

Validation of GHANA
Validation Report
Sustainable Development Strategies Group (SDSG), Independent Validator
20 January 2017

1. BACKGROUND

Ghana is a West African country on the Gulf of Guinea, bordered by Côte d'Ivoire, Burkina Faso, and Togo. The country is the second largest producer of gold in Africa after South Africa, and also produces diamonds, magnesium, bauxite, limestone, and—since 2010—oil. Ghana has experienced steady economic growth of over 7% per year on average since 2005, with relatively high per capita growth.¹ Ghana's national level of poverty fell remarkably between 1992–2013 by more than half, from 56.5% to 24.%, including reductions of extreme poverty from 16.5% to 8.4%.² However, poverty persists and is growing in rural areas; poverty is now almost four times higher in rural areas than in urban areas (compared to twice as high in the 1990s).³ The extractives sector contributes substantially to economic growth in Ghana: in 2013, over 50% of foreign direct investment and 1.1% of direct employment in Ghana were attributed to the mining sector,⁴ and in 2014 the sector contributed 8% of GDP and 15% of domestic revenue collected by the Ghana Revenue Authority. However, oil production now surpasses mining receipts, comprising 75% of total extractive sector revenue (USD 1.3 billion) in 2014. This backdrop underscores the ongoing importance of the Extractive Industries Transparency Initiative (EITI) in Ghana.

Ghana committed to implement the EITI in 2003 and formed its first multi-stakeholder group (MSG), the National Steering Committee (NSC), in 2005. Ghana was accepted as an EITI Candidate in 2007 and was designated EITI Compliant in 2010, making Ghana the second country in Africa to achieve this status. The country was also the first of any country to cover the mining sector in EITI reporting, and in 2009 expanded coverage to include oil. Ghana EITI (GHEITI) has published 11 EITI Reports covering the years 2004–2014 and is currently preparing its 12th report, covering 2015.

The EITI Board agreed in June 2016 that Ghana's Validation against the 2016 EITI Standard should commence on 1 July 2016. Pursuant to the Validation Guide, the International Secretariat carried out the first phase of validation—initial data collection, stakeholder consultations, and preparation of their initial evaluation of progress against the EITI requirements (the "Initial Assessment"). SDSG was appointed as the independent Validator to evaluate whether the Secretariat's work was carried out in accordance with the Validation Guide. SDSG's principal responsibilities as Validator are to review and amend the Initial Assessment, as needed, and to summarize its independent review in this Validation Report for submission to the Board through the Validation Committee.

¹ UNICEF, University of Sussex, Ashesi, The Ghana Poverty and Inequality Report—2016, *available at* [https://www.unicef.org/ghana/Ghana_Poverty_and_Inequality_Analysis_FINAL_Match_2016\(1\).pdf](https://www.unicef.org/ghana/Ghana_Poverty_and_Inequality_Analysis_FINAL_Match_2016(1).pdf).

² *Id.*

³ *Id.*

⁴ The Ghana Chamber of Mines and International Council on Mining and Metals, Report: Mining in Ghana—What Future Can We Expect? (2015), *available at* <http://www.tabforestmines.com/wp-content/uploads/2015/10/Ghana-Chamber-of-Mines-report.pdf>.

- **Work Performed by the Independent Validator**

The Secretariat's Initial Assessment was transmitted to SDSG on 3 January 2017. Our Validation Team undertook this phase of the Validation process through: (1) In-depth review and marking up of the EITI Assessment by each team member; (2) Detailed review and comments by the Multi-Stakeholder Specialist of Requirements 1 and 7; (3) Detailed review and comments by the Financial Specialist of Requirements 2 through 6; (4) Overall review and drafting coordination by the Team Leader; (5) Review of comments from Ghana's NSC; (6) Consolidation of detailed comments on the mark up of the Initial Assessment; (7) Peer review of the draft mark up and Validation Report by an additional expert; and (8) Consolidation of reviews and finalization of this Validation Report.

The SDSG Validation Team received the NSC's comments on the International Secretariat's Initial Assessment on 13 January 2017. The comments, clarification, and supporting documentation were detailed and clearly organized. The NSC's comments underscore its commitment to continued and improved EITI implementation.

- **Comments on the Limitations of the Validation**

Ghana is among the 14 countries undergoing the EITI Validation process between the latter part of 2016 and early 2017. Compared to the first half of these countries, relatively more time was provided for the Validation Team to undertake this phase of the review process for Ghana. This provided the opportunity for further team discussions, review of the NSC's comments, and consideration of areas where the Validation Team's assessment diverged from that of the International Secretariat. Nevertheless, the time provided, in general, and the nature of this phase of the process do not readily accommodate further stakeholder outreach beyond the Secretariat, particularly when no requests for issues to be 'spot-checked' were received, and given that the independent Validator is not expected to duplicate data collection and consultation work completed by the Secretariat. Neither is it permitted to consider activities after 1 July 2016, per express directive of the Board. Notwithstanding these limitations, the Validation Team has carefully reviewed the Secretariat's Initial Assessment, the comments of the NSC, and applicable references to determine Ghana's level of progress against the requirements of the 2016 Standard.

- **Comments on the International Secretariat's Initial Assessment**

The initial data collection, stakeholder consultations, and drafting of the Initial Assessment were generally undertaken by the International Secretariat in accordance with the 2016 Validation Guide. This entailed a desk review of relevant documents from 21 June–20 August 2016, a country visit by a two-person team from the International Secretariat that conducted stakeholder consultations exclusively in the capital city of Accra on 22 – 26 August 2016 (we note that the International Secretariat's country visits typically utilize a three-person team, but we did not find that the smaller size of this team had any significant impacts), and production of the Initial Assessment. These consultations focused principally on stakeholders in the capital who are already familiar with the EITI, and while outreach beyond them was limited, it did include some stakeholders who are not represented on the NSC and are based outside of Accra. The Secretariat's team was identified by name, though it would be helpful to also indicate each member's level of familiarity or engagement with EITI in Ghana to confirm the appropriate balance in perspectives and experience.

2. GENERAL COMMENTS

- **Progress in EITI Implementation**

Ghana's NSC, formed in 2005, includes civil society, mining, and oil and gas representation, as well as wide representation by government agencies. As noted above, GHEITI has published 11 EITI Reports covering the years 2004–2014 and is currently preparing its 12th report, covering 2015. The 2004–2009 reports focus on the mining sector, while the 2010–2014 reports cover mining and oil and gas. GHEITI reporting has included issues beyond the requirements of the EITI Standard, such as subnational transfers and expenditures, local content, and the artisanal and small-scale mining (ASM) sector.

GHEITI has been a leader among implementing countries, and within Ghana on a national level, in building momentum for beneficial ownership transparency. GHEITI has also committed to participate in EITI efforts on transparency in commodity trading. However, there remains scope for improvement in GHEITI implementation, particularly to address gaps to meet requirements related to state participation, in-kind revenues, and transactions between state-owned enterprises (SOEs) and the government. As noted in the International Secretariat's Initial Assessment, GHEITI also needs to address gaps regarding licenses awarded, missing production and export data, and comprehensiveness of reconciliation. The GHEITI Bill, available in draft form at the time of the International Secretariat's Initial Assessment, would strengthen GHEITI through enforcing reporting requirements and institutionalising GHEITI. Further recommendations are elaborated in Section Four below.

- **Impact of EITI Implementation**

GHEITI has contributed to robust public debate regarding the extractives sector in Ghana. Stakeholders from all sectors have not only credited GHEITI with stimulating a productive public discourse, but also with building trust within the extractive sector, particularly between communities and companies at the local level. Government engagement in Ghana's NSC has advanced inter-agency dialogue and cooperation on EITI-related issues, and has also led to constructive dialogue and relationship-building between the government and stakeholders in industry and civil society sectors, both on national and subnational levels.

GHEITI has led to numerous concrete outcomes in the country, including increased scrutiny of timeliness and distribution of mineral royalties to local government, and monitoring of how mineral revenue is utilized at both national and subnational levels. GHEITI has contributed to enactment of a new Income Tax Act and development of guidelines for the utilization of mineral royalties at the national and subnational levels. Further follow-up on and implementation of outstanding recommendations from past GHEITI Reports will strengthen EITI implementation and outcomes.

- **The Independent Validator's Assessment of Compliance**

Figure 1 – Validator’s assessment

EITI Requirements		LEVEL OF PROGRESS					
		No Progress	Inadequate	Meaningful	Satisfactory	Beyond	Note
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)				←		1
	License allocations (#2.2)	Inadequate Documentation					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)						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	Revenue management & expenditures (#5.1)						
	Subnational transfers (#5.2)						
	Distribution of revenues (#5.3)						
Socio-economic contribution	Mandatory social expenditures (#6.1.a)						4
	Discretionary social expenditures (#6.1.b)						5
	SOE quasi-fiscal expenditures (#6.2)			←			6
	Economic contribution (#6.3)				←		7
Outcomes and impact	Public debate (#7.1)						
	Data accessibility (#7.2)						
	Follow up on recommendations (#7.3)						
	Outcomes/impact of implementation (#7.4)						

1-7: Please see Detailed Findings below.

3. DETAILED FINDINGS

- 1.1 **Government Engagement.** We agree that Ghana has made **SATISFACTORY** progress in meeting this provision.
- 1.2 **Company Engagement.** We agree that Ghana has made **SATISFACTORY** progress in meeting this provision.
- 1.3 **Civil Society Engagement.** We agree that Ghana has made **SATISFACTORY** progress in meeting this provision.
- 1.4 **MSG Governance.** We agree that Ghana has made **SATISFACTORY** progress in meeting this provision.
- 1.5 **Work Plan.** We agree that Ghana has made **SATISFACTORY** progress in meeting this provision.
- 2.1 **Legal Framework and Fiscal Regime.** We disagree that Ghana has made satisfactory progress in meeting this provision and instead find that its level of progress is **MEANINGFUL**. Provision 2.1 requires a summary of the level of fiscal devolution; the Initial Assessment finds that the "report makes no reference to fiscal devolution" (at least as to petroleum).
- 2.2 **License Allocations.** We disagree that Ghana has made satisfactory progress in meeting this provision and instead find the Initial Assessment does not document the facts necessary to make an assessment. The Initial Assessment does not document whether the technical and financial criteria for mining awards are disclosed in the EITI Report; confirmation that there were no 2014 transfers of oil and gas licenses is missing; there is no mention of whether consortium members are disclosed (oil and gas and mining); and there is no discussion of whether deviations as to oil and gas awards are disclosed.
- 2.3 **Register of Licenses.** We agree that Ghana has made **MEANINGFUL** progress in meeting this provision.
- 2.4 **Contract Disclosures.** Although we agree that, as a technical matter, Ghana has made **SATISFACTORY** progress in meeting this provision, this highlights the inadequacy of Provision 2.4, as written. Provision 2.4 requires a finding of satisfactory progress where a government states that it has a policy of zero transparency, yet such a policy clearly fails the broader goal of public disclosure of contracts.
- 2.5 **Beneficial Ownership.** This provision is not yet taken into account in the overall assessment of Ghana's compliance with the EITI Standard.
- 2.6 **State Participation.** Although we agree that Ghana has made **MEANINGFUL** progress in meeting this provision, this assessment highlights the huge gap between meaningful progress and inadequate progress, and the need for a change to the definition of meaningful progress. In order to find *meaningful progress*, in addition to showing that significant aspects of the requirement have been implemented, the assessment must demonstrate that "the broader objective of the requirement *is being* fulfilled." Yet a finding of *inadequate progress* must be supported by a finding that "the broader objective of the requirement *is far from* fulfilled." As

the initial assessment demonstrates, the EITI Report does not provide enough information regarding the ownership of Ghana National Petroleum Corporation (GNPC) subsidiaries and the "financial relationship between GNPC and the Government is not clearly explained," among other deficiencies. Therefore, it cannot be said that the broader objective—transparency regarding state participation—"is being fulfilled." Yet it would be more inaccurate to conclude that the objective "is far from being reached."

- 3.1 **Exploration Activities.** We agree that Ghana has made **SATISFACTORY** progress in meeting this provision.
- 3.2 **Production Data.** We agree that Ghana has made **MEANINGFUL** progress in meeting this provision.
- 3.3 **Export Data.** We agree that Ghana has made **MEANINGFUL** progress in meeting this provision.
- 4.1 **Comprehensiveness.** We agree that Ghana has made **MEANINGFUL** progress in meeting this provision.
- 4.2 **In-Kind Revenues.** We agree that Ghana has made **MEANINGFUL** progress in meeting this provision, but similar to our comment regarding Provision 2.6, a finding that the "oil/gas report fails to achieve transparency of important in-kind payments" is not consistent with an assessment that the broader goal—transparency regarding in-kind payments—is being fulfilled (i.e., an assessment of meaningful progress).
- 4.3 **Infrastructure Provisions and Barter Arrangements.** We disagree that Ghana has made meaningful progress in meeting this provision and instead find that this provision is **NOT APPLICABLE** to Ghana's reporting in 2014. The Master Facility Agreement does not constitute an agreement to provide goods, services, or infrastructure in exchange of Exploration & Production (E&P) concessions or physical delivery of oil or gas. There is no evidence of any infrastructure provisions and barter arrangements.
- 4.4 **Transportation Revenues.** We agree that this provision is **NOT APPLICABLE** to Ghana's reporting in 2014. However, this assessment highlights a problem in the wording of the 2016 Standard. Provision 4.4, unlike similar provisions, uses the term *expected* (not *must*) as its standard for the MSG's consideration of transportation revenues. According to the 2016 Standard, when the term *expected* is utilised, "the multi-stakeholder group [must] consider the issue, and document their discussions, rationale for disclosure/non-disclosure[,] and any barriers to disclosure" and the "Validation will consider and document the discussions by the multi-stakeholder group." The Initial Assessment does not document MSG discussions or rationales, nor does it appear that the MSG considered transportation revenues in the manner required by the wording of provision 4.4. Despite the flawed wording of the 2016 Standard, the assessment that a disclosure of transportation revenue was not applicable in 2014 seems appropriate.
- 4.5 **Transactions Involving State-Owned Enterprises.** We agree that Ghana has made **MEANINGFUL** progress in meeting this provision.
- 4.6 **Subnational Direct Payments.** We agree that Ghana has made **SATISFACTORY** progress in meeting this provision.

- 4.7 **Level of Disaggregation.** We agree that Ghana has made **SATISFACTORY** progress in meeting this provision.
- 4.8 **Data Timeliness.** We agree that Ghana has made **SATISFACTORY** progress in meeting this provision.
- 4.9 **Data Quality and Assurance.** We agree that Ghana has made **SATISFACTORY** progress in meeting this provision.
- 5.1 **Distribution of Extractive Industry Revenues.** We agree that Ghana has made **MEANINGFUL** progress in meeting this provision.
- 5.2 **Subnational Transfers.** We agree that Ghana has made **SATISFACTORY** progress in meeting this provision.
- 5.3 **Revenue Management and Expenditures.** This provision is not yet taken into account in the overall assessment of Ghana's compliance with the EITI Standard.
- 6.1 **Social Expenditures.** We disagree that Ghana has made satisfactory progress in meeting this provision and instead find that the provision is **NOT APPLICABLE**. The disclosure of voluntary social expenditures is encouraged, but not required. If there are no mandatory social expenditures, then this provision is not applicable. We note a broader issue for the EITI across the different countries: the interpretation and treatment of local content provisions as social expenditures should be analysed further and proper guidance provided to EITI countries.
- 6.2 **SOE Quasi-Fiscal Expenditures.** We disagree that Ghana has made meaningful progress in meeting this provision and instead find that its level of progress is **INADEQUATE**. The oil and gas report does not give a clear picture of GNPC finances and contains no recognition of the possible incidents of quasi-fiscal expenditures, when in reality, there appear to be such expenditures. The sizable expense by a GNPC subsidiary in the mining sector for road rehabilitation also casts doubt that would justify an open discussion.
- 6.3 **Contribution of the Extractive Sector to the Economy.** We disagree that Ghana has made satisfactory progress in meeting this provision and instead find that its level of progress is **MEANINGFUL**. The Initial Assessment does not document an estimate of informal sector activity, although ASM activity is discussed in other sections of the EITI Report and the Initial Assessment. Absent this information, we find that Ghana has made meaningful progress.
- 7.1 **Public Debate.** We agree that Ghana has made **SATISFACTORY** progress in meeting this provision.
- 7.2 **Data Accessibility.** Disclosure under this requirement is encouraged, not required, and thus is not taken into account in the overall assessment of compliance.
- 7.3 **Discrepancies and Recommendations from EITI Reports.** We agree that Ghana has made **SATISFACTORY** progress in meeting this provision.

7.4 **Outcomes and Impact of EITI Implementation on Natural Resource Governance.** We agree that Ghana has made **SATISFACTORY** progress in meeting this provision.

4. RECOMMENDATIONS

Following are the International Secretariat's overarching recommendations for improving EITI implementation in Ghana, with the Validation Team's modifications and supplements in italics.

- 4.1 *It is recommended that the NSC develop* a realistic timeline for finalising the GHEITI Bill. It is also recommended that the draft GHEITI Bill or any revised internal procedures of the NSC take the following issues raised by stakeholders into account: (a) although decisions are made by consensus, if they would at some point have to be made by voting, representatives from the same constituency might not agree to one vote; (b) considering adequate representation of interested stakeholders without increasing NSC membership to the extent that it becomes inefficient; (c) an alternate system or a mechanism for representation, which can also help ensure that membership of the NSC does not become too unwieldy; *and* (d) mechanisms allowing NSC representatives to consult with and reach out to their wider constituencies to allow for *wider* participation in the design and implementation of GHEITI. The NSC may also wish to consider practices related to re-election of NSC members.
- 4.2 While the NSC has developed a work plan with objectives that reflect the key concerns of stakeholders with regards to the management of the country's extractive resources, it is recommended that the NSC review the objectives for the next work plan to ensure that it fully encompasses the reality of the scope of GHEITI's work, which goes beyond the scope of the current work plan. This would help ensure that the activities and related costs are accurately reflected, *which* could be useful when raising funds.
- 4.3 It is recommended that civil society undertake a capacity building needs assessment and that actions to address civil society capacity constraints be implemented. This could help ensure that there are feedback mechanisms in place for civil society representatives not on the NSC. The NSC may also wish to consider ways in which the NSC and GHEITI Secretariat can provide support for civil society activities.
- 4.4 The NSC should ensure that the oil *and* gas sector's multiple fiscal regimes are coherently *presented* and their rationale explained in forthcoming GHEITI Reports.
- 4.5 Pending launch of the online licence registers/cadastrals, the NSC should provide for the disclosure of all elements required and encouraged by Provision #2.3 in forthcoming GHEITI Reports.
- 4.6 The NSC may wish to ask the government for a more affirmative policy statement and timeline on contract disclosure.
- 4.7 The NSC should describe in greater detail the transactions between GNPC and the government. The NSC should also seek to explain more clearly in future oil *and* gas reports the actual sequence of steps that GNPC follows in its own petroleum operations (lifting and marketing) as well as those it follows as *a conduit for* in-kind payments from companies to the government. The resulting narratives should be supported by disclosure and reconciliation of relevant

volumes, prices, and values. The NSC and stakeholders such as GNPC may wish to use the targeted efforts on commodity trading transparency to ensure that this information is made public in a way that is consistent and streamlined with other GNPC reporting.

- 4.8 The NSC should ensure that data under Provisions 3.2 and 3.3 are completely and accurately provided, *i.e.* production and export volumes and values, and state explicitly any assumptions about equality between production and exports, *with verification regarding the equality between production and exports.* The NSC should ensure that this data is included in forthcoming GHEITI Reports.
- 4.9 The Terms of Reference (*TOR*) for the Independent Administrator (*IA*) should be aligned with the Standard *TOR* for *IAs*, in accordance with the EITI Standard, as endorsed by the EITI Board. *The NSC should, for future reports, ensure that it specifically discusses and documents the TOR and selection of the IA.*
- 4.10 The MSG may wish to ensure that forthcoming reports provide information on the status of implementation of the *Western Corridor Gas Infrastructure Development Project* (WCGIDP).
- 4.11 Once production in new oil fields is initiated, the NSC may wish to consider whether the government receives material revenues from the transportation of gas.
- 4.12 Information on the distribution of revenues and expenditures would benefit from being *presented in a wider budgetary context.*
- 4.13 The NSC may want to be more alert to quasi-fiscal expenditures by SOEs.
- 4.14 While already being active *in* outreach, the NSC and the GHEITI Secretariat are encouraged to work more closely with the media and local civil society organisations (*CSOs*) in their dissemination activities, and may wish to consider the recommendations made by media representatives on how to make GHEITI Reports more accessible and engaging for media and the broader public. *In particular, GHEITI is encouraged to widely publish summary reports to share with media and in hard copy with civil society stakeholders, translated into local languages where necessary.*
- 4.15 The NSC is encouraged to maintain the open data portal and update it with the latest EITI data (2014), and to continue its work on making GHEITI Reports more accessible and machine readable.
- 4.16 The NSC should consider the outstanding recommendations from past GHEITI Reports and agree relevant and specific follow-up and implementation *measures.* If this has already been agreed, the NSC is encouraged to clearly document next steps, timelines for action points, and responsible parties to strengthen follow-up by relevant stakeholders.
- 4.17 Future Annual Progress Reports (*APRs*) could better reflect the progress made by GHEITI with regards to improved transparency and accountability in the extractive sector by *clarifying* links between the activities with key priorities and challenges from the sector. The NSC may also wish to consider consulting with wider stakeholders to include their views on GHEITI's progress *and impact.*

4.18 The NSC might wish to organise outreach and dissemination activities such as a roundtable or workshop to discuss the impact of GHEITI, key challenges, and areas of improvement, in light of the Scanteam impact assessment
