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Validation of Myanmar

For decision For discussion For information

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The International Secretariat recommends that the Validation Committee recommends that the EITI Board agree 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>**.

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Supporting documentation

- Validation report [[English](#) | [Burmese](#) | [French](#)]
- Comments on the draft Validation Report by the MSG [[English](#)]
- Draft Validation report [[English](#) | [Burmese](#) | [French](#)].
- Initial assessment by the International Secretariat [[English](#) | [Burmese](#)].

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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

Draft Board Paper <i>for discussion</i> reviewed by the Validation Committee	6 February 2019
Validation Committee agreement on a Board Paper <i>for discussion</i>	7 February 2019
Draft Board Paper <i>for decision</i> reviewed by the Validation Committee	27 February 2019
Draft Board Paper <i>for decision</i> reviewed by the Validation	4 April 2019

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EITI Validation Committee Paper 75-2
Validation of Myanmar

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Committee	
Validation Committee agreement on a Board Paper for decision	TBC

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VALIDATION OF MYANMAR

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Proposed Board decision on the Validation of Myanmar

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

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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 lauds the MSG's accomplishments in ensuring effective multi-stakeholder oversight of EITI implementation and aligning EITI objectives with national priorities. 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 nonetheless encourages Myanmar to further improve public disclosures, particularly related to license management, 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), 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)*

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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. The final decision was taken by the EITI Board.

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 \[English | Burmese | French\].](#)

Deleted: Both papers were shared with the MSG for its feedback and comments are expected by 7 February 2019. The Independent Validator will then review the comments and respond to the MSG, before finalising the Validation report.

The Validation Committee reviewed the case on 6 February, [7 February](#), [27 February](#) and [4 April](#) 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.](#)

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[The Validation Guide requires the international secretariat, the Validator and the Board to assess adherence to the provisions of the Civil Society Protocol in relation to the EITI process and implementation. In assessing these provisions, the Board has been careful to make a distinction between activities related to the EITI process and those that are conducted beyond the scope of EITI implementation. In particular, provision 2.5 of the Civil Society Protocol has been validated in terms of civil society's ability to ensure that the EITI contributes to public debate. In Kazakhstan, for example, the Board decided that Requirement 1.3 should be assessed as "satisfactory progress" despite stakeholder views that there was some self-censorship in the broader civil society. The Board noted that civil society organisations were engaged fully, actively and effectively in all aspects of EITI implementation. In evaluating provision 2.5 of the Civil Society Protocol, the Board considered that the initial assessment and Validation report showed that civil society had sufficient access to opportunities and forums for engaging in public decision-making around the extractive sector and related to the environment for civil society. The Validation of the Philippines is similar in that Requirement 1.3 was assessed as "satisfactory progress" despite documented killings of anti-mining activists in Southern Mindanao, based on its assessment that the civil society constituency was able to contribute to public debate and influence public decision-making, despite these incidents.](#)

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[In the case of Myanmar, civil society representatives from the Myanmar Alliance for Transparency and Accountability \(MATA\), who are members of the MSG, alleged the following:](#)

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1. That on one occasion, the papers of a MATA member about a coal electric power station were seized by government authorities on the grounds of illegal publication. The documents were entitled "Burning the green future" and "Basic knowledge related with coal power station." In support of this allegation, MATA submitted a notarized affidavit explaining the facts of the case. There is no indication that the MATA member's public advocacy was related to disseminating findings of EITI Reports or other EITI-related outreach activities.

2. That the townships of Hpa-An and Loikaw have issued regulations requiring NGOs to secure prior approval from the state before conducting public activities. Copies of these regulations were submitted to the Validator by MATA. There is no indication that these regulations have been invoked to refuse authorisation for EITI-related outreach and dissemination activities in the townships of Hpa-An and Loikaw.

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It should be noted that MATA, through the EITI process, is able to contribute to discussions on natural resource governance and thus has access to public decision-making, as reflected in its participation in the formulation of the gemstone sector policy and its inputs to recommendations in EITI Reports. Considering the foregoing, the International Secretariat recommends that the Validator's assessment of "satisfactory progress" on Requirement 1.3 is maintained.

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[The Validation Committee reviewed the International Secretariat's update on the incidents related to civil society engagement at its 4 April 2019 teleconference and agreed TBC.]

Based on the findings above, the Validation Committee agreed to recommend the assessment card and corrective actions outlined below.

The 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 corrective actions. This recommendation takes into account that the challenges identified are significant and seeks to align the Validation deadline with the timetable for Myanmar's 2018 and 2019 EITI Reports.

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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)					

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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 requirements.
	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.

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. In accordance with requirement 8.3.c.i, the industry constituency should develop and disclose an action plan for addressing the deficiencies in company engagement documented in the initial assessment and Validator's report within three months of the Board's decision, i.e. by **<Board Decision + 3 months>**.
2. 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.
3. 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.

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4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.

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11. 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.