

Validation of KYRGYZ REPUBLIC
Validation Report
Sustainable Development Strategies Group (SDSG), Independent Validator
9 January 2017

1. BACKGROUND

The Kyrgyz Republic, among the first countries to commit to the EITI implementation, started producing EITI Reports in 2004 as part of the EITI pilot. Kyrgyz Republic became an EITI candidate country on 27 September 2007 and gained EITI Compliant status in March 2011 based on Validation against the 2009 EITI Rules. The EITI Board agreed in June 2016 that the Kyrgyz Republic'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.

- **Work Performed by the Independent Validator**

The Secretariat's Initial Assessment was transmitted to SDSG on 25 November 2016. 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) Consolidation of detailed comments on the mark up of the Initial Assessment; (6) Drafting of the Validation Report and peer review by additional expert; (7) Review of the country's Multistakeholder Group (MSG, also referred to as "Supervisory Board" (SB)) and National Secretariat Comments on the Initial Assessment; and (8) Consolidation of reviews and finalization of the Validation Report.

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

Compared with previous Validation Reports completed thus far in 2016, more time was provided for the Validation Team to undertake this phase of the process for the Kyrgyz Republic. This allowed for more thorough reviews by each team member, for further team discussions, peer review, and more opportunities to discuss areas where the Validation Team's assessment diverged from that of the International Secretariat. Nevertheless, the time provided and nature of this phase of the process do not readily accommodate further stakeholder outreach beyond the Secretariat, particularly when the MSG did not provide requests for issues to be 'spot-checked' and no comments from the country's multi-stakeholder group (MSG) 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 SB and National Secretariat, received 30 December 2016 and focused on 2.2, 2.3, 2.4, 2.5, 3.3, 4.3, 4.4, 4.6, 4.9, 5.2, and 6.1; and applicable references to determine the Kyrgyz Republic'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 (dates for this desk review are not provided in the Secretariat's Initial Assessment), a country visit by a three-person team from the Secretariat that conducted stakeholder consultations from 22–26 August 2016, and the production of the Initial

Assessment. It is unclear from the Secretariat’s Initial Assessment where the stakeholder consultations took place—whether they were in capital city of Bishkek only or also in other parts of the country. It appears that consultations focused principally on stakeholders in the capital who are already familiar with the EITI, and outreach beyond them was limited. 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 the Kyrgyz Republic to confirm the appropriate balance in perspectives and experience.

2. GENERAL COMMENTS

- **Progress in EITI Implementation**

As noted above, the Kyrgyz Republic was one of the first countries to implement the EITI. The Kyrgyz Republic’s first MSG was established in 2004 and was restructured in 2008 with the creation of a multi-stakeholder Supervisory Board (SB) tasked with overseeing EITI implementation. Government, industry, and civil society stakeholders are represented on the SB, with industry and civil society “reshuffling” their representatives in early 2016.

Adequate funding remains a challenge for EITI implementation in the Kyrgyz Republic. Another challenge is stakeholder engagement, which has gradually faded over time, but with some signs of renewed EITI efforts on stakeholder outreach and engagement in December 2015 and in the first half of 2016. Stakeholders reported that senior government officials have stopped attending meetings of the MSG, and instead have delegated this responsibility to lower ranking officials. Stakeholders also reported that civil society participation, while consistent, has been confined to a small group of non-governmental organizations (NGOs) that have not effectively extended engagement to a wider group of civil society stakeholders. Industry support for the EITI has declined rapidly as companies fail to see tangible outcomes and are frustrated by requirements to file similar reports with the government—companies do not want to duplicate efforts.

Continued and consistent engagement from the State Committee on Industry, Energy, and Subsoil (SCIES; formerly the State Agency for Geology and Mineral Resources or SAGMR) to make the EITI a priority and to streamline company reporting requirements will improve EITI implementation in the Kyrgyz Republic. The ongoing leadership and proactive support of Duyshenbek Zilaliev, Director of SCIES, as the EITI Champion and Chair of the SB are particularly important to the EITI’s success in and benefits to the Kyrgyz Republic. Likewise, consistent funding (noting the complete lack of funding from January 2014–September 2015, and from January 2016 to date), as well as broader and more consistent stakeholder engagement will strengthen EITI implementation and relevance in the Kyrgyz Republic.

- **Impact of EITI Implementation**

Although the EITI has been implemented in the Kyrgyz Republic for many years, and most stakeholders consulted by the International Secretariat agree that the EITI is a positive development for the Kyrgyz Republic, progress has been slow. Although EITI dissemination activities picked up in late 2015 and through the first half of 2016, the initiative has failed overall to gain widespread public awareness and contribute to public debate. The increased focus on stakeholder outreach and renewed vigour of the SB this year are encouraging, however, and with greater focus on addressing funding concerns, overcoming legal barriers to implementation, impact assessment, strategic planning, and follow-up on lessons learned, the EITI should move towards the SB’s objectives of improving natural resource governance; transparency and accountability of the government in managing the extractive sector; and attraction of foreign investment. In particular, the government and SB have an opportunity to boost EITI relevance throughout the country by using the EITI to increase transparency of regional development funds, the “social package,” and beneficial ownership. Such opportunities should be considered by the SB as ways to increase the EITI’s positive impacts in the Kyrgyz Republic. The Kyrgyz Republic has also attempted to extend EITI implementation to the fuel and energy sectors, and may wish to consider renewed efforts to extend EITI implementation to these sectors. In a country where mining makes up over 8% of GDP and almost half of total exports, there remain significant opportunities for the EITI to benefit all stakeholders

in the Kyrgyz Republic, promoting responsible management of the sector and its contributions to sustainable development. More detailed comments and recommendations are provided below.

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

Figure 1 – Validator’s assessment

EITI Requirements		LEVEL OF PROGRESS					Note
		No Progress	Inadequate	Meaningful	Satisfactory	Beyond	
Categories	Requirements						
1MSG oversight	Government engagement (#1.1)						
	Industry engagement (#1.2)				←		1
	Civil society engagement (#1.3)						
	MSG governance (#1.4)						
	Work plan (#1.5)				←		2
Licenses and contracts	Legal framework (#2.1)						
	License allocations (#2.2)						
	License register (#2.3)						
	Policy on contract disclosure (#2.4)			←			3
	Beneficial ownership (#2.5)						
	State participation (#2.6)						
Monitoring production	Exploration data (#3.1)						
	Production data (#3.2)			←			4
	Export data (#3.3)						
Revenue collection	Comprehensiveness (#4.1)				←		5
	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)				←		6
	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)						
	Discretionary social expenditures (#6.1.b)						
	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 & impact of implementation (#7.4)						

1-6: Please see Detailed Findings

3. DETAILED FINDINGS

- 1.1 **Government engagement.** We agree that Kyrgyz Republic has made **MEANINGFUL** progress overall, and agree that the government has not been fully, actively, and effectively engaged in the EITI process. Although SB meeting minutes show that representatives from government do participate and engage in meetings, and have provided data for EITI reports, government leadership in overcoming legal barriers and addressing funding issues could improve. The government is also encouraged to take a more active role in increasing stakeholder outreach and using EITI data to promote public debate.
- 1.2 **Company engagement.** We disagree that Kyrgyz Republic has made satisfactory progress in meeting this requirement and instead find its level of progress to be **MEANINGFUL**. While companies are participating in SB meetings and the 89 largest extractive companies (of the 136 companies that met the materiality threshold) voluntarily reported under the EITI Standard in 2014, it is difficult to find that companies are fully, actively, and effectively engaged in the EITI process. Company participation has been inconsistent and, according to the Institutional Set-Up Study, “with the exception of Kumtor and JSC Kyrgyzaltyn was nominal.” The International Secretariat’s Initial Assessment notes that lack of company access to SB membership has been a concern, along with concerns regarding lack of outreach and engagement. The Initial Assessment notes that this has led to misunderstanding of EITI among industry stakeholders, many of whom government and civil society note have been “against the EITI.” The Initial Assessment also notes that there is no evidence that industry has made use of wider networks to advocate for legislative reform related to the EITI, including those that would identify and address duplicative reporting requirements.
- 1.3 **Civil society engagement.** We agree that Kyrgyz Republic has made **SATISFACTORY** progress. However, we also agree that the recent attempts at legislative changes that would have a negative impact on civil society and the functioning of civil society organizations call for continuous monitoring of the civil society space. Challenges with funding issues, and its impacts on civil society outreach, engagement, and capacity building efforts in Bishkek, and particularly in regions outside Bishkek, should be addressed.
- 1.4 **MSG Governance.** We agree that Kyrgyz Republic has made **MEANINGFUL** progress.
- 1.5 **Work Plan.** We disagree that Kyrgyz Republic has made satisfactory progress in meeting this requirement, and instead find its level of progress to be **MEANINGFUL**. According to the International Secretariat’s Initial Assessment, while the work plan provides for capacity building activities, it does not outline specific plans; the work plan comments on the need to implement amendments to the Law on Subsoil Use, but does not outline plans for how this will be addressed; while the work plan mentions the need to implement recommendations from Validation, it does not outline the MSG’s plans for doing so; the work plan does not mention any plans to implement recommendations from EITI Reporting; and while some of the activities are costed, others only note “donors” or “government” but do not indicate who the donors are, nor does it indicate any fundraising activities or sources of technical assistance.
- 2.1 **Legal Framework and Fiscal Regime.** We agree that Kyrgyz Republic has made **SATISFACTORY** progress.
- 2.2 **License Allocations.** We agree that Kyrgyz Republic has made **MEANINGFUL** progress.
- 2.3 **Register of Licenses.** We agree that Kyrgyz Republic has made **MEANINGFUL** progress.

- 2.4 **Contract Disclosures.** We disagree that Kyrgyz Republic has made meaningful progress in meeting this requirement, and instead find its level of progress to be **INADEQUATE**. According to the International Secretariat’s Initial Assessment, the government’s policy regarding the public disclosure of contracts and licenses is not described in the 2013–14 EITI Report, and the report lacks the required references to relevant legal provisions and commentary on reforms underway. Although the report confirms that the license agreements that set forth the obligations of the license holders are not publicly available, we do not find that this statement alone constitutes meaningful progress with the broader objective of contract transparency.
- 2.5 **Beneficial Ownership.** We agree that while the Kyrgyz Republic is not yet required to address the provisions related to beneficial ownership, it participated in the EITI pilot exercise on this issue and has laid initial foundation for future progress.
- 2.6 **State Participation.** We agree that Kyrgyz Republic has made **INADEQUATE** progress.
- 3.1 **Exploration Activities.** We agree that Kyrgyz Republic has made **SATISFACTORY** progress.
- 3.2 **Production Data.** We disagree that Kyrgyz Republic has made meaningful progress in meeting this requirement, and instead find its level of progress to be **INADEQUATE**. According to the International Secretariat’s Initial Assessment, the 2013–14 EITI Report does not provide production value data, and the production volume data provided in the report is incomplete and is not disaggregated by region.
- 3.3 **Export Data.** We agree that Kyrgyz Republic has made **INADEQUATE** progress.
- 4.1 **Comprehensiveness.** We disagree that Kyrgyz Republic has made satisfactory progress in meeting this requirement, and instead find its level of progress to be **MEANINGFUL**. According to the International Secretariat’s Initial Assessment, the SB has not documented the options considered and its rationale for establishing the materiality definitions and reporting thresholds, nor does the 2013–14 EITI Report contain a description of each payment/revenue stream or disclose aggregate revenues received (material and non-material) for each of the agreed payment/revenue streams. Issues with regard to the reporting of SOE transactions, which are required by 4.1 to be included in the comprehensive reconciliation, are addressed in the International Secretariat’s initial assessment of provision 4.5.
- 4.2 **In-Kind Revenues.** We agree that this provision is **NOT APPLICABLE** to Kyrgyz Republic for the 2013-14 reporting period.
- 4.3 **Infrastructure Provisions and Barter Arrangements.** We agree that Kyrgyz Republic has made **NO PROGRESS**.
- 4.4 **Transportation Revenues.** We agree that Kyrgyz Republic has made **NO PROGRESS**.
- 4.5 **Transactions Involving SOEs.** We agree that Kyrgyz Republic has made **INADEQUATE** progress.
- 4.6 **Subnational Direct Payments.** We agree that Kyrgyz Republic has made **INADEQUATE** progress. Progress on this requirement will be critical in addressing long-standing community concerns over the impacts and benefits of mining at the local level.
- 4.7 **Level of Disaggregation.** We disagree that Kyrgyz Republic has made satisfactory progress in meeting this requirement, and instead find its level of progress to be **MEANINGFUL**. According to the International Secretariat’s Initial Assessment, the 2013–14 EITI Report does not disaggregate the data by subnational governmental entity. Given that none of the local

governmental entities reported in either 2013 or 2014 (see 4.1), and that progress in reporting subnational direct payments (4.6) and subnational transfers (5.2) are assessed as inadequate, we do not believe that the Kyrgyz Republic has made satisfactory progress in meeting a provision that requires disaggregation by government entity.

- 4.8 **Data timeliness.** We agree that Kyrgyz Republic has made **SATISFACTORY** progress.
- 4.9 **Data Quality and Assurance.** We agree that Kyrgyz Republic has made **INADEQUATE** progress.
- 5.1 **Distribution of Extractive Industry Revenues.** We agree that Kyrgyz Republic has made **SATISFACTORY** progress.
- 5.2 **Subnational Transfers.** We agree that Kyrgyz Republic has made **INADEQUATE** progress. Similarly with Requirement 4.7, progress on this requirement will be critical in addressing long-standing community concerns over the impacts and benefits of mining at the local level.
- 5.3 **Revenue management and expenditures.** Disclosure under this requirement is encouraged and is thus not taken into account in the overall assessment of compliance.
- 6.1 **Social Expenditures.** We agree that Kyrgyz Republic has made **INADEQUATE** progress.
- 6.2 **SOE Quasi-fiscal expenditures.** We agree that Kyrgyz Republic has made **NO PROGRESS**.
- 6.3 **Contribution of the Extractive Sector to the Economy.** We agree that Kyrgyz Republic has made **MEANINGFUL** progress.
- 7.1 **Public Debate.** We agree that Kyrgyz Republic has made **MEANINGFUL** progress. We note that the dissemination activities carried out in December 2015 and in the first half of 2016 are commendable, and such efforts should continue and expand to ensure that the EITI contributes to public debate.
- 7.2 **Data Accessibility.** Disclosure under this requirement is encouraged and not required, and is thus not taken into account in the overall assessment of compliance.
- 7.3 **Discrepancies and Recommendations from EITI Reports.** We agree that Kyrgyz Republic has made **INADEQUATE** progress.
- 7.4 **Outcomes and Impact of EITI Implementation on NR Governance.** We agree that Kyrgyz Republic has made **MEANINGFUL** progress.

4. RECOMMENDATIONS

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

- 4.1 *The SB is encouraged to take an active role in overcoming legal barriers that may impact EITI reporting.*
- 4.2 *It is recommended that the SB take a more active role in increasing stakeholder outreach, particularly in the regions, and make use of EITI data to promote public debate.*

- 4.3 The SB is encouraged to entrench extractive sector transparency in government systems, and take steps to move towards online EITI reporting based on the routine disclosures provided by relevant government agencies and companies. It is recommended that the SB undertakes a feasibility study to identify what information required to be disclosed under the EITI Standard is already publicly available and what information is not yet routinely disclosed. Opportunities for providing more EITI data in open data formats could also be explored.
- 4.4 *The SB should discuss and document the rationale for the options considered in defining and establishing the threshold for materiality. This discussion should be reflected in the EITI Report.*
- 4.5 *The SB should discuss and develop programs to build the capacity of local governments and local SBs to monitor and report on amounts remitted to regional or local development funds. Programs should also be developed for local governments to strengthen reporting and implementing EITI at the local level.*
- 4.6 *The SB is encouraged to discuss and develop programs to strengthen the capacity of local communities to monitor social expenditures, support financial literacy, and implement EITI at the local level.*
- 4.7 While considering the feasibility of mainstreamed disclosures and in preparing for the next EITI Report, it is recommended that the SB review the data collection procedures.
- 4.8 *The SB and the government are strongly encouraged to explore further the management and expenditures of the regional development funds as well as the social package. Given long-standing grievances over mining at the local level, it is critical that the government develops and legally establishes mechanisms to disclose how much has been transferred to a regional development fund, including the source of the transferred amount and basis for its calculation.*
- 4.9 *The SB is encouraged to work with local governments which are, in turn, strongly encouraged to likewise establish local disclosure practices and mechanisms that publicize sub-national direct payments from companies, confirmation of receipt of funds from the central government to a relevant regional development fund, as well as the proposed uses and actual expenditures of these funds.*
- 4.10 The SB should consider whether to take a more active role in developing recommendations from EITI Reports, and agree relevant follow-up and implementation.
- 4.11 KEITI may wish to consider undertaking an impact assessment, with a view to identifying opportunities to increase impact. This could also include exploring whether to extend EITI disclosures to other areas of national priority and interest, including for example development funds expenditures, beneficial ownership, contract transparency, and SOE governance.
- 4.12 The SB should discuss and secure sustainable funding model for the EITI implementation in terms of the national secretariat functioning and preparation of the reports. This may include partial government funding and diversified donor support.
