

**Mr. Jonas Moberg,**

***Head of the EITI Secretariat***

**Dear Mr. Moberg,**

The Multi-Stakeholder Group of Azerbaijan has reviewed the Validation report. Herewith, I would like to bring to your kind attention the MSG's official reaction on the report. I would like to ask you to submit the attached document to the Validation Committee for consideration.

Attachment: 8 pages

Yours sincerely,

**Shahmar Movsumov**

**Chairman of the MSG**

## Official opinion of Azerbaijan's MSG on Validation report of Azerbaijan prepared by SDSG, 9 October 2016

### Civil society engagement (#1.3):

Secretariat's initial assessment marks this requirement as a satisfactory progress, whereas the Independent Validator disagrees with this conclusion and finds it as a meaningful progress.

#### Expression:

The Validator provides few extractions from Secretariat's report (SR) and substantiate its opinion with these statements ignoring much more positive statements that the SR contains. We see a necessity to enumerate those positive sentences below:

- MSG meeting minutes document that CSO MSG representatives are able to freely express views on the environment and challenges for civil society in Azerbaijan.
- The minutes also confirm that civil society representatives are able to speak critically about the EITI Report and bring transparency and other technical issues of concern to the table.
- During the past year, some members of the Coalition have also talked about the EITI process and the challenges that civil society is facing in the media, either in response to media enquiries or on their own initiative. There is no evidence that any of the Coalition members have faced difficulties as a result of these activities.
- Evidence provided during the information gathering process shows that civil society representatives seem able to speak freely in public about the EITI process including for example during MSG meetings, EITI events including for the promulgation of EITI Reports, public events, in the media, etc. In some ways, civil society continues to push the boundaries in terms of commentary on what was previously considered sensitive issues.
- Although it is clear that there is a certain degree of self-censorship in Azerbaijan and that there are clearly several "no-go topics", none of the stakeholders consulted provided any

practical examples of self-censorship in relation to the EITI process or voiced concern that self-censorship was having an impact on the dissemination of information related to the EITI process.

- The civil society representatives consulted said that apart from one alternate CSO MSG member who is also a member of the international EITI Board, no civil society representative substantively involved in the EITI process had faced restrictions as a result of expressing views on the EITI process.

We consider it unfair to eliminate all abovementioned facts and stress again that civil society members face no any restriction or coercion vis-à-vis EITI.

Coming to the facts that are presented in the VR, we witnessed an incomplete research and one-sided approach that distorts the conclusion. We would like to go through all provided statements one-by-one:

*“Three Coalition members remain in exile for fear of being arrested.”*

This statement was taken from SR, but unfortunately the Validator eliminates the second part which clearly states: “Although the reasons for their prosecution is not directly related to their EITI activities”.

*Most EITI events “remain under some form of government control and are subject to government approvals.”*

The same situation was observed here. It seems the Validator gives less importance to the second part which says: “Although many civil society representatives reported that they openly expressed views on the situation for civil society as well as on natural resource governance issues and rarely faced any repercussions for doing so”

*Civil society representatives face a “certain fear of reprisal or intimidation” when expressing views on the situation for civil society as well as on natural resource governance issues.*

Corrective action a) states: “engage in public debate related to the EITI process and express opinions about the EITI process without restraint, coercion or reprisal”. It logically does not include “fear” to this requirement, as “fear” is a subjective issue and cannot be measured.

What is really matters is that Coalition members and CSOs do express their views on the EITI freely without any reprisal or coercion as the corrective action a) requires.

*“In the aftermath of the EITI Board decision on Azerbaijan in April 2015, an alternate CSO MSG member who is also a member of the EITI Board was portrayed in local media of being responsible for the downgrading of Azerbaijan and was accused of betrayal against the state.”*

The aforementioned article was published in [www.azerfax.az](http://www.azerfax.az). Firstly, the editor of this website is Nijat Daglar, a Coalition member, a former Council member and press secretary of the Coalition in 2007-2012. Secondly, pluralism is one of the first if not the first core element of any media (as the EITI promotes), thus the MSG considers this argument irrelevant.

*“There have been examples of civil society representatives substantively engaged in the EITI process that have faced intimidation because of views expressed in relation to the EITI process.”*

No any concrete examples are provided in both SR and VR. MSG firmly highlights again that none of the CSOs faced intimidation because of views expressed in relation to the EITI.

To recap, should the Validator investigated thoroughly all facts it could see that outreach activities done during 2015-2016 were more than previous years both in terms of number of events and their scope. MSG concludes that Validator's assessment of 1.3 is misleading and distorted.

#### Operation:

The MSG provided both orally and written the details of the progress on mentioned issues. Yes, some problems do existed with regard to civil society operations, but were gradually eliminated as a result of fruitful cooperation among parties. Most of the problems were resolved and the International Secretariat was informed about all developments. The details of activities done can be found in Azerbaijan's Corrective Action Plan.

## Work Plan (#1.4):

The VR states: “the country’s Work Plan does not explain the rationale behind these three stated objectives.”

Neither Standard nor corresponding corrective action includes that the rationale behind of defined objectives must be explained in the Work Plan. Furthermore, all three objectives are linked to national priorities and rationale for each objective was described in the document (paper was discussed in the MSG) sent to the Secretariat. The Validator had to review this document before coming to the conclusion.

With regards to activities on civil society, the MSG decided to include general directions to the Work Plan, as all details of planned actions are illustrated in the Corrective Action Plan which was added to the Progress Report.

## License allocations (#2.2):

The Validator marks this requirement as not applicable to Azerbaijan. It also claims that the discussion around this requirement focuses solely on PSAs. It is important to note that PSAs are the only legislative documents that regulate the extractive sectors and have a force of law. There is no any permits and concessions other than PSAs in Azerbaijan’s practice. Standard also states that “the term license in this context refers to any license, lease, title, permit, CONTRACT or concession by which the government confers on a company(ies) or individual(s) rights to explore or exploit oil, gas and/or mineral resources.” (2.3.a) PSAs signed by the government of Azerbaijan and relevant companies play abovementioned role and thus MSG disagrees that the license allocation is inapplicable to Azerbaijan.

## Register of licenses (#2.3):

*The VR states: “The Independent Administrator confirmed that there was no publicly available register of active PSAs and created one for purposes of the 2014 EITI Report. Thus, Azerbaijan had not maintained such a publicly available register”*

Yes, Azerbaijan did not have the practice of disclosing PSA details in a single register. However, the EITI brought about regular practice of disclosing PSA register in Azerbaijan. This register was prepared in close consultation with International Secretariat and by the time of Validation it

was already in public domain. Therefore, the MSG disagrees with the conclusion of the Validator that the "Azerbaijan had not maintain such a publicly available register". The local Secretariat has already sent letters to relevant government agencies with the purpose of updating the content of the register and it is expected that new PSAs will be added to the register.

### State participation (#2.6):

After the SR was out SOCAR reacted to some of the comments via e-mail and provided clear explanations. All discussions and comments will be included to the 2015 EITI Report. Thus, MSG believe that this requirement should be reviewed again.

### Data quality and assurance (#4.9):

The Independent Administrator's comment regarding this issue is provided below:

*There is misunderstanding on behalf of the Validator related to the Data Quality and Assurance section of the Report.*

*It should be noted that the EITI Report contains the Independent Reconcilers' Report and the following is outlined in the second paragraph of this section:*

- *"Except as described in the following paragraph, our examination was conducted in accordance with the International Standards on Auditing and, accordingly, included examining, on a test basis, evidence supporting the Statement of the Committee and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion."*

*The following paragraph is included in the section 1.2.Scope of Work of EITI Report.*

- *"We set out our findings in this report and associated annexes. The reconciliation procedures carried out were not designed to constitute an audit or review in accordance with International Standards on Auditing or International Standards on Review Engagements and, as a result, we do not express any assurance on the transactions beyond the explicit statements set out in this report."*

*We are specifically referring to the fact that there was not any audit works conducted on assessing the credibility of transactions indicated in Individual Report submitted by each Company. This does not mean that the overall Reconciliation process is not performed in accordance with ISA. Every figure for payments and revenues stated in the Individual Reports submitted to Independent Administrator is reconciled in accordance with ISA, and this is outlined both in Independent Reconcilers Report and associated opinion.*

*To sum up, we believe that the procedure related to data quality and assurance are carried out in accordance with the requirements of EITI Standard.*

### Comprehensive disclosure of taxes and revenues (#4.1):

*The MSG defines transactions as material where the “sum or volume exceeds zero.” No information is provided in the EITI Report, however, on the MSG’s rationale for this definition.*

The first sentence in itself is wrong. The EITI Report says:

*“Material revenue sources defined by the EITI Multi-stakeholder groups are as follows:*

- Oil production revenues in kind and in cash;*
  - Natural and associated gas production revenues in kind and in cash;*
  - Base and precious metals production revenues in kind and in cash;*
  - Profit tax;*
  - Signing and other bonuses;*
  - Acreage and transit fees 13; and*
  - Royalty, Value Added Tax, land tax, Property tax, price change and other taxes (excluding employee profit tax, contributions to the State Social Protection Fund and withholding tax). •*
- The extractive companies transfer the acreage fees, transit fees and bonuses to the State Oil Fund of Azerbaijan Republic;*
- The extractive companies transfer the natural and associated gas to the State Oil Company of Azerbaijan Republic; and*
  - The extractive companies transfer the taxes including (profit tax, VAT, land tax, property tax, price change and other taxes) to the Ministry of Taxes of the Republic of Azerbaijan.*

*Transfers to the Government of Azerbaijan from the MENTIONED revenue sources are considered material if their sum/volume exceeds zero (0)."*

The study to define material payments in the extractive sectors of Azerbaijan was conducted by the local Secretariat in 2011 and the results were presented in the MSG meeting. According to the documents from State Statistical Committee, State Customs Committee, Ministry of Labor and Social Protection of Population, Ministry of Taxes and other relevant agencies MSG concluded that abovementioned payments cover 99.9% of all extractive revenues. And materiality threshold for these revenue streams was determined as "0". The rest of the extractive revenues covers only 0,1% of total extractive revenues. Rational here is that the efforts and resources directed to the disclosure of these trivial revenue streams are more than the return of their disclosure. Since then every year the MSG reviews materiality of payments and if any of the MSG members requires detailed investigation again MSG shall task the local Secretariat to start surveys among relevant agencies.

The MSG minutes illustrates all discussions around materiality of extractive revenues. The MSG did not see any necessity to provide the details in the EITI Report.

#### Quasi-fiscal expenditures (#6.2):

This issue is under focus of the MSG. Quasi-fiscal expenditures were discussed in the recent MSG meeting and it was decided to appeal to International Secretariat to get relevant documents to analyze these expenditures and define a clear explanation. The issue will be further discussed in the next MSG meetings.

#### Public debate (#7.1):

It is undeniable that the civil society organizations are much closer to public and have quick access to outreach activities with population. Taking this into account as well as deciding that as an independent overseer of the EITI process the Coalition members can deliver more fair and clear picture of the process to the public, it was agreed that NGO members would be main actors in the public events. All the parties of the MSG reached the conclusion that directly involvement of EITI reporting entities to the public events can cause conflict of interests. However, both government and companies have been always supporting civil society

members and their events financially and participated in most of these activities. By doing so, the MSG did not want to limit NGO members and gave them the green light in EITI related events.

In addition to this, it is also important to note that the EITI Standard says that *“MSG is required to ensure that outreach events, whether organized by government, civil society or companies, are undertaken to spread awareness of and facilitate dialogue about the EITI across the country.”* As can be seen, the Standard neither specifies any party to undertake outreach activities nor does imply that all parties should organize these kind of events.

Moreover, the Validator should not overlook the fact that the EITI Standard was updated in the late February and the requirement on “a clear policy on the access, release and re-use of EITI data” was included to the Standard. Since then till July 1 the MSG had only 2 meetings with tough agendas which included priority issues. This issue is under MSG's attention and will be discussed in the next meetings. However, it is worth to highlight that there is an oral consensus within the MSG that the EITI data and press-releases are disclosed in the EITI's, Coalition's and Oil Fund's web-sites and are under an open license.

#### Review the outcomes and impact of EITI implementation (#7.4):

In addition to our comments on SR, we would like to highlight that outcomes and impact were discussed in the special working group (consisting of MSG representatives) on reporting. As a result of discussions two major impacts that all stakeholders agree were included into the Progress report 2015. The results were mainly based on wide discussions among range of stakeholders, opinions, public information in media and common sense.

We want to stress again that Azerbaijan cannot add anything new to this list. True core of the EITI is all about mutual understanding and cooperation among three important parties as well as transparency of extractive revenues. It is a fact that Azerbaijan has achieved both.