

EITI (Extractive Industries Transparency Initiative) in Kazakhstan

June 2007- February 2008

Report of the Coalition of Kazakh Nongovernmental Organizations “Oil Revenues - Under Public Oversight!” on the implementation progress of EITI in Kazakhstan

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The publication of this report was funded by the Soros Foundation – Kazakhstan

Contents of this publication reflect viewpoints of its authors that do not necessarily coincide with the viewpoint of the Soros Foundation – Kazakhstan

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Introduction

«Oil Revenues - Under Public Oversight!» Coalition was established in June 2004 by a few nongovernmental organizations of Kazakhstan. Today the coalition consolidates about 70 organizations from all regions of Kazakhstan. Thus, the Coalition is a mighty mouthpiece of a civil society which appeals to the government of Kazakhstan and extractive companies for the greater transparency. Today the coalition membership is developed to the utmost in Western and Eastern regions of Kazakhstan. These regions are known as the ones where extractive companies of oil and gas as well as of mining sectors are concentrated to a greater extent.

At the heart of the coalition activities there is an idea of a society's right to be informed about revenues from the extractive industry as well as an idea of participating in the process of distribution of these incomes through their elected representatives. During the whole term of its activities the Coalition constantly appeals to the Government and extractive companies with a call for active and valid participation in the implementation of EITI in Kazakhstan.

The Coalition is not a legal entity; it is an loose association of Kazakhstani nongovernmental organizations. Such a flexible structure enables Coalition to respond promptly to new challenges in the process of EITI implementation in Kazakhstan, to adjust aims, tasks and methods of the Coalition correspondingly to achieve a maximum effect.

In June 2007, the Coalition published its first report called «Two years of EITI implementation in Kazakhstan: conclusions and recommendations», which covered a period as of July 2005, when it was officially announced that Kazakhstan joined EITI, till May 2007.

The purpose of that report was to attract attention to the difficulties of EITI implementation in Kazakhstan. By signing up to EITI, the Government of Kazakhstan took certain obligations. One of such obligations was to produce the first National EITI report on payments of extractive companies and also on the revenues received by the state from the extractive industry. However, within two years after the sign-up implementation in Kazakhstan encountered a lot of obstacles and the government and other stakeholders should undertake a series of measures to tackle these problems.

The coalition report evoked a deep public resonance. One of the significant results of the publication and presentation of the report was a meeting of the Coalition representatives with Karim Massimov, a Prime Minister of Kazakhstan, which took place on July 12, 2007 and was devoted to preliminary results of EITI implementation in Kazakhstan.

During the meeting the Prime Minister gave a series of direct commissions to the Ministries of Justice, Energy, and Information and to some others departments, which were involved in the EITI implementation process:

1. The Ministry of Energy and Mineral Resources was to announce a tender to select an auditing company to do reconciliation of data in August 2007;
2. It was decided that recommendations of NGOs concerning review of legislation, improvement of reporting templates, development of the new procedures for the National Stakeholders' Council are to be considered in the framework of the National Stakeholders' Council work;
3. The Ministry of Economy and Mineral Resources was to continue working with extractive companies as to their joining EITI.
4. The Ministry of Economy and Mineral Resources together with the Ministry of Economy and Budget Planning was to increase the limit of the staff members of

the Ministry of Energy and Mineral Resources to accommodate three additional staff units for the EITI secretariat.

5. National Company «KazMunaiGaz» was to work out an issue of «Tengizshevroil»'s signing up to EITI.
6. The Republic's Budget Commission was to provide funds in the republican budget for 2008 for implementation of EITI.
7. The Ministry of Information was to produce a plan of raising public awareness about EITI.

NGO Coalition «Oil Revenues - Under Public Oversight!» expressed satisfaction with the fact that EITI implementation was taken under personal control of the Prime Minister. From their part, Coalition members decided to monitor implementation of these important decisions.

Thus, inquiries have been sent to the respective ministries with the purpose of ascertaining the level of implementation of these decisions and commissions by the Prime Minister.

Unfortunately, the Coalition has not received any feedback to its inquiries so far, and the actual state of affairs with regard to the implementation of EITI shows that not all commissions of a Prime Minister have been fulfilled by now:

- «Tengizshevroil» Ltd., being one of the biggest tax-payers in Kazakhstan, has not joined EITI implementation so far;
- On the whole, less than a third (97) out of nearly 300 (296) extractive companies have joined EITI;
- Recommendations of the Coalition aimed at bringing legislation of Kazakhstan in compliance with the international principles and criteria of EITI have not been considered yet;
- The funds in the republican budget of 2008 for EITI implementation have not been fixed in full; thus, capacity building arrangements, stipulated for by a Memorandum between the Government of RK and the World Bank as of 05.12.2006, as well as information arrangements, remain outstanding;
- Ministry of Information has not produced a plan for raising public awareness about EITI.

Failure to fulfill Prime Minister's commissions as well as failure to carry out international commitments as to EITI implementation in Kazakhstan make members of the Coalition anxious about the future of this initiative in Kazakhstan.

The present report will focus on the EITI implementation process in Kazakhstan from June 2007 to February 2008.

Chapter I: Comments on the first National EITI report in Kazakhstan

About participation in the preparation of the first National EITI report.

Coalition developed recommendations regarding reporting templates and presented them to members of the National Stakeholders Council. In spite of the fact that not all of these recommendations were taken into consideration when the final version of the template was shaped, the recommendations of the Coalition have laid the foundation for their further advancement.

Besides, the difficulties were made for the solution of this task by the imperfection of Kazakhstani legislation with regard to the provision with a right to information access and by the imperfection of Memorandum of Understanding.

At the next stage an auditing company was appointed with the purpose of reconciliation of companies' and government's reports.

Whereas the Memorandum of Understanding in force was imperfect and confined a choice of an auditing company, an appointment process of such a company was delayed: no applications from auditing companies were received when the bids for the implementation of verification had been announced by the government in the second half of 2007. As a result, stakeholders reached an agreement to alter Memorandum of Understanding in the near future. Meanwhile, for the implementation of verification and for the preparation of the first report «Deloitte» Ltd., an auditing company, was chosen.

Then at the meeting of the National Stakeholders Council the following was done:

- reporting templates and requirements specification for the data verification were finally coordinated with the auditing company;
- oil-production enterprises, that had to provide information on the payments remitted by them to the budget during 2005, were determined;
- a commission was given to the Ministry of Finance to provide the data on the payments received from companies;
- on termination of the work on the data verification by the auditing company, there was reviewed a draft version of the report which included a number of proposals made by Coalition representatives as to its more precise definition and correction.

On the whole, the preparation of the first EITI report revealed the following problems with EITI implementation in Kazakhstan:

- the imperfection of the legislation in the Republic of Kazakhstan, including tax legislation, budget legislation, acts on access to information, laws of subsurface use and others.
- the imperfection of reporting templates which lies in insufficient data completeness and transparency, in the lack of confirmation with regard to the adequacy of the data provided by the government, and also the imperfection of registration and reporting methodologies in Kazakhstan both on the whole and within the limits of EITI;
- a low level of awareness as to the principles of sustainable development of managers of extractive companies and regional authorities, the lack of distinct political liberty aimed at the implementation of these principles at the level of oblasts, cities and regions of Kazakhstan, and also aimed at their dissemination to all extractive companies;
- lack of mechanisms of social control over companies and state activities, and also lack of interaction between public organizations and state structures, on the whole - lack of mechanisms of public management of state affairs.

The first EITI report was presented to the members of the National Stakeholders Council in December 2007. The Coalition then recommended:

- to summarize selectively sums of discrepancies: in the event that a company and government have carried further the same payment on various assets, it is necessary to sum up a difference per these assets taking into consideration a sign, «+» or «-». In all other cases it is necessary to summarize absolute values of discrepancies, i.e. without taking the sign into consideration. When this method is used, fundamentally

different data on an overall rate of the discrepancies between the Governmental reports and the reports of the extractive companies are obtained. Thus, in our opinion, a sum total of the discrepancies in the first report is from 4 to 8 billion tenge;

- to convert the company data on dollar payments at an actual exchange rate and to indicate sum totals of the remittances in the total column. When payment data were cited to auditors, the data from some companies were cited in US dollars, while revenues from these companies are taken into account in tenge, and it, in its part, hampers a process of the data comparison.

A final report was presented by the Ministry of Energy and Mineral Resources at the time of preparation for the conference, which was conducted by the Ministry together with the World Bank in Kazakhstan. As it turned out, «Deloitte», the auditing company that was preparing the first report, left the remarks of the Coalition out of account.

Range of discrepancies between the data provided by the companies and the Government

«Deloitte» company cited in its report the discrepancies under the following items:

1. The discrepancies between companies' payments and Governmental revenues in tenge are equal to 57 billion KZT in favour of the Government.
2. The discrepancies between companies' payments and Governmental revenues in US dollars are equal to 423 million USD in favour of the companies.
3. If dollars are converted at the rate into tenge¹, the difference goes down to (-1 billion 117 million tenge).

Table 1. Basic resultant figures of Deloitte's report and conversion of dollar revenues into tenge.

Payments of companies in tenge, thousand tenge	Payments of companies in dollars, thousand dollars	Revenues to the Government, thousand tenge	Difference in tenge, thousand tenge	Difference in \$, thousand dollars	Total difference, thousand tenge
287,796,291	423,483	345,186,404	-57,390,113	423483	
	If to convert into tenge at the rate 1\$=132.88 thousand tenge			If to convert into tenge at the rate 1\$=132.88 thousand tenge	The difference has gone down ↓
287,796,291	56,272,421.04	345,186,404	-57,390,113	56272,421.04	-1,117,691.96

In this case with the breakdown according to kinds of payments a picture looks as follows:

1. Maximum difference is observed according to the "Special payments of subsurface users" clause (-6.8 billion tenge);
2. The second place is occupied by the "Payments to the State" - +6.5 billion tenge, which include payments to the Road fund, Obligatory Medical Insurance Fund, State Social Insurance Fund and others as per the previous tax structure. These revenues per se can actually be referred to the current social tax. Then, «Taxes, -2.1 billion tenge» section should turn into pluses - +4.4 billion tenge;
3. The third place is occupied by customs payments +0.7 billion tenge;
4. The fourth place is occupied by other compulsory payments - +0.4 billion tenge.

¹ An average annual exchange rate of US dollar against tenge was 132.88 tenge for 1 US dollar in 2005, according to the National Bank of Kazakhstan.

According to the report it is obvious that the companies pay less Special payments of subsurface users than the Government receives (minus sign) (-6.8 billion tenge) and pay more taxes than the Government receives. It is quite a strange situation, whereas «Deloitte» in its report provides an explanation only for the difference of 1.7 billion tenge and for a few million else, while the rest 5 billion remain unaccountable. At the same time with regard to the taxes (if to take into consideration Assessments to budget under old contracts), a capital contribution to the difference is contributed by a Corporate income-tax (CIT) and Social tax – approximately 2 billion tenge with a positive sign, i.e. the companies pay more than the Government receives.

The inconsistency between the payments and revenues from the point of view of common sense is incomprehensible and hard to explain, but what is more strange is how differently alphanumeric sums can be inter-accounted. It is equivalent to a case when we would liquidate debts for heating by advance payments for a phone. Actually, discrepancies are to be computed modulo, i.e. regardless of a sign.

Namely that is why the Coalition offers to consider the discrepancies to be a summation of the discrepancies without taking a sign into consideration, but the discrepancies are not regarded as an inter-set-off of the payments that are not connected with each other. In this case a sum of discrepancies will be equal to 26 billion tenge.

Using explanations of «Deloitte» company, it was possible to make corrections to the lines with regard to a social tax, to an excess profits duty, to customs payments and assessments to the budget (only those lines were taken which included numerations in billions in order not to hamper perception), as a result the difference increased from -1.1 billion tenge to +4.7 billion tenge. At the same time the difference «per module» came down from 26 billion tenge to 8.4 billion tenge.

Thus, one could think that a difference from 4 to 8 billion tenge is being observed. Taking into consideration the fact that only a third of the companies has presented their reports (97 out of 296), these figures can be multiplied by 3 with certainty, that is there are discrepancies between reporting of the companies and of the Government starting from **12 to 24 billion tenge**.

Open issues

On the one hand, the Coalition welcomes publication of the first report within EITI. This undoubtedly important event has become a distinct signal to the world community – the signal of a consistent support given to EITI by the Government of Kazakhstan as well as by extractive companies, and it has also signified the beginning of a new stage in EITI implementation in our country.

On the other hand, we would like to express our concern about inconsistency of the first report with all EITI criteria and to pay attention of all stakeholders to a number of important issues that remain open after the publication of the first EITI report:

1. We are perplexed about significant differences between a draft report and a final one, with regard to the explanation of the discrepancies, in particular as to a corporate income tax:

The draft version interpreted the divergence as to this tax by reflection by the companies and the Government of one and the same payment in different lines of the report on this tax, but in the final version this divergence was explained by the fact that the companies did not include in their reports a set-off between a corporate income tax and other taxes,

including royalty and value added tax. The final report did not mention a previously mentioned divergence to the amount of 3,29 million tenge as to the corporate income tax, under which there is currently a legal controversy between Ministry of Finance of RK and one of the companies.

These **discrepancies are not eliminated and substantiated** by «Deloitte» company. As a result, the report which should be «comprehensible and comprehensive», in accordance with EITI criteria, in fact needs to be explained.

2. In our opinion, this report does not also correspond with the first criterion of EITI and cannot be considered all-embracing in view of the fact that **there are no specific data in it**. Thus, for example, the following is indicated in the report:

- «other dues and payments to the budget», at that it is not disclosed which ones in particular; also, an amount of receipts with regard to each of them separately is not indicated;
- «general reasons», at that all the rest reasons are not mentioned;
- «repayments that are not included in the report», at that the sum which is not included in the report is omitted, and reasons for that are not indicated;

In the «Common causes of the discrepancies between the reports on payments/revenues drawn up by the Companies and the Government» section of the report a court examination between one of the companies and the Government is mentioned, at the same time it is indicated that the Government did not accept the payment (it is not pointed out what tax it was) made by the company. The fact that the transferred payment is unaccepted by the Government is quite bewildering. In this case **where did the amount transferred by the company go?** This question is not provided with an answer by auditors' report.

Besides, the discrepancies provoked by various reasons in most clauses of the report are generalized without indication of amounts of discrepancies on account of every separate reason.

3. Conformity of independent accountants' report with the actual state of affairs with regard to payments/revenues to the budget arouses a question for the following reasons:

- In the preamble to the report it is said by the auditors: «Our work did not extend to reviewing all payments/allocations received by the Government that were provided by the Companies and the Government. If payments/allocations were made by the Companies but omitted from both the Companies' and Government's submissions, our work was insufficient to detect them». Thus, originally the auditors were subject to such conditions when **they could not bring out all payments effected by the companies to the Government of RK**. The question emerges: Can such audit be regarded as comprehensive?
- In the report of independent accountants **methodology of performance of the inspection is not indicated**, in particular in what cases, according to what criteria (when inspecting the discrepancies by way of confirmations of various data presentation) warrants for payment on disbursements of the companies, personal accounts of the companies presented by the Government were audited, and in what cases independent auditors were satisfied with letters of explanation presented by the Government and Companies. A question emerges as to why the auditors were satisfied with the letters and did not audit the data of business accounting of the

companies in full by way of the data comparison with warrants for payment and personal accounts. Both the letters of the Government and of the Companies are not vouchers for payments/tax revenues and for other compulsory payments to the budget.

4. We regret that **the data on the disbursements of the extractive companies and receipts from them were presented in an aggregated form**, without details on each company taken separately. Though data publication along with the marking-out per each company taken separately is not a mandatory requirement of EITI, **many of the countries, including Mongolia, Nigeria and Ghana, have reached a decision to publish disaggregated data**. In our opinion, exactly such form of information disclosure corresponds with the first EITI's criterion relative to the report being comprehensible.
5. From the report **it is not clear what companies have presented pre-audited data to «Deloitte» company**. There is no doubt that the presentation of the pre-verified data is very important for gaining the confidence of the community in the published information and ensures report adequacy in accordance with the second EITI's criterion.
6. In «Deloitte»'s report it is mentioned that twenty four companies presented revised reports with adjustments as to the effected payments/revenues. The Government also presented the revised report with adjustments as to the effected payments/revenues. It is bewildering that **there is such a considerable number of technical discrepancies in the revised reports** while a sufficiently simple form of the report presentation has been used.
7. We find it important to get public **explanations from a governing body of «MangistauMunaiGaz» JSC**, which signed a Memorandum of Understanding on EITI but which, at the same time, has not authorized the Government to present its data to «Deloitte», as it is required by the report.
8. **There are no responses to main, in our opinion, questions** in the report of «Deloitte» company:
 - what discrepancy is established on the whole in the report?
 - what reasons for the discrepancies can be considered to be explained ones?
 - what reasons for the discrepancies have not received an explanation?

Taking the aforesaid into consideration, NGO Coalition «Oil Revenues - Under Public Oversight!» declares that the presented **First National EITI report in Kazakhstan cannot be regarded as the one corresponding with EITI's criteria in full measure**. On account of that, we cannot accept this report until explanations as to points at issue are received, as well as a clear answer to the previously mentioned questions is obtained. Our Coalition intends to press all stakeholders to take measures for avoidance of similar misunderstandings when preparing the second EITI National report.

Chapter II: Reaching consistence of EITI implementation process in Kazakhstan with the validation criteria

Participants of the international EITI conference in Oslo in October 2006 accepted a recommendation of the International Advisory Group (IAG) with regard to the application of the mechanism of a regular independent validation of the progress attained by the countries supporting this initiative.

In 2007 International Executive Committee of EITI laid the foundation for the implementation of validation, having defined criteria for a choice of an independent validator and having approved requirements specification for the implementation of validation. There was also a tender amongst interested organizations specializing in appraisal; also there was pre-validation of a correspondence of the countries which had signed up to EITI, with the four basic criteria².

It is assumed that the countries that have gone through pre-validation will carry out validation by the middle of 2008.

The process of validation and indicators for appraisal are described in detail in a Validation Guide produced by IAG. This guide is a supplement to the IAG Report and it is possible to get familiarized with its e-text on the following website: www.eitransparency.org. In 2007 Soros-Kazakhstan Fund awarded «Alshy» fund with a grant to translate the IAG report into the Kazakh language.

For the aims of the current report it is important to remember the principles that have been assumed as a basis of validation:

- Focus exclusively on EITI.
- Validator should take into account specifics of the country.
- It is a multistakeholder process.
- A validation aims to make recommendations on EITI implementation process, and not to criticize a country.
- Judging by the results of validation, countries are accepted as either **candidate countries** (a progress attained in the course of EITI implementation is acknowledged), or **compliant countries** - compliant with all the criteria and principles of EITI.

The following indicators are used for the implementation of validation:

- A work plan on EITI implementation which is approved by all stakeholders and which contains measurable goals,
- The Validation Grid based on 20 indicators and which is filled in by an independent validator in the course of studying a implementation process and while meeting with representatives of all stakeholders.
- Companies' self-validation forms that should be placed on their websites.

According to validation results, an validator prepares a brief report supplemented will all the above mentioned documents. This report is appealed to provide an answer to a main question: **does a process of EITI implementation in this country correspond with all criteria and principles of this initiative or the country is still a candidate?**

Candidates are those countries the governments of which have undertaken an obligation to inculcate EITI together with a civil society and with companies and which have scheduled a stable work plan of EITI implementation. It is also important to determine whether a progress in EITI implementation has been reached or not beginning from the point of holding last validation.

At the same time any discords as to the report on validation are, first of all, examined by the validator, government and many-sided council of stakeholders. In case of significant discords, the issue is submitted for consideration of the international Executive Committee of EITI which has a right to take a final decision.

² 1-4 indicators being used for the implementation of validation

What should be done to make EITI implementation process in Kazakhstan compliant with the validation criteria.

Kazakhstan joined EITI in June of 2005, at that in December of 2005 a respective Memorandum of Understanding was signed by all parties (Government, a group of Parliament deputies, a number of extractive companies and NGO Coalition «Oil Revenues - Under Public Oversight!»). In 2006 on the initiative of Coalition «Oil Revenues - Under Public Oversight!» a National Stakeholders Council was founded; this council is a body taking decisions with respect to EITI implementation in our country.

However, in 2006-2007 an original impulse was lost: it took two years for the parties to work out, coordinate and accept a full-fledged work plan, to work out a reporting form, to conduct a tender amongst auditing companies and to prepare the first report within EITI. However, the first report was prepared and presented in February, 2008. This event can be regarded as a historic one by right. At the same time, in EITI implementation in Kazakhstan a lot of questions are still open and it is an evidence of a necessity to proceed with an effective dialogue and cooperation between the Government of RK, Parliament deputies, and representatives of extractive companies and of nongovernmental organizations.

In 2008 Kazakhstan has to go through a validation process for the first time. There is an attempt made by this report to offer to all stakeholders recommendations aimed at guaranteeing reaching by Kazakhstan conformity with all EITI requirements. In the table given further official indicators of validation are used; they are divided into 4 categories according to the stages of EITI implementation: affiliation, preparation, information disclosure and dissemination.

In October of 2007 EITI Board confirmed officially the status of Kazakhstan as of a candidate, that is as of a country corresponding at least to four basic criteria (to indicators 1-4). Not calling this decision of EITI Board in question, we would also like to offer our own recommendations concerning achievement of absolute compliance with indicator 4.

Indicators	Measures that should be taken in order to attain complete compliance
I. SIGN UP	
Indicator 1. Has the Government issued an unequivocal public statement of its intention to implement EITI?	—
Indicator 2. Has the Government committed to work with civil society and companies on EITI implementation?	—
Indicator 3. Has the Government appointed a senior individual to lead EITI implementation?	—
Indicator 4. Has a fully costed workplan been published and made widely available, containing measurable targets, a timetable for implementation and an assessment of capacity constraints?	It is necessary to subject the Work plan to revision concerning quantitative and qualitative indicators and financing. For the time being, the Work plan does not contain information about restrictions hampering the implementation process and about measures aimed at reduction of these restrictions. Besides, it is required to refresh the information contained in the Work plan, making the latter correspond with the current situation.

II. PREPARATION

Indicator 5. Has the Government established a multistakeholder group to oversee EITI implementation?

(1) It is necessary to ratify and sign a new Memorandum of Understanding as quickly as possible, and also a new version of the Provisions of a National Stakeholders Council. Both documents are studied in details by the representatives of all parties and, should they be accepted, will secure increasing the work efficiency of the National Stakeholders Council (for example, a project of new provisions of the National Stakeholders Council envisages a large number of representatives from each party, the rule of quorum definition is changed in the project, and also a concept of a workgroup for the technical working over the issues submitted further for ratification by members of the National Stakeholders Council is introduced thereto). (2) Besides, it is necessary to work out a distinct, clear and transparent mechanism of the nomination of the representatives of nongovernmental organizations, extractive companies and Parliament for membership in the National Stakeholders Council. (3) It is necessary to make sure that representatives of only those organizations form part of the National Stakeholders Council who are indeed interested in the work on EITI implementation. (4) Then, it is necessary that the state assumes travel expenses of the representatives of nongovernmental organizations, being members of the National Stakeholders Council, who make their way to participate in the Council's sittings.

Indicator 6. Is civil society engaged in the process of EITI implementation?

(1) It is necessary that the Work plan on EITI implementation describes factors restraining efficacious participation of the representatives of the civil society in EITI implementation, and offers effective measures to overcome these factors. For example, it has already been said in the commentary to Indicator 5 that most representatives of NGO encounter difficulties while finding funds for defraying their travel expenses. Besides, there is an actual need for the increase of professional standards of the civil society's representatives involved in the process of EITI implementation. It is important that not only international donor organizations, but also both the state and the companies would practice activities aimed at professional development of the representatives of NGO (with the aid of conducting trainings, seminars, by publishing guides and arranging for meetings, etc.). (2) It is necessary to make sure that all the representatives of organizations of the civil society, who form a part of the National Stakeholders Council, are independent of the Government or companies in their opinions and decisions being reached.

Indicator 7. Are companies engaged in

At present only oil-producing companies are presented

the process of EITI implementation?	in the National Stakeholders Council, at that some companies play a more proactive part than the others. There is a need to attract to the National Stakeholders Council representatives of the enterprises from a mining sector, and it is also essential to strive for alike active participation of all representatives of the industry in the council.
Indicator 8. Did the Government remove any obstacles to EITI implementation?	(1) In 2007 NGO Coalition «Oil Revenues - Under Public Oversight!» offered a number of amendments and annexes to some normative and juridical acts of the Republic of Kazakhstan. The aim of these amendments and annexes is clearance of juridical and regulatory obstacles for EITI implementation. We are inclined to believe that it is necessary to start a discussion on the offered amendments and supplements within the corresponding working group at the National Stakeholders Council as quickly as possible. (2) Besides, we suggest the Government of RK and extractive companies resigning a requirement of confidentiality of data on payments of each extractive company (at present time this requirement is included in terms and conditions of the contracts made). This requirement removal would provide for the publication of reports within EITI limits in the detailed form, which, in its turn, could increase information transparency with regard to Kazakhstani incomes received from the extractive industry.
Indicator 9. Have reporting templates been agreed?	—
Indicator 10. Is the multistakeholder committee content with the organization appointed to reconcile figures?	—
Indicator 11. Has the Government ensured all extractive companies will report?	According to the current status, most big companies, being members of the List of tax-payers being approved by the Government and subject to the republican monitoring, have not joined EITI implementation: for example, «Vassilkovski GOK», «Kazakhaltyn» mining and smelting trust», «Yubileinoe», «Tengizshevroil», «Matin», «Sazankurak», «Kazakhstankaspishelf», «Kazfosfat», «Ust-Kamenogorsk titanic-magnesium plants», «Akbakaiski mining and smelting plants», «Condensate», «Nova-Zinc», «Shubarkol komir», «Orken», «Kostanaiskie mineraly», «Turgai-Petroleum», «Kuatamlonmunai», «SNPS-Ai-Dan Munai», «Tolkynneftegaz», «Kazpolmunai». It is necessary to take active measures for providing conditions for presenting reports by these companies. As is well known, in January of 2007 Act of RK of alteration and addendum to some legislative acts of RK as to matters of subsurface-use and conducting of oil

	<p>operations in RK was passed. In accordance with this law, the extractive companies, contesting for acquiring a right to use the subsurface, undertake obligations to join a Memorandum of Understanding in respect of EITI implementation before signing the corresponding contract. However, taking into account the fact that the state has already entered into agreements with the subsurface users for mining of the majority of open oilfields, it is also necessary to guarantee participation of the companies, already exploiting the subsurface, in EITI implementation by taking legislative measures or by means of direct negotiations.</p>
<p>Indicator 12. Has the government ensured that company reports are based on audited accounts to international standards?</p>	<p>In compliance with a Memorandum of Understanding between the Government of RK and World Bank, signed in December 2006, the Government of RK undertook an obligation to provide for the integrity of the data being reflected in the reports of the Government of RK and extractive companies. It implies that the auditor of every extractive company has to provide confirmation that the return that has been given by such an extractive company as a report within EITI, is based on the existing and verified by the auditors accounting. In accordance with the Memorandum, it should be attained by means of special Government Regulations effective as of January 1, 2008. However, by the moment of the preparation of the present report such Government Regulations have not been issued.</p>
<p>Indicator 13. Has the Government ensured that government reports are based on audited accounts to international standards?</p>	<p>Within the limits of the National Stakeholders Council it is necessary to determine what body can take over the function for the verification of data being presented by the Government of RK to an independent validator within EITI. After that there is a need to make alterations and supplements to the statutory and legal acts governing activities of this body.</p>
<p>III. INFORMATION DISCLOSURE</p>	
<p>Indicator 14. Were all material oil, gas and mining payments by the extractive companies to government disclosed to the organization contracted to reconcile figures and produce EITI report?</p>	<p>In the previous chapter NGO Coalition «Oil Revenues - Under Public Oversight!» expressed its opinion regarding the first National EITI report. We urge all stakeholders to pay attention to the issues we have set forth as well as to the remarks made with regard to the first report. Otherwise, our Coalition cannot declare the First report corresponding with all EITI criteria.</p>
<p>Indicator 15. Have all material oil, gas and mining revenues received by the government disclosed to the organization contracted to reconcile figures and produce EITI report?</p>	<p>-//-</p>
<p>Indicator 16. Was the multistakeholder group content that the organization contracted to reconcile the company and government figures did so</p>	<p>-//-</p>

satisfactorily?	
Indicator 17. Did EITI report identify discrepancies and make recommendations for actions to be taken?	-//-
IV. DISSEMINATION	
Indicator 18. Was the EITI report made publicly available in a way that was publicly accessible, comprehensive and comprehensible?	In the previous chapter a viewpoint of NGO Coalition «Oil Revenues - Under Public Oversight!» was set out, in correspondence with which the first report, published by Kazakhstan within EITI implementation, cannot be regarded as an overall one in view of the fact that there are no specific data in it. Thereupon our Coalition declares for the necessity to take a number of measures aimed at guaranteeing the completeness of the information presented in the report. In order to have the report on EITI be considered as easily accessible, complete and comprehensible, it has to be (i) prepared in three languages (Kazakh, Russian and English), (ii) presented in the course of a special conference with the participation of representatives of the vast community, and (iii) placed on the official website: www.eiti.kz . Besides, it is necessary to prepare (also in the three languages) a brief press-release summarizing basic conclusions and recommendations of this report. This press release must be published in the principal central and regional printing mass media. Furthermore, the information about this report has to be broadcasted by main television and radio channels.
Indicator 19. What steps have been taken to act on lessons learnt, address discrepancies and ensure EITI implementation is sustainable?	Immediately after an official publication of the report within EITI a special working group is to be established within the National Stakeholders Council. This group should transform the recommendations given in EITI report to specific actions, which should further be included in the Work Plan.
Indicator 20. (on the basis of self-appraisal templates being filled in by the companies). How do extractive companies support EITI implementation?	—

Chapter III: Recommended alterations and additions into some legislative acts of the Republic of Kazakhstan

An analysis of difficulties in the activities of the Coalition towards the achievement of compliance with EITI criteria by Kazakhstan has revealed a necessity to change the subsurface-use legislation aimed at:

- Enhancing the right of citizens for access to information (at the moment the law envisages mainly access to the environmental information);
- EITI implementation should be defined as a competence of the Government;

- The notion of “Authorized body for the provision of transparency of extracting industries” should be introduced;
- Provision of annual reports with regard to EITI on tax and non-tax, monetary and natural payments to the government should be stated as an obligation of the subsoil user;
- Civil society organizations and Mass Media should be given right to participate as observers in tenders for subsoil usage, at consideration and selection of concessionary projects, and in tenders for investment programs for the right of subsoil usage;
- Civil society organizations and Mass Media should be given free access to information on the registration of legal entities belonging to the extractive industry, their charters, on registrations of the real estate deals, as well as on issued licenses (except information, containing a commercial and other secret protected by the law);
- Civil society organizations and Mass Media should be given the right to know terms of concluded contracts.

For the above mentioned purpose, the Coalition of NGO has worked our recommendations as to making amendments and supplements to the legislation of RK, which have broached the following statutory and legal acts of the Republic of Kazakhstan:

1. Act № 2828 of the Republic of Kazakhstan «About subsurface and subsurface users» as of January 27, 1996
2. Act № 68 of the Republic of Kazakhstan «About agreements (contracts) for the division of production when producing oil operations in the sea» as of July 8, 2005
3. Act № 167 of the Republic of Kazakhstan «About concessions» as of July 7, 2006
4. Act № 373 of the Republic of Kazakhstan «About investments» as of January 8, 2003
5. Decree № 13 of a Minister of Energy and Mineral Resources of RK «About ratification of the Instructions to arrange for and to organize a competition of investment programs for the receipt of a right to use the subsurface» January 21, 2003
6. Decree № 199 of a Minister of Energy and Mineral Resources of RK «About ratification of the Instructions to prepare applications for the participation in the competition and to prepare competitive proposals to acquire a right of the subsurface-use to prospect, to produce as well as to the superposed prospecting and production» as of September 13, 2002
7. Regulation № 106 of the Government of the Republic of Kazakhstan «About ratification of the Provision about public monitoring of the subsurface in the Republic of Kazakhstan» as of January 27, 1997
8. Regulation № 1022 of the Government of the Republic of Kazakhstan «About ratification of Regulations about procedure of maintenance of the State cadastre of deposits and of minerals ingress, and of maintenance of the State cadastre of man-caused mineral generations in RK» as of August 16, 1996
9. Regulation № 108 of the Government of the Republic of Kazakhstan «About ratification of Regulations concerning entitlement to subsurface-use in the Republic of Kazakhstan» as of January 21, 2000
10. Resolution № 66 of the Board of a National Bank of the Republic of Kazakhstan «About ratification of Regulations concerning a choice of external managers engaged in the management of assets of a National Fund of the Republic of Kazakhstan» as of July 25, 2006
11. Regulation № 1011 of the Government of the Republic of Kazakhstan «About ratification of Regulations concerning a choice of an independent auditor for an

annual external audit of a National Fund of the Republic of Kazakhstan» as of July 26, 2001

These proposals, with the assistance of Soros – Kazakhstan Fund, have been translated into English and distributed amongst members of a National Stakeholders Council; whereupon, in the sessions of the National Stakeholders Council the Coalition insisted on creation of a working group involved in concordance of these proposals.

As majority of the companies and government did not make actions in return, the issue about necessity to change the legislation was included in a number of other urgent questions of EITI implementation upon holding different events by the Coalition in the regions of Kazakhstan. This subject was widely and repeatedly covered in newspapers, in television broadcastings, was discussed in the seminars and round-table discussions held by the Coalition members in various regions of Kazakhstan. Necessity of considering and ratifying these amendments was being discussed in the personal meetings with Mazhilis and Senate deputies of the Parliament of the Republic of Kazakhstan, and was brought up during the meeting of Coalition representatives with Karim Massimov, a Prime Minister of the Republic of Kazakhstan, in July of 2007.

As a result of the actions taken, apart from wide information of community and population about this matter, they succeeded in seeking a decision of the National Stakeholders Council to create a Working group involved in working over a question of amending the legislation.

On the whole, in essence of the matter an actual result was not attained, but certain informational and motivational fundamentals were laid in different target groups, thus, the settlement of this issue moved from an anchoring point.

At the same time, the activity of moving amendments to the legislation revealed issues insufficiently worked out and relating to work of the National Stakeholders Council, and it allowed blocking an examination of any issues by the National Stakeholders Council, in particular:

- lack of distinctly regulated responsibility of representatives of the parties, first of all, responsibility of Secretariat members, for their hands off and, occasionally, complete nonparticipation in the work of the National Stakeholders Council;
- lack of mechanisms providing for working capacity of the National Stakeholders Council in the presence of such passivity.

About movement of amendments to the Memorandum of Understanding relative to EITI implementation.

An analysis of the National Stakeholders Council has given a chance to establish reasons for inefficiencies in the activities of this body, which lie in the lack of clear procedure-oriented standards that regulate this activity, lay down rights and obligations of the parties of the National Stakeholders Council and their responsibility in this connection, ensure the body's capacity for work.

With the purpose of eliminating these factors the Coalition worked out recommendations with regard to the amendment of the Memorandum of Understanding dated as of October 2, 2005, which regulated the activities of the National Stakeholders Council. These recommendations were translated into the English language with the assistance of a representative of «ExxonMobil» company in the National Stakeholders Council - Patricia Graham - and distributed amongst members of the National Stakeholders Council.

The movement of these recommendations was accomplished in the aggregate with other actions undertaken by Coalition members, and this subject was also included in the context of informational and advocacy measures, taken by Coalition members in the regions of the republic.

Apart from the Coalition members' attempts, the following circumstances contributed to the movement of the amendments to the Memorandum of Understanding:

- a problem of generation and extension of a number of parties' representatives in the National Stakeholders Council that touches upon interests of other parties of the Memorandum;
- recommendations of the auditing company verifying the data presented by extractive companies and government for drawing up the first National EITI report about EITI implementation in Kazakhstan;
- holding a first National conference of EITI implementation in Kazakhstan planned for the conduction under the aegis of the World Bank by the end of February in 2008;
- an international estimation (validation) of a progress of EITI implementation in Kazakhstan which is in prospect by 2008.

Thereupon, on the eve of 2007 an issue of admission of a new version of the Memorandum proceeded to a working level. With the participation of representatives of the parties and within the working group, founded by a decision of the National Stakeholders Council dated as of December 24, 2007, a particular discussion concerning Memorandum provisions offered by the Coalition began; the aim was to finish the coordination by February 11, 2008.

At the same time, in spite of proposed amendments to the Memorandum of Understanding, a number of questions that have not been agreed upon by the parties remains unresolved: the issue of desegregation of the data on payments of the companies; a time period covered by the second National EITI report; and also representation of the parties in the National Stakeholders Council.

Thereupon, a final adoption of the Memorandum has been postponed till a later term with the purpose of working out a project coordinated with all the participants of EITI.

Chapter IV: General recommendations as to EITI implementation in Kazakhstan

Basic problems on the way of EITI implementation in Kazakhstan, in our opinion, lay in the following:

1. Participation in EITI implementation in Kazakhstan does not extend to all extractive companies.
2. The Work Plan directing activities of all stakeholders requires considerable revision.
3. Scarcity of human and financial resources got to take part in EITI implementation.
4. Low awareness of population regarding EITI.
5. Low efficiency of the work of the National Stakeholders Council on EITI implementation.
6. Lack of interest in additional measures aimed at the increase of transparency.

We suggest considering two phases of EITI implementation:

- Meeting all **minimal criteria** of EITI (in accordance with conclusion of the independent valuator);

- Introducing **additional measures** aimed at increasing transparency in the extracting sector.

RECOMMENDATIONS REGARDING COMPLIANCE WITH MINIMAL CRITERIA

1. The Government of RK should ensure participation of all extractive companies in EITI implementation in Kazakhstan, including «Tengizshevroil» Ltd. and Ajip KCO.
2. It is necessary to improve the Work Plan in a part of qualitative and quantitative indicators and financing. For the time being the Work Plan does not contain information about any restrictions hindering the process of implementation, as well as about measures aimed at lowering these restrictions. Besides, it is required to update information contained in the Work Plan by bringing it to conformity with the current situation.
3. It is necessary to work out (with participation of all stakeholders) a budget program of EITI implementation and a passport of this program with the description of aims, tasks, qualitative and quantitative characteristics, anticipated results, required financing and other showings according to the legislation of RK, and to include corresponding expenses in the project of the republican budget for 2008. The expenses for EITI, included in the respective program of the republican budget, should cover (i) a salary of EITI coordinator; (ii) travel allowances for business trips of the members of the National Stakeholders Council to Astana city; (iii) expenses for preparation and publication of auditing reports with regard to gas-and-oil producing industry as well as regarding mineral resource industry; (iv) expenses for carrying out wide informational and educational programs.
4. It is necessary to establish a specialized Secretariat involved in EITI implementation and attached either to Ministry of Finance or to Ministry of Energy and Mineral Resources of RK.
5. It is necessary to introduce a number of supplements and amendments into legislative acts of the Republic of Kazakhstan, the main essence of them comes to the necessity to:
 - broaden a right of citizens to access to the information (currently the law envisages only access to the environment-related information);
 - include EITI implementation in RK in the competence of the Government;
 - introduce a notion of «An authorized body for providing with the transparency of activities of extractive branches»;
 - include in the obligations of a subsurface-user presentation of an annual report about tax and non-tax, money and in-kind payments to the budget;
 - entitle interested public associations and mass media to act as observers when competitions aimed at acquiring a right to the use the subsurface take place, when concession projects are studied and selected, when there is a contest of investment programs aimed at the acquisition of a right to use the subsurface;
 - guarantee for the interested public associations and mass communication media free access to the information concerning (i) registration of legal entities, (ii) their regulations, (iii) registration of deals with immovable property, and (iv) also licenses granted, with the exception of the information being trade or other secrets secured by law;
 - create legal basis for making a revelation of terms and conditions of the contracts conducted for the use of subsurface.
6. It is necessary to provide for a valuable participation of the representatives of all parties

to the Memorandum of Understanding in the sittings of the Council. The procedure of nominating members of the National Stakeholders Council should be clear, transparent and should be approved by all the parties forming the National Stakeholders Council.

7. It is necessary to monitor how the government fulfils commitments taken in correspondence with the Memorandum of Understanding signed with the World Bank.
8. It is necessary to provide for the publication of a second report covering 2006 and 2007 in 2008; that report should be based on the verified data.
9. A further improvement of reporting templates is required.
10. It is necessary to remove restrictions on the participation in a tender for an auditing process in the companies not forming a part of «The Big Four».
11. The second report (as well as the subsequent reports) should involve the information about payments made by the companies of the mineral resource sector.
12. Within the Work Plan it is essential to proceed with the implementation of a strategy aimed to increase the level of awareness about EITI.
13. For the purpose of ensuring effective cooperation with extractive companies at the local level and with the purpose of increasing awareness of the population, it is necessary to create conditions for the foundation of regional councils of stakeholders for EITI implementation.
14. In 2008, it is necessary to conduct first validation in order to confirm a status of a implementing country.

RECOMMENDATIONS AS TO AN ADDITIONAL COMPLEX OF MEASURES AIMED AT ACHIEVING A HIGHER LEVEL OF TRANSPARENCY IN THE EXTRACTIVE SECTOR (EITI PLUS)

EITI was conceived as an initiative being developed dynamically. For that very reason it is important to remember that its six criteria, accepted by the participants in March of 2005, are minimal criteria. This means that the countries should be ready to go further than these criteria need.

At the second stage of EITI implementation in Kazakhstan we offer to:

EITI was initially conceived as a dynamically developing initiative. That is why it is important to remember that the criteria adopted by participants of the March 2005 meeting are in fact **minimal**. It means that countries should be ready to go even further than these criteria require.

For the second phase of EITI implementation in Kazakhstan we propose to:

1. Disclose payments by all extractive companies operating in their territory on a company-by-company basis and by payment type. The Coalition believes that this approach is the only way to consider published information as “publicly accessible, comprehensive and comprehensible” in accordance with EITI Criteria #1.

Although protecting commercially confidential information is important, a commitment to publish only aggregate data is contradicting to the philosophy of transparency put at the foundation of this initiative. Disclosure of information on companies' payments to the government is a generally acceptable norm in many industrially developed countries, and companies should not be encouraged to apply double standards with regard to developed and developing countries.

2. Disclose information about **social investments and payments to local budgets** made by extractive companies. These payments and investments can be important factors of sustainable social and economic development and thus the public should be involved in the process of managing these revenues.

In accordance with the legislation, the information on all expenses accrued to companies is to be included in companies' reports to tax and statistical authorities as well as the information on everything which has been extracted, manufactured or built by the companies. These data are collected, processed and used at the calculation of GDP by the government. Thus, the government can provide data for reconciliation with companies' reports.

Besides, adjustment of EITI to country specifics is not prohibited but rather encouraged provided that EITI principles and criteria are met, so reports on social investments could add to general EITI reports on payments to central budget.

3. Terms of extractive industry contracts, or at least their provisions which regulate companies' payments to the government. Although this demand may seem radical, contract transparency is a norm in a number of countries, including Azerbaijan and the Kyrgyz Republic.

4. Develop mechanisms of cooperation with the UN Global Compact.³ The experience of cooperation between the Government, industry and civil society in EITI implementation can encourage extractive companies to increase transparency of information on impact of companies' operations on the environment, social development projects, protection of labor rights and other rights of workers, etc.

5. Develop efficient policies which will ensure that citizens are informed on how well extractive companies observe government's regulations regarding **protection of the environment, increasing local content, as well as labor protection and industrial safety**. These issues are beyond EITI mandate; however it is necessary to consider them while attempting to evaluate the overall impact of the extracting companies on the country's development. Unfortunately, available mechanisms and procedures do not provide for reliable and sufficient public oversight, and companies are not transparent enough on the above issues. And again, the valuable experience of cooperation between the stakeholders gained in the process of EITI implementation might be extremely useful for this purpose.

6. Include in EITI payments from companies engaged in **transportation and transit of energy resources**.

³ The Global Compact initiative is implemented in Kazakhstan in accordance with the Decree of the President of the Republic of Kazakhstan # 80 of March 30, 2006 and Resolution of the Government of the Republic of Kazakhstan # 222 of March 31, 2006.