



Validation of Myanmar

For decision

Summary:

The International Secretariat recommends that the Validation Committee recommends that the EITI Board agrees that Myanmar has made *meaningful progress* in implementing the 2016 EITI Standard. In accordance with requirement 8.3.c, Myanmar will be requested to undertake corrective actions before the second Validation on **<date of Board decision + 18 months>**.

Validation of Myanmar

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Supporting documentation (available via <https://eiti.org/document/myanmar-validation-2018>)

24 November 2018: Initial assessment by the International Secretariat [[English](#) | [Burmese](#)].

24 December 2018: Draft Validation report [[English](#) | [Burmese](#) | [French](#)].

12 February 2019: Comments on the draft Validation Report by the MSG [[English](#)].

18 February 2019: Final Validation report [[English](#) | [Burmese](#) | [French](#)]

23 April 2019: Letter from MATA [[English](#)]

15 June 2019: 2nd Letter from MATA [[English](#)]

7 August 2019: 3rd Letter from MATA [[English](#) | [French](#)]

13 August 2019: The International Center for Not-for-Profit Law (ICNL) Analysis on Myanmar's Validation [[English](#) | [French](#)]

Has the EITI competence for any proposed actions been considered?

The Articles of Association mandate the Board to classify implementing countries as candidate countries or compliant countries (Article 5(2)(i)(a)). The EITI Standard ([Requirement 8.3](#)) addresses EITI Validation deadlines and the consequences following Validation.

Financial implications of any actions

The recommendation implies a second Validation commencing in mid-2020. The cost of second Validations varies depending on the complexity of the extractive industries and the number of corrective actions. In this case, a second Validation is expected to cost circa 25 000 USD, including staff time and travel (if needed).

Document history

Submitted to the Validation Committee	6 February 2019
Discussed by the Validation Committee	7 February 2019
Discussed by the Validation Committee	27 February 2019
Discussed by the Validation Committee	4 April 2019
Discussed by the Validation Committee	10 April 2019

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Discussed by the Validation Committee	25 April 2019
Discussed by the Validation Committee	23 May 2019
Discussed by the EITI Board	17 June 2019
Discussed by the Validation Committee	18 September 2019
Discussed by the Validation Committee	30 September 2019
Approved by the Validation Committee	TBC
Submitted to the EITI Board (BC XXX)	TBC

1. Recommendation

The Validation Committee recommends that the EITI Board takes the following decision:

Following the conclusion of Myanmar's Validation of 2018, the EITI Board concludes that Myanmar has made meaningful progress overall in implementing the EITI Standard.

The Board commends Myanmar for its impactful EITI implementation, evident in the progress in introducing policy reforms, improving transparency in extractives data, stimulating robust public debates and creating a platform for dialogue among stakeholders. The Board acknowledges the EITI's centrality in the government's reform agenda, particularly related to public finance management and the gemstone sector. It also recognises the MSG's accomplishments in ensuring effective multi-stakeholder oversight of EITI implementation and aligning EITI objectives with national priorities. The Board acknowledges that the EITI has created opportunities for all constituencies to be engaged in policy discussions on natural resource governance, including creating discussion platforms for civil society where they did not exist before. The Board takes note of the manner in which all constituencies have collectively proposed recommendations in EITI Reports to improve the management of the extractive sector as well as government's response to proposals for reforms prioritised by civil society, such as beneficial ownership and state-owned enterprise transparency.

At the same time, the Board sees the need to further improve the environment for civil society participation in the EITI, particularly in subnational regions. The Board emphasizes the urgent need for the government to address the corrective actions related to civil society participation, particularly in ensuring that there is an enabling environment for civil society within and outside of the multi-stakeholder group to meaningfully engage in all aspects of the EITI process without obstacles. The Board congratulates Myanmar for the unprecedented disclosures of extractives data in a country with a nascent democratic process and recent history of economic liberalisation. The Board welcomes Myanmar's efforts to move towards mainstreaming of its mining cadastre as well as initiatives to publish more disaggregated data through project-level reporting.

The Board nonetheless encourages Myanmar to further improve public disclosures, particularly related to license allocation, gemstone production data and state-owned enterprises (SOEs), while strengthening the comprehensiveness of its EITI reporting. These improvements could help Myanmar ensure that this growing transparency translates into greater accountability in the governance of its extractive industries, key to its broader economic development.

*Taking into account the complexity of the extractive sector in the country and the good faith efforts undertaken by Myanmar to meet requirements of the EITI Standard, the Board has determined that Myanmar will have 18 months, i.e. until **<date of Board decision + 18 months>** before a second Validation to carry out corrective actions regarding requirements relating to industry engagement (#1.2), civil society engagement (#1.3), license allocations (#2.2), license register (#2.3), state participation (#2.6), production data (#3.2), export data (#3.3), in-kind revenues (#4.2), SOE transactions (#4.5), distribution of revenues (#5.1), mandatory social expenditures (#6.1), and quasi-fiscal expenditures (#6.2). Noting concerns regarding broader constraints on civil society's freedoms of expression and of operation, the Board agreed to reassess adherence to the civil society protocol during Myanmar's second Validation.*

Failure to achieve meaningful progress with considerable improvements across several individual requirements in the second Validation will result in suspension in accordance with the EITI Standard. Pursuant to the EITI Standard, Myanmar's MSG may request an extension of this timeframe, or request that Validation commences earlier than scheduled. The Board's decision followed a Validation that commenced on 1 July 2018. In accordance with the 2016 EITI Standard, an initial assessment was undertaken by the International Secretariat. The findings were reviewed by an Independent Validator, who submitted a draft Validation report to the MSG for comment. The MSG's comments on the report were taken into consideration by the independent Validator in finalising the Validation report and the independent Validator responded to the MSG's comments. Following representations from several stakeholders, in September 2019 the Validation Committee requested a review of the evidence related to civil society engagement. The Validation Committee recommended that the Board exercise its mandate to consider information subsequent to the commencement of Validation. The final decision was taken by the EITI Board.

2. Background

The Government of Myanmar committed to implement the EITI in 2012 and was accepted as an EITI Candidate in July 2014. The Validation process commenced on 1 July 2018. In accordance with the Validation procedures, an initial assessment [[English](#) | [Burmese](#)] was prepared by the International Secretariat and a draft Validation report was prepared by the Independent Validator [[English](#) | [Burmese](#) | [French](#)]. Comments from the MSG [[English](#)] were received on 12 February 2019. The Independent Validator reviewed the comments and responded to the MSG, before finalising the Validation report [[English](#) | [Burmese](#) | [French](#)].

Validation procedure

Validation Committee Paper 08-2 Validation of Myanmar

The initial assessment [[English](#) | [Burmese](#)] was submitted to the independent Validator for review on 10 December 2018. The Validator submitted a draft Validation report [[English](#) | [Burmese](#) | [French](#)] on 24 December 2018. Comments from the MSG [[English](#)], including comments and separate annexes [[English](#)] from the Myanmar Alliance for Transparency and Accountability (MATA), were submitted to the independent Validator on 14 February 2019. The independent Validator reviewed these documents, responded to the MSG [[English](#) | [Burmese](#)] and completed the final Validation report [[English](#) | [Burmese](#) | [French](#)] on 19 February 2019. On 23 April, the MATA coalition sent a letter [[English](#)] to the Validation Committee, which provided additional detail to the MATA comments included in the MSG's response to the draft Validation report. MATA further sent two additional letters 2nd letter [[English](#)] and 3rd letter [[English](#) | [French](#)] on 15 June and 7 August respectively after the Validator's report was finalised. The International Center for Not-for-Profit Law (ICNL) also submitted an analysis on Myanmar's Validation [[English](#) | [French](#)] on 13 August 2019. These letters were not reviewed by the independent Validator, as they were addressed to the Validation Committee subsequent to the completion of the independent Validator's work.

Validation Committee review

The Validation Committee reviewed the case on 6 February, 7 February, 27 February, 4 April, 10 April, 25 April and 23 May 2019. On 27 February, the Validation Committee mandated the International Secretariat to provide additional background information on allegations of restrictions on civil society space in relation to EITI implementation at the subnational level, highlighted in the MSG's comments on the draft Validation report and initial assessment. On 23 April, the MATA coalition sent a letter to the Validation Committee reiterating its position that civil society in Myanmar faces challenges regarding its engagement in the EITI process. At its 25 April teleconference, the Validation Committee mandated the International Secretariat to provide further updates on the documentation reviewed by the independent Validator and details of the allegations in MATA's letter. Without a recommendation from the Validation Committee, the Board proceeded to discuss Myanmar's Validation in Paris but no decision was taken.

The Secretariat conducted a mission in Myanmar on 12-16 August 2019 to meet with stakeholders and explain the next steps in the Validation process after the Board meeting in June. Prior to the mission, MATA sent a third letter to the Validation Committee emphasising its position that the assessment on Requirement 1.3 should be meaningful progress. The letter reiterates previous allegations on the existence of laws they perceive as restrictive of their participation in EITI with additional examples of how these laws have been applied. The letter also contains new allegations and arguments that have not been previously raised. The content of this letter was further discussed by MATA during their meeting with the Secretariat in Naypidaw. Subsequently, the Secretariat received a letter from the International Center for Not-for Profit Law (ICNL) with a review of the initial assessment.

Further review

On 18 September 2019 the Validation Committee requested that the International Secretariat review all of the information that had been presented to date with regards to civil society engagement. Having considered the available evidence, the Secretariat recommends that the Validation Committee exercises its mandate to consider information subsequent to the commencement of Validation and recommend to the Board that Requirement 1.3 be assessed as

“meaningful progress”.

The Secretariat’s assessment highlights two aspects of the EITI Civil Society Protocol relating to freedom of expression and freedom of association:

Expression: There is evidence that civil society’s ability to speak about contentious issues related to EITI implementation has been limited due to threats and fear of reprisal. The civil society protocol refers to: *“actual practice, including diverse stakeholder views or substantive evidence provided by independent third parties, indicates that self-censorship or self-imposed restriction by civil society representatives has taken place related to the EITI process due to fear of reprisal and whether such barriers have impacted civil society representatives’ dissemination of information and public comment on the EITI process.”*

Several challenges have been highlighted by civil society representatives engaged in the EITI process. They argue that while criticism of government and industry is possible, discussions of natural resource governance issues related to EITI Requirements tend to remain superficial due to self-censorship. Some civil society members consider that there are limitations to their ability to fully discuss the particulars of the military’s beneficial ownership of gemstone companies due to fear of retaliation if their analysis implicates specific individuals. This challenge is particularly evident in conflict areas where fear of reprisal is more pronounced. Consequently, these restrictions make it difficult for civil society to fulfil their role in examining the beneficial ownership of extractive companies, even in the light of documentation from other sources that many gemstone companies are owned by politically-exposed persons.

Civil society representatives expressed that they have avoided raising major issues regarding discrepancies in EITI Reports for fear that doing so would make them liable for prosecution under various laws. They argue that this has limited their ability to stimulate public debate.

There is also evidence of civil society’s inability to use EITI data for analysis due to threats of possible prosecution under the Official Secrets Act. A civil society representative who is engaged in the EITI process asked for information in an EITI related capacity on revenues from the sale of the government’s share of in-kind oil revenues with the intent of using this information for research. While the information was given to him, he was warned by a government official that the data is considered a state secret, implying that he could be prosecuted under the Official Secrets Act for publishing this information. Consequently, the civil society member refrained from using the data for fear of reprisal. Some civil society representatives also consider themselves restrained from asking for copies of extractive contracts for fear that the act of possessing copies of these contracts and using them for analysis could make them liable for prosecution under the Official Secrets Act.,.

In the International Secretariat’s view, the concerns regarding reprisal and self-censorship are both credible and clearly linked to the EITI process, given that they relate to civil society’s ability to conduct analysis of EITI data and express views related to EITI activities.

Association: There is evidence that there are constraints to civil society’s freedom to associate with other members within their constituency in subnational regions that are resource rich and where issues in the extractive sector are contentious and dominated by ethnic armed organisations. Civil society representatives have highlighted challenges regarding their ability to establish subnational units in conflict areas. Several civil society representatives consulted noted their fear of prosecution under the Unlawful Associations Act for assemblies in conflict-prone

areas where ethnic armed organizations operated. While the MSG's plan is to establish 15 EITI subnational units, only six have been established to date. Awareness-raising activities to form subnational units in these regions, as well as conducting EITI coordination meetings especially in Kayah, Shan and Mandalay, are restricted by the burdensome requirements for permit applications ahead of meetings. As a result, the establishment of subnational units which is mandated by a notification from the Union Minister of Planning and Finance dated 13 December 2017 has been delayed. Meetings aimed to disseminate findings of EITI Reports have also been restricted due to similar administrative burdens. In the Mandalay region, civil society organizations are required to pay fees considered exorbitant by civil society groups (40,000 MMK or USD 26) for conducting workshops.

The civil society protocol provisions on "association" require that civil society representatives are able to communicate and cooperate with each other regarding the EITI process. In the international secretariat's view, there is credible evidence of restrictions on civil society's ability to conduct EITI meetings and liaise with constituencies in their regions due to burdensome procedures for securing permits.

The dates of these incidents were not fully discussed in MATA's letters but it was clear from their explanation during consultations with the International Secretariat in August 2019 that the acts constituting self-censorship started before Validation commenced in July 2018 and are still ongoing. Civil society's complaints regarding securing permits for meetings have been raised in MSG meetings since 2017. A civil society representative explained that some of these incidents, specifically those relating to allegations at the local level, were not mentioned during the stakeholder consultations for Validation precisely because they were wary of the potential retaliation not just on them but on their fellow civil society representatives in conflict areas. Civil society representatives added during the consultation with the International Secretariat that the restrictions on civic space in relation to the EITI has deteriorated in the latter part of 2018 to 2019.

On [XX September], the Validation Committee agreed to recommend an overall assessment of "meaningful progress" in implementing the 2016 EITI Standard. Requirement 8.3.c of the EITI Standard states that:

- ii. Overall assessments. Pursuant to the Validation Process, the EITI Board will make an assessment of overall compliance with all requirements in the EITI Standard.
- ...
- iv. **Meaningful progress.** The country will be considered an EITI candidate and requested to undertake corrective actions until the second Validation.

The Validation Committee agreed to recommend a period of <18 months> to undertake the corrective actions. This recommendation takes into account that the challenges identified are relatively significant and seeks to align the Validation deadline with the timetable for Myanmar's upcoming EITI Reports.

Commented [IS1]: Subject to review by the Validation Committee.

3. Assessment card

The Validation Committee recommends the following assessment:

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

Legend to the assessment card

	No progress. All or nearly all aspects of the requirement remain outstanding and the broader objective of the requirement is not fulfilled.
	Inadequate progress. Significant aspects of the requirement have not been implemented and the broader objective of the requirement is far from fulfilled.
	Meaningful progress. Significant aspects of the requirement have been implemented and the broader objective of the requirement is being fulfilled.
	Satisfactory progress. All aspects of the requirement have been implemented and the broader objective of the requirement has been fulfilled.
	Beyond. The country has gone beyond the requirement.
	This requirement is only encouraged or recommended and should not be taken into account in assessing compliance.
	The MSG has demonstrated that this requirement is not applicable in the country.

4. Corrective actions

The EITI Board agreed the following corrective actions to be undertaken by Myanmar. Progress in addressing these corrective actions will be assessed in a second Validation commencing on **<date of Board decision +18 months>**.

1. In accordance with Requirement 1.2.a, Myanmar must ensure that companies particularly the military-affiliated companies, as well as oil and gas companies outside of the MSG are fully, actively and effectively engaged in the EITI process. If there are barriers to the participation of these companies, the government must, in accordance with Requirement 1.2.b ensure that there is an enabling environment for company participation with regard to relevant laws, regulations, and administrative rules as well as actual practice in implementation of the EITI.
2. In accordance with Requirement 1.3.c of the EITI Standard and the civil society protocol, the government must ensure that there are no obstacles to civil society participation in all aspects of the EITI process. Accordingly, the Government of Myanmar is required to ensure that there are no obstacles to civil society's ability to engage in public debate related to the EITI process and that civil society is able to express opinions about the EITI process without restraint, coercion or reprisal. The government is further required to ensure that mechanisms are in place to enable civil society to undertake dissemination of EITI data and outreach in all areas of the country, including subnational EITI implementation.
3. In accordance with Requirement 2.2.a.ii of the EITI Standard, Myanmar is required to disclose the technical and financial criteria used in awarding licenses in the mineral and gemstone sector. The MSG should also include a discussion of non-trivial deviations from the applicable legal and regulatory framework governing license awards

pursuant to Requirement 2.2.a.iv. Lastly, the MSG should clarify the rules on transfer of licenses, particularly whether it is allowed in the mineral sector. The MSG is encouraged to systematically disclose all information required by Requirement 2.2 of the Standard, in accordance with the level of detail required by the Standard.

4. In accordance with Requirement 2.3 of the EITI Standard, Myanmar is required to publicly disclose the following information that were missing the EITI Report: the coordinates of several ME3 blocks, the dates of application, awards and duration of all oil and gas and mining licenses, and the commodities for each oil and gas block. To strengthen implementation, Myanmar should ensure that license information as required under Requirement 2.3 of the Standard are disclosed through a public register as part of the government's routine and systematic disclosure of information.
5. In accordance with Requirement 2.6, Myanmar is required to disclose the details regarding the terms attached to the equity stake of all SOEs in extractive projects. It should also disclose the SOE's responsibility to cover expenses at various phases of the project cycle, including the details of payment of taxes in behalf of joint venture partners and miscellaneous revenues in the case of oil and gas. MOPF should also disclose the details of the loan guarantees it provided to SOEs as well as prevailing rules on retained earnings. Finally, Myanmar is required to clarify whether UMEHL and MEC are government- owned corporations. If they are, the MSG is required to engage them in the EITI process in accordance with Requirement 1.2, include them in the scope of the EITI reporting process and assess the comprehensiveness of its interests in extractive projects as disclosed in the MEITI Report. To strengthen implementation, the MSG is encouraged to consider examining the alleged miscellaneous revenues of MOGE.
6. In accordance with Requirement 3.2 of the EITI Standard, Myanmar is required to disclose production volume and value by commodity for jade and gems. To strengthen implementation, the MSG should consider including export data from transactions outside of the gems emporium in the scope of the EITI Report. Government is encouraged to regularly disclose this information through government platforms.
7. In accordance with Requirement 3.3 of the EITI Standard, Myanmar should disclose comprehensive data for export volumes and value for gems and jade, disaggregated by commodity. To strengthen implementation, the MSG should consider including export data from transactions outside of the gems emporium in the scope of the EITI Report. Government is encouraged to regularly disclose this information through government platforms.
8. In accordance with Requirement 4.2, Myanmar should categorically assess the materiality of in-kind payments for the three sectors. It should also be clarified in the next report whether there are in-kind payments for oil and gas. The sales of the state's share for oil and gas should be disclosed including the volumes sold and revenues received. For mining and gems, in-kind payments should be disaggregated by paying company to the SOE, and by buying company in the case of sales of the government's share. To strengthen implementation, the government is encouraged to systematically disclose data on on-kind revenues through government platforms.

9. In accordance with Requirement 4.5, government should ensure that all transfers from government to SOEs are comprehensively and publicly disclosed in government platforms. Myanmar should review the comprehensiveness of information disclosed regarding SOE transactions in view of what is revealed from other sources of information, including whether there are material transfers made between the SOE's other accounts to other entities.
10. In accordance with Requirement 5.1, Myanmar is required to provide further explanation regarding the extractive revenues that are not recorded in the national budget. The MSG should consider expanding the scope of EITI reporting to further examine the details of these Other Accounts, such as tracing the exact extractive sector revenues that go to these accounts and how these revenues are spent, as well as explaining the rules in maintaining these accounts.
11. In accordance with Requirement 6.1 of the EITI Standard, companies are required to disclose social expenditures when mandated by law or contract. Where such benefits are provided in-kind, it is required that companies disclose the nature and deemed value of the in-kind transaction. The beneficiaries and their functions should also be disclosed. Where possible, these payments should be reconciled. The companies are further encouraged to disclose discretionary social expenditures where material. The MSG is encouraged to develop a reporting process with a view to achieving a level of transparency commensurate with the disclosure of other payments.
12. In accordance with Requirement 6.2, Myanmar is required to include disclosures from SOE(s) on their quasi-fiscal expenditures including SOE(s) payments for social services, public infrastructure, fuel subsidies and national debt servicing, etc. outside of the national budgetary process. The multi-stakeholder group is required to develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams, and should include SOE subsidiaries and joint ventures.

The government and the MSG are encouraged to consider the other recommendations in the Validator's Report and the International Secretariat's initial assessment, and to document the MSG's responses to these recommendations in the next annual progress report.