23-24 December. The final 2013-2014 EITI Report was published on SAGMR's website and distributed among stakeholders on 30 December 2015. However, on 16 February 2016 a renewed version of the 2013-14 EITI Report was distributed among stakeholders. The reason why the final report was only published in February was due to the limited time available to prepare the report. Since the draft report was shared in late December, the IA addressed stakeholders comments only in February 2016.

### Stakeholder views

Civil society expressed satisfaction with the timeliness of the data in the EITI Report, noting that it would not be possible to prepare the report quicker than the current one-year interval, not least given that the number of companies participating in the report was increasing every year.

### Initial assessment

Although the final 2013 data was published slightly later than the 31 December 2015 deadline, it was published alongside figures from 2014. In light of this, the International Secretariat's initial assessment is that the data is timely and that the Kyrgyz Republic has made satisfactory progress in meeting this requirement.

## Data quality (#4.9)

### Documentation of progress

Appointment of the Independent Administrator:

According to the 2015 Annual Progress Report<sup>96</sup> p.8, the Supervisory Board (SB) endorsed the ToRs for the Independent Administrator for the 2013 and 2014 EITI report on 20 May 2015. Some minor updates were made to the ToRs and circulated to the SB on 18 June 2015 for approval, notably the addition of an instruction to the Independent Administrator to evaluate the data collection process used for EITI reporting purposes in Kyrgyzstan<sup>97</sup>.

The Supervisory Board established a tender committee consisting of Svetlana Valuiskaya (Head of National Statistics Committee), Kalia Moldogazieva (Coordinator of the NGO Consortium) and Ozhorbek Duishev (Chairman of the Association of Miners and Geologists of Kyrgyz Republic)<sup>98</sup> to evaluate the applications and select the Independent Administrator on behalf of the SB. According to the 2015 Annual Progress Report, the tender for the Independent Administrator was held in August 2016. However, a winner could not be announced as the Parliament had not yet ratified the WB MDTF grant that would be used for hiring the Independent Administrator. The grant became effective on 22 September 2015<sup>99</sup>. The tender committee selected Ernst and Young LLC and the national EITI secretariat signed the contract with Ernst and Young on 1 December 2015 (2015 Annual Progress Report, p.17).

Terms of Reference for the Independent Administrator:

*(i) Use of the Standard Terms of Reference for Independent Administrators*

The ToRs for the 2013-14 EITI Report are in accordance with the standard ToRs for EITI Reports. It was prepared by a working group and approved at the SB meeting on 20 May 2015<sup>100</sup>. However, Kyrgyzstan has since 2010 departed from the data collection procedure outlined in the standard TOR, which states that (p.4):

The Independent Administrator is expected to undertake the following tasks during the data collection phase:

2.1 Distribute the reporting templates and collect the completed forms and associated supporting documentation directly from the participating reporting entities, as well as any contextual or other information that the MSG has tasked the Independent Administrator to collect in accordance with 1.3.4 above. [Where an alternative approach is proposed - e.g. where the national EITI secretariat assists with data collection, or where the data is collected through an existing reporting mechanism, there should be consultations with the Independent Administrator to ensure the integrity of the information transmitted to the Independent Administrator].

Rather than involving the Independent Administrator in data collection, Resolution 317 from 2010 mandates the Directorate for the Protection of Subsoil Resources within SAGMR to collect EITI reporting templates from all license holders on the previous financial year by 15 May the following year. A letter from the national secretariat explains the procedure as follows<sup>101</sup>:

“According to the Instructions approved by Resolution № 317, the Report presented by a company is signed by a company official authorized to sign the Report on behalf of the company and also by the company’s chief accountant. The signatures are certified by the company seal and

<sup>96</sup> Annual Progress Report 2015 is available only in Russian (<http://geology.kg/images/IPDO/ot/2.pdf>)

<sup>97</sup> Email from the KEITI national secretariat, 18 June 2015.

<sup>98</sup> The list of tender commission members is provided in the ToRs for Independent Administrator on p.13, English.

<sup>99</sup> Letter from the World Bank on the effectiveness of the EITI Post-Compliance Phase II grant.

<sup>100</sup> The SB meeting minutes, 20 May 2015, available in Russian <http://www.geology.kg/images/IPDO/23.pdf>

<sup>101</sup> Letter from the national secretariat dated 29 April 2015 concerning the procedure for data collection of Kyrgyzstan EITI Reports from mining companies and state agencies, unpublished.

presented to the State Agency for Geology.

The Report is submitted in hard copy, completed clearly and legibly by hand or in printed form. Correction of figures and item entries is not permitted. All of the requested indicators are entered. If no entry is made in any item box (line, column) due to unavailability of the relevant indicator, lack of indicator, this item box (line, column) is crossed out.

EITI reports from companies are submitted to the State Agency for Geology in sealed envelopes with cover letters, which are registered at the administrative office with the assignation of a number and date of receipt. A mark of receipt is made in the second copy of the cover letter. The document is then referred to an authorized official at the State Agency for Geology by means of a resolution of the office head.

The authorized official receives the information and stores it in a safe. Safe-keeping and transmission of EITI reports is carried out in accordance with the Resolution of the Government of the Kyrgyz Republic №318 "On improving implementation of the Extractive Industries Transparency Initiative in the Kyrgyz Republic", dated December 8, 2010. The State Agency for Geology sends EITI reports as per the list to the audit company for preparation of the EITI report.

The process of collection of data from extractive companies by the State Agency for Geology is guaranteed safe from any interference intended to change, destroy, etc. the data. "

Similarly, Resolution 317 mandates the national secretariat to collect the reporting templates from the government agencies by 15 May of the year following the end of the financial year. Upon submission of the templates from the government agencies "The authorized official of the Secretariat opens the envelopes and registers the receipt of the report in the register...The process of collection of data from state agencies has guarantees of safe-keeping provided by the EITI Secretariat.<sup>102</sup>"

The reporting templates are then handed over to the Independent Administrator once appointed. The national secretariat notes that "In order to ensure the independence of the data obtained, information collected from extractive companies by the State Agency for Geology and information collected from state agencies by the EITI Secretariat are transferred to the administrator separately"<sup>103</sup>.

Although the procedure speeds up the EITI reporting process and reduces the cost of the EITI Report, the International Secretariat and the World Bank raised concerns over the involvement of the government and the national secretariat in the data collection process, and lack of sufficient procedures for safeguarding the information. In addition, the procedure did not comply with the Requirements of the EITI Standard to consult the Independent Administrator in the development of reporting templates and assurance processes for EITI data. In light of this, the SB agreed that the Independent Administrator for the 2013-14 EITI Report would evaluate this approach (Provision 1.8 of the ToRs, p.9), in particular with regards to safeguarding information.

The Independent Administrator – Ernst and Young LLC – provided the following comments on the procedures for data collection (2013-14 EITI Report, p.21):

"Thus, the collection of data on payments of mining companies to the State for the 2013-2014, (Phase 2 of the EITI Report preparation project) has been fully carried out by the EITI Secretariat

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<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

in the KR (state bodies) and Gosgeologoagentstvo [SAGMR]. It should be noted that the procedure of data collection on payments from both mining companies, and from state bodies, is off-standard with relation to the application of EITI Standard. However, we did not find that the EITI Standard prohibits the application of such a procedure, thus one cannot talk of its correctness or incorrectness, one can talk only of its efficiency. In the context of ensuring the timeliness of the EITI Report preparation, such procedure is adequate, since two channels of collecting reporting documents are used:

- Gosgeologoagentstvo [SAGMR] collects reporting data from companies;
- EITI Secretariat in KR collects reporting data from the state bodies;

Also, it should be noted that for companies a request for information for the EITI reporting from their "specialised" state body (Gosgeologoagentstvo - SAGMR) may be a more powerful argument to provide data compared to a request from the Independent Administrator."

The Independent Administrator did not evaluate whether the approach may affect the reliability of the data. The data collection process is summarised on page 21 in the 2013-14 EITI Report.

### (ii) Reporting templates

As noted in the assessment of requirement 4.1 above, the reporting templates for the 2013-14 EITI Report are defined by government Resolution 317 from 2010. The International Secretariat is not aware of any amendments to these reporting forms prior to the data collection for the 2013-14 EITI Report.

### (iii) Data assurance and assessment of data reliability

There is no indication in SB meeting minutes that the SB in collaboration with the Independent Administrator has undertaken a review of the audit and assurance practices in government agencies and companies to be included in the EITI Report. The ToRs for the Independent Administrator states that the Independent Administrator should undertake this review as part of the inception phase. The inception report says that reporting templates will be checked for a signed and sealed letter by each company's top manager. The reporting template attached to the inception report contained a question on whether a company had undergone an external audit and whether the financial statement it is publicly available. This is consistent with the approach for assurance of company and government data as established by government resolution 317, notably the use of attestations i.e. availability of signatures and a seal of responsible persons (2013-14 EITI Report, p.22).

Although this procedure is confirmed in the inception report, there is no evidence that the SB has discussed this procedure since the adoption of the Resolution, nor is there any evidence that the Independent Administrator has been invited to comment on the assurance procedure. The Independent Administrator does not comment on how many companies or government agencies complied with this procedure, nor does the report confirm how many companies, government agencies and SOEs had audited financial statements in 2014.

The 2013-14 EITI Report goes on to outline the law and regulations for the audit of government entities, explaining the Chamber of Account's role in auditing (p.112-113). SOEs are subject to mandatory audit in accordance with the Law on Auditing #134 (2013-14 EITI Report, p.107). The Independent Administrator also comments that private companies are not required by law to have their accounts audited and majority of companies do not have financial statements audited (2013-14 EITI Report, p.213).

The Independent Administrator provides the following statement on reliability of the EITI reporting (p.11):

“We have not performed any procedures to verify the accuracy, completeness and reliability of received information, unless it is directly stated in the EITI Report.

Because the above agreed upon procedures do not constitute either an audit or a review made in accordance with International Standards on Auditing or International Standards on Review Engagements, we do not express any assurance on the amounts of taxes and other payments made by the extractive industry companies. Had we performed additional procedures or had we performed an audit or review of the financial statements in accordance with International Standards on Auditing or International Standards on Review Engagements, other matters might have come to our attention that would have been reported to you.

The purpose of the EITI Report is to increase the transparency in the extractive industry of KR. Our procedures do not provide for the detection of fraud or mistakes made by companies or state authorities of the Kyrgyz Republic. EITI Report relates only to amounts of taxes and other payments made by extractive industry companies indicated in Section 3.1.1, does not apply to the financial statements of KR extracting companies as a whole.”

Furthermore, the Independent Administrator make the following recommendation to improve data reliability:

Using of data on payments to the government certified by an independent auditor for EITI Report can significantly improve the reliability of the data. In the future, it will be reasonable to include a question on availability of the audited financial statements into the Payment Data Form from the companies. The representation of the company’s management stating that all information for EITI report was taken from these financial statements. However, there are complications associated with application of this recommendation, namely: Assurance of the financial statements by an independent auditor is a voluntary initiative and the majority of extractive companies do not get their financial statements audited by external auditors. It may be considered to stimulate extractive companies to prepare publicly available financial statements and engage independent auditors for assurance as one of the solutions to the problem. For example, introduction of the legislative requirement for mandatory preparation of the financial statements by extractive companies, and independent audit of the financial statements. At least, independent auditors should be engaged to provide a separate opinion on payments under the EITI. (2013-14 EITI Report, p.213-14).

Similar recommendations have been put forward in previous EITI Reports, including the EITI Report from 2012 (p.34), which states that

For a more reliable EITI reporting, the mining companies should engage an independent auditor to issue a separate audit report according to EITI Report-K. State agencies’ reports shall also be audited by an independent auditor. The Government of Kyrgyz Republic should develop the process of such audit. The Treasury Board and Ministry of Finance of Kyrgyz Republic can be involved.

Currently there are no effective requirements in the legislation of the Kyrgyz Republic for the extractive companies in regards of the audit of financial statements. However, it is a worldwide practice for extractive companies to publish its annual financial statements together with a report of an independent auditor. Since independent audit of financial statements would significantly

increase the transparency of extractive industry in general, we recommend the Kyrgyzstan EITI Supervisory Board to initiate corresponding changes in the legislation of Kyrgyz Republic obliging extractive companies to conduct audit of their financial statements.

*(v) Data sources and electronic files*

Electronic data files were published together with the 2013-14 EITI Report and the Summary Data Form was submitted electronically to the International Secretariat. The 2013-14 EITI Report is clearly sourced.

**Stakeholder views**

With regards to reporting templates, government officials confirmed that the reporting template used for the 2013-14 EITI Report is the same as the one used in 2010. As far as they were aware no new tax payments had been introduced since then. However, there could be some non-tax payments that were not reflected in the template. For example, negotiated payments related to the “social package” that companies have to provide to local communities and authorities and license retention fees might not be included. Government officials explained that it would be desirable to ensure electronic EITI reporting in the future. Although the government was technically ready to take this on, there was a need for legal backing for e.g. e-signatures etc. This was addressed in the draft revised Law on Subsoil, and if passed SAGMR could hopefully start to work on this next year.

Some companies said that they were used to filling in the EITI reporting template and had no issues with that. Other companies were of the view that the EITI reporting template duplicated existing reporting obligations of the companies, and did not understand why they had to file the same data twice.

The Independent Administrator for the 2013-14 EITI Report said that almost all reporting templates were collected in hard copy, and that this had been very cumbersome as it had to be transferred to excel format before they could start working with the data.

In terms of the data collection procedure, the government explained that they had some difficulties in collecting reporting templates from the companies. One challenge was to obtain the correct address and it could take 1-2 months to get the information. Another challenge was that it was voluntary for companies to provide the data and this was a systemic issue that needed to be resolved. Some companies had responded in writing explaining that because there are no laws that require such disclosures they will not participate. Furthermore, there was no government intervention or attempt to force reporting on the companies that did not participate. One government representative said that the high-level Department of Fuel and Energy Sector in the Government could have supervised the implementation of Resolution 317 requiring reporting. However, due to communication challenges between the former secretariat and government agencies, this did not happen. In terms of non-reporting local governments, a government representative said that the government and the secretariat had failed to build a good relationship between SAGMR and local governments on EIT issues, which impacted the data collection process. It was noted however that payments to local governments are very small.

No stakeholders expressed concern about the current data collection procedure, nor did they seem to have considered the possibility of a potential conflict of interest within the existing procedures. Company representatives said that the quality of the EITI report had improved year on year, and that it was efficient to have the SAGMR collect the data from the companies. It was noted that discrepancies tended to be small. Civil society was satisfied with the work of the Independent Administrator, and did not express any concern about data collection. However, civil society noted that there continued to be discrepancies in the report every year. The Independent Administrator said that a data collection process handled by the

government and national secretariat was preferable to having the Independent Administrator collect the data as the government had more authority over license holders and ensured a more efficient data collection process. The Independent Administrator for the 2013-14 EITI Report had no views on the safeguards put in place by the government and national secretariat for collecting and storing the data, but noted that there should be a legal requirement for companies to disclose the information.

With regards to auditing practices and assurances provided by the reporting entities, no stakeholders commented on the assurances used for the EITI Report. On wider practices, a government official said that the Chamber of Accounts did audit SOEs annually, but that the audit reports were not consistently made public.

Civil society noted that it would be beneficial with more stringent auditing procedures for companies. They noted that many small companies have one accountant who might be located in the region, or doing accounting based on old systems. It has been particularly challenging to ensure that the many small companies completed their reporting templates correctly. As for the government's data, civil society noted that the accounting chamber examine the state-owned companies and government entities. Civil society did not have any comments on the assurances for the EITI Report.

The Independent Administrator for the 2013-14 EITI Report said that they had studied the auditing practices, and encouraged companies to be audited and publish audited data. The Independent Administrator also confirmed that when discovering discrepancies, they had check the annual reconciliation acts signed by the Tax Service and the company. The Independent Administrator noted that this provided a higher level of assurance than simple sign-off, and they had recommended that for next year all companies should attach the reconciliation act to the reporting templates. The Independent Administrator did not recall discussions about auditing practices in government agencies.

### **Initial assessment**

The SB has agreed a TOR for the Independent Administrator for the 2013-14 EITI Report that is largely consistent with the standard TOR for Independent Administrators issued by the EITI Board, and appointed an Independent Administrator. However, the SB has significantly deviated from the "agreed upon procedures" with regards to the inception phase and data collection phase. The MSWG did not consult the Independent Administrator on the reporting templates in accordance with requirement 5.2(a). There is no evidence that a review of audit and assurance practices were undertaken prior to data collection in accordance with requirement 5.2(b) and the Independent Administrator was not involved in any discussion about data assurances in accordance with requirement 5.2(c). Furthermore, there has been limited discussion about potential conflicts of interest in having the national secretariat and SAGMR responsible for collecting data from companies and government entities. It should be noted that some safeguards have been put in place to avoid data collusion, and no stakeholders expressed concern about the data collection procedure. However, the safeguards do not appear to have been discussed by the SB and the lack of prior consultation with the Independent Administrator seem to have affected the reliability of the data and follow up on previous recommendations related to data reliability. The use of hard copy reporting forms has also slowed down the reporting process and led to errors and discrepancies. In light of this, the International Secretariat's initial assessment is that the Kyrgyz Republic has made inadequate progress in meeting this requirement.

*Table 4 - Summary assessment table: Revenue collection*

EITI provisions	Summary of main findings	International Secretariat's assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Comprehensiveness (#4.1)	<p>In accordance with requirement 4.1, the SB has agreed a list of material revenue streams, agreed reporting thresholds for companies, and identified the reporting entities. Although the Independent Administrator was not consulted on the templates, neither the Independent Administrator nor other stakeholders have expressed any concern about the revenues covered in the template. Some government entities and companies did not report, nor has the government disclosed total government revenues. However, according to consultations with the Independent Administrator, the omissions appear to be immaterial and payments by companies can be accessed online from the portal <a href="http://www.budget.okmot.kg">www.budget.okmot.kg</a>. Stakeholder consultations reveal a need for modernising the reporting format currently in use, moving away from hard copy format to an electronic system.</p>	Satisfactory progress
In-kind revenues (#4.2)	<p>The 2013-14 EITI Report does not provide information on whether the government collects revenues in-kind. Government officials confirmed that in-kind revenues are not practiced.</p>	Not applicable
Barter and infrastructure transactions (#4.3)	<p>The 2013-14 EITI Report does not provide information on infrastructure and barter transactions, nor does the SB appear to have discussed the issue.</p>	No progress
Transport revenues (#4.4)	<p>The 2013-14 EITI Report does not provide information on revenues from transportation of oil, gas or minerals material. There were conversations with the Independent Administrator</p>	No progress

	and the National Statistics Committee about disclosing this information, however the data was not available.	
Transactions between SOEs and government (#4.5)	It has not been possible to ascertain whether there are other transactions between the government and SOEs beyond regular payments by the company to the government.	Inadequate progress
Subnational direct payments (#4.6)	It has been difficult to ascertain what type of payments, if any, are collected by local governments and the materiality of such payments. It does not appear that the SB has adopted a systematic approach to defining payment flows from companies to subnational governments nor identified a workable approach to EITI reporting.	Inadequate progress
Level of disaggregation (#4.7)	Data is disaggregated by individual payment, individual company and individual government entity. The data is not presented by project.	Satisfactory progress
Data timeliness (#4.8)	The draft 2013-2014 EITI Report was published online on 31 December 2015. The final 2013-2014 EITI Report was published and distributed among stakeholders on 16 February 2016.	Satisfactory progress
Data quality (#4.9)	The SB has significantly deviated from the “agreed upon procedures” with regards to the inception phase and data collection phase. The SB did not consult the Independent Administrator on the reporting templates in accordance with requirement 5.2(a). There is no evidence that a review of audit and assurance practices were undertaken prior to data collection in accordance with requirement 5.2(b) and the Independent Administrator was not involved in any discussion about data assurances in accordance with requirement 5.2(c). Furthermore, there has been limited discussion about potential conflicts of interest in having the national secretariat and SAGMR responsible for collecting data from companies and government entities.	Inadequate progress
<p><b>International Secretariat’s conclusions and recommendations:</b></p> <p>1. The government and the SB are urged to reconsider the current EITI Reporting procedures and move towards mainstreamed disclosures. With regards to financial data, this should include assessing the feasibility of making use of the existing online budget portal where companies’ tax data is disclosed. It should also assess the prevailing auditing and accounting practices in</p>		

companies and government entities.

2. In parallel to preparing for mainstreamed disclosures, the SB is encouraged to simplify the EITI reporting process by establishing a higher reporting threshold for reconciliation, reducing the number of small companies that are currently reporting. The SB is also encouraged to revisit the list of revenue streams currently included in the EITI report, with a view to reduce the number to only cover the most material revenue streams. Any future EITI reports should also be prepared in accordance with the agreed upon procedure for EITI reports.
3. The SB should discuss the relevance and materiality of infrastructure and barter transactions.
4. The SB should discuss the relevance and materiality of transportation payments.
5. The SB should identify the various types of financial transactions between the government and SOEs, and ensure that these are described and disclosed in the next EITI Report.
6. The SB should discuss the relevance and materiality of any extractive industry specific direct payments to subnational government units.

## 4. Revenue management and distribution

### 4.1 Overview

This section provides details on the implementation of the EITI requirements related to revenue management and distribution.

### 4.2 Assessment

#### Distribution of revenues (#5.1)

##### Documentation of progress

The 2013-14 EITI Report provides a list of revenues recorded in the national budget that include the following payments related to the extractive industries: Subsurface use tax (royalties and bonuses), VAT, excise tax, concession income, dividends and fee for environmental pollution (pp.101-102). A list of revenue streams recorded in local budgets is also provided, and it includes land tax and property tax (p.102). The 2013-14 EITI Report does not explain an allocation of other extractive industries revenues included in the EITI Report but that do not figure on these lists of revenues recorded in the national and local budgets.

The 2013-14 EITI Report explains that since November 2014, there are two types of regional development funds to which some extractive industry revenue is allocated. However, this is done through the budget system (p.102). (see #5.3 below).

##### Stakeholder views

Government officials and other stakeholders confirmed that all payments and taxes are either allocated to central or local government budgets.

##### Initial assessment

The 2013-14 EITI Report and consultations with stakeholders have confirmed that all revenues from the extractive industries are allocated in the budget. The International Secretariat's initial assessment is that the Kyrgyz Republic has made satisfactory progress in meeting this requirement. However, it is

recommended that the explanation of revenue allocations in the next EITI Report covers all revenue streams in the report to avoid any confusion about their allocation.

## Sub-national transfers (#5.2)

### Documentation of progress

The 2013-14 EITI Report provides an overview on establishment of two types of regional development funds - oblast and district level development funds– that were introduced in November 2014 to develop and maintain local infrastructure and provide for social and economic development of the regions (pp.102-104). These regional development funds receive a certain share of some extractive related non-tax payments. The report notes that the budget system is used to finance these funds (p.103). The 2013-14 EITI Report contains no disclosures related to these funds, however the International Secretariat understands that no transfers took place in FY 2013-14.

### Stakeholder views

Stakeholder consultations revealed significant confusion regarding regional development funds.

According to some civil society representatives, the way the funds work is that 2 % of a company's non-tax payments should be earmarked for regional development. If the company is operating a gold deposit with reserves of more than 50 tons, or another mineral resource deposit of nationwide importance, the mining company first pays 20% of the 2% directly to mining affected communities. The remaining 80 % is paid to a special account in the Ministry of Finance (MoF). The MOF then allocates 30% of these funds to the relevant oblast development fund and the remaining 50% to the relevant district development fund. Where the company is operating a gold deposit of less than 50 tons, or another mineral resource deposit that is not of nationwide importance, the company pays 20% of the 2% directly to the mining affected community, and the remaining 80% is transferred through the MOF to the district development fund. According to civil society, transfers should take place twice a year, however the law did not specify the exact procedures for the MoF transfers to oblast and district level. As a result, about KGS 800 m has been accumulated in the MoF account. Although the allocation of the money has been completed, the money has not yet been disbursed. It was noted that so far 47 regional funds had been established, 27 of which were at the district level. There was some concern that this was creating added bureaucracy and complexities in terms of revenue management, with little capacity of local administrations to handle these funds (see Requirement 5.3 below).

A civil society representative explained that the bonus from tenders was also, according to the law, supposed to be transferred to various government entities. For example, the government had received USD 100 m for the Jerooy deposit in 2015. In accordance with the law, this money had been distributed as follows: 3% to SAGMR, 3% to local self-government, 3 % to district development funds and 3% to oblast development funds. The remaining funds had been allocated to the state budget.

A government official explained that since 2012, the fee for retaining the mining license had been introduced. According to him, 100% of that fee was allocated to local self-governing authorities through the Ministry of Finance.

### Initial assessment

The 2013-14 EITI Report includes only limited information on some subnational transfer mechanisms. Stakeholder consultations point to considerable confusion around the current systems. Although the International Secretariat is not aware of any transfers taking place in 2013-14, the International

Secretariat concludes that significant further work is needed to establish sufficient transparency mechanisms and systems covering these funds. In light of this, the International Secretariat's initial assessment is that the Kyrgyz Republic has made inadequate progress in meeting this requirement.

### **Additional information on revenue management and expenditures (#5.3)**

#### **Documentation of progress**

The 2013-14 EITI Report provides a description of the budget process, noting that the budget process for both national and local levels is defined by the Budget Law (on pp. 98-100). Section 6.5.7 provides an overview of audit practice for state finances (pp.108-109).

As noted in the discussion of Requirement #.5.2, certain extractive revenues are earmarked for specific purposes or specific regions. Although the EITI Report provides some information about the uses of regional development funds, no transactions have yet taken place and further assessments on the methods for ensuring accountability and efficiency in the use of funds does not appear to have been considered by the MSG.

#### **Stakeholder views**

Several stakeholders expressed a desire for further transparency in the use of the regional development funds.

Civil society expressed concerned about the lack of procedures for decision-making regarding the spending of the oblast and district development funds. It was explained that for each fund, a Supervisory Board, a Steering Committee and an Administration unit would be created, but the responsibilities of each entity was not clear. It was thought that the Ministry of Finance and State Administration of local self-governments would develop annual development strategies, and that local self-governments or supervisory boards would then submit applications or choose activities in accordance with these strategies

A government official explained that a committee is established to oversee the use of the development fund, including reviewing proposals from local stakeholders on how to use the money. The committee is comprised of local government representatives and nominees of concerned villages. It was thought that the situation in mining communities had significantly improved because of this system and the introduction of social packages (see Requirement 6.1 below), and there were fewer reports of illegal activities such as blocking roads, etc. A local government official explained that the establishment of regional and district development funds been instrumental in reducing mining conflict. The social projects resulting from these funds are established at the district level. Funds are used mainly intended to be used for agriculture machinery and infrastructure, in particular social infrastructure. It was explained that local governments would develop a strategy outlining the activities on which the money should be spent. The strategy would be updated annually, and was available to the public. At the end of the year, there would be a meeting where the local government would explain how the fund had been spent. Some 300-400 people would attend the meetings.

Another local government official explained that at the end of 2015 their district development fund had been allocated KGS 120 m. A Supervisory Board of nine people had been established to decide how the money should be used. The Board was mostly comprised of village heads. The Supervisory Board would consider the needs of the village, but ultimately it would be a decision for local parliamentarians how to spend the money. Based on the decisions, tenders would be announced for carrying out the projects. The

tenders would be overseen by the procurement team in local government. All decisions were published in the printed mass media to ensure transparency and openness. It was noted that in there had been concerns that the funds were not well managed and could be spent on anything. However, since 2015, there were provisions stipulating how the funds should be used (mostly for infrastructure). the money would be transferred to the special accounts of the local government and the Chamber of Accounts would do annual audits.

### Initial assessment

Disclosing information on revenue management and expenditures is only recommended and does not count in the assessment of compliance. The EITI Standard states that “The multi-stakeholder group is encouraged to disclose further information on revenue management and expenditures, including a description of any extractive revenues earmarked for specific programmes or geographic regions. This should include a description of the methods for ensuring accountability and efficiency in their use” (EITI Requirement 5.3.a). The International Secretariat recommends that the SB responds to the stakeholder interest by addressing expenditures related to regional development funds in future EITI Reports, and make this information comprehensible and accessible to citizens.

Table 5 - Summary assessment table: Revenue management and distribution

Summary assessment table:		
EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Distribution of revenues (#5.1)	The 2013-14 EITI Report provides a list of revenues recorded in the national and local budgets. Stakeholders confirmed that all revenues are allocated in the budget.	Satisfactory progress
Sub-national transfers (#5.2)	The 2013-14 EITI Report notes the creation of statutory regional development funds and transfer mechanisms between national and subnational governments. Although it is unlikely that any transfers took place in FY 2013-14, there is limited transparency and understanding of how the current transfer mechanisms work.	Inadequate progress
Information on revenue management and expenditures (#5.3)	The 2013-14 EITI Report provides a description of the budget process, and auditing practices for state finances. The 2013-14 EITI Report also provides an overview on establishment of regional development funds - oblast and district levels that were introduced in November 2014 and that will receive a share of extractive related non-tax payments.	
<b>International Secretariat's conclusions and recommendations:</b>		
1. The SB should explore how development funds are regulated and how the transfer mechanisms between national and subnational governments work. Given the public interest in regional		

development funds, the SB might wish to use the EITI as a mechanism for public disclosure related to the transfers and expenditures of these funds.

## 5. Social and economic spending

### 5.1 Overview

This section provides details on the implementation of the EITI requirements related to social and economic spending (SOE quasi-fiscal expenditures, social expenditures and contribution of the extractive sector to the economy).

### 5.2 Assessment

#### Social expenditures (#6.1)

##### Documentation of progress

The 2013-14 EITI Report explains that the Law on Amendments and Additions to the KR Law on Subsurface No. 77 dated 24 May 2014 introduced social expenditures through the concept of a “social package”. This is a contribution to the social and economic development of an extractive region, paid by extractive companies (p. 106). The Law on Amendments the Law on Subsurface defines the “social package” as a minimum amount of investments in socio-economic development of local community within the territory of subsurface use objects (p.74). Given that this law only came into force in May 2014, there were no relevant transactions to report in the 2013-14 EITI Report.

The 2013-14 EITI Report briefly describes the social development program implemented by Kumtor Gold Company CJSC (pp. 106-107). It does not disclose data on the amounts of social expenditure in 2014, nor is it established whether this program is a voluntary programme or whether it is part of the contract with the government.

Other social expenditures include support for education and support for social infrastructure. These payments are disclosed but not reconciled in the EITI Report (p.193-194). Recipients of these revenues are sometimes but not always the regional state administration and local governments. The International Secretariat understands that these are voluntary social expenditures.

##### Stakeholder views

Some government officials explained that the concept of the social package had existed since 2012. While it was applicable to all companies, there were no clear rules and regulations for how these package should be developed. A civil society representative confirmed that the rules were only available for licenses awarded through tenders, not for licenses awarded through other methods. A government representative explained that the social package was mandatory only when the license had been issued by tender or auction, and was not applicable to licences that had been directly negotiated. Still, most companies would provide a social package and sometimes it was part of the discussions when negotiating the license.

According to a government representative, companies develop the social package in consultation with communities, and then inform SAGMR about what has been agreed with the local communities regarding the social package. Local governments have a large role in overseeing this process. A civil society representative confirmed this understanding, but noted that there were no guidelines for how the

consultations should take place, nor the amounts of the social package.

One government representative said that while it was the companies that were in charge of negotiating the social services with the communities, it would be better if it was the government that decided what should be part of the social package and was responsible for distribute the benefits given that it was challenging for the companies to face local communities and governments on this issue. According to the government representative, there were two problems with the current system. Firstly, the law does not stipulate the volume of the social package. Secondly, local authorities were inefficient and there were conflicts of interest issues.

A company representative said that his company paid KGS 4 m annually in social package to the local government. This money was used on schools, refurbishing, infrastructure, higher education etc. The money was simply transferred to the local government and the company was not involved in decision-making on how the money should be spent.

Another company representative said that thanks to improved dialogue between the SAGMR, regional and district level governments, there were less protests now than before. Meetings with local communities were more frequent, enabling companies to explain what they were doing, the benefits of their activities, etc. The company would transfer support for social services to the special account of the local government. Given that such services were voluntary for his company, an MoU between the local government and the company had been established stipulating what funds should be spent on.

A third company representative confirmed that the flows entitled “support to education” and “support to social infrastructure” were voluntary payments. The representative also informed us about the company’s contribution to the Issykul Development Fund, to which they paid 1% of annual gross income (resulting in KGS 453.7 m<sup>104</sup> (USD 7.4 m)) to the treasury which was then responsible for transferring the money to the fund. The company was not involved in the decisions around spending, and sometimes lamented this as there had been reports of misuse of the fund or unwise spending decisions. The company also lamented that it had not been possible to ensure audits of the fund.

Local NGOs said that it had been a decision of local government that social infrastructure should be developed using the social packages provided by the companies. The local government had good capacity to spend this money well, and local MPs were exercising oversight functions.

### **Initial assessment**

The 2013-14 EITI Report includes limited information about mandatory and voluntary social expenditures, and there is little evidence in SB meeting minutes that the SB has considered this issue in any detail. Stakeholder consultations reveal a mix of seemingly mandatory and voluntary practices and approaches to social expenditures. The International Secretariat’s initial assessment is that the Kyrgyz Republic has made inadequate progress in meeting this requirement. It is recommended that the SB takes a comprehensive look at the various forms of social expenditures and develop appropriate transparency mechanisms.

## **SOE quasi fiscal expenditures (#6.2)**

### **Documentation of progress**

The 2013-14 EITI Report does not address quasi-fiscal expenditures of state-owned enterprises. There is

<sup>104</sup> <https://www.facebook.com/ikonuguu/posts/748557198578583>

no evidence in MSG meeting minutes that the SB has discussed this issue. The TOR for the Independent Administrator for the 2013-14 EITI Report does not task the Independent Administrator with collecting data related to quasi-fiscal expenditures (TOR for the Independent Administrator 2013-14 EITI Report, p.16)

### **Stakeholder views**

A company representative explained that Kyrgyzaltyn makes quasi fiscal expenditures in terms of subsidising one of its subsidiaries – the mining company Makmal Altyn. The company is situated near the village of Kazarman in Djalal-Abad oblast, which is fully dependent on the mine and refining plant which generates 95 % of the local budget. The company representative explained that even if it operates at a loss, it is not an option to close down the operation as people will lose the main source of finance and this may lead to protest and instability.

A government representative explained that although the Law on Budget prohibits the government from allocating funds from the budget to finance SOE, it is different if the SOE perform social functions such as e.g. providing heating. The state would then subsidise the difference between the tariffs and the real cost.

### **Initial assessment**

Although the 2013-14 EITI Report does not mention quasi-fiscal expenditures, stakeholder consultations revealed that there are subsidies, at least related to coal. Although the materiality of these quasi-fiscal expenditures are uncertain, there is no evidence that the SB has ever considered the issue. In light of this, the International Secretariat's initial assessment is that the Kyrgyz Republic has made no progress in meeting this requirement.

## **Contribution of the extractive sector to the economy (#6.3)**

### **Documentation of progress**

The 2013-14 EITI Report provides an overview of the contribution of extractive industries to economy of Kyrgyz Republic (p.45):

- In 2014 the share of extractive industries in GDP was 8.4% (p.7). The 2013-14 EITI Report does not provide the size of extractive industries in absolute terms.
- The 2013-14 EITI Report explains the legal framework applicable to individual artisanal mining including alluvial gold (p.63, p.73), however does not include any further estimates on the size of the sector.
- The share of total government revenues generated by the extractive industries in 2014 amounted to 8.4% (p.57). The report does not include total government revenue in absolute terms.
- The report disclosed the share of the extractive industry in total exports in 2013, amounting to 47.1% (p.8). It also provides the 2013 value of exports in absolute terms (p.9). The report notes that official statistics on exports for 2014 were not available (p.35)
- The EITI Report illustrates employment in the extractive industries by minerals type (p.57). The extractive industries in Kyrgyzstan employ 16 555 people which is 3.2% of total employment (p.57).
- Key regions where production is concentrated can be found in table 4 (p.32). The report also

Validation of Kyrgyz Republic: Report on initial data collection and stakeholder consultation  
discloses areas of concentration of gold and coal (table 3 on pp.28-32 and table 5 on pp.33-34).

### Stakeholder views

A government official explained that artisanal mining was allowed in certain defined areas, and subject to obtaining a permit from the Tax Service. According to this official, there were few artisanal miners in the country.

A civil society representative said that the EITI could provide more details on employment. People's first concern was about job creation and it would be useful to see how many people were employed in the various mining companies. For example, a government official had said that the companies needed to ensure that 75% of the staff was from the local area, however there was no way to track this.

### Initial assessment

The 2013-14 EITI Report provides an overview of the contribution of extractive industries, including the share of the extractive industries in GDP, share in total revenues, share of exports, employment in absolute terms and percentage in total employment, as well as main region of production. The report does not address the size of extractive industries in absolute terms; an estimate of informal sector; and total government revenues generated by the extractive industries in absolute terms. The International Secretariat's initial assessment is that the Kyrgyz Republic has made meaningful progress in meeting this requirement.

Table 6 - Summary assessment table: Social and economic spending

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Social expenditures (#6.1)	The 2013-14 EITI Report explains that the amendments to the subsoil use law in 2014 introduced social expenditures ("social package") by extractive companies. The report gives no detail on how these programmes are developed, nor any details on expenditure apart from related to the Kumtor project. The report does not disclose details regarding the value and beneficiaries of the social expenditures in 2014. Some social expenditures are also voluntary, and the report does not clearly delineate between voluntary and mandatory social expenditures.	Inadequate progress.
SOE quasi fiscal expenditures	The 2013-14 EITI Report does not	No progress

(#6.2)	address quasi-fiscal expenditures of state-owned enterprises, nor is there any evidence that the SB has discussed this. Stakeholder consultations reveal that quasi-fiscal expenditures exist.	
Contribution of the extractive sector to the economy (#6.3)	The 2013-14 EITI Report provides an overview of the contribution of extractive industries, including share of the extractive industries in GDP, share in total revenues, share of exports, employment in absolute terms and percentage in total employment, as well as main region of production. The report does not address the size of extractive industries in absolute terms; an estimate of informal sector; and total government revenues generated by the extractive industries in absolute terms.	Meaningful progress
<p><b>International secretariat's conclusions and recommendations:</b></p> <ol style="list-style-type: none"> <li>1. The SB should undertake further work on social expenditures. This should include establishing which expenditures are voluntary and which are mandatory, and identify the materiality of the payment flows. It should also include developing a reporting mechanism for ensuring transparency in transactions related to social expenditures in the future, including details on the value and beneficiaries of social expenditures.</li> <li>2. The SB should discuss any quasi-fiscal expenditures of state-owned enterprises, in particular subsidies related to energy, and ensure these are covered in the next EITI Report if material.</li> <li>3. The SB should ensure the next report covers the size of extractive industries in absolute terms, an estimate of informal sector and total government revenues generated by the extractive industries in absolute terms.</li> </ol>		

## Part III – Outcomes and Impact

### 1. Overview

This section provides details on the implementation of the EITI Requirements related to the outcomes and impact of the EITI process.

### 2. Assessment

#### 2.1 Public debate (#7.1)

##### Documentation of progress

##### *(i) Dissemination and other activities aimed at public debate*

The members of the KEITI secretariat under the supervision of the Supervisory Board have undertaken a number of activities aimed at raising awareness of the general population about the EITI and transparency of extractive industries in the Kyrgyz Republic:

- One of the main events that were organised to disseminate the 2013-14 EITI Report was the EITI National Conference on 23-24 December 2015<sup>105</sup>. The conference's main purpose was to introduce the findings of the report to the wider public. Some 155 people attended the conference. (2015 APR, p.30)
- Following the National Conference in December 2015, the 2013-2014 EITI Report was uploaded on the website of SAGMR in February 2016 to ensure easy public access (Report on government activities on dissemination of the EITI Report, p.1). The Report was also distributed to the members of the Jogorku Kenesh, the Parliament, in hard copies in June 2016. (Report on government activities on dissemination of the EITI Report, p.2)
- In late 2015, the KEITI Secretariat in partnership with the Eurasia Foundation of Central Asia (EFCA) produced a series of modules on analysing EITI data and understanding the Validation process. A training based on these modules was delivered for local communities of Naryn, Issul-Kul, Talas and Jalal-Abad regions from 26 to 29 December 2015<sup>106</sup>. According to the 2015 Annual Progress Report: "the training was organised to ensure delivery of accurate information about the EITI and the Validation process, and to inform the population of the effective use of the EITI data" (p. 29). The three two-day trainings gathered 103 people.
- A live broadcasting featuring the EITI Champion, Director of the SAGMR Zilaliyev Duishenbek was aired at one of the main TV channels "NTS" in February 2016. (Report on government activities on dissemination of the Report, p.1)
- The national secretariat staff has taken part in various conferences in the Kyrgyz Republic, ensuring up to date information about their work on EITI implementation (Report on government activities on dissemination of the Report, p.1):
  - In February 2016 the Deputy Director of SAGMR Ulanbek Ryskulov and the Head of the

<sup>105</sup> EITI National Conference coverage in local TV channel. Source Youtube: <https://www.youtube.com/watch?v=M1urEjwUjuI>

<sup>106</sup> 2015 EITI Progress Report, page 28:

[https://eiti.org/sites/default/files/documents/annual\\_activity\\_report\\_2015\\_kyrgyzstan.pdf](https://eiti.org/sites/default/files/documents/annual_activity_report_2015_kyrgyzstan.pdf)

Policy On Natural Resources department under the Ministry of Economy Askat Bekov took part in the national conference on “The Mining Industry: perspectives and questions”<sup>107</sup>.

- In May 2016 the national secretariat made a presentation about EITI implementation in the Kyrgyz Republic at the “National Conference on decreasing conflict in the extractives” and circulated the latest EITI Report from the Kyrgyz Republic covering 2013-2014.
- In May 2016 the national secretariat staff made a presentation about anti-corruption efforts of the government at the “The result of the anti-corruption initiatives on national and sectoral levels” with a particular focus on the EITI process in the country.
- Civil society has worked with the members of three public councils in extractive regions to provide consultations to local communities on extractive companies and their operations. According to the 2015 Annual Progress Report, availability of these public councils for consultations led to more peaceful resolutions of conflict (Annex 3).
- The online EITI forum administered by the CSO Consortium has contributed to national debate and accounted for 3000 active users every quarter (2015 APR, Annex 3).

Most of these activities were targeted at the representatives of local communities in the extractive regions, CSOs, central and local governments and youth representatives. 11% of the activities that were planned for 2015 were not carried out and 25% of the activities were only partially completed, as indicated in the 2015 Annual Progress Report (page 6) due to the lack of funding and the renewed EITI process in 2016 following the recommendation of the Institutional Setup study.

#### *(ii) Making the EITI Report comprehensible*

Dissemination of the EITI reports are an integral part of the Kyrgyz work plans. Discussion of dissemination activities are documented in the meeting minutes of the Supervisory Board on 31 January 2013, 23 December 2013 and 16 December 2015:

- On 31 January 2013, members of the Supervisory Board discussed the need of disseminating data from the 2010-2011 EITI Report and the inclusion of this activity into the 2013 EITI work plan.
- On 23 December 2013, the CSO representatives urged a closer cooperation among the EITI stakeholders in dissemination activities given the lower financial assistance received for EITI activities. Members of the Supervisory Board agreed and planned on joint efforts for improving national EITI implementation through dissemination activities and outreach in 2014 and 2015.
- On 16 December 2015, members of the Supervisory Board discussed dissemination activities in the past year and EITI stakeholders reported on the activities that they carried out. It was pointed out that that the national secretariat has been entrusted with dissemination activities and the civil society representatives were engaged in outreach. Members of the Supervisory Board have also discussed the financial constraints of EITI activities and suggested the evaluation of current needs of Kyrgyzstan on the resource management aspect and whether the EITI is necessary. It was agreed that the national secretariat and the Supervisory Board work towards improving the 2013-2014 EITI Report and putting effort into its dissemination.

<sup>107</sup> University of Central Asia and Ministry of Economy hosted a forum on EI policy in the Kyrgyz Republic. Details [here](#).

The SB has taken some steps to ensure that the report is comprehensible and publicly accessible:

- The 2013-14 EITI Report has been published in Kyrgyz, Russian and English languages on the international and national EITI websites. According to the 2015 Annual Progress Report, the full and summary versions of the Report have also been made available in hard copy (APR, p. 27). Financial data is available in an open data format (xlsx).
- Following the launch conference on the 2013-14 EITI Report, the KEITI Secretariat produced a video-report from it in order to make the discussions widely available to the broader public<sup>108</sup>.

### Stakeholder views

It was noted by several stakeholders that there was very little media engagement in the EITI, and involving media in the future was key to create public debate.

One journalist said that discussions around the EITI only happen within the SB. Journalists that could be interested in the EITI topic are not invited to the SB meetings, only to official events that are held extremely rarely. It was noted that only a limited circle of journalists is familiar with the EITI and only few can read and understand EITI reports. Furthermore, when journalists write about conflict cases linked to extractive industries, EITI is never mentioned.

A government official from Talas region explained that they had 12 “open hours” per week where stakeholders could come and ask questions about the mining sector. Most common questions were around the impact on mining on the environment, job creation and the Jerooy deposit. Some days, 50-60 people would show up to have certain challenges resolved. Both government and companies had learnt that transparency was key to reducing conflict.

NGO representatives from Talas explained that they were actively engaged in EITI outreach. Their work focused on three areas: (1) Providing access to information about the EITI; (2) Counselling and conflict prevention; and (3) Training of local communities and other local experts, including media. A working group of interested local NGOs had been established and contributed to deliver these services, including participation in local public hearings, roundtables etc. The NGOs had developed materials and brochures on the EITI, summaries of key laws and documents explaining community members’ rights. There was also active engagement with local media. The working group would feature in local radio or TV at least once a quarter, sometimes more frequently. Articles were also published in the local Talas bulletin, a monthly newspaper.

Local NGOs were also running a public reception centre. Previously, during the period when there was a lot of concern about Jerooy and Andash desposits, a full time person had been employed to answer people’s questions about the mining activities. Now, such services were available when needed. People would typically ask questions about job creation, payments, their rights, environmental issues, who owns the company and what social compensation they would get. Many would also ask about the EITI, in particular about the status of the Kyrgyz Republic in the EITI. The people who would visit included community members, students etc.

In terms of trainings, local NGOs would mostly focus on explaining what the EITI is, including the EITI Standard and the Principles. They would also explain the history of the EITI in the Kyrgyz Republic, how many reports had been produced, etc. One representative noted that “we use the EITI Reports, but we

<sup>108</sup> Summary or the video-report on the National TV channel NTS’s page [here](#).

have not yet discussed the 2013-14 EITI Report”.

Other civil society representatives said that the EITI Report was published online and distributed to local public reception offices. It was noted the NGO Consortium had a frequently visited Facebook page<sup>109</sup> where mining sector news was uploaded. In 2014, CSOs from Bishkek visited extractive regions for EITI dissemination, but did not have an opportunity to that in 2015 due to financial constraints. Rather, it was the staff of the national EITI secretariat that visited extractive regions and presented the EITI Report.

One representative from companies admitted that couldn't see any impact of the EITI in Kyrgyz Republic and recommended to conduct an assessment study in order to identify the real impact if any and target objectives for next years.

### Initial assessment

The SB, in particular the government and civil society representatives, have taken some steps towards ensuring comprehensiveness of the EITI reports, their promotion and public access. The national EITI secretariat held some communication activities that targeted limited groups of citizens, such as the national EITI Conference. However, it does not seem that all SB members have been substantively engaged in dissemination activities.

The 2013-14 EITI Report was circulated in hard copies in the main languages spoken in the country (Russian and Kyrgyz) at trainings and conferences held throughout the country. It is also available online<sup>110</sup>. However, a fair amount of the work plan activities dedicated to generating public debate were not conducted due to the funding constraints.

Although some dissemination activities have been carried out, in particular in the last half year, there is no evidence that the EITI is contributing to public debate in the Kyrgyz Republic. The International Secretariat's initial assessment is that Kyrgyz Republic has made meaningful progress in meeting this requirement.

## 2.2 Data accessibility (#7.2)

### Documentation of progress

Kyrgyz Republic's EITI reports are not fully machine-readable, although the 2013-14 EITI Report provides financial data in excel format.

The meeting minutes of the Supervisory Board from 12 June 2014, 26 March 2015 and 16 December 2015 present evidence of the ongoing discussion of the EITI stakeholders in the Kyrgyz Republic on the need to develop electronic EITI reporting:

- On 12 June 2014, the members of the Supervisory Board had finalised the 2014-2015 EITI work plan. According to activity 2.4 the Supervisory Board was to: “...facilitate data acquisition, examine the question of EITI reporting in electronic format.” It was noted that one of the challenges for the EITI process in the Kyrgyz Republic has been the lack of specialists that could transfer existing information into electronic database.
- According to the minutes of the 26 March 2015 members of the Supervisory Board discussed introducing “...other ways of electronic reporting through available means, i.e. the Open Budget

<sup>109</sup> Facebook Page of the EITI CSO Consortium in the Kyrgyz Republic [here](#):

<sup>110</sup> EITI National country page, 2013-2014 EITI Report available [here](#).

portal that publishes information about payments received by the state.”

- CSO representatives within the Supervisory Board highlighted their efforts in drawing the attention of the government into developing e-reporting at the last Supervisory Board meeting in 2015 [16 December 2015]. According to the minutes of the 16 December 2015 the State Agency for Geology and Mineral Resources flagged the current lack of infrastructure for developing such system.

Although these minutes present evidence of an ongoing discussion of the need to move towards electronic EITI reporting, the SB does not appear to have achieved activity 2.4 of the 2014-2015 EITI work plan, which includes “examination of the question of reporting in electronic format to facilitate data accessibility” (2014-15 work plan, activity 2.4).

The IA makes the following recommendation to improve data accessibility:

“Consider implementing information system in SAGMR that enables companies and government authorities to provide EITI reporting in an electronic form as part of EITI initiative in the Kyrgyz Republic. It may be forms in Excel format filled in using a single pre-approved template and sent to a special secured email of SAGMR or EITI Secretariat. It may be a specialized IT system accessible online, in which companies and government authorities may enter data for EITI reporting. It is important to note that in this case it will be necessary to consider a procedure using which companies and government authorities will be able to confirm the accuracy of the data provided. One of the measures to confirm reliability of data validation is to provide the scanned version of the appropriate letter signed by the CEO and stamped by company / government authority. A scanned copy of an audit report of the company may be provided.” (2013-14 EITI Report, p.212).

### **Stakeholder views**

A government official noted that the license register is exportable to excel. A civil society representative noted that the Mongolian e-reporting system was impressive and it would be desirable with something similar in the Kyrgyz Republic.

The IA lamented that all reports were submitted in hard copies and that it took a lot of time and efforts to manually input all payment data into the excel sheets.

### **Initial assessment**

Requirement 7.2 encourages the SB to make EITI reports accessible to public in open data formats. The SB has started work on making EITI reports machine readable by publishing excel files. There are ongoing discussions about how to achieve electronic reporting in the future. Such efforts are encouraged but not required and are not considered in assessing compliance with the EITI Standard.

## **2.3 Lessons learned and follow up on recommendations (7.3)**

### **Documentation of progress**

#### *Recommendations from the Independent Administrator*

Recommendations listed in the 2013-14 EITI Report focus mainly on improving the EITI Reporting process, notably seven recommendations for improving the EITI reporting templates (2013-14 EITI Report, pp.211-

212) and four recommendations aimed at improving the reliability of data (p.213). However, in addition to these, the IA outlines eight other recommendations focused on legal requirements for EITI reporting, improving the timeliness of EITI reporting, strengthening auditing practices for extractive companies, improving data accessibility and work towards open data, addressing gaps in publicly available license information including publication of license agreements online, strengthen statistical data on production of minerals, and consolidation of data in the Treasury (2013-14 EITI Report, p.217-218)

There is no evidence from SB meeting minutes that the recommendations have been discussed by the SB, though the meeting minutes of the Supervisory Board from the 12 December 2015 note the request for suggested improvements of the 2014 Report by the SB members (SB Meeting minutes, 16 Dec 2016, p.2). Nonetheless the 2016 workplan includes a couple of activities related to these recommendations such as work on improving EITI reporting templates, publications of license agreements and implementation of the legal requirements related to EITI Reporting (2016 work plan, activities 2.8; 3.3; and 3.6).

The 2013-14 EITI Report also provides an overview of the actions undertaken to address the recommendations from the previous EITI reports (p. 214). It is clear that most of these recommendations have not been addressed, or been addressed only partially. The Independent Administrator notes that some of the recommendations provided in previous reports may not be applicable but highlights the importance of addressing issues around the (1) up-to-date list of extractive companies that operate in the Kyrgyz Republic; (2) comprehensiveness of data; and (3) the coordination of government and companies in the reporting process.

#### **Stakeholder views**

A few civil society members recalled they provided recommendations on improving the EITI Report and that the comments were taken into account. It was noted that during every SB meeting gaps in the EITI Report were discussed and stakeholders provided recommendations, in particular to the Tax Service and Custom Service. At the same time, the representative of civil society could not recall recommendations from the 2014 EITI Report and didn't remember the SB held discussion on those recommendations.

Some government representatives commented that recommendation to improve reporting templates were timely since a few new taxes were introduced recently. It was also noted that despite previous recommendations, the approach to address discrepancies in the last EITI Report had worsened.

A company representative that took part in discussions of the EITI report said that this discussion did not cover recommendations for improvements in EITI Reporting.

#### **Initial assessment**

There is little evidence the SB has taken steps to act upon lessons learnt, to identify, investigate and address the causes of discrepancies and to consider the recommendations for improvements from the Independent Administrator for the 2013-14 EITI Report. The SB meetings minutes do not show that there has been any discussions on the recommendations and lessons learnt from the publication of the 2013-2014 EITI Report, and no assessment of recommendations has been provided in the Annual Progress Report. The International Secretariat's initial assessment is therefore that Kyrgyz Republic has made inadequate progress in meeting the requirement.

## **2.4 Outcomes and impact of implementation (#7.4)**

### **Documentation of progress**

The SB has produced two Annual Progress Reports (APR), covering 2014 and 2015. The 2014 APR is available through the global EITI website<sup>111</sup>. The latest APR covering 2015 is available through the national EITI website<sup>112</sup>.

The 2015 APR was agreed and published on the national EITI website by the 1 July 2016 deadline. The report lists all activities undertaken by the EITI stakeholders in the Kyrgyz Republic in 2015, including the publication of the 2013-14 EITI Report (p. 26), its dissemination activities and EITI outreach (p. 28), contribution to the improvement of the legal structure (p. 29), and the support for effective implementation of the EITI (p. 31). The summary of activities listed in the 2015 APR does not provide the full list of activities carried out by EITI stakeholders and excludes information about some of the government activities in EITI outreach throughout the country. That however is provided in detail through the *Report of the Government on dissemination of the EITI 2013-2014 Report*.

The 2015 Annual Progress Report does not provide a list of recommendations and the level of progress in implementing each recommendation noting that recommendations from the Validation Report are expected to be provided in 2016 (2015 Annual Progress Report, p. 10) and that they will be followed up in the 2015 EITI Report. The document does however discuss the strengths and weaknesses of EITI implementation (p.10) and notes the actions that were undertaken to address some of these weaknesses.

Section 3 of the 2015 APR discusses the progress of the Kyrgyz Republic against the seven headline requirements of the 2013 EITI Standard (pp.6-9). However, the assessment does not cover all sub-provisions of the EITI Standard, nor does the assessment appear to contain any critical reflections on requirements that may be unmet or where improvements are needed. The APR does not seem to include a discussion of steps to exceed the requirements, nor actions taken to address encouraged aspects of the EITI Standard. The Annual Progress Report also states the progress of each objective in the work plan (pp. 15-23). It notes achievements such as the publication of the 2013-14 EITI Report, dissemination activities and the review of the institutional set up.

The 2014 EITI Annual Progress Report provides an overview of the EITI activities in the Kyrgyz Republic which are essentially similar to the activities carried out in 2015 and described in 2015 Annual Progress Report. It provides an overview of the meetings of the Supervisory Board (p. 2), dissemination activities of the EITI reports (p.4), innovative aspects of the EITI through subnational EITI council administered by the civil society groups, compliance to the EITI requirements.

### **Stakeholder views**

Civil society representative admitted that for the new Supervisory Board members, preparation of the Annual Progress Report was challenging. Due to a limited timeframe and little information on 2015 activities the APR did not provide a full overview of the work done in 2015 and was mainly focused on four months – September to December when the 2014 EITI Report was prepared and released.

A representative from the government noted that in general the EITI was considered as a good practice. Some government officials make analysis based on the EITI reports. Another government's representative noted that it was beneficial to participate in the EITI.

A company representative noted that the EITI was positive for the country as people have increased their knowledge of the mining sector in Kyrgyz Republic. It was said that the EITI eliminated gaps in information

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<sup>111</sup> The 2014 Annual Progress Report is available in Russian, <https://eiti.org/node/7779>

<sup>112</sup> The 2015 Annual Progress Report is available in Russian <http://www.geo.gov.kg/images/IPDO/ot/2.pdf>

on the mining sector. The EITI could serve as a tool to oversee corruption. It could also be seen as a tool to help investment climate. Another company representative doubted the impact of the EITI and had not seen any impact on the investment attractions or country's image. It was said there was no impact on public in connection to the EITI. The EITI could have been relevant to social conflicts with companies but it was considered as yet another reporting.

### Initial assessment

The SB has reviewed progress and outcomes of implementation on a regular basis, including by publishing annual progress reports over the past two years. Although these reports provide a useful snapshot of last years' activities, they lack an assessment of the impact and outcomes of the objectives. Even though the Supervisory Board notes that recommendations from the 2016 Validation will be addressed in the next EITI report the discussion of the recommendations from EITI reports are not documented in detail. The International Secretariat's initial assessment is therefore that Kyrgyz Republic has made meaningful progress in meeting the requirement. KEITI may wish to consider undertaking an impact assessment, with a view to identify opportunities to increase impact.

Table 7 - Summary assessment table: Outcomes and impact

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Public debate (#7.1)	The SB has taken limited steps to ensure that the EITI Report is actively promoted within public. Incompleteness of planned dissemination activities is due to the lack of funds.	Meaningful progress
Data accessibility (#7.2)	KEITI does not yet provide EITI data in easily accessible format. The SB held a discussion to address this encouraged requirement, no actions were taken.	
Lessons learned and follow up on recommendations (7.3)	There is little evidence about the discussion of the IA's recommendations by the members of the Supervisory Board following the publication of the Report.	Inadequate progress
Outcomes and impact of implementation (#7.4)	The Supervisory Board has produced an account of activities undertaken in 2015 through their Annual Progress Report. The APR notes the strengths and weaknesses of the EITI process in the Kyrgyz Republic and notes that the process was stalled in 2016 due to the changes within the institutional setup. The APR lacks an impact assessment.	Meaningful progress
<b>International Secretariat's conclusions and recommendations:</b>		
1. It is recommended that the SB considers necessary improvements to their dissemination activities		

and communication efforts through engaging all stakeholders and various new means of involving media and public.

2. The SB is encouraged to provide more EITI data in an open data format and to launch its work on mainstreaming EI transparency.
3. The SB members are encouraged to work with the members of the Jogorku Kenesh (Parliament) to ensure EITI contributes to national priorities for the extractive sector, and remains topical.
4. The SB members should follow-up the recommendations from the EITI Reports in a thorough manner.
5. The SB is encouraged to conduct an impact assessment.

### 3. Impact analysis (not to be considered in assessing compliance with the EITI provisions)

#### a) The impact of the EITI process in-country to date

Despite having implemented the EITI for several years, there does not seem to be any tangible impacts of implementation. The Institutional set up study notes that “The conducted survey shows that each third respondent has noted a very slow progress in the EITI implementation in Kyrgyzstan. In addition, most of the respondents worried about lack of understanding at all levels, isolated and not interrelated actions of all structures involved in the EITI and low public awareness to promote the EITI” (p.9). During the initial information gathering, the International Secretariat came across different views on the impact of the EITI in Kyrgyz Republic. Although most of respondents agreed that the EITI was considered a positive development for the country, stakeholders found it hard to identify concrete impact examples.

The renewed SB members revisited the 2016 work plan only in June 2016, identifying the following objectives for EITI implementation: (1) improvement of natural resource governance; (2) transparency and accountability of the government in managing the extractive sector and (3) attraction of foreign investment. Given a short time period it is early to assess whether the objectives were met. However, it is highly unlikely that the SB developed indicators to evaluate progress on achieving these objectives, neither secured sufficient funding to conduct planned activities to lead to desired outcomes. Besides funding constraints, there does not seem to be enough government engagement to boost the EITI process. The SB members should work on an achievable work plan for 2017 and develop a fundraising policy to secure sufficient funding. The government should consider to contribute financially to ensure sustainable implementation of the EITI. This implies ensuring efficient functioning of the national EITI secretariat and annual reporting.

The dissemination activities carried out in 2016 targeted limited stakeholder groups consisting mostly of the SB members, conference participants, diplomatic missions and a few public receptions in extractive regions. These efforts have not generated nation-wide debate, neither measurable impact.

Government representatives acknowledge added value and opportunities behind the EITI implementation. Little work has been done to enable full, active and effective engagement of companies. Industry representatives admitted they had no understanding of the EITI and considered the EITI as yet another reporting burden. There is no evidence that the EITI has in any way influenced the investment climate in Kyrgyz Republic or attracted investors to the mining sector.

Civil society representatives highlighted transparency of Regional Development Funds and social package as potential areas where the EITI process could bring impact. Local civil society said that benefited from

the EITI. In particular, the EITI that gives access to information, helps communities understand to understand their rights and act in compliance with laws, empowers local communities to participate in decision-making and is used a conflict prevention tool.

#### a) Opportunities for increasing the impact of the EITI

Stakeholder consultations revealed a number of opportunities for increasing the impact of implementation:

Government:

- **Transparency of “social package”.** The Law on Amendments and Additions to the KR Law on Subsurface No. 77 dated 24 May 2014 introduced social expenditures through the concept of a “social package”. There still does not seem to be clear rules on these payments and how they can be applied to all companies. A government representative identified two areas where transparency is needed:
  - Defining the size of payments related to social package.
  - Monitoring the accountability of local authorities in disbursing the social package to eliminate disputes related to conflicts of interest.
- **Beneficial ownership.** Currently the Parliament revisits the Law on Subsoil that contains a provision to disclose beneficial owners. Even though the government supports beneficial ownership transparency, some members of the Parliament and industry see this as a burdensome and unattractive move. The EITI can be a tool for backing a strong legal framework on beneficial ownership and enable public access to BO information.
- **Mainstreaming.** All stakeholders acknowledged opportunities for integrating transparency in government systems. This would remove some of the reporting burden from companies, strengthen management of extractive industries, increase accountability of government and companies and ensure public access to data.

Civil society:

- **Ensure transparency in the Regional Development Funds.** To date there are 46 newly-established Regional Development Funds that have already received payments from extractive companies and have no policy on use of money, accountability and assessment of how the money is spent. Transparency mechanisms for these funds are highly desired by the broader public.
- **Promote open data.** Although SAGMR hosts an interactive map of mining licenses, this needs to be updated and there is a need to ensure capacity and financing for maintaining the website. It was noted that the online minerals map was out of date and should be upgraded. The data provided in the EITI reports was not in open data format disabling quality analysis and use of data.
- License agreements were not yet disclosed. The EITI could facilitate **contract and license transparency.**

Industry:

- **Impact assessment.** A company representative suggested to conduct an impact assessment to understand the value of EITI implementation. Having visible impact examples could ensure more active engagement of companies and their support.

- **Making data more understandable.** Industry suggested that technical EITI reports ought to be translated into infographics and other more comprehensible communication materials targeted at local communities.

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## Annexes

### Annex A - List of MSG members and contact details

Name	Organisation	Contact details
<i>Government</i>		
Duishenbek Zilaliev	State Committee for Industry, Energy and Subsoil	
Ulanbek Ryskulov	State Committee for Industry, Energy and Subsoil	<a href="mailto:ulanrys@gmail.com">ulanrys@gmail.com</a>
Svetlana Valuyskaya	National Committee on Statistics of the Kyrgyz Republic	Tel. +996 553 212135
Isabaeva A.	Ministry of Finance	<a href="mailto:a.isabaeva@minfin.kg">a.isabaeva@minfin.kg</a>
Burulkan Sultanova	State Tax Service	Tel. +996 555 50 28 00
Aizada Khalikova	State Custom Service	<a href="mailto:uptd@customs.gov.kg">uptd@customs.gov.kg</a>
<i>Industry members</i>		
Maskat Kobonbaev	Manas Resources / Zet - Explorer	<a href="mailto:maks_kobonbaev@yahoo.com">maks_kobonbaev@yahoo.com</a> +996 (772)-544-300
Askar Sydykov	International Business Council	<a href="mailto:askar.sydykov@gmail.com">askar.sydykov@gmail.com</a> +996 556 510761
Arkadiy Rogalskiy	Mining Association of Kyrgyz Republic	<a href="mailto:askar.sydykov@gmail.com">askar.sydykov@gmail.com</a> +996 556 510761
Anvar Estimesov	KyrgyzAltyan	<a href="mailto:aestemesov@gmail.com">aestemesov@gmail.com</a>
Rysbek Toktogul	Kumtor Gold Company	<a href="mailto:rysbekt@gmail.com">rysbekt@gmail.com</a>
<i>Civil society members</i>		
Chingiz Beksultanov	NGO "Forum on official support for development"	<a href="mailto:beksultanov.kg@gmail.com">beksultanov.kg@gmail.com</a>
Chinara Aitbaeva	NGO "Nash Vek"	<a href="mailto:nash.vek@gmail.com">nash.vek@gmail.com</a> <a href="mailto:chinaraga@yahoo.com">chinaraga@yahoo.com</a>
Nurbek Toktakunov	Public Union "Affiliate Group Precedent"	<a href="mailto:Toktakunov@gmail.com">Toktakunov@gmail.com</a>
Abdylda Temirberdiev	Public Fund "Maredan"	<a href="mailto:t.abdulda03@rambler.ru">t.abdulda03@rambler.ru</a>
Gulnara Isbasarova	Talas Public Reception office	<a href="mailto:gisbasarova@mail.ru">gisbasarova@mail.ru</a>

## Annex B - List of stakeholders consulted

### Government

Bekbolot Aliev, Deputy Chairman of the State Property Fund

Almazbek Azimov, Deputy Minister of Finance

Mars Cherikchiyev, Advisor to the Chairman of the State Committee for Industry, Energy and Subsoil Use

Yelena Doronina, Senior Specialist, the State Statistics Committee

Zamir Kachkanakov, Head of Governor's Administration, Talas

Daiyr Kenekeyev, Governor (government plenipotentiary) of Talas oblast

Kubanychbek Kumashov, Deputy Chairman of the State Tax Service

Burulkan Mambetshayeva, Chief inspector of accounting and tax statistics, State Tax Service

Zhoomart Murzaev, Specialist, the State Property Fund

Ademy Musaeva, staff member, Department of International Relations, the State Committee for Industry, Energy and Subsoil Use

Azamat Orosbaev, First Deputy Chairman, the State Statistic Committee

Konymet Osmonbekov, Akim (mayor) of Bakai-Atyn rayon (Talas)

Ulanbek Ryskulov, Deputy Chairman of the State Committee for Industry, Energy and Subsoil Use

Azis Saparaliev, Deputy Chairman, the State Committee for Industry, Energy and Subsoil Use

Felix Shapiro, IT-consultant, the State Committee for Industry, Energy and Subsoil Use

Sherikul Sultanov, Head of the national EITI secretariat

Lyuksina Tekseeva, Deputy Chair, the State Statistics Committee

Abraev Tologon, Fiscal policy department, the State Committee for Industry, Energy and Subsoil Use

Irina Tsoi, Legal Advisor, the State Committee for Industry, Energy and Subsoil Use

Svetlana Valuiskaya, Senior Specialist, the State Statistics Committee

Adylet Zhakibaniev, Specialist, the State Property Fund

### Industry

Almaz Alimbekov, Chairman of the Board of Directors, JSC KyrgyzAltyn

Ishimbai Chunuev, President, Kyrgyz Mining Association

Anvar Estemesov, Member of the Board of Directors of JSC KyrgyzAltyn

Aleksey Fedorov, General Director, Turan Metals Ltd

Zhanibek Kubandykov, Altyn Kumushtok Mining Ltd

Askar Sydykov, Executive Director, International Business Council

Rysbek Toktogul, Treasury manager, Kumtor Gold Company

Mirzat Usenov, Vertex Gold Company Ltd

### **Civil Society**

Natalia Ablova, CSOs expert

Nazgul Aksarieva. Project Manager, Eurasia Foundation of Central Asia

Chinara Atbaeva, NGO “Nash Vek”

Nazgul Aksarieva. Project Manager, Eurasia Foundation of Central Asia

Gulnara Isbasarova, Head of public reception in Talas

Kalia Mondogazieva, NGO Consortium Coordinator, NGO “Tree of Life”

### **Others**

Ekmat Baibakpaev, Member of Parliament

Jyldyz Galieva, Associate Director, Senior Banker, EBRD Bishkek

Timur Gainanov, Program Manager, Deloitte

Paul Hamlin, Economic Development Advisor, USAID

Viktor Kovalenko, Head of Cleantech and Sustainability Services, Ernst & Young

Larisa Li, journalist

Nazgul Kulova, Consultant, NRGi

David Oberhuber, Programme Director, GIZ

Kanyshai Sadyrbekova, Managing Director, Deloitte

Temir Tenizbaev, Senior Auditor, Deloitte

## Annex C - List of reference documents

### **MSG Minutes**

7<sup>th</sup> MSG Minutes 25 February 2010: <http://geology.kg/images/IPDO/15.pdf>

16<sup>th</sup> MSG Minutes 31 January 2013: <http://geology.kg/images/IPDO/16.pdf>

17<sup>th</sup> MSG Minutes 19 June 2013: <http://geology.kg/images/IPDO/17.pdf>

18<sup>th</sup> MSG Minutes 23 December 2013: <http://geology.kg/images/IPDO/18.pdf>

19<sup>th</sup> MSG Minutes 29 May 2014: <http://geology.kg/images/IPDO/19.pdf>

20<sup>th</sup> MSG Minutes 12 June 2014: <http://geology.kg/images/IPDO/20.pdf>

21<sup>st</sup> MSG Minutes 9 December 2014: <http://geology.kg/images/IPDO/21.pdf>

22<sup>nd</sup> MSG Minutes 26 March 2015: <http://geology.kg/images/IPDO/22.pdf>

23<sup>rd</sup> MSG Minutes 20 May 2015: <http://geology.kg/images/IPDO/23.pdf>

24<sup>th</sup> MSG Minutes 16 December 2015: *unpublished but available in Google Drive*

CSO “Minutes of the discussion of the situation dated April 22 2016” *unpublished but available in Google Drive*

Minutes of the EITI International Board meeting Oslo, p. 3,

[https://eiti.org/sites/default/files/documents/boardmeeting\\_003\\_minutes.pdf](https://eiti.org/sites/default/files/documents/boardmeeting_003_minutes.pdf)

### **Other Documents**

Kyrgyz Republic’s 2013-2014 EITI Report <https://eiti.org/node/7778>

Kyrgyz Republic’s 2014 EITI Annual Activity Report. *unpublished but available in Google Drive*

Kyrgyz Republic’s 2015 EITI Annual Activity Report: <http://geology.kg/images/IPDO/ot/2.pdf>

Review of institutions Set-up and Multi-stakeholder Group Functioning. 30 December 2015. *unpublished but available in Google Drive.*

Interactive map of mineral resources in not currently available on <http://www.geology.kg/index.php/2016-02-02-02-56-14>.

2014-2015 Work Plan: unpublished but available in Google Drive

2016 Work Plan: <http://geology.kg/images/IPDO/ot/3.pdf>

<http://forum.eiti.org.kg/>

Evaluation Report for the pilot project on BO in the KR, 2015, available in English

Beneficial ownership scoping note 2014, available in English.