

Experiences and Benefits of Optimised Mineral Resource Governance for Zimbabwe: Lessons from SADC Extractive Industries Transparency Initiative (EITI) Implementing Countries



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In partnership with



Zimbabwe Environmental
Law Association (ZELA)



Improved human conditions through good
governance of the region's resources.

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Experiences and Benefits of Optimised Mineral Resource Governance for Zimbabwe: Lessons from SADC Extractive Industries Transparency Initiative (EITI) Implementing Countries

Introduction

The management of abundant mineral resources continues to remain a challenge in most African countries. This is despite a multitude of interventions that have been made at continental, regional and national levels. African countries, with very few exceptions, are failing to harness the potential of their mineral resources for broad-based socio-economic development and are therefore characterised by poverty.

Amongst the many challenges that have inhibited positive transformation in the economies and lives of African people, despite natural resources in the form of oil, gas and minerals, is opacity. The extractive industry has generally operated opaquely, with limited openness and participation of the general public, and characterised by poor governance. Over the years, emerging global and continental standards on mineral resources governance have been developed, anchored on resource rent monitoring systems such as the Extractive Industries Transparency Initiative (EITI).¹ The EITI is the global standard to promote the open and accountable management of oil, gas and mineral resources.²

The EITI standard requires the disclosure of information along the extractive industry value chain, from the point of extraction to how revenues make their way through the government, and how they benefit the public. By encouraging disclosure, the EITI seeks to strengthen public and corporate governance, promote understanding of natural resource management, and provide the data to inform reforms for greater transparency and accountability in the extractives sector. Noting the mineral resource governance capacity challenges of member states of the African Union, the Africa Mining Vision (AMV) encourages the accession to continental and international resources monitoring and oversight standards such as the EITI. Currently, EITI is being implemented by 55 countries globally, nearly half (25) of them in Africa.³ Zimbabwe is not among them.

¹ The Extractive Industries Transparency Initiative was founded in 2003.

² <https://eiti.org/>

³ <https://eiti.org/countries>

Zimbabwe is a country endowed with a significant and diverse mineral resources, estimated at 66 base and industrial mineral deposits. These include gold, chrome, asbestos, coal, nickel, diamonds, black granite, and platinum group of metals (PGMs). Despite this rich mineral resource base, Zimbabwe is ranked number 150 out of 188 on the United Nations 2019 Human Development Index. 72 per cent of its population is estimated to live below the poverty datum line and the country has the highest level of food insecurity in all of Africa, with 5.8 million people living in acute hunger. The economic growth and broad-based development of the country as envisaged by the Sustainable Development Goals (SDGs) has been predicated on this diverse mineral wealth.⁴

In the past decade, the regulation of the extractives sector in Zimbabwe has come under scrutiny due to the dwindling social, economic and political environment. Zimbabwe's mining sector has been the mainstay of the economy and expectations are that it will become an engine for sustainable economic growth and development.⁵ Zimbabwe aims for a fourfold increase in revenue from minerals by 2023 through an ambitious plan, the Strategic Road to the Achievement of \$12 billion by 2023.⁶ Without addressing some of the major reasons for the country's current socio-economic challenges, attributed to corruption and lack of transparency and accountability in the management of Zimbabwe's mining sector, this will be unattainable.⁷ To that end, initiatives like the EITI provide frameworks that have been seen to help resource-rich countries (like Zimbabwe) to deal with similar challenges by strengthening public and corporate governance in natural resource management. Because of the plethora of problems in Zimbabwe's mining sector, civil society organisations, community based organisations, and some government ministries have been advocating for Zimbabwe to join the EITI since 2010.

So far these hopes (and occasional commitments by the government of Zimbabwe) have been futile. It has sometimes been argued that the EITI is a foreign driven initiative.⁸ While not official, there is no doubt that this argument is reflective of the thinking of the government of Zimbabwe, and subsequently no

⁵ The Zimbabwe National Industrial Development Policy (2019-2023) recognises the mining sector as integral to industrialisation of the Zimbabwean economy through minerals beneficiation, which is one of the key pillars of the ZNIDP that will shape the next phase of industrialisation in Zimbabwe given the wide variety of mineral resources.

⁶ <https://www.herald.co.zw/the-minerals-of-hope-us12bn-mining-sector-target-to-change-nations-fortunes/>

⁷ Zimbabwe is ranked 158 out of 180 countries under Transparency International's 2019 Corruption Perceptions Index

⁸ The Zimbabwe Independent, 2020. Ncube's EITI move sparks cabinet rift <https://www.theindependent.co.zw/2020/01/31/ncubes-eiti-move-sparks-cabinet-rift/>

progress has made been on EITI. The Zimbabwe government's key argument has been that the EITI does not come with clear opportunities for change.

It is against this background that the current study seeks to provide insights into the experiences and benefits of other Southern African Development Community (SADC) countries that have signed up to the EITI. These countries include the Democratic Republic of Congo (DRC), Malawi, Madagascar, Mozambique, Tanzania and Zambia, which are Zimbabwe's neighbours in the same regional economic bloc, and often face similar mineral resource governance challenges. The purpose of this study is to show that EITI compliance has benefits that can help a country to optimise value from its mineral resources by addressing corruption and promoting transparency and accountability, which are key challenges in Zimbabwe's mining sector. In addition, recommendations are made on the important concrete steps to take towards joining the EITI. It is important that the values and principles of good governance, transparency and accountability guaranteed in the Zimbabwe Constitution shape the current and future trajectory of mineral resource governance.



A case for Madagascar

By Ihariantsoa Sambatra Christian &
Dr Ketakandriana Rafitoson

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Acronyms and abbreviations

AMSA	Ambatovy Mining Société anonyme
BCMM	Bureau du Cadastre Minier de Madagascar/ Mining Cadastre Office of Madagascar
BP	British Petroleum
CPI	Corruption Perceptions Index
CSO	Civil Society organisation
DMSA	Dynatec Mining Société Anonyme
EITI	Extractive Industries Transparency Initiative
GDP	Gross domestic product
IGM	Institut de Gemmologie de Madagascar/ Gemmological Institute of Madagascar
LGIM	Law on Large Mining Investments/ Loi sur les Grands Investissements Miniers
LNIE	Laboratoire National des Industries Extractives/ National Laboratory of Extractive Industries
MMRS	Ministère des Mines et des Ressources Stratégiques/ Ministry of Mines and Strategic Resources
MSG	Multi-stakeholder group
OMNIS	Office of National Mines and Extractive Industries
PE	Permis d'Exploitation - Exploitation Permits
PR	Permis de Recherche - Research Permits
PRE	Small-scale mining permits
QMM	Quit Mineral Madagascar
SADC	Southern African Development Community
Tcf	Trillion cubic feet
TI-MG	Transparency International-Initiative Madagascar
USGS	US Geological Survey
ZELA	Zimbabwe Environmental Law Association

Executive Summary

The Extractive Industries Transparency Initiative (EITI) has become a leading global standard for responsible and transparent governance of oil, gas and mineral resources. It is being implemented in most parts of the African continent because of the mineral wealth concentrated there. Madagascar is one of the African countries, a member of the Southern African Development Community (SADC), that has been implementing the EITI process since 2008 with a view to reaping benefits such as improving the investment climate, strengthening accountability and good governance, and promoting greater economic and political stability. Several challenges have been faced by the country during these twelve years of implementation, including political instability, sustainable financing constraints, and uneven stakeholder participation.

Zimbabwe is one of the richest countries in Africa with regard to extractive resources, but it faces problems of poor resource governance and the proliferation of corruption. It is also one of the few SADC member countries not implementing the EITI standard. The analysis that follows aims to document the lessons that Zimbabwe can learn from the EITI in order to understand how the EITI can enable Zimbabwe to maximise the value of its resources and emerge from the 'natural resource curse', based on Madagascar's twelve years of experience in implementing the standard. Recommendations on the governance, implementation, and sustainable financing of the EITI process are put forward after presenting the opportunities and challenges of joining the initiative.

Introduction

Extractive resources present multiple challenges for economic growth and development in resource-rich countries. However, many countries suffer from the 'resource curse' due to weak policies and institutions in resource management, lack of transparency and accountability, and increased corruption¹. As a result, the Extractive Industries Transparency Initiative (EITI) was launched in 2002, at the instigation of former British Prime Minister Tony Blair, at the World Summit on Sustainable Development in Johannesburg.

The EITI is an international standard that seeks to improve transparency and good governance in the sector through the verification and full publication of payments made by companies and revenues received by governments from oil, gas and minerals. Implementation of the standard offers benefits to governments, extractive companies and civil society. These benefits include improving the investment climate, enhancing accountability and good governance, and promoting greater economic and political stability. As a result, out of the 81 countries rich in extractive resources², 53 are implementing the EITI standard, including 24 countries in Africa, which accounts for 30 per cent of the world's mineral reserves, 10 per cent of oil and 8 per cent of natural gas.

Madagascar is endowed with a large potential of non-renewable natural resources, including mineral reserves, hydrocarbon resources and gas. Unfortunately, the positive impacts generated by the exploitation of these extractive resources are still limited and the high prevalence of corruption in the country is one of the main barriers to development. A study conducted by Transparency International-Initiative Madagascar (TI-MG) revealed 19 vulnerabilities and 24 associated risks of corruption in the granting of mining permits³. In addition, the country scored 24/100 and ranked 158th out of 180⁴ in the Corruption Perception Index (CPI) for 2019. Madagascar joined the SADC EITI implementing countries in 2008 in order to improve the extractive industry's state of transparency and increase

¹ Banque Mondiale (2012), Initiative pour la transparence des industries extractives (ITIE): De la mise en œuvre de l'ITIE. Un manuel pour les décideurs politiques et les parties prenantes, Département de l'Énergie durable, unité Pétrole, gaz naturel et mines, p.17 URL: <http://documents.worldbank.org/curated/en/267131468193772303/pdf/73831-FRENCH-ITIE-PUBLIC.pdf>

² World Bank website (2020) consulted on 11 June 2020 at: <https://www.banquemonde.org/fr/topic/extractiveindustries/overview#1>

³ Transparency International-Australia website (2020). Assessment of the risks of corruption in the granting of mining titles in Madagascar on: <https://transparency.org.au/wp-content/uploads/2020/05/Evaluation-des-risques-de-corruption-Madagascar.pdf>

⁴ Transparency International-Initiative Madagascar website (2020), Corruption Perception Index accessed at: <https://www.transparency.mg/ipc2019>

citizens' ownership of the extractive process.

Some SADC member countries, despite being rich in mineral resources, are not yet implementing the EITI. This is the case with Zimbabwe, which has vast resources of gold, chromium, asbestos, coal, nickel, diamonds, black granite and platinum group metals. Zimbabwe faces a myriad of problems in the governance and management of revenues from extractive resource exploitation, mitigating impacts and benefits to local communities and fostering social conflict. As a result, the country is ranked 150th out of 188 countries in the 2019 Human Development Index, with 72 per cent of its population living below the poverty line⁵.

This analysis discusses the benefits, opportunities, successes and challenges in terms of governance of the extractive industries in Madagascar. It is part of a wider study on SADC EITI countries which is being conducted by Southern Africa Resource Watch (SARW) and the Zimbabwe Environmental Law Association (ZELA), with the aim of encouraging countries that have not yet implemented the EITI standard (such as Zimbabwe) to do so.

The methodology used in this research combines primary data collection from EITI⁶ stakeholders with a literature review. The study first provides an overview of the Malagasy extractive sector, and then discusses the history, legal and institutional framework of EITI Madagascar. Finally, opportunities and challenges are discussed, followed by recommendations for Zimbabwe.

1. Overview of the extractive sector in Madagascar

Madagascar's mining sector produces, among other things, nickel, cobalt, ore, ilmenite, graphite, chromium and gold (through gold panning⁷). But nickel accounts for 55 per cent of the country's total production in 2018 (EITI Madagascar, 2019c). In the same year, 28 per cent of the export value came from two

large mines (Ambatovy⁸ and QMM⁹), medium-size mines (Holcim, Gallois, Graph Mada), and small mines. Nine mining companies are in production and four are in the prospecting and research phase¹⁰. The mining sector's legal framework is constituted by the Mining Code¹¹, the Law on Large Mining Investments or Loi sur les Grands Investissements Miniers (LGIM),¹² and the Establishment Agreement or Convention d'établissement¹³, which serves as the legal and fiscal framework for operations between QMM and the Malagasy state. Thanks to the significant advantages that the texts in force grant to mining companies, Madagascar attracts many investors from all over the world. However, the issuing of mining permits has been suspended for almost ten years¹⁴, which has had an impact on the country's attractiveness in terms of mining investments.

Concerning the upstream hydrocarbons sector, oil exploration in Madagascar is concentrated in the West Coast basins. Specifically in this part of the big island, the US Geological Survey (USGS), in its April 2012 assessment, estimates for the Morondava reservoirs a potential of 10.7 billion barrels of oil, 167.2 Tcf (Trillion cubic feet) of natural gas and 5.2 million barrels of liquefied natural gas (EITI Madagascar, 2019c). Officially, 14 oil companies and 18 oil blocks made up Madagascar's upstream oil sector in 2018, a year that is marked by the arrival of the oil major British Petroleum (BP) in the country. BP has acquired four blocks in the basin previously held by ExxonMobil, covering 45 000 square kilometers off the northwest coast of Madagascar. Only Madagascar Oil SA holds a license to exploit unconventional bituminous oil. The upstream oil sector (exploration, research, extraction of hydrocarbons and the transportation of hydrocarbons to the point of product completion) is governed by Law No. 96-018 of 9 September 1996 relating to the Petroleum Code.

⁵ La croix.com website (2017), Zimbabwe's economy in figures, accessed on 8 June 2020 at: <https://www.la-croix.com/Monde/Afrique/Leconomie-Zimbabwe-chiffres-2017-11-24-1200894615>

⁶ A questionnaire was administered to former and current members of the EITI National Committee. Thirteen people were invited to answer the questions but only two returned despite reminders. As the main author is a current member of the EITI's civil society cluster, his knowledge of the EITI completes the desk review and the qualitative data collected from the interviews.

⁷ Most of which is informal.

⁸ The project focuses on Nickel and Cobalt. It is carried out through two companies: AMSA and DMSA. <http://www.ambatovy.com/ambatovy-html/docs/index.html%3Flang=fr&p=166.html>

⁹ QIT Madagascar Minerals (QMM) mines mineralised sand that it extracts in south-east Madagascar, a subsidiary of the Rio Tinto Group. <https://www.riotinto.com/energyandminerals/about-qit-madagascar-minerals-15376-fr.aspx>

¹⁰ EITI Madagascar (2019b). Reconciliation Report 2018, pp.23-34

¹¹ Malagasy Mining Code 2005 available at <http://edbm.mg/wp-content/uploads/2017/12/CODE-MINIER-2005.pdf>.

¹² Law n°2001-031 of 8 October 2002; amended by Law n°2005-022 of 2 August 2005 on Large Mining Investments (LGIM): The LGIM establishes a special regime for investments exceeding 50 billion Ariary in order to guarantee the stability of their investment as provided for in Title VIII of the Mining Code. It deals in particular with tax, customs and exchange rate issues. At present, only AMBATOVY company benefits from this special regime

¹³ Promulgated in the Official Journal on 3 February 1998, this agreement specifically governs the activities of QMM-Rio Tinto in the Anosy region.

¹⁴ Note n°34/2011-PM/SGG/SC, signed by the Secretary General of the Government, prohibited the granting of new research (PR) and exploitation (PE) permits, with effect starting from 6 April 2011. Letter n°682/MMH, signed on 31 May 2011 by the Minister of Mines and Hydrocarbons, suspended the issuance of Small Scale Mining Permits (PRE) as of 8 September 2009.

The extractive sector is placed under the leadership of the Ministry of Mines and Petroleum. Several related bodies contribute to the good management of the sector, such as the Mining Cadastre Office of Madagascar (BCMM)¹⁵, in charge of the management and control of mining permits, the Office of National Mines and Extractive Industries (OMNIS)¹⁶, in charge of managing, developing and promoting national petroleum and mineral resources in Madagascar, the Gemmological Institute of Madagascar (IGM), and the National Laboratory of Extractive Industries (LNIE).

In 2018, the contribution of the extractive sector to Madagascar's Gross Domestic Product (GDP) was 4.41 per cent. It has stagnated since 2015, remaining between 4.41 and 4.84 per cent (Madagascar EITI, 2019c). The contribution of extractive industries to 2018 tax revenues was US\$69.24 million. This is an increase compared to the previous five years. In fact, the extractive sector contributed for 4.62 per cent in 2018, i.e. US\$69.24 million, compared to 3.67 per cent in 2017, 4.03 per cent in 2015 and 2.48 per cent in 2014.

2. Background of the EITI in Madagascar: an atypical pathway

Madagascar submitted its application to the Extractive Industries Transparency Initiative (EITI) process on 22 February 2008 because all stakeholders, including the Malagasy government, extractive companies and CSOs, were aware of the benefits of implementing the standard on “transparency of financial flows generated by extractive industries on the one hand, and increasing their contribution to the Malagasy economy on the other”¹⁷.

“All stakeholders hoped that the various reports and tools produced by the Madagascar EITI would help citizens and all stakeholders to better understand the sector. The country would benefit from sound mining, oil and gas development. Between the government and companies, the EITI should be a reliable instrument for sustainable collaboration, and the same goes for civil society and companies”. *Lydia BOARLAZA, DG Madagascar Consolidated Mining, Representative of the Chamber of Mines, interview June 2020*

¹⁵ Website of the Office des Mines Nationales et des Industries Extractives consulted on: <https://www.omnis.mg/index.php?lang=en>

¹⁶ Website of the Institute of Gemmology of Madagascar consulted on: <http://igm.mg/>

¹⁷ EITI Madagascar (June 2011), EITI Report for the years 2007, 2008, 2009 and first half of 2010

However, three years after joining the process as a candidate country, Madagascar was suspended in October 2011 due to the 2009 coup¹⁸ that led to the establishment of a transitional government, which did not enjoy the recognition of the international community. This crisis has not only slowed down Madagascar's EITI activities but has also impacted on the functioning of the EITI Regional Committees due to the drastic reduction in funding. A possible de-listing of Madagascar from the EITI was being considered at the time. But the joint efforts of the government, the national committee and the Executive Secretary to continue the annual reconciliation work and to publish the EITI reports revealed the country's willingness to continue the accession process to the standard.

“At a time when Madagascar was on the point of becoming a major mining producer, it was important that all measures be taken to ensure that the country did not suffer the ‘resource curse’. From this point of view, joining the EITI process was absolutely imperative. Civil society, and in particular conservation NGOs, could only welcome the commitment of all stakeholders – the government, mining companies and civil society – to continue the efforts made over the past several years to bring Madagascar to become a full member of the EITI”.

The late Léon Rajaobelina, Former member of the civil society college within the National Committee, Vice-President of Conservation International Madagascar.

Source: EITI Madagascar (March 2018), 2008-2018: 10 years of contribution to transparency

¹⁸ Randrianja S., Le coup d'Etat de mars 2009, Karthala editions, <http://www.karthala.com/hommes-et-societes-sciences-economiques-et-politiques/2528-madagascar-le-coup-d-etat-de-mars-2009.html>

This suspension was lifted on 6 June 2014 after the country's return to constitutional order. Following its reinstatement as a candidate country, Madagascar was subject to its first validation under the EITI 2016 Standard from 1 September 2017 to 29 June 2018. Madagascar was deemed to have made 'significant progress' in implementing the EITI Standard. Despite this, the EITI Board agreed that Madagascar should take fifteen (15) corrective actions, and progress was assessed during the second validation which started on 29 December 2019. At the end of this second validation, the EITI Board decided that overall Madagascar had made significant progress in implementing the 2016 EITI standard, with substantial improvements. Only seven out of the fifteen corrective measures prescribed in the first validation have been fully implemented¹⁹.

3. Legal and institutional framework of Madagascar's EITI

3.1. Legal framework

The EITI 2016 Standards do not set out a mandatory legal structure for national committees or executive secretariats in countries that adhere to the standards. Requirement 1.4 on the multi-stakeholder group only provides that "the Government shall ... iii. consider establishing a legal basis for the Multi-stakeholder Group ... ²⁰".

The Malagasy government first expressed its desire to implement the EITI in August 2007. It should be noted that in order to ensure the legitimacy of the structure, regional committees were first set up from July to September 2008. It was only in 2013 that the Madagascar EITI was established by Decree No. 5615/2013 on the definitive creation and reactivation of the National Committee of the Extractive Industries Transparency Initiative (EITI)²¹. Unfortunately, it did not provide a legal framework for the EITI Regional Committees due to a lack of resources. The Order allows the Malagasy state to recognise the existence of the National Committee, its mission and its functioning. However, it does not define

¹⁹ EITI website, Madagascar has made significant progress in implementing the EITI 2016 standard, with substantial improvements, accessed at: <https://itie.org/fr/decision-conseil/2020-30>.

²⁰ EITI Madagascar (March 2017), Study on strengthening governance

²¹ EITI Madagascar, Arrêté portant sur la création définitive et la réactivation du comité national, accessed at: http://itieemadagascar.org/wp-content/uploads/2017/08/Madagascar_ARRETE-PORTANT-CREATION-DEFINITIVE-ET-REACTIVATION-DU-COMITE-NATIONAL-ITIE.pdf

its legal status, i.e. it does not define the type of body constituted by the National Committee, the Executive Secretariat, or more generally by the EITI-Madagascar. This situation prompted the National Committee to commission a study on strengthening EITI governance because of difficulties in the proper implementation of the process in Madagascar. The main recommendations were (i) the institutionalisation of the EITI-Madagascar by decree in the Council of Ministers in order to rekindle dynamism in the implementation of the EITI, (ii) the attachment of the Madagascar EITI secretariat to the Ministry in charge of Mines and Petroleum, (iii) the inclusion of the EITI's executive secretariat into the budget of the supervisory ministry and respect for the secretariat's management autonomy. Indeed, it must be noted that the non-integration of the EITI process into the law favours the lack of participation of certain companies in the reconciliation exercise, reduced participation of members of the national tripartite committee, and financial difficulties in the operation and implementation of the activities provided for in the work plan.

The Madagascar EITI was institutionalised by Decree n°2017/737 of 30 August 2017, establishing its attributions, organisation and functioning. It should be noted that its attachment was transferred to the Ministry of Mines and Strategic Resources by Decree n°2019-362 of 4 May 2019. The National Committee's rules of procedure were subsequently adopted in January 2018. They specify the rules and procedures for the functioning of the Madagascar EITI National Committee (NC) and the Executive Secretariat (ES), as well as the relations between these two institutions.

3.2. Institutional framework

The national committee or multi-stakeholder group (MSG)

In Madagascar, the EITI is organised in two bodies. On the one hand there is the multi-stakeholder group or national committee, the deliberative organ chaired by the Minister of Mines, who is the champion²², and composed of eight representatives for each college (state, private sector and CSOs). And on the other hand there is the executive secretariat, headed by an executive secretary who supports the National Committee in the implementation of the EITI in Madagascar.

²² The title given to the person appointed by an EITI member state to lead the implementation of EITI standards. He or she chairs the National Committee.

The National Committee is composed of three colleges whose members are elected or appointed in accordance with the provisions of Article 7 of Decree No. 2017-737 of 30 August 2017. It is chaired by the Minister in charge of Mines and Oil, who is the senior official in charge of leading the implementation of the EITI.

The term of office of the members of the National Committee is four years, renewable. The status of each member of the National Committee is nominative and personal. However, once appointed, each member of the National Committee shall represent both the entity in respect of which he/she has been appointed and the college from which he/she comes. Entities in which an election or call for nominations is necessary to appoint a representative must respect the principle of independent, transparent and uncoerced appointment procedures. Each constituency elects a “Lead Partner” at the beginning of its term of office, who is responsible for speaking on behalf of the constituency and representing it, as well as facilitating relations and communication with the EITI champion and the Executive Secretary.

The Executive Secretariat

The Executive Secretariat is the management and coordination body for EITI Madagascar. It is headed by an Executive Secretary appointed for a term of five years, renewable by decree issued by the Council of Ministers on the proposal of the National Committee, following a call for nominations. He or she has the rank of Director General of the Ministry.

Normally, the Executive Secretariat comprises a technical unit, an administrative and financial unit, and an information and communication unit. The staff of the Executive Secretariat may be composed of private law agents or seconded civil servants. The mission of the Executive Secretariat is to ensure that the activities prescribed in the annual work plan validated by the National Committee are carried out within the prescribed time limits. In practice, the staff of the Executive Secretariat is composed of civil servants seconded from the Ministry in charge of mines.

The National Committee and the Executive Secretariat are in periodic contact with the International Secretariat which offers support and gives recommendations while guaranteeing the independence of the Committee and the Secretariat in accordance with the EITI standards.

4. Opportunities and challenges of EITI implementation in Madagascar

4.1. Opportunities of EITI implementation in Madagascar

The implementation of the EITI is based on two main mechanisms: (i) the annual publication of a report reconciling the financial flows of revenues from payments made by extractive industries to the state and the receipts received by the state; and (ii) the development of a multi-stakeholder platform to promote public dialogue and debate on the governance of non-renewable resources. EITI implementation presents opportunities for good governance in the extractive sector.

Availability of reliable data for stakeholders

While in its early years, the EITI report focused solely on reconciling the financial flows paid by extractive companies and those received by the state, today it goes beyond reconciliation and includes in the report “contextual information” linked to the legal and regulatory framework, licensing procedures, public accessibility to oil contracts, and the weight of the sector in the economy. In addition, Madagascar’s EITI report goes further in complying with the EITI Standard by disclosing how communes spend their share of rebates based on participatory budgeting programmes²³.

“Since its launch in 2002, Rio Tinto has been a strong supporter of Extractive Industries Transparency and has expressly supported the EITI. This support is demonstrated through our voluntary commitment to the development of EITI reports whose ultimate objectives are good fiscal governance, accountability and transparency. Regional EITI committees have been set up and QMM has been a member of them, notably in Fort-Dauphin. Based on the principle of partnership between the State and the private sector, QMM has always sought to find and implement strategies to optimise the management of rebates and royalties. Rural communes have implemented the principle of participatory budgeting with tangible results on the allocation of rebates to the priorities defined with the community”.

²³ EITI Madagascar (March 2018), 2008-2018: 10 years of contribution to transparency

Ny Fanja Rakotomalala, Chairman and CEO of Rio Tinto QMM²

Source: EITI Madagascar (March 2018), 2008-2018: 10 years of contribution to transparency

Discovery of their rights by mayors

Following the publication of the first EITI reconciliation reports and awareness-raising among the population and communal leaders in the region to publicise the results, mayors were astonished to learn of the existence of mining administration fees for their communes. These funds were kept by the Bureau du Cadastre Minier de Madagascar (BCMM) because they could not be sent securely to the communes.

The mayors' demands, supported by the Ministry in charge of decentralisation, have led to the creation of a system to make the communes' bank details more reliable so that they can receive their share of the mining administration fees. This can help their populations to benefit from the spin-offs of mineral extraction (EITI Madagascar, 2018).

Sub-national payments and transfers

The first EITI reconciliation reports had enabled some mayors of remote communities to learn that their communities were entitled to payments from the extractive sector, channelled through a government agency. In particular, the lack of bank accounts and appropriate information had prevented them from receiving their entitlements. Subsequent reconciliation reports showed that such problems had continued and highlighted the need for improvements in the procedures for the collection and distribution of sub-national payments and transfers. The specific report on sub-national payments and transfers, i.e. to decentralised local authorities (regions, communes) or the relevant state agencies, therefore makes practical recommendations to enable more efficient and uniform management in this area (EITI Madagascar, 2018).

Improved management of public administration databases

Difficulties encountered during the reconciliations made the tax and customs services aware of the limits of their information system and the inadequacy of its updating. In particular, the taxpayer identification numbers used by the two services were different and the same company could have several different iden-

tification numbers. The databases were subsequently updated and corrected to allow for greater consistency and cooperation between the tax and customs administrations (EITI Madagascar, 2018).

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The mayors' demands, supported by the Ministry in charge of decentralisation, have led to the creation of a system to make the communes' bank details more reliable so that they can receive their share of the mining administration fees. This can help their populations to benefit from the spin-offs of mineral extraction (EITI Madagascar, 2018).

Sub-national payments and transfers

The first EITI reconciliation reports had enabled some mayors of remote communities to learn that their communities were entitled to payments from the extractive sector, channelled through a government agency. In particular, the lack of bank accounts and appropriate information had prevented them from receiving their entitlements. Subsequent reconciliation reports showed that such problems had continued and highlighted the need for improvements in the procedures for the collection and distribution of sub-national payments and transfers. The specific report on sub-national payments and transfers, i.e. to decentralised local authorities (regions, communes) or the relevant state agencies, therefore makes practical recommendations to enable more efficient and uniform management in this area (EITI Madagascar, 2018).

Improved management of public administration databases

Difficulties encountered during the reconciliations made the tax and customs services aware of the limits of their information system and the inadequacy of its updating. In particular, the taxpayer identification numbers used by the two services were different and the same company could have several different iden-

tification numbers. The databases were subsequently updated and corrected to allow for greater consistency and cooperation between the tax and customs administrations (EITI Madagascar, 2018).

Contribution to the public debate

According to the International EITI Secretariat's Madagascar Second Validation Assessment Project:

"There is evidence that the Madagascar EITI has contributed to the public debate on the use of EITI data by local communities, the media, development partners and think tanks. Other independent studies commissioned by the Multi-stakeholder Group appear to be frequently cited alongside the EITI Reports, particularly by companies and development partners. Industry stakeholders and development partners generally recognise the contribution of Madagascar EITI to extractive industries transparency. Public use of EITI data has focused in particular on four areas, namely sub-national payments and transfers, the economic contribution of artisanal and small-scale mining, licensing, and reform of the Mining and Petroleum Codes. Sub-national government officials and civil society have used EITI data to track payments for mining administration costs and as a tool for participatory budgeting. With regard to artisanal and small-scale mining, the EITI Reports have highlighted discrepancies in estimates of the value of gold exports (and loss of revenue) despite the export ban. With regard to the management of mining licenses, the EITI Report has served as an annual diagnosis of BCMM supervision reforms and discrepancies in the management of license movements. EITI Madagascar has also contributed to reforms of sectoral legislation, such as the Mining and Petroleum Codes, serving as a platform for CSOs to comment²⁴."

²⁴ International EITI Secretariat (April 2020), Madagascar Second Validation Assessment Project

"The growing interest of women in the mining issue was noted during the regional briefings, as their numbers increased relative to men."

Lydia Boarlaza, DG Madagascar Consolidated Mining, Representative of the Chamber of Mines.

"The government, the extractive industries and civil society have concerted and focused on issues of improving governance in the sector and have succeeded in arousing the general interest of the population and the confidence of investors."

Dane Marcelle, Acting Executive Secretary of EITI Madagascar from December 2019 to the present, interview June 2020.

Clarification on the granting of mining permits

The almost ten-year moratorium on mining licences has raised concerns about the granting of licences in violation of the official freeze, with an impact on investor confidence in the government's management of licences. The EITI Reports shed light on the granting and transfer of licences in this exceptional context and made recommendations to improve the management of licences, which have been followed up by the BCMM. In addition, this study was further developed by Transparency International-Initiative Madagascar (TI-MG) by assessing the risks of corruption in the granting of mining permits.

Systematic disclosure of data

Disclosures are made voluntarily by companies and state entities. They cover the legal, fiscal and institutional framework, the list of mining permits and procedures, the state of occupation of oil blocks, legal owners, state-owned companies (list, financial statements and dividends), the production capacity of the company, the destination of products, customs statistics on exports, control obligations and the role of the Court of Auditors, the payments made by companies to the state, customs receipts, the distribution of Mining Administration Costs (FAM), the activity report of the General Directorate of the Treasury (DGT), the reports on the policy and social achievements of companies, the share of the mining sector in general in the country's economy as well as the share of payments and activities of certain companies in the national economy²⁵.

²⁵ EITI Madagascar (December 2019b). 2018 EITI Reconciliation Report

Encouraging disclosures of beneficial owners

EITI Madagascar also plays a leading role in encouraging disclosures on beneficial owners. It submitted a draft decree in December 2019 and disclosed for the first time detailed information on beneficial owners and ownership structure of companies. Government representatives, including the financial intelligence unit SAMIFIN and the anti-corruption agency BIANCO, welcomed this work, underlining its links with Madagascar's commitments elsewhere in the fight against money laundering and illicit financial flows.

4.2. Challenges in EITI implementation

Madagascar has faced many challenges over the twelve years of EITI implementation, including political instability, severe funding constraints, uneven levels of stakeholder participation and the Covid-19 health crisis. The findings of the first validation on government engagement highlighted that the institutionalisation of Madagascar EITI through a decree may not be sustainable in the long term. In the process of the second validation, industry and civil society representatives, as well as partners, expressed concerns about the government's concrete commitment to improving governance in the extractive sector.

Political instability

The political crisis in 2009 not only slowed down the activities of the Madagascar EITI but also impacted on the existence of the EITI Regional Committees due to the drastic decrease in funding. A possible de-listing of Madagascar from the EITI was considered a possibility at that time.

“It is mainly political crises that have had an impact on the management of the process, as the interlocutors change with each regime change and the vision of the process could also be different depending on the regime in place”.

**Lydia Boarlaza, DG Madagascar Consolidated Mining,
Representative of the Chamber of Mines, interview June 2020**

Funding constraints

The decree on institutionalisation has not yet succeeded in making the EITI grant sustainable. In accordance with Requirement 1.1, the government is invited to further integrate EITI funds into government budgeting in order to ensure the sustainability of EITI implementation over the long term.

The first validation had revealed that the government had not fully, actively and effectively participated in the EITI process between 2014 and 2017. General statements of support at the high political level have not always been translated into concrete efforts to support all aspects of EITI implementation at the operational level, leading to the resignation of the Executive Secretariat staff²⁶. The delivery of EITI reporting depends largely on technical and financial partners such as the World Bank, the African Development Bank and the Multi-Donor Trust Fund (MDTF). Due to funding shortfalls on the part of the government in 2018, the Multi-Stakeholder Group and the national secretariat have not been able to carry out all the activities in the work plan. Madagascar did not publish an annual progress report in 2018 and was therefore suspended in February 2019. The suspension was lifted in May 2019, following a commitment by the government to provide funding to ensure the sustainability of the process.

Compilation table of the financial contribution (in US\$) to support the implementation of the EITI

Unequal levels of stakeholder participation

The first validation showed that Madagascar had made significant progress in im-

Année	2011	2012	2013	2014	2015	2016	2017	2018	2019
Total	249 451 \$	N/A	N/A	215 315 \$	627 146 \$	536 654 \$	648 000 \$ ²⁷	N/A	N/A
Multi-Donor Trust ITIE Fund ²⁸	140 929	N/A	N/A	N/A	43 846 US\$	36 154 US\$	N/A	N/A	N/A
Gouvernement Malagasy	13 761,80	N/A	N/A	100 000 ²⁹	–	–	100 000	N/A	100 000 ³⁰
Banque mondiale	13 221,39	N/A	N/A	115 315 ³¹	0	0	N/A	N/A	N/A
BAD	7 379,38	N/A	N/A		293 300	200 500	N/A	N/A	N/A
GiZ	18 500	N/A	N/A	0	0	0	N/A	N/A	N/A
Basket Fund	N/A	N/A	N/A	N/A	90 000 ³²	100 000 ³³	N/A	N/A	N/A

Source: Compilation of Madagascar EITI Progress Report from 2011 to 2018

²⁶ Express de Madagascar (2019), Gouvernance minière-Daniella RANDRIAFENO resigns.

Retrieved from: <https://lexpress.mg/03/12/2019/gouvernance-mini%C3%A8re-daniella-randriafeno-demissionne/>

²⁷ Estimated Budget

²⁸ A common fund for EITI implementing countries, managed by the World Bank

²⁹ The National Secretariat has received a grant from the Malagasy Government, through the Public Treasury, in the amount of US\$100 000. This fund has enabled the National Secretariat to remain operational with three (3) employees and to carry out a minimum of sensitisation activities.

due to technical and financial capacity constraints and the fragmented nature of Malagasy civil society. In the second validation, civil society engagement is still hampered by limited capacity and resources.

Inadequate representation of women on the national committee

When appointing or renewing members representing the Extractive Industries College in the multi-stakeholder group, gender balance was not taken into account.

However, the review of gender balance is part of the Madagascar 2020 EITI Work Programme, in order to comply with Article a) ii of Requirement 1.4 of the new 2019 EITI standard, which states that “the multi-stakeholder group and each Constituency shall take into account gender balance in their composition in order to progress towards parity”.

Table showing the distribution of women in the national committee

2007-2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
N/A	N/A	N/A	N/A	5/21	7/21	8/21	11/21	9/24	9/24

Source: Compilation of Madagascar EITI Progress Report from 2011 to 2018

In addition, since the 2015 exercise, the multi-stakeholder group has made a point of including contextual and numerical information on the number of women working in the extractive industries in the reconciliation reports.

Cont. Page 18:

³⁰ An effective transfer in November 2019 of MGA 140 million only covered the 10-month salary arrears of the former Executive Secretary.

³¹ An effective transfer in November 2019 of MGA 140 million only covered the 10-month salary arrears of the former Executive Secretary.

³² The government is the main financier however the budget foreseen for the coordination of the National Secretariat which was to be financed by the Basket Fund has not materialised. This situation has impacted on the operationality of the Executive Secretariat.

³³ The fund that was to be financed by the Basket Fund did not materialise.

5. Recommendations and conclusion

EITI Madagascar has successfully implemented the EITI since its adherence thanks to the multi-stakeholder group as a platform to build dialogue and trust between the three colleges: the administration, extractive companies and civil society. In addition, the Madagascar EITI has focused its efforts on priority issues at the national level in the extractive sector such as sub-national transfers and payments, the suspension of the licensing process for almost ten years, the debate on the systematic disclosure of data relating to the production sharing contract, and beneficial ownership. The Madagascar EITI has played a key role as a provider of reliable and regular data for all stakeholders despite the challenges the country faces.

In order to encourage Zimbabwe to join the EITI process, the following recommendations are proposed based on Madagascar’s experience:

5.1. Recommendations on the governance of the EITI process

- Ensure the institutionalisation of the National EITI Committee by means of a decree to reaffirm the importance of the EITI process.
- In many countries, the effective chairmanship of the multi-stakeholder group is entrusted to the EITI champion, who is a high-level civil servant: the Minister of Mines, the Minister of Finance, the Prime Minister or the President of the Republic. The government is required to appoint a senior official to lead EITI implementation. The person so appointed must have the confidence of all stakeholders, have the authority and freedom to coordinate EITI-related actions among the relevant government entities and ministries, and be able to mobilise the resources needed for EITI implementation.
- Ensure equal representation of the colleges in the National Committee.
- Each constituency should appoint a ‘Lead Partner’ who is responsible for being the spokesperson for the respective constituencies and representing them where necessary, as well as facilitating relations and communication with the EITI champion and the Executive Secretary.
- Ensure dialogue and consensual decision-making in the National Committee to support the smooth running of the process.
- In the event of a vote within the National Committee after debates in which each member is free to speak, each constituency has one vote regardless of the distribution of the number of members in each constituency.

5.2. Recommendations on EITI implementation

- Ensure the good organisation and functioning of the Executive Secretariat by providing it with the necessary resources (human, material and financial) in a sustainable manner. The government should further integrate EITI funds into government budgeting in order to ensure the sustainability of EITI implementation over the long term.
- Disseminate the results of the EITI report at all levels (national, regional and local) in a comprehensible manner and according to the specificities of the regions. Allow public debate on the results of these reconciliations with a view to the appropriation of EITI standards by all citizens.
- The legal framework should provide for the full participation of companies in the sector in the EITI reconciliation process.

5.3. Recommendations on sustainable financing for EITI implementation

The EITI activities, as well as the functioning of the Secretariat, including the salaries of the employees, day-to-day management costs (rent, telephone, internet etc.) and the membership fee of the EITI Association at the international level, should be covered by the state budget. This would reflect in figures showing the government's commitment to implementing the EITI standards and principles. It would also be conceivable to finance the EITI through a share of the administrative costs paid at the level of the mining cadastre.

"In the case of Madagascar, joining the Extractive Industries Transparency Initiative (EITI) is only beneficial for the country, as the EITI is one of the tools that allows stakeholders to discuss, exchange, understand each other and reach a consensus that is valid for all parties. In addition, an EITI implementing country is more credible to potential major investors and reassures them that their investments are secure."

Lydia Boarlaza, DG Madagascar Consolidated Mining, Representative of the Chamber of Mines, interview June 2020

References

Laws

- Law n°99-022 of 19 August 1999 amended by Law n°2005-021 of 27 July 2005 on the Mining Code
<http://edbm.mg/wp-content/uploads/2017/12/CODE-MINIER-2005.pdf>.
- Law n°2001-031 of 08 October 2002, amended by Law n°2005-022 of 02 August 2005 on Large Mining Investments (LGIM)
<http://eitimadagascar.org/loi-sur-les-grands-investissements-miniers-lgim-2005/>
- Convention d'établissement du Projet Ilménite
https://www.riotinto.com/documents/QMM_Convention_detablissement.pdf

Publications, reports

- EITI Madagascar (June 2011), EITI Report for the financial years 2007, 2008, 2009 and first half of 2010.
http://eitimadagascar.org/wp-content/uploads/2017/08/2007_2009_madagascar_eiti_report_fr.pdf
- EITI Madagascar (2012): Progress report on Madagascar EITI activities in 2011.
http://eitimadagascar.org/wp-content/uploads/2017/10/Madagascar_RAPPORT-ANNUEL-DAVANCEMENT-2011.pdf
- EITI Madagascar (2013): Progress report on EITI activities in Madagascar in 2012.
http://eitimadagascar.org/wp-content/uploads/2017/10/Madagascar_RAPPORT-ANNUEL-DAVANCEMENT-2012.pdf
- EITI Madagascar (2014): Progress report on EITI activities in Madagascar in 2013.
http://eitimadagascar.org/wp-content/uploads/2017/10/Madagascar_RAPPORT-ANNUEL-DAVANCEMENT-2013.pdf
- EITI Madagascar (2015): Progress report on EITI activities in Madagascar in 2014.
http://eitimadagascar.org/wp-content/uploads/2017/10/Madagascar_RAPPORT-ANNUEL-DAVANCEMENT-2013.pdf

- EITI Madagascar (2016) : Progress report on EITI Madagascar 2015 activities
http://eitimadagascar.org/wp-content/uploads/2017/09/Madagascar_RAPPORT-ANNUEL-DAVANCEMENT-2015.pdf
- EITI Madagascar (2017): Study on Strengthening EITI Governance
<http://eitimadagascar.org/etude-sur-le-renforcement-de-la-gouvernance/?aid=940&sa=0>
- EITI Madagascar (2017): Progress report on EITI activities in Madagascar in 2016
http://eitimadagascar.org/wp-content/uploads/2017/09/Madagascar_RAPPORT-ANNUEL-DAVANCEMENT-2016.pdf
- EITI Madagascar (March 2018), 2008-2018: 10 years of contribution to transparency
https://eiti.org/files/documents/brochure_-_10_ans_de_leiti_-_201805.pdf
- EITI Madagascar (2019a): Progress report on EITI Madagascar activities in 2017 and 2018
http://eitimadagascar.org/wp-content/uploads/2017/08/EITI-Madagascar_Rapport-annuel-davancement-2017-et-2018.pdf
- EITI Madagascar (2019b) : Reconciliation Report 2017
<http://eitimadagascar.org/wp-content/uploads/2020/01/EITI-2017-RAPPORT-FINAL-11112019.pdf>
- EITI Madagascar (2019c). Reconciliation Report 2018
<http://eitimadagascar.org/wp-content/uploads/2020/01/EITI-2018-RAPPORT-FINALdu-11112019-.pdf>
- International EITI Secretariat (April 2020), Madagascar Second Validation Assessment Project
- Randrianja, S. (2011) Le coup d'Etat de mars 2009. Karthala editions
- Transparency International-Initiative Madagascar (2020). Evaluation des risques de corruption dans l'octroi des titres miniers à Madagascar.

<https://transparency.org.au/wp-content/uploads/2020/05/Evaluation-des-risques-de-corrupcion-Madagascar.pdf>

- Banque Mondiale (2012), Initiative pour la transparence des industries extractives (ITIE) : De la mise en œuvre de l'ITIE. Un manuel pour les décideurs politiques et les parties prenantes, Département de l'Énergie durable, unité Pétrole, gaz naturel et mines
<http://documents.worldbank.org/curated/en/267131468193772303/pdf/73831-FRENCH-EITI-PUBLIC.pdf>

Website and press articles

- EITI Madagascar, Arrêté portant sur la création définitive et la réactivation du comité national, accessed at: http://ITIEmadagascar.org/wp-content/uploads/2017/08/Madagascar_ARRETE-PORTANT-CREATION-DEFINITIVE-ET-REACTIVATION-DU-COMITE-NATIONAL-ITIE.pdf
- EITI website, Madagascar has made significant progress in implementing the EITI 2016 standard, with substantial improvements, accessed at: <https://ITIE.org/fr/decision-conseil/2020-30>.
- Express de Madagascar (2019), Gouvernance minière-Daniella RANDRIAFENO resigns. Retrieved from: <https://lexpress.mg/03/12/2019/gouvernance-mini%C3%A9re-daniella-randriafereno-demissionne/>
- La croix.com website (2017), Zimbabwe's economy in figures, accessed on June 08, 2020 at: <https://www.la-croix.com/Monde/Afrique/Leconomie-Zimbabwe-chiffres-2017-11-24-1200894615>
- Transparency International-Initiative Madagascar website (2020), Corruption Perception Index accessed at: <https://www.transparency.mg/ipc2019>
- Website of the Office des Mines Nationales et des Industries Extractives consulted on: <https://www.omnis.mg/index.php?lang=en>
- Website of the Institute of Gemmology of Madagascar consulted on: <http://igm.mg/>



A case for Democratic Republic of Congo

By Albert Kabuya Muyeba,

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Acronyms and abbreviations

1+4	President of the DRC and 4 vice-presidents
CAMI	DRC Mining Cadastre
CENADEP	National Centre for Development Support and Popular Participation
CNCD	Belgian Civil Society Organisations
DFID	Department for International Development (British cooperation)
DGDA	Customs and Assises Branch
DLFD	Administrative and Federal Revenue Branch
DRC	Democratic Republic of Congo
EC	EITI Executive Committee
EITI	Extractive Industries Transparency Initiative
EITI	Transparency in Extractive Industries Initiative
FEJE	women and economic justice organisation
GIZ	Gesellschaft für Internationale Zusammenarbeit (German cooperation)
GMP	Multi-party group
IMD	Taxation branch
NHR	Natural Resource Network
NRT	EITI National Committee
OSISA	Open Society Initiative for Southern Africa
POM	Mining Organisations Platform
PWYP	Publish what you pay
SARW	Southern Africa Resource Watch
SI	EITI International Secretariat
SONAHYDROC	Société Nationale des Hydrocarbures du Congo
ST	EITI Technical Secretariat
TFM	Tenkefungurume Mining
WB	World Bank

Introduction

The Democratic Republic of Congo (DRC) is one of the most resource-rich countries in Africa. Like other countries rich in natural resources, its people do not receive dividends from the exploitation of these immense resources, but are living in extreme poverty. This paradox has led some people today to talk about impoverishing wealth; that is to say that the richer a country is, the poorer its population is. Natural resources become a curse instead of a blessing that benefits communities. It is to break this paradox that the Congolese government decided to implement the Extractive Industries Transparency Initiative (EITI) with the aim of improving the governance of the mining sector, oil, gas and forestry so that the proceeds from the exploitation of these resources contributes to the realisation of programmes of collective interest and benefit all Congolese.

To this end, the DRC joined the EITI in 2006 and undertook reforms in the natural resources sector, including industrial mines, oil and gas. The artisanal mining and forestry sectors will have to be integrated in due course. The EITI is an international standard that promotes the sound management of extractive resources, so that they can be an important driver of economic growth and sustainable development. To this end, the EITI requires countries that implement the EITI to ensure transparency by disclosing payments in respect of taxes, royalties, fees and miscellaneous benefits to companies that exploit extractive resources (especially mining, oil and gas) to the benefit of the state and the revenues that the government receives from these enterprises. The EITI also requires the publication of other information, including contextual information, to enable stakeholders and the general public to have better knowledge and to debate on the functioning of the extractive sector and its contribution to the state budget in particular and to the economy in general.

From the status of candidate country in 2007, the DRC has experienced one suspension and has recovered to become EITI-compliant since July 2014. After the turbulence of the year 2015, with the commitment of all stakeholders, the DRC has made significant progress in the implementation of the EITI according to the report of the last validation, but 18 months was given to the country to implement 13 corrective actions in order to be considered a compliant country. Since the beginning of 2020, the DRC has been facing a decline in commodity prices and global demand with a negative impact on macroeconomic balances.

Real GDP growth reached 6.9 per cent in 2015, 3.6 percentage points lower than originally projected at the beginning of the year, and the slowdown deepened in 2016. The growth of the extractive industries slowed to 4.8 per cent compared to an average of 20.4 per cent per year between 2010 and 2014, while the price of products such as copper, which accounted for 53 per cent of goods exports between 2010 and 2015, fell by a quarter.

Alongside this fragility, the DRC is currently facing the global health crisis caused by the Covid-19 pandemic, whose economic and social consequences are likely to be catastrophic. This health crisis is slowing the momentum in the implementation of the corrective measures proposed by the EITI Board of Directors and the International Secretariat.

We have subdivided this study into sections. The first section presents the state of the extractive industry in the DRC, the second section gives a short account of the ups and downs of the implementation of the EITI in the DRC, and the third section will address current challenges and suggest ways forward for some challenges. A fourth section addresses the issue of women and youth participation in the implementation of the EITI. We will then make some recommendations to Zimbabwe's stakeholders before making a general proposal to the Southern African Development Community (SADC).

Section I: The extractive industry of the DRC



Company delegates to the Congolese EITI committee

The EITI is the global standard for promoting open and responsible management of extractive resources. A number of countries with large reserves of natural resources (such as minerals, oil, gas and wood) are facing the paradox of the resource curse in terms of the poverty level of their population. The DRC holds some of the largest deposits of copper, cobalt, coltan, diamonds, gold, silver, tin, iron ore, zinc and oil in the world. Untapped mineral deposits are estimated at US\$24 trillion at current market prices. The country is one of the main exporters of minerals. The DRC holds about 51 per cent of the world production of cobalt, 17 per cent of tantalum, 15 per cent of coltan, 13 per cent of diamonds, 6 per cent of copper, 4 per cent of refined cobalt, and 2 per cent of tin. Extractive industries have accounted for more than 80 per cent of the country's exports over several decades, and accounted for 68.3 per cent of government revenues in 2015. Most of the extractive activities take place in Upper Katanga and Lualaba.

Although the country's current crude oil production is modest (about 25 000 barrels per day), the DRC has untapped potential, both at sea and on land – approximately 7.2 million barrels of recoverable oil based on 2016 data. More and more criticism is being levelled against the Congolese government regarding oil

exploration activities in the protected areas of Virunga and Salonga. The governance of the Congolese forest sector has always provoked strong criticism from civil society organisations in the environment sector, including Green Peace and the Natural Resources Network.

One third of the national territory represents what is called the Congo Basin, rightly considered the second lung of the planet (after the Amazon). The DRC currently has an estimated population of 80 million people spread over a land mass of the same size as western Europe, eighty times the size of Belgium and more or less four times that of France. The DRC is ranked 176th out of 189 countries according to the 2018 United Nations Human Development Index. About 80 per cent of the population lives below the poverty line, with one of the lowest per capita incomes in the world. Less than 10 per cent of the population have access to basic quality social services. Abuses of armed groups are reported almost every morning. Massacres, rapes and deportations of populations are perpetrated despite two decades of the United Nations Mission for the Stabilisation of Congo. Access to mineral wealth by some neighbouring countries remains one of the causes of these armed conflicts, and the situation may take several more years if the prices of gold, cassiterite, wolframite, colombo, and tantalite continue to rise.

With the privatisation of the industrial mining sector and with more than two million artisanal operators in all sectors, the DRC is among the countries for which the implementation of the EITI standard is a trigger for growth. If it is to break this paradox of abundant resources in the face of a population that is languishing in the abyss of misery, then the Congolese government has no real choice. The salvation of all Congolese depends largely on the transparent management of public resources, especially the revenues generated by mines, oil and to some extent its forests.

Section II: The ups and downs of EITI implementation in the DRC

The government of the DRC pledged to implement the EITI on 17 March 2005 with a statement by the vice-president who is in charge of economic and financial issues, His Excellency Jean Pierre Bemba Gombo. This declaration materialised in a statement made in May 2005 by the National Forum convened by the government with active participation of civil society. In January 2006, a major

press conference was organised to make official this political commitment, despite the difficult context of the time. The DRC was accepted as a candidate country to the EITI in February 2008. A National Committee of the EITI DRC had difficulty because of its large size and the characteristics of a political regime that brought together the government of the time and the war chiefs for reasons of peace. After the 2006 elections the country had enormous difficulties in setting up a National Committee capable of giving real impetus to promote transparency and good governance of the extractive sector. Gradually the DRC will strive under the government led by Prime Minister Adolphe Mozito.

The texts organising the EITI in the DRC were improved with a decree of the Prime Minister No. 09/31 of 8 August 2009 reducing the size of the National Committee of the EITI, mainly on the recommendation of civil society (including the Natural Resources Network, and the Congolese Coalition for Publish What You Pay). It should be pointed out here that these texts were produced with the financial support of the Observatory of Natural Resources in Southern Africa, SARW at the open days of Congolese civil society on the EITI, organised by CENADEP. The first DRC report of the EITI dates back to 2007 and covered less than US\$350 million while the last report of the EITI focused on 2017 data and traced more than one and a half billion US dollars in revenues from the extractive sector. To date the DRC has produced more than ten EITI reports that have traced to the public treasury about twelve billion US dollars at the rate of one billion two hundred on average each year. That is a total of approximately twelve billion US dollars collected and traced. Qualitatively, the first EITI reports produced by the DRC in the years 2010 and 2011, at the beginning of the process, had flaws related in particular to completeness and reliability. Discrepancies in unreconciled reporting ranged up to \$80 million from the RAD case that at the time broke. This was not such as to make the process credible.

The DRC was unable to implement the principles and criteria of the EITI at the time, so the country was suspended. But the EITI National Committee saw this suspension as a real opportunity to learn how to implement the EITI Standards. It is only in 2014, under Prime Minister Matata Mpogno, that the country was declared by the Board of Directors as an EITI-compliant country. The EITI process has benefited from the support of several partners including the World Bank, SARW, GIZ, CNCD 11.11.11, REVENUE WATCH and many others. The EITI process is part of the state budget of the Ministry of Planning. In fact, at the

time, the Congolese government disbursed nearly \$2 800 000 a year. The reports for the years 2014, 2015, 2016 are of good quality in terms of the mass of available information disclosed, the extractive sector as well as public finances undergoing several reforms. The state's financial authorities are increasingly modernised, whereas a few years ago the DGRAD collected the data manually.

a) The EITI Executive Committee and stakeholder engagement



Indaba mining February 2019, DRC delegation and civil society delegates to the EITI national committee

The Executive Committee of the EITI DRC has about 18 members, eight of whom represent public institutions (Congolese government), five of whom represent extractive companies and, five of whom represent civil society. Among the representatives of the public institutions the Executive Committee of the EITI DRC has within it a representative of the head of state, a representative of the prime minister and representatives of the senate and the national assembly. The commitment of the Congolese government to implement the EITI is unequivocal. Her Excellency the vice-prime minister is currently in charge of planning and presides over the EITI DRC. The senior advisor of the head of state in charge of economic issues, a representative of the prime minister, a senator, a national deputy, and several women ministers take part in the meetings of the Executive Committee of the EITI. The Congolese government mobilises the financial authorities for the collection and disclosure of revenues from the extractive

sector, the general inspection of finances for the reliability of data, the Mining Register and many other services to ensure that the information contained in the country's EITI reports is reliable. The Congolese government is the stakeholder without which it is impossible to talk about the EITI in the country. The Congolese government makes every effort to ensure that operational extractive companies in the DRC disclose the information necessary for the preparation of EITI reports. It ensures that Congolese civil society participates in a free and independent manner and that no actor can be subjected to intimidation or reprisals because of its views on the governance of the extractive sector. The contribution of the Congolese government in the implementation of the EITI standard is crucial as it is the most important stakeholder in the EITI process and leads the process. It designates senior politicians to lead the implementation, it takes the texts organising the implementation via the Prime Minister. It is the government that adheres to the EITI, it funds the implementation process and mobilises partners for additional support. The government votes a budget for implementation and allocates it to the activities of the work-plan of the EITI National Committee. The government is the most important stakeholder determining the effective implementation of the EITI Standard. If extractive companies and the government do not disclose the payments or significant resales received in the sector on behalf of the Treasury, the EITI will not make sense. The commitment of the extractive companies, members of the Congo Federation of Enterprises and the Chamber of Mines, is also unequivocal. The large private mining companies are represented by a delegate of TFM, the public mining companies are represented by a delegate of the Gécamines, the Chamber of Mines is validly represented and the private oil companies are represented by the Director General of Perenco, and public oil companies are represented by a delegate of Sonahydroc. It should be noted here that the wood industry took part in the meetings of the EITI Executive Committee. The engagement of Congolese civil society in the EITI has been essential since the start of the EITI implementation process in 2005. There are civil society delegates representing organisations involved in Congolese mining issues including POM, PWYP RDC, CENADEP and the Natural Resources Network.



PWYP DRC, congolese delegation to the Lima EITI international conference

Students and young people from citizen movements as well as some networks of women involved in mining issues contribute to the quality of the public debate that enabled the DRC to undertake reforms, particularly in the oil, gas, and mining sectors.

Congolese civil society plays a key role in the implementation of the EITI in the country. The success of the EITI DRC was largely due to the contribution of civil society. Civil society provides local citizen control and uses the data published in the various EITI reports to fuel public debate at the community level. Today more than ever, countries implementing the EITI standard are judged on the basis of the civic space, resulting in more implementation of the EITI in the country. The wider this civic space is, the better the process will go. The more this civic space is reduced, the more inadequate is the level of implementation of the EITI Standard in a country. The active participation of civil society in the implementation of the EITI is an indicator of the smooth running of the process. The more barriers there are to civil society action, the more inadequate the process of implementing the EITI standard. As much as civil society participates independently in the process, so much progress is made in implementation. We must ensure that the voice of civil society is heard whenever necessary to claim that the implementation of the EITI standard is unfettered. The EITI Standard

2019 recognises that the crisis in the governance of the multi-stakeholder group (GMP) with damning revelations about the mismanagement of the ST has affected implementation.

Each stakeholder independently designates its representatives to the EITI Executive Committee without interference from other stakeholders. The modalities of appointing the delegates of the stakeholders to the Executive Committee depend on the practices at the level of the stakeholders, it is required that all delegates of each stakeholder enjoy the confidence of their peers. More and more voices are demanding that delegates of stakeholders spend no more than three years on the Executive Committee.

The GMP of the Democratic Republic of Congo meets in principle once a month in the ordinary meeting of the Executive Committee, that is every last Wednesday of the month (or whenever the need arises, in an extraordinary meeting). In addition to the decree, the National Committee of the EITI has adopted Rules of Procedure.

The technical quality of the EITI Executive Committee meetings depends on the preparatory work of civil society delegates and the Technical Working Group (TWG) which is stakeholder-driven. It was this TWG that saved the day when the EITI Executive Committee could no longer meet during the election year and for several months before the implementation of the new government. It should be mentioned here that after the third validation the EITI Board of Directors concluded that the DRC has made significant progress in implementing the EITI Standard. The DRC has 18 months to take corrective actions in accordance with the requirements of the EITI Standard, including:

- the governance of the Multiparty Group (1.4)
- licensing (2.2),
- the register of licences (2.3),
- state participation (2.6),
- production data (3.2),
- export data (3.3),
- completeness (4.1),
- transactions of state-owned enterprises (4.5),

- sub-national direct payments (4.6),
- data quality (4.9),
- the distribution of income (5.1),
- sub-national transfers (5.2),
- compulsory social expenditure (6.1), and
- quasi-tax expenditures of state-owned enterprises (6.2).

The implementation of these various corrective measures requires the Congolese government to provide responsible leadership to reform the sectors concerned. The active participation of extractive companies and the performance of the state's financial authorities can guarantee the increase of revenues for the Congolese state, while the involvement of Congolese civil society is the key to successful implementation of the EITI Standard in the DRC.

b) The EITI Technical Secretariat

The strength of the Executive Committee of the EITI DRC is also the Technical Secretariat (ST) of the EITI, which is full of technical experts in charge of data collection, of communication and strengthening civil society on the EITI. A brilliant woman lawyer has been appointed EITI Coordinator, replacing the former National Coordinator (who is currently under legal proceedings).

This interim arrangement, which was supposed to last three months, will soon have lasted three years. A transparent process for the recruitment of a new EITI National Coordinator is under way, as the dossier has been adopted by the Council of Ministers. It should be noted here that background reports and scoping studies are currently produced by the Technical Secretariat, while the Independent Administrator produces only the conciliation report.

c) Technical and financial support from the Board of Directors and the SI

The Board of Directors of the EITI and the International Secretariat (SI) of the EITI always provides substantial support to the multi-party group of the DRC. The visits and working sessions with the SI have always been moments of learning and mutual reinforcement. They allow regular updating of the members of the Executive Committee and experts of the ST about the requirements of the Standard, taking into account the specificities of the DRC. The International

Secretariat of the EITI (based in Oslo) is the technical body for the day-to-day management of the implementation of the EITI Standard in implementing countries. It conducts consultations of all kinds to ensure that the process is carried out within the limits of the EITI Standard. It carries out preliminary validation of the countries and advises the authorities of each country on how to circumvent the different challenges.

d) Support from technical and financial partners

The World Bank, the GIZ and the British Cooperation are among the partners that have always supported the activities on the implementation of the EITI in the DRC, whether it be the activities carried out by civil society, those carried out by the Congolese government, or those carried out by extractive enterprises.

During the years of implementation of the EITI, the DRC benefited from the technical and financial support of development partners, mainly the World Bank, British Cooperation, German Cooperation, and Belgian Cooperation. The World Bank supported the EITI process in the DRC through a multi-donor fund of which Britain is one of the largest donors. The PROMINES project funded EITI DRC activities for several years. The support of REVENUE WATCH, SARW, Carter Center, Cordaid and CNCD 11.11.11 went more towards Congolese civil society organisations including POM, CENADEP, RRN, PWYP RDC, FEJE, citizen movements and several community radio networks across the country. As a result of the attempts at mismanagement at the ST level with the former National Coordinator currently under arrest, several partners stopped their financing of EITI activities.

Section III: The benefit for the Congolese Government

The Congolese Government is currently making a huge profit from the implementation of the EITI.

The first benefit for the country is that the financial operations around mining, oil, gas and forest resources must be done in full transparency for both the extractive companies and the Congolese state. This has the advantage of highlighting corrupt practices and misappropriations. The second benefit is the opportu-

nity for authorities to report regularly on the management of public revenues collected in the sector, allowing citizen quality control over their allocation, which strengthens dialogue and trust between citizens and decision-makers. The third benefit is that EITI data, and in particular the substantive public debate that it provokes, necessarily leads to public policy reforms. For example, the public debate on the EITI led the DRC to reform its 2002 Mining Code and its oil and gas law. The Congolese forestry code will soon be revised, taking into account the law on fundamental principles relating to the environment.

The share that belongs to the communities affected by extraction and the decentralised or local entities is now disclosed in the EITI reports, according to the distribution key set out in the mining code, the hydrocarbons code and the forestry code. The contribution of the extractive sector to the national or provincial budget is now known. Everything becomes clear, there is no longer the risk of opacity as in the past.

There is improved transparency and traceability of revenues from the sector to the Treasury General Account. Currently the mining royalty distribution key is respected, the mining provinces know their share in advance and have the opportunity to hold it at source, which was not possible a few years ago. There is a mining fund to finance development projects and programmes for future generations, whether it be hospitals, universities, entire cities, etc.

The EITI has led to the revision of certain Leonine contracts and their amendments and the vote on a new mining code and a new hydrocarbon code. The quality of the information has improved at the level of the Mining Register and the efforts aimed at the disclosure of the beneficial owners of the extractive companies in order to find any conflicts of interest and politically exposed persons. There have been improvements of the tax law and the tax code, modernisation and computerisation of financial boards such as DGRAD, DGI and DGDA. Thanks to the EITI reports, it is now possible to reveal the financial statements of state-owned enterprises and make recommendations for the future.

Section IV: Current challenges and attention points

The DRC faces some challenges in the implementation of the EITI. For methodical reasons we will distinguish between structural challenges and operational challenges.

A. From a structural point of view

The EITI DRC faces structural challenges that make it difficult to implement reforms that could boost an economy already weakened by dysfunctional public finances, the decline in commodity prices (including copper, cobalt, diamonds and oil), and poor financial performance. Currently the EITI DRC is strangled by the fact that under the comprehensive and inclusive agreement, the Ministry of Planning was rightly considered as coordinator of the government's action in a context of 1+4 without a Prime Minister. But with the Constitution of 18 February 2006, the country passed under a semi-presidential regime with a Prime Minister who coordinates the action of the government and is supposed to sign the new EITI texts. In the meantime the EITI Standard changes every three years. The danger consists in confusing the National Committee of the EITI with any public service using the budget annex of the Ministry of Planning. This can be seen in the blocking of operating costs and salary arrears for technical staff. The President of the EITI DRC has the rank of Deputy Prime Minister, and this could have facilitated the signing of the new texts of the EITI, but the political machine resulting from the alliances between FCC and CASH seems surrounded by a lot of mistrust. Another problem blocking the EITI DRC is linked to the fact that the National Coordinator is appointed and relieved of his duties by the President of the Republic.

The second blockage comes from the budget cuts made by the Congolese government in the framework of the prudent management of public finances that reduced the means of work of the Executive Committee, undermining the activities of the EITI and the production of reports on the deadlines.

B. At the operational level

Operationally, the EITI DRC faces challenges of various kinds, notably those related to the complexity of the Congolese mining sector, the reliability of data,

the barter agreement, the sale or transfer of shares, the review of mining contracts, and the governance of the multi-stakeholder group.

1) The complexity of the Congolese mining sector and the difficulty of achieving completeness of the published data could undermine the quality of the reports produced. There are one hundred extractive companies to track.

Concerns about the completeness and reliability of the data provided by both the government and business systems continue to arouse the distrust of civil society organisations, hindering efforts to move to systematic data disclosure. Ultimately, the EITI must address the concerns of all stakeholders, including the fact that the sector's revenues still do not benefit citizens.

2. There are concerns around data reliability and quality assurance. The lack of reliable statistics in the country did not make it easier for the multi-stakeholder group to collect data. The EITI Standard requires that the data reported be from audited accounts for greater reliability. Data from the state's financial authorities have often been reported without being drawn from the accounts previously audited. The multi-party group decided that the General Inspectorate of Finance, an institution that reports to the President, can attest to the reliability of the data reported by the financial authorities.

3) The China Mineral Infrastructure Barter Agreement or Contract: the DRC has signed a contract with some Chinese companies and banks estimated at nearly US\$9 billion, some of which should be used for the construction of infrastructure, some for the creation of a mining company, called SICOMINES. This agreement was the subject of wide public debate to ensure that the disbursements made are in the interest of the DRC.

4) The sale or sale of shares or assets of state enterprises: the DRC has faced more than one case of the sale or disposal of assets of state enterprises, mainly with regard to Gécamines whose several scandals were reported in the EITI reports and on the stock exchanges. These sales were generally made at a discount and the buyers sold them three or five times more expensively a few weeks later. This posed a serious problem of sincerity and honesty in the head of the DRC authorities.

5) The review of mining contracts: most contracts signed between major extractive companies and the DRC have not taken into account the interests of the Congolese people. There are several cases of clauses unfavourable to the interests of Congolese communities affected by mining activity. There are the calls for the review of these contracts, and the inclusion of clauses favourable to the interests of the affected communities.

6) The internal governance of the multi-party group: the Executive Committee of the EITI faced the misappropriation of resources for the implementation of the EITI in the DRC by the National Coordinator of the EITI. Once informed by the audit report carried out by the Executive Committee, the extractive companies and civil society have withdrawn their trust in the person of the EITI National Coordinator. This led to the ousting of the former EITI National Coordinator, Professor Jérémie Mack Dumba, who is currently detained at the Makala Central Prison in Kinshasa. It should be noted here that Professor Mack Dumba was released on bail and then obtained the annulment by the Council of State of the suspension order which struck him for irregularities. Discussions continue with the SI on implementation costs related to rents, missions and salaries and attendance fees of multi-party group members.

Oversight of the implementation of the EITI itself has had to address its own internal governance issues. Although the engagement of industry and civil society in the implementation of the EITI has proven to be strong in often difficult circumstances, the Congolese government must respect all colleges participating in the EITI as equal partners and exercise adequate oversight over the governance of implementation, including financial management.

Given the ambitions of the EITI process and the remarkable commitment of all colleges, the implementation of the EITI in the DRC must set an example of probity and adherence to the EITI Code of Conduct and the Civil Society Protocol.

Section V: The participation of women and young people

The EITI National Committee, which is the guiding body for the implementation of the EITI Standard, requires stakeholders to meaningfully involve women and youth in the process. The current Executive Committee is chaired by a woman, and the Acting Coordinator happens to be a woman too. Among the govern-

ment representatives, three of the five ministers are women. Within the extractive enterprises stakeholder group, women make significant contributions, and women participate actively among the civil society representatives.

At the moment, the EITI Executive Committee is chaired by the Deputy Prime Minister in charge of planning, and the ST is currently headed by a Coordinator who is supported by a Deputy Coordinator. Each stakeholder includes women among its delegates. In addition, the EITI's ST is composed of gender experts. The representation of women in the implementation of the EITI in the DRC is beyond doubt.

Efforts are being made to increase the participation of young people in the implementation of EITI. Currently, young people are involved in the process of implementing the EITI standard in the DRC, particularly at the level of public debate. Students and young people from the citizens' movements are involved in the debate on EITI data and advocacy campaigns organised by civil society. Congolese civil society is increasingly mobilising young people to actively participate in efforts to promote transparency and responsible management of the country's natural resources. Young people have worked hard to create a fund for future generations.

Section VI: Some success stories in the DRC

Responding to an SI question about the impact of the EITI in the DRC, Minister Kabwelulu made it clear that the impact is significant and that examples are legion. For example, parliament regularly uses EITI data to monitor government revenues. The Minister of Mines, in calculating GDP, uses the statistics of the EITI Reports.

The SI delegation on mission in Kinshasa attested that Congolese civil society, within the framework of its prerogatives within the Executive Committee, is not under any pressure from outside or inside. Each of the members of this platform present at this meeting, expressed themselves freely. All in all, no stakeholder obliges the other to accept anything in the decision-making because all work in a harmonised and consensual way.

The process in the DRC contributes meaningfully to transparency and continues to animate public debate. The Congolese government maximises revenues to

better fight poverty, improving the lives of the Congolese people. The EITI will produce the expected results in the DRC as stakeholders are free to express their views, and requests for confidentiality are respected.

Section VII: Recommendations

We make a few recommendations to Zimbabwe on the effective implementation of the EITI, learning from the implementation of the EITI Standard in the DRC :

- make a serious commitment to implement the EITI through a multi-stakeholder group involving extractive companies, civil society and government delegates, ensuring that each stakeholder participates freely and without hindrance;
- mobilise extractive companies and financial authorities to collect extractive sector revenues;
- take organisational and operational texts of the EITI committee in the country and designate a senior official for the implementation of the process;
- mobilise material, human and financial resources for the effective implementation of the EITI Standard;
- set a benchmark or scope based on a scoping study of the mining, gas and oil sector;
- hire an independent director or an independent audit firm to develop credible reports;
- raise awareness among reporting parties, in particular state enterprises, financial institutions, local entities and private companies in the mining and oil sector;
 - produce comprehensive reports on significant payments to the public treasury, mining and oil licences or contracts, beneficial owners, sub-national transfers
- train and inform the public, especially communities affected by mining, gas, oil and forestry on the EITI Standard, including an extension campaign of the EITI Standard within communities and in public bodies;
- ensure the active and independent participation of civil society in the EITI process without hindrance.

Conclusion

This study provides Zimbabwe's stakeholders with an opportunity to learn from the experiences of African countries that have made progress in implementing the EITI Standard. The DRC and Zimbabwe are experiencing the same realities when it comes to the management of mineral resources and hydrocarbons, in that their people remain trapped in poverty. The DRC and Zimbabwe are targeted by mafia networks specialising in illicit financial flows, terrorist financing, money laundering, and the financing of armed conflict. The DRC and Zimbabwe are rich in natural resources, but their populations are languishing below the poverty line. These two SADC countries share a common history, and they have a lot to learn from each other. This is why we believe that we need to encourage exchanges of experience in the implementation of the EITI Standard between the two countries.

SADC should encourage member countries to join the EITI in order to enable people to benefit from the exploitation of natural resources while fuelling well-informed public debate on the management of these resources. If properly exploited, the EITI data can lead to ministers' interpellations and feed debates in parliament. This can accelerate reforms.

This study summarily outlined the extractive industry of the DRC, described the ups and downs in the implementation of the EITI in the DRC, identified the benefits for the Congolese government, addressing current challenges and attention points, including the participation of women and youth in implementation. We finished the analysis with some success stories and recommendations for Zimbabwe. Speaking of the extractive industry of the DRC, we noted its complexity, the large number of companies and taxes to be recovered. Regarding the implementation of the EITI, we presented the ups and downs of the application of the Standard in a country that was emerging from political crisis and armed conflict, and took time to adopt fair laws. We noted that from the sixth year onwards the Executive Committee was recast, which led to changes, including the appointment of a Prime Minister while the country was governed by the 1+4 formula.

This shift has not been easy, the EITI DRC Committee will be redesigned as

circumstances change. Things are progressing well, taking advantage of the improvement in commodity prices from 2013 to 2015 and the 2011 elections. As the DRC enters a more or less stable period, the EITI Standard will give rise to valuable public debate on the management of natural resources. The hydrocarbons code and the mining code will undergo reforms.

A three-year work plan estimated at US\$12 million is adopted by the GMP and implemented using Congolese government funds. Mining and oil companies are mobilising for the effective implementation of the EITI, as is Congolese civil society. The Congolese government is mobilising at least five ministries and financial authorities for more efficiency, so things are changing very well.

At the initiative of civil society and extractive companies, an evaluation of the work plan is required to ensure that the resources allocated to the EITI DRC are managed well, but the audit carried out by the GMP highlighted weaknesses in the management of the ST which led to the crisis resulting in the suspension of the National Coordinator and the appointment of an Acting Coordinator with an Assistant Coordinator pending the recruitment of a new Coordinator. This interim arrangement took three years, which caused mistrust on the part of technical and financial partners.

We have noted that there are three secrets to successful implementation of the EITI in the country:

- strong leadership by the government,
- the commitment of heads of enterprise and heads of financial Boards willing to disclose information without taboos, and
- a proactive and committed civil society.

Like the DRC, Zimbabwe is experiencing a transition to a democratic society after a long political crisis due to dictatorship, and a financial crisis that has plunged the population into extreme poverty. The history of the DRC in terms of exiting the political and financial crisis and establishing democracy can serve as an example for Zimbabwe. The same is true of the implementation of the EITI and of the reforms to be undertaken so that the income of the extractive sector can benefit the population.

Footnotes

1. Rapport d'évaluation du Plan de travail de l'ITIE RDC pour les années 2015 - 2017, POM, août 2016, p 5

2. Rapport de la banque Mondiale sur le suivi de la situation économique et financière de 2016 en RDC, p1

3. La Norme ITIE 2019

4. NikStoop (juillet 2018), « More legislation, more violence ? The impact of Dodd-Frank in the DRC »,

5. <https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0201783&type=printable> ; Département britannique pour le développement international (juillet 2018), « DFID Democratic Republic of Congo (DRC) profile »,

6. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/723135/Democratic-Republic-Congo-July-2018.pdf, consultés en février 2019. 3 U.

7. Oil rights threatening DRC's Salonga National Park , Global Witness février 2019. <https://www.globalwitness.org/en/press-releases/oil-rights-salonga-national-park-could-be-null-and-void-global-witness-analysis-reveals/>

8. Programme des Nations Unies pour le développement (2018), « Human Development Reports: Congo (Democratic Republic of the) », <http://hdr.undp.org/en/countries/profiles/COD>, consulté en février 2019.

9. NRGi (octobre 2015), op.cit.

10. Rapport CORAP sur le suivi par la société civile congolaise des politiques énergétiques de la RDC ;

11. Analyse des rapports ITIE RDC par la société civile lors des journées portes ouvertes organisées par le CENADEP au Centre inter-diocésain, à Kinshasa en 2015.

12. Analyse comparée des rapports 2014 à 2016 effectuée par les acteurs de la société civile au CEPAS en 2017 à Kinshasa en 2018.

13. NRGi (octobre 2015), « Country strategy note: Democratic Republic of Congo (DRC) », https://resourcegovernance.org/sites/default/files/documents/nrgi_drc-strategy_20160629.pdf, consulté en février 2019.

14. Secure Livelihoods Research Consortium (juillet 2018), « Mining minerals or mining the state? The practical norms governing mineral extraction in former Katanga, Democratic Republic of Congo », <https://securelivelihoods.org/wp-content/uploads/Mining-minerals-or-mining-the-state-Claude-Iguma-final-online.pdf>,

15. Ivanhoe Mines, <https://www.ivanhoemines.com/> ; Mining and Business Magazine (octobre 2018), « Kamo: Ivanhoe détient le plus grand projet de cuivre d'Afrique à Kakula »,

16. <https://www.miningandbusiness.com/actualite/kamo-ivanhoe-detient-le-plus-grand-projet-de-cuivre-dafrique-a-kakula-103> ; Agence Ecofin (mai 2017), « RD Congo: Ivanhoe reçoit un dernier paiement de USD 41,2 millions de la part de Zijin Mining »,

17. <https://www.agenceecofin.com/cuivre/2405-47599-rd-congo-ivanhoe-recoit-un-dernier-paiement-de-41-2-millions-de-la-part-de-zijin-mining>

18. Secure Livelihoods Research Consortium (juillet 2018), op.cit.

19. Bread for all, RAID et Fastenopfer (June 2014), « PR or Progress? Glencore's Corporate Responsibility in the Democratic Republic of the Congo ».

20. https://resourcegovernanceindex.org/system/documents/documents/000/000/134/original/Resource_Governance_Index_DRC_mining_profile_%28English%.pdf?1502816516, consulté ici en février 2019, p.7.



A case for Malawi

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Acronyms and abbreviations

CEPA	Centre for Environmental Policy and Advocacy
CONGOMA	Council of Non-Governmental Organisations in Malawi
CPIA	Country Policy and Institutional Assessment
DFID	Department for International Development
DoM	Department of Mines
EITI	Extractive Industry Transparency Initiative
FDI	Foreign direct investment
FY	Financial year
GDP	Gross domestic product
GIZ	Gesellschaft für Internationale Zusammenarbeit
GOM	Government of Malawi
IDA	Bank's International Development Association
MMA	Mines and Minerals Act
MSG	Multi-stakeholder group
MWEITI	Malawi Extractive Industry Transparency Initiative
NCA	Norwegian Church Aid
NGO	Non governmentnal organisation
NRJN	Natural Resource Justice Network
NSA	Non-state actors
OECD	Organisation for Economic Cooperation and Development
PFM	Public financial management
PWYP	Publish What You Pay
TOR	Terms of reference

Executive Summary

Malawi expressed its commitment to join the Extractive Industries Transparency Initiative (EITI) in June 2014. The commitment came after serious lobbying efforts by civil society pre-dating 2008 when the Kayerekera Uranium Mine, the first big mining project Malawi has ever had, was opened. The commitment was confirmed by President Mutharika during the opening of the 45th session of parliament on 17 June 2014. Malawi decided to join the EITI as a way of showing its commitment to promoting transparency and accountability in the extractive sector.

Since 2014, Malawi published three EITI reports. The country underwent a validation in 2018, in which the EITI board noted the meaningful progress that Malawi had made in implementing the global standard with a few areas requiring improvement in order for it to be rendered an EITI-compliant country. In August 2019, Malawi was suspended due to late submission of the EITI report, but the suspension was lifted when Malawi submitted the report on 30 November 2020.

At the time of joining the EITI, Malawi's mining governance framework was still outdated and weak and fostered a veil of secrecy by vesting too much power in the executive arm of government. There was limited room for participation of non-state actors in the governance of the extractive sector, and the realisation of benefits of the sector was at the discretion of the minister and the presidency. Since joining the EITI, Malawi facilitated the inclusion of civil society organisations in the governance of extractive industry revenues and contracts through their participation in the Malawi EITI multi-stakeholder group (MWEITI MSG); something which was otherwise not possible within the existing framework. This multi-stakeholder participation has opened up opportunities to track extractive revenue, engage in dialogue on contentious issues such as beneficial ownership, contract transparency and benefit-sharing agreements; and facilitated institutional reforms that will ensure accountability and transparency across the board, thereby reducing the likelihood of the resource curse for Malawi. Considering that the sector is still rather under-developed, the national effort to ensure that the country does not lose more resources through poorly negotiated contracts, corruption and weak fiscal regime is commendable.

However, the tool continues to face barriers such as limited technical and financial capacity to facilitate its effective implementation, and the lack of political will to fully operationalise the necessary reforms and institutionalise systematic disclosures. The country is yet to harmonise the policy and legislative framework to facilitate access to information and mandatory disclosure of data. In addition, the country continues to rely on external funding for the EITI reporting and administration which has made the process unsustainable, and has caused it to be regarded as an external activity separate from the day-to-day business of government.

If Malawi is to avoid the resource curse, then the MWEITI must be a widely engaging process that generates relevant data that can be used to inform different sectors and stakeholders in the economy to make decisions, and also to inform necessary reforms towards a more desirable governance framework. The country needs to demonstrate commitment through designated financing and institutionalisation of systematic disclosures in the relevant agencies and departments of government. This will ensure that the benefits of the EITI transcend the extractives sector, thereby facilitating national ownership of the initiative. While the EITI cannot solve all the existing governance challenges over natural resource revenues, the initiative can surely facilitate a neutral platform for meaningful dialogue between stakeholders, and a greater level of public interest and participation which could steer Malawi towards its aspirations for a more profitable extractives sector for sustainable national development.

Introduction

The African continent is home to abundant natural resource wealth and is estimated to hold about 30 per cent of all global mineral reserves,¹ which include gold, diamonds, oil, natural gas, uranium, and more. While the availability of natural resources presents opportunities for rapid economic growth and development for the continent, it has often come with the cost of conflict, environmental degradation and increased inequalities. There are many obstacles to achieving the desired rate of development from these resources, one of which remains governance of mineral resource wealth. Across the globe, experience has demonstrated that governance is a prerequisite to harnessing the economic value of mineral wealth and natural resources². Responsible stewardship of natural resource wealth requires systems that allow public participation, accountability and transparency at all levels.³

The Extractive Industry Transparency Initiative (EITI) is one of the best-practice frameworks that have been formulated to improve the domestic foundation for resource governance around the world. The EITI is at the forefront of the movement for transparency and accountability in extractive industries resource management⁴. It has been used to demonstrate government commitment towards improved good governance of natural resource wealth by many African countries. This is especially the case for Malawi where the extractives sector had come to be known for its secrecy and high political interference, leading to a deterioration in public trust in the management of the sector, and sour relations between mining affected communities and companies. The EITI presented an opportunity for reconciliation between non-state actors (NSA), the government and companies, as well as institutional reform for the development of the sector.

It has now been five years since Malawi joined the EITI, and the country has produced three reports to date. Looking back at the challenges that led to Malawi's decision to join EITI, this paper provides an opportunity to assess the extent to which the initiative has successfully contributed to fostering accountability and transparency in the sector. The paper discusses the journey of Malawi in joining the EITI, and the lessons learnt in the course of implemen-

¹ (Catalyzing Growth and Development Through Effective Natural Resources Management)

² Ibid

³ (The Role of Governance and International Norms in Managing Natural Resources, 2018)

⁴ (Natural Resource Governance Institute, Natural Resource Charter, 2014)

tation. The findings will help Zimbabwe, as one of the countries in the region that have not yet subscribed to the initiative, to have a deeper understanding of how the EITI can help the country optimise value from its mineral resources by addressing some of the key challenges in its mining sector.

The study was conducted through a comprehensive review of international and national literature on the Malawi extractives sector with relevance to the EITI. The literature review provided a retrospective understanding of the EITI process across the world, and in Malawi, and how it has been analysed and understood by various stakeholders. The sources of data included research studies by NSAs; expert analysis reports and reviews; news publications; national legislation, policies, government strategies and reports.

The consultants also conducted one-on-one semi-structured interviews with stakeholders⁵ from within and without the EITI implementation framework in Malawi. A list of questions derived from the assignment terms of reference was used to guide the discussions, but participants were also allowed to add relevant issues into the discussion. Due to the Covid-19 crisis and national government restrictions, all interviews were conducted over the phone. Due to the Covid-19 crisis and national government restrictions, all interviews were conducted over the phone.

The report then examines the legal and institutional framework in which the EITI has been operational in Malawi at the time of joining, and at the time of publication of this report. This section helps us appreciate the legal and policy context into which the initiative was adopted and is now currently being implemented. The report then examines the opportunities and challenges in the implementation of the MWEITI; followed by recommendations on how the MWEITI can further be improved and maximise the available opportunities for improved extractives governance in Malawi.

⁵ 3 Private Sector, 3 Government, 1 Member of Parliament, 4 CSO's, 1 EITI International Secretariat

Overview of the Malawi Extractive Industry

Over the last two decades, the extractive industry in Malawi has been increasingly recognised as a potential driver of economic growth and development. The country is endowed with a range of minerals including rock aggregate, coal, limestone, rare earths, uranium, kaolin, dolomite, bentonite; semi-precious gemstones (such as ruby, garnet, amethyst, tourmaline and sapphire), and ornamental stones (such as rose quartz)⁶. As an agriculture-based economy prone to climate shocks and other challenges, the country has been working towards diversifying the national resource base for sustained economic development. In the Malawi Growth and Development Strategy (MGDS I)⁷, the government highlighted its aspirations to "... expand the sectoral sources of growth, deepen and sustain the gains to be made from agriculture, and make the economy less susceptible to external shocks like weather, changes in terms of trade, political developments in the region, and fluctuations in external aid flows". This aligned with the prerogative of the Malawian government in the MGDSII to raise the GDP contribution of the mining sector from 0.9 per cent in 2014/15 FY to 20 per cent by 2020⁸.

**TABLE 2.3 ANNUAL PERCENTAGE GROWTH RATES
(IN PERCENT)**

	Constant 2010 prices				
Sector	2016	2017	2018	2019*	2020*
<i>Agriculture, forestry and fishing</i>	-0.1	6.1	0.9	3.9	5.1
<i>Crop and animal production</i>	-1.1	7.3	-0.3	5.3	6.6
<i>Forestry and logging</i>	2.3	3.3	2.8	-0.9	0.4
<i>Fishing and aquaculture</i>	1.6	5.7	6.2	3.6	5.8
<i>Mining and quarrying</i>	0.4	1.5	2.1	3.6	5.8

Figure 2: Excerpt of the Malawi Annual Percentage Growth Rates
(Source: Malawi Annual Economic Report, 2019)

In 2009, the World Bank projected that the sector would contribute \$50-\$100 million to government revenue⁹ based on the pipeline of mineral prospects in the short to long term (Figure 1)¹⁰. The commissioning of the

⁶ (The Revenue Costs and Benefits of Foreign Direct Investment in the Extractive Industry in Malawi: The Case of Kayelekera Uranium Mine, 2013)

⁷ (Government of Malawi, Malawi Growth and Development Strategy I: From Poverty to Prosperity 2006-2011, 2005)

⁸ (Government of Malawi, Malawi Growth and Development Strategy II 2011-2016, 2010)

⁹ (Malawi Mineral Sector Review: Source of Economic Growth and Development, 2009)

¹⁰ (Malawi Mineral Sector Review: Source of Economic Growth and Development, 2009)

Kayelekera uranium mine was marked as a milestone in the role of the sector; and formed a basis for the high expectations for the sector contribution to the economy. However, the mine ceased its operations in 2014 due to low uranium prices, and has since been under care and maintenance. In the years between 2002 and 2005, the country registered a startling trend in the sector's percentage growth rates¹¹ (attributed to the investment injection for the Kayelekera Uranium mine). However, since then the country has continued on a slower growth rate trajectory (Figure 2) which has fallen short of the 20 per cent GDP sector contribution hoped for in the MGDSII. The sector recorded 0.88 per cent contribution in the 2016/ 2017 financial year¹², and projects the same in 2020 .¹³

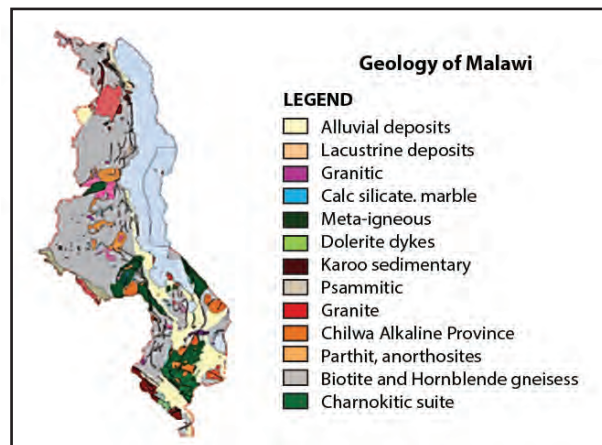


Figure 3: A map of Malawi highlighting key geological features
(Source : Malawi Department of Geological Survey)

Through policy and legislative reforms, the government has attempted to create a conducive environment for the growth of the sector. The country has also established a progressive geo-data management platform following the geophysical surveys conducted in 2015¹⁴. The country is working towards increasing accessibility to geological

data (Figure 3) through geological mapping, mineral resource potential mapping, natural risks

geo-hazard mapping, support to small-scale mining, procurement of laboratory and field equipment, construction of a documentation centre at the national Geological Survey Department, and capacity building to stimulate investment interest in the mining sector¹⁵. The Department of Mines has also continued to maintain the mining cadastral system which is an online database of mineral licenses for increased transparency and ease of administration of mineral tenements across the country. Currently, *the GDMIS aims to store, load,*

*edit, retrieve, visualise, analyse and detect correlations between the data and metadata from all relevant sources and thematic sectors, including the mining cadastre, topography, environment, geophysics, geology, prospecting, and geochemistry*¹⁶. This data has been used at various exhibition platforms such as the Mining Indaba 2020 to attract potential investors. It is unclear whether (and how) this has successfully informed any recent negotiations for mining rights.

Background of the Mweiti

In 2007, Malawi entered into a development agreement with Paladin Africa Limited over the Kayelekera Uranium Mine. The announcement of the licence awarding by government was received with a lot of criticism from CSOs, and citizens across the country. The project raised fears and questions on the negotiation process, and the contents of the agreement between the government and Paladin was not made publicly available. The Kayelekera experience initiated controversies between the government and civil society on contract secrecy, licence awarding, and the accrued benefits from the country's resources from the extractives sector. At the time, the principle legislation in the sector (the Mines and Minerals Act of 1981) facilitated secrecy and rent-seeking by vesting ownership of mineral resources in the presidency and giving it and the relevant ministers discretion on licensing and contract negotiation on behalf of the republic.

The conflicts escalated in 2011 and 2013 when the government awarded exploration licences of three blocks for oil and gas, and secretly signed Petroleum Sharing Agreements (PSA) for Blocks 4, 5 and 6 a few days before the tripartite elections in 2014. An analysis conducted by Oxfam revealed that "... the government promoted oil exploration in the absence of a clear policy framework; adopted a production sharing system without a clear legal framework; fast-tracked the finalization of the contract negotiations in secret; and agreed to generous and in some cases incoherent tax terms"¹⁷. Following these allegations, all exploration activities were halted in 2014 and only resumed in 2016. For many Malawians, it had become clear from these experiences that the country would not accrue any benefits from the mining sector without the right mechanisms in place to facilitate good governance of natu-

¹¹ From the Annual Economic Report 2006: 2002 (-38.7%); 2003 (18.6%); 2004 (47.6%); 2005 (52.1%)

¹² MWEITI Report for 2016/17 Fiscal Year, 2019)

¹³ (Annual Economic Report 2019, 2019)

¹⁴ Ibid

¹⁵ (Economic and Fiscal Policy Statement 2019, 2019)

¹⁶ <https://www.eomag.eu/gaf-established-a-geodata-management-system-for-the-geological-survey-department-malawi/>

¹⁷ Malawi's Troubled Oil Sector, (2017) Oxfam

ral resource revenue, based on the tenets of transparency and accountability¹⁸. The increasing recognition of the sector in national development strategies opened up the interest of state and non-state actors to the mining sector, which allowed for increased pressure towards joining the EITI. The EITI is only one of the many governance tools, codes and standards aimed at reforming the extractives sector for national benefit¹⁹.

Malawi expressed its interest in joining the EITI in June 2014 as a way of showing its commitment to promoting transparency and accountability in the extractives sector as outlined in the 2013 Mines and Minerals Policy. This was made by a public announcement by President Arthur Peter Mutharika during the opening of the 45th session of parliament on 17 June 2014 and published as a press statement in the national print newspapers²⁰. To back this announcement, the president appointed the Minister of Finance Hon Goodall Gondwe to lead the country's efforts to join the EITI²¹. Thus fulfilling the first step towards joining EITI under requirement 1 of the standard²².

The next step was the setting up of the multi-stakeholder group (MSG) which was facilitated by the Ministry of Finance, which was also acting as the secretariat. The MSG formally met for the first time on 18 March 2015, after several months of constituency elections. The MSG facilitated the submission of the formal application which was submitted to the international EITI Secretariat in July 2015. In October 2015, Malawi was admitted as an EITI candidate country after having been found to fulfill all the EITI sign-up requirements. In its submitted workplan, Malawi made several commitments towards institutional reform to support the EITI implementation, including contract transparency, beneficial ownership disclosure, and publication of its first EITI report.

Malawi has published three reports since joining the EITI in 2014²³ and was in the course of producing its fourth report to cover the period 2016/ 2017. However, the reporting process has been delayed due to the Covid-19 global pandemic. The country underwent a validation in 2018 in which the board decided that Ma-

¹⁸ (The Revenue Costs and Benefits of Foreign Direct Investment in the Extractive Industry in Malawi: The Case of Kayeleker Uranium Mine, 2013)

¹⁹ (Natural Resource Governance Institute, Natural Resource Charter, 2014)

²⁰ Malawi EITI Candidature Application Form

(<https://eiti.org/files/documents/Malawi%20EITI%20Candidature%20%20Application%20Form%2027%20July%20%202015.pdf>)

²¹ (Validation of Malawi: Report on Initial Data Collection and Stakeholder Consultation, 2018)

²² Requirement 1.1: Government commitment (Source: EITI Standard 2019)

²³ 2017 report covering 2013/2014 FY; 2018 for 2014/2015 FY; 2019 for 2015/2016 FY

lawi has made meaningful progress, although there were still a few areas that needed to be improved in order to become an EITI-compliant country. In August 2019 Malawi was suspended due to late submission of the EITI report, but the suspension was lifted when Malawi submitted the report on 30 November 2019.

Month	Event
June	Government's announcement to implement EITI
January 2015	MWEITI MSG formed and National Secretariat set up
October 2015	MWEITI becomes Candidate county
April 2017	Publication for the first EITI Report (Period covered: 1st July 2014 to 30 June 2015)
June 2018	Publication for the second EITO Report (Period covered: 1st July 2015 to 30 June 2016)
Septemeber 2018	Commencement of validation
February 2019	Final validation report
August 2020	Next validation

Figure 4: Summary of the timeline of MWEITI

(Source : MWEITI Report 2016/17)

Legal and Institutional Framework of the Mweiti

Legal Framework

At the time of joining the EITI, the country did not have clear and adequate internationally standardised legal and institutional frameworks regulating the mining industry²⁴. As an agriculture-based economy and formerly under one party leadership; the governance framework did not align with the democratic and participatory principles promoted in the EITI core principles²⁵.

The main legislative frameworks for the sector relevant to the EITI process included: *The Mines and Minerals Regulation Act 1981; Explosive Act (1968); Petroleum Exploration and Production Act (1983); Environmental Management Act (1996); Occupational Safety, Health and Welfare Act, 1997; Land Act (2000); Atomic Energy Act (2011); Taxation Act (2006); and Access to Information Act (2017)*.

Out of these governance frameworks, the Mines and Minerals Act of 1981 was

²⁴ (The Revenue Costs and Benefits of Foreign Direct Investment in the Extractive Industry in Malawi: The Case of Kayeleker Uranium Mine, 2013)

²⁵ (The EITI Standard 2019, 2019)

considered as the principal legislative framework for the mining sector, together with subsidiary legislation in the form of regulations. In 2013, The country launched the Mines and Minerals Policy which was the first policy to make reference to the EITI. The short chapter in the policy on “Regional and International Cooperation” highlighted that “...government will promote regional and international cooperation in the mining sector”; with specific objectives on Malawi’s intent to participate in global and regional governance objectives such as the EITI²⁶.

In addition to the increased recognition of the mining sector as a crucial economic development vehicle, the Malawi Growth and Development Strategy III²⁷ explicitly highlights participation of Malawi in the EITI as a strategy towards the enhanced production and sound management of non-renewable resources.

In 2019, the country adopted a new mining law which is partially being enforced pending the finalisation of the regulations. The new law makes provision for submission and ownership of reports, data and information²⁸. The Act stipulates that:

“The Commissioner may require the holder of a mineral tenement to prepare a report on any subject matter related to the mineral tenement within such reasonable time as may be specified by the commissioner” [Section 37 (1)]

This provision makes it a requirement for mineral tenement holders to comply with reporting as stipulated by the government, failing which they commit an offence. While this is not exclusive to the EITI, it can sufficiently encompass the MWEITI reporting processes. The section further provides for penalties for non-compliance, which are²⁹ a fine and up to five (5) years imprisonment.

The Act also provides for open access to data through the establishment and maintenance of a website³⁰; beneficial ownership disclosure through the ownership register which is also open to the public³¹; and for participatory approach to the governance of Malawi’s natural resources through community engagement provisions³². In its provisions on “Compliance with

²⁶ (Government of Malawi, Mines and Minerals Policy of Malawi, 2013)

²⁷ (Government of Malawi, Building a Proactive, Competitive and Resilient Nation 2018-2022, 2017)

²⁸ (Government of Malawi, Mines and Minerals Act, 2019), Section 37-38

²⁹ Ibid, Section 247

³⁰ Ibid, Section 15-17

³¹ Ibid, Section 27-31

³² Ibid, Section 300

fiscal transparency requirements and guidelines”, the Act provides that:

(1) The Commissioner, in consultation with the Commissioner General of the Malawi Revenue Authority, may, from time to time, issue mandatory or voluntary guidelines with regard to the keeping of fiscal payment records, the submission of information relating to fiscal payments by mineral tenement holders to any authority of the Government and require any other information or reports that may be useful to provide fiscal related transparency for the extractive industries.

(2) A holder of a mineral tenement shall conform to mandatory guidelines issued pursuant to subsection (1) with regard to fiscal transparency record keeping and reporting for the extractive industries³³.

The section goes further to provide a fine for non-compliance. This is the closest the country has come to a mandatory EITI law. The Act also has provisions on the types of licences and conditions of licensing in the sector, and stipulates the fiscal provisions for the sector³⁴. The Public Audit Amendment Act (2018) and Public Finance Management Act (2003) further support the fiscal management framework for the country.

Malawi enacted the Access to Information law in 2017 which can further promote and support the smooth implementation of EITI. However, the law is still not in operation due to the delay in development of the procedures for compliance with the Act. This is mainly attributed to a lack of political will due to the broader implications of the law.

The national legal and policy framework has continued to undergo significant changes to support the development of the extractives sector; and the implementation of the EITI. While CSOs have been lobbying for an exclusive EITI law, the inclusion of relevant provisions in the new principle law demonstrate government commitment to the initiative. However, the institutional reforms required to effect these laws have still not taken effect, thereby limiting the extent to which the EITI can be implemented in the country. This is evident from the delays in the devel-

³³ Ibid, Section 268

³⁴ Part XIV of the Malawi Mines and Minerals Act 2019

opment of regulations and guidelines to facilitate the implementation of relevant laws. Despite the ongoing reforms, Malawi is yet to fully utilise the new framework to go beyond the implementation of the EITI and promote it in all relevant sectors.

Institutional framework of the MSG

Malawi's multi-stakeholder group is composed of three main constituencies in line with the EITI guidelines. It is comprised of twenty-three (23) member representatives; seven (7) from government, eight (8) from the extractive companies, and eight (8) from the civil society. The members of the MSG serve for a term of three (3) years and an institution can sit in the committee for only 2 consecutive terms.

The MSG is guided by terms of reference (ToRs) in its operations which were developed following the EITI international guidelines. The ToRs describe the key roles, responsibilities and rights of the MSG, and the internal governance rules and procedures. The MSG is responsible for review of the annual workplans and budget; appointment of the Independent Administrator; developing ToRs for the Independent Administrator; and facilitating the development and approval of the EITI reports and annual progress reports. The MSG also supports the validation process. The Malawi MSG has three (3) sub-committees on beneficial ownership disclosure roadmap implementation; communication and engagement; and finance, risk and audit.

Government/ secretariat

In the MWEITI MSG, government is represented by the Ministry of Finance, the Department of Mines, the Reserve Bank of Malawi, and the National Audit office. Administration of the MWEITI is chaired by the Director of Revenue in the Ministry of Finance, Economic Planning and Development. The national secretariat facilitates communication with the EITI international secretariat for further guidance, support and submission of reports. The secretariat also facilitates the development of the annual workplan which is validated and adopted by the MSG prior to implementation.

Civil society organisations

The CSOs form one of the constituencies of the MSG and have been key in the adoption and implementation of the EITI in Malawi. CSOs were nom-

inated into the MSG through the mother NGO body in Malawi, which engaged the network of CSOs working on extractives to nominate four representative institutions. CSOs in Malawi have facilitated engagements with the citizens on the EITI reports, developed and followed up with the government on the status of the implementation of various recommendations; and also facilitated debate on various issues emerging from the EITI reporting.

Private sector

Engagement of companies in the MSG was facilitated through the Malawi Chamber of Mines and Energy, which is a convening platform for companies involved in the extractives sector in Malawi. Apart from sitting on the MSG, companies also participate in the submission of the templates for EITI reporting. The companies have also advocated in their spaces for other companies to participate and comply in EITI reporting.

Opportunities and Challenges of Mweiti Implementation

Opportunities

Implementation of EITI in Malawi has had both successes and challenges. The following are some of the successes gained for the country from its commitment towards the EITI. The section also explores the opportunities that can possibly arise as an EITI-implementing country but that are yet to be exploited due to existing institutional and legislative weaknesses.

- *Creating a space for civic engagement and participation in extractives governance*

One of the most distinguishing opportunities created by the MWEITI is the space for enhanced dialogue between stakeholders. Through its diverse composition, the MWEITI MSG presents a neutral space in which stakeholders can engage in constructive dialogue on emerging issues in the national extractives sector. The increased interaction between stakeholders has minimised misinformation to the general public emanating from the secrecy and exclusivity that characterised the sector, and has further promoted the principle of free prior informed consent (FPIC). In communities that used to be in conflict with compa-

nies (such as in Phalombe where Mkango Resources Limited, an MSG member company is exploring rare earth particles), there has been reduced conflict due to the increased level of engagement and interaction between stakeholders. A respondent from the company constituency³⁵ expressed the view that the

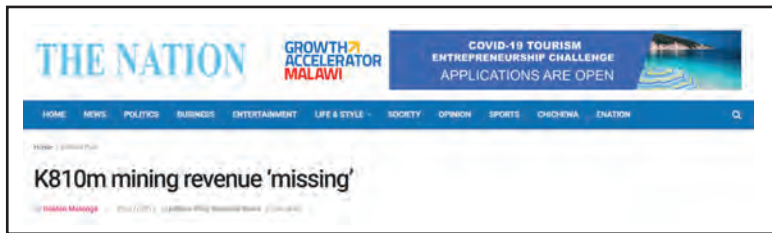


Figure 6: A local newspaper headline on the findings from the first MWEITI report (Source : Nation Online)

MWEITI has helped to increase the public understanding of the different mining projects, including the difference between a mining company and an exploration company; the different taxes that companies pay; and how much they are actually paying. This has helped to manage community expectations regarding corporate social responsibilities.

The MWEITI reports have allowed the MSG to identify policy and institutional gaps through the comprehensive reviews conducted as part of the development and validation of EITI reports. In the first EITI report, the MSG highlighted an unreconciled figure of nearly \$1 million which exposed gaps in the institutional frameworks on revenue collection and management systems³⁶.

The platform has also allowed CSOs and all MSG members to hold government accountable for the different revenue streams reported and to actively lobby for full contract transparency. Through the MSG, contract transparency was made possible. In 2016 only two contracts were shared³⁷; by 2017, all contracts were made publicly available online,³⁸ and these have been used to inform CSO lobbying and advocacy initiatives. A clear example of this is the discovery of the existence of a training fund accrued from oil exploration companies managed by the DoM. Information of this fund was only discovered through the publi-

³⁵ Interview with MSG member constituent on 22 May 2020
³⁶ (Matonga, K810m mining revenue 'missing', 2017)
³⁷ Kayelekera and Nyala Mines contracts
³⁸ <https://www.resourcecontracts.org/countries/mw>

cation of the agreements between government and oil exploration companies, which were published online in 2017 and in the second MWEITI report. A CSO respondent³⁹ indicated that it was only after the CSOs, through the MSG, had called for more information regarding the fund that the DoM made a presentation on its utilisation and current status in 2019. Without the MSG's efforts to hold government accountable for these resources, it is very likely that the funds would have remained unmonitored and subject to abuse. While there is no clear link between the EITI and a reduction of corruption in the sector, it is because of the EITI that avenues for corruption and resource looting have been subject to scrutiny and question from the MSG members. This could contribute to reducing corruption in the long run if the process is embedded into systems and institutions.

- *Creating a conducive investment environment for enhanced national economic development*

In 2013, Malawi was hit with a financial crisis. The country, whose national budget is largely supported through development assistance, was cut off by its partners and had to cope with a domestically funded budget⁴⁰. The crisis was a result of what came to be known as the "cashgate scandal", a story of government resource misappropriation by public officials which is believed to have taken place over a five-year period and led to the loss of over \$356 million of public funds⁴¹. The scandal revealed weaknesses in the public finance management (PFM) system across the board. During the years of this scandal, the country also ranked lowest in the internationally renowned Country Policy and Institutional Assessment (CPIA) trade rating. While the EITI did not play a role in exposing this scandal, it has significantly contributed to the mitigation of the economic crises that followed its discovery.

The CPIA is determined against a set of 16 criteria grouped into four clusters: economic management, structural policies, policies for social inclusion and equity, and public sector management and institutions⁴². The rating has an effect on the World Bank's International Development Association (IDA) Index, which in turn influences the amount of IDA resources allocated to a country.

³⁹ Response from MSG CSO constituent member on 22 May 2020
⁴⁰ ('Cashgate' - Malawi's murky tale of shooting and corruption, 2014)
⁴¹ (Malawi faces toughest, most high-profile trial yet in massive Cashgate scandal, 2017)
⁴² (The World Bank, 2002-2018) <https://www.indexmundi.com/facts/malawi/indicator/IQ.CPA.TRAD.XQ>

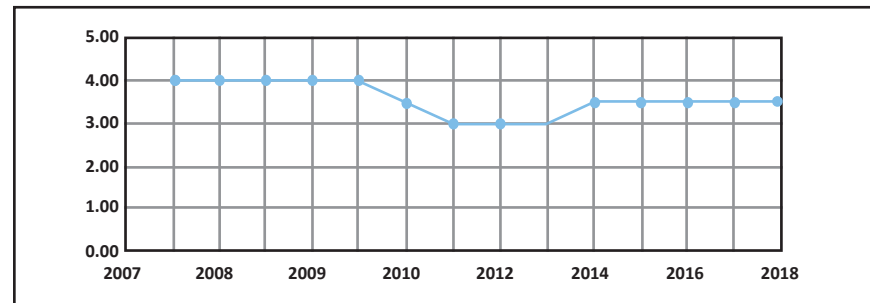


Figure 5: Source: World Bank Group, CPIA database (retrieved from)

As can be observed from the CPIA trends for Malawi over the last decade (Figure 5), the rating considerably increased following the commitment of Malawi to join the EITI. In addition to committing to the EITI, Malawi also committed to implement various sectoral reforms, which have contributed to its increased IDA rating and continued support from development partners such as the IMF⁴³ and World Bank. In 2014, Malawi's main donors withheld \$150 million pending further investigations into the cashgate scandal. The IMF subsequently decided to release \$20 million to the country following the conclusion of an investigative report into the scandal and once prosecution processes were underway⁴⁴. While it may not be the only factor, the public commitment of the Malawian government to enhancing accountability and transparency in the management of revenue from extractive industries played a key role in increasing partner confidence in the country's fiscal management systems.

Through increased transparency and accountability, the country has created a conducive investment climate, which is attracting more foreign direct investment (FDI) such as Sovereign Metals which is exploring graphite in Lilongwe, and Mkango Resources which is exploring rare earth particles at Songwe Hills (Phalombe district). Although foreign direct investment flows to Malawi have been fluctuating in the recent past, FDI stock closed at US\$ 1.3 billion in 2018, contributing 20.2 per cent of the country's GDP⁴⁵.

For government, the increased accuracy of data means that the true GDP growth and the contribution of each sector can be captured and leveraged to

increase the national credit rating for the country in line with various international economic indexes. This would increase the threshold of the country's eligibility for development assistance and economic stimulus packages from development partners to facilitate the desired economic growth trajectories highlighted in the national development strategies. Increased accountability for resources would also widen the domestic revenue base due to the decreased loss of revenues⁴⁶ through corruption and unchecked systems and institutions. For example, in the last two EITI reports, the MSG has been able to identify unreconciled figures worth up to 34 per cent of government revenue,⁴⁶ and subsequently made recommendations and improvements to the reporting templates for enhanced data capture. Through government response to the report recommendations, the EITI continues to provide support in government target areas of planning and budgeting; budget execution; monitoring and reporting; budget oversight; and the PFM institutional framework⁴⁷.

- *Enhanced responsiveness for a profitable and conflict-free extractives sector*

In Malawi, the MSG has also been used as a platform for discussing key issues affecting the sector beyond revenue reporting. Some of the issues addressed through the platform include the growing threats to civic space as faced by a number of CSOs in Africa including Malawi; issues of illegal mining in the ASM sector and opportunities for growth; and emerging issues at global and national level. The MSG comes as a readily available space for CSOs to advocate for mining governance issues since all players are sitting at the table as equals. CSOs have been able to utilise the space to provide recommendations to investors and government; and to receive information relevant for communities. CSOs participating in EITI implementation have also benefited through capacity building and enhanced understanding of EI revenue management. Their participation in and contribution to the platform has increased their credibility and authority in the sector since they are able to debate and meaningfully engage from an informed position.

As outlined by the validation report⁴⁸, EITI implementation in Malawi has also had success in its efforts to implement the recommendations in the multi-stake-

⁴³ <https://www.bbc.com/news/world-africa-25912652>

⁴⁴ Ibid

⁴⁵ <https://import-export.societegenerale.fr/en/country/malawi/investment-country-risk> (UNCTAD's 2019 World Investment Report)

⁴⁶ (Chauwa, 2018)

⁴⁷ (Economic and Fiscal Policy Statement 2019, 2019)

⁴⁸ (EITI International Secretariat, 2018)

holder approach, which in the process has enabled the country to improve the implementation capacity of the EITI. This is demonstrated by the efforts of stakeholders from the private sector to involve fellow companies in the process and call for their compliance. This is largely owing to the perceived benefits of improved relations between companies and communities through increased demonstration of their national economic contribution. The fostering of good relations between stakeholders mitigates political risks and conflicts, thereby facilitating a conducive environment for investment. One private sector respondent stated that:

“...there is a need for transparency and accountability on the revenue collected, and how it has been used so that we build trust with communities that mining industry is beneficial. The current system is bringing a lot of challenges with community to trust developers who actually pay a lot of revenue⁴⁹.”

The MWEITI has also demonstrated that it can be adapted to fit the needs of stakeholders and to address the key governance challenges in context. An interesting demonstration of this is the inclusion of Nyala Mines in the MWEITI reporting. The mine was said to be below the materiality threshold, but the absence of data in the public domain attracted the interest of CSOs who advocated for its inclusion in the report. This was in the context of rumors that the mine had not been remitting taxes, and that they were understating their income. Despite the political barriers, the EITI was essential in the opening up of the mine to the public domain and will continue to be central in ensuring that the owners are taken to task in the determination of any unscrupulous activities⁵⁰.

Challenges

Despite the available opportunities and successes, the MWEITI has faced a number of challenges which have undermined the accrued benefits to the sector.

- *Financing*

Since its commitment to join the EITI, Malawi has largely depended on financing from development partners to implement the initiative. The challenge presents

⁴⁹ Interview with a non-MSG private sector respondent on 9 June 2020

⁵⁰ One-on-one interview with CSO representative, 20 May 2020

itself in two-fold. Firstly, the administrative costs for the EITI are exorbitantly high for a country whose budget is largely dependent on development assistance. While the country is unable to mobilise adequate resources for the basic functionality of its existing systems, it is a tall order to expect the country to divert resources towards the implementation of the EITI which is not regarded as the core business of the government. To this end, Malawi has depended on development partners such as Gesellschaft für Internationale Zusammenarbeit (GIZ), and formerly on the United Kingdom’s Department for International Development (DFID) and the World Bank to support the implementation of the EITI in the country. This proved to be a challenge when in 2019 the country was suspended due to the delayed reporting resulting from inadequate resources to facilitate the process in time.

The reduction in funding has challenged the functionality of the secretariat which has not been able to sustain personnel, implement activities in the work-plan, conduct capacity building for the MSG members, or implement outreach activities to disseminate the EITI report findings to citizens⁵¹.

This challenge also applies to the CSO constituency which has failed to mobilise resources towards further utilisation of the data for policy influence beyond the MSG. Most CSOs outside of the MSG do not fully understand the technical aspects of the reports and are therefore unable to fully participate in relevant processes. Due to limited resources, there are few platforms for capacity building and improved access to EITI data through citizens reports.

The limited growth of the sector has raised reservations from government on the return of investment into the sector. Considering the high costs associated with reporting, the slow rate of development in a sector which is contributing less than 1 per cent to the GDP seems like an investment with little to no returns. However, a recent study into the effects of increased revenue transparency through the EITI⁵² has observed that as *“...dependency of countries on re-*

⁵¹ One-on-one interview with MSG Secretariat respondent on 29 May 2020

⁵² (The effects of increased revenue transparency in the extractives sector: The case of the Extractive Industries Transparency Initiative, 2017)

source rents increases, so too do the economic benefits of membership". While the benefits may not be realised now, the increasing growth and development of the sector will generate increased economic benefits if the EITI is already established and functional in the country. This therefore calls for increased economic commitment towards the initiative for long-term benefits to the sector and to the national PFM institutions.

- *Lack of political will to fully utilise the EITI as a reform tool*

Over the years, the EITI process has generated a wealth of data which has largely been under-utilised. Presently, it has become more apparent that the EITI process in Malawi is narrowly focused on being compliant to the EITI board by submitting reports, and not necessarily learning from the process to make significant improvements in the governance of natural resources. This is demonstrated by the limited commitment to addressing the recommendations that are highlighted in the reports, some of which are recurring in all the reports but are still outstanding. In an interview, a CSO constituent⁵³ expressed concern that the MWEITI has been used by government to increase ratings on accountability, transparency and PFM without fully utilising it as a genuine reform tool. One respondent said that the MWEITI has not fully utilised the members of parliament who have also not had a chance of playing their role in overseeing the process⁵⁴. The reports have never been validated by parliament or any of its committees, and it is currently being implemented by the secretariat in isolation. Specifically, it appears that the initiative did not adequately inform the review of the Mines and Minerals Act 2019. It continues to be implemented in a weak legislative framework that does not fully support the initiative. The lack of an explicit EITI law makes the process weak and dependent on political will rather than on institutional mandate.

- *Limited harmonisation between the MWEITI and other institutional and governance strengthening initiatives*

The MWEITI reporting process has been criticised for being conducted in isolation from other processes that work on improving governance in the country. One respondent said that they felt the initiative was isolated from the cham-

⁵³ Interview with CSO respondent on 28 May 2020

⁵⁴ Interview with member of parliament respondent on 9 June 2020

poning of the country mining vision which is in line with the African Mining Vision⁵⁵ and promotes accountability and transparency in extractives revenues. According to the respondent, the isolation of the process has made it difficult to integrate the findings from the MWEITI reports into other relevant sectors and processes that could positively contribute to the national value of the initiative. The process has also been criticised for being overly technical and therefore making the data unusable by other constituents within and outside of the MWEITI MSG.

This weakness has been further demonstrated by forestry companies who have said that they are not mandated to report to the Department of Mines when their administrative office is the Department of Forestry (DoF). This has led to delays in data acquisition and large unreconciled figures which affect the accuracy of the reporting data.

RECOMMENDATIONS AND CONCLUSIONS

Overall, the EITI in Malawi has presented an opportunity for the extractives sector to open up to more stakeholders for meaningful engagement through the multi-stakeholder group. Based on the experience of MWEITI, the consultants strongly subscribe to the benefits of the initiative as a tool for increasing transparency and accountability in the extractives sector, or at least stimulating the policy and reformation discussion for it. While the global initiative had initially focussed on tax revenues alone, its inclusion of Requirement 6⁵⁶ on social and economic spending now facilitates reporting of environmental impacts of the extractives sector which provides a more better overall perspective to the EITI reporting and usage of data.

The following are the key recommendations to be considered for the MWEITI moving forward:

1. Institutionalisation of the MWEITI

Effective implementation of the EITI cannot be done without an institutional framework that promotes and supports the initiative. One sentiment from a re-

⁵⁵ Interview with member of parliament respondent on 9 June 2020

⁵⁶ (EITI International Secretariat, 2019)

spondent in the private sector was the question of why government is subscribing to a “foreign” initiative which could very easily be done as a national activity. This highlights the limited understanding of the EITI which is mainly to identify the key gaps in the national institutions and facilitate the necessary reforms.

The MWEITI MSG must actively pursue, through its work plan, the institutionalisation of the EITI through policy and legislative reforms that support accountability and transparency by upholding its fundamental principles such as access to information; facilitating participation and safeguarding participants’ rights throughout the process; and a progressive fiscal and taxation regime that facilitates equitable distribution and management of revenues. The MSG needs to increase its reach to advance the integration of the EITI processes into different sectors and government agencies. The progression towards resolution of outstanding recommendations should be a core activity of the MSG, especially for recurring recommendations. Integration of EITI reporting into the day-to-day activities of the relevant government agencies and companies would reduce the cost (in finances and time) of the process since some of the necessary activities would already be undertaken by the relevant agencies in their recurrent expenditure. In essence, the EITI reporting should not be treated as a once-off annual activity but should rather continue to be done as part of systematic disclosure, whether or not an EITI report is being produced.

The institutionalisation of the MWEITI will foster ownership of systematic disclosure processes and data across all sectors and agencies who are not part of the MSG but are equally valuable to the process. With more stakeholders actively participating in the process, this would lead to increased usage of EITI data to inform decision-making and reform processes, thereby making the data increasingly relevant and profitable to the country. In her analysis of the gains of EITI reporting, Corrigan⁵⁷ notes that “...the positive effect of EITI membership increases as resource dependence increases”. As Malawi continues to aspire towards development of the extractives sector for economic growth and development, it is in a fortunate position to integrate the process into existing institutions while the potential revenue losses and risks are still minimal. To minimise the cost of

⁵⁷ (The effects of increased revenue transparency in the extractives sector: The case of the Extractive Industries Transparency Initiative, 2017)

the EITI and to maximise the national gains, existing institutions that add value to the reporting process (such as the Auditor General and the Malawi Revenue Authority) should be actively engaged to build their capacity and facilitate the mainstreaming of data reporting.

2. Engagement beyond the multi-stakeholder group

The MWEITI MSG has proved instrumental in the upholding of the EITI principles of accountability and transparency. However, based on the recommendations and scope for the EITI, it is clear that limiting stakeholder participation to the MSG alone is not enough to achieve the expected gains from the EITI. Over the years of MWEITI implementation, many of the recommendations have cut across the scope of the MSG and require other agencies and stakeholders to be fully integrated into the MWEITI process for its success. This further aligns with the Malawi EITI validation corrective action⁵⁸ under requirement 1.5, which calls for involvement of stakeholders beyond the MSG in the consultations and MWEITI work planning. These stakeholders include technocrats in relevant government agencies, lawmakers, civil society, and private sector representatives. In the validation report⁵⁹, it is recommended that channels should be created for more companies to participate⁶⁰. This would ensure that the MWEITI workplan progressively addresses emerging issues and has support from all the relevant stakeholders who understand the initiative and their role in its implementation.

Another important stakeholder to be included and prioritised in the MWEITI process is the legislature or members of parliament. In the last three MWEITI reports, and in the validation process, some of the strongest recommendations made require review or amendment of the national legislative framework. Generally, EITI reports can shed light on which companies dominate the industry; the role of state-owned companies; the sources of revenues and who collects them; as well as the current governance shortcomings. These are all factors that should inform lawmaking. The EITI needs to be supported and understood by the parliament to ensure entrenchment of EITI principles in the final legislation. Parliamentary participation in the MWEITI processes would play a crucial role in informing extractive sector lawmaking, and providing adequate information

⁵⁸ (Validation of Malawi: Report on Initial Data Collection and Stakeholder Consultation, 2018): Corrective Action 2

⁵⁹ Ibid: Corrective Action 1

⁶⁰ Presumably, including those that do not meet the threshold.

for parliamentary oversight on national budgeting and revenue management processes⁶¹. In addition, since the mining takes place in the constituencies of the respective parliamentarians, this would provide them with an opportunity to conduct oversight in their communities and validate the report findings based on real experience.

Finally, although MWEITI has made strides towards engaging with the public and mining communities through the EITI report launching, there is a need to facilitate more meaningful engagement with mining affected communities and the general public on the report findings and how they can use the data. Since the EITI reports tend to be technical and bulky, the MSG needs to be more proactive in the translation and distribution of summary reports in local languages, and identifying data relevant to specific communities so that the transparency demonstrated through provision of data by companies and government can actually be used to facilitate accountability. All stakeholders in the MSG must take a lead in facilitating access to (and use of) EITI data for their constituents.

3. Strengthening capacity and participation of CSOs in the MSG

Experience from around the world shows that EITI can be a valuable tool for oversight and reform, or it can be a superficial “box-ticking” exercise⁶². This is true for the MWEITI MSG and other⁶³ similar participatory governance tools that bring various stakeholders with competing interests together. Variation in technical expertise can affect the quality of the interaction between parties in the MSG.

Considering that Malawi’s extractives sector is still in its infancy, there is very limited capacity nationwide in the public and private sector. While the country has so far prioritised the capacity building of government officials and technocrats through the existing training fund, the opportunities need to be opened up more widely to ensure that capacity is widespread in different sectors including the civil society fraternity. This will require avid follow-up of training fund resources and advocacy for wider inclusion.

⁶¹ (Natural Resource Governance Institute, EITI and Parliamentary Oversight of Oil, Gas, and Mining Revenues, 2014)

⁶² (Natural Resource Governance Institute, EITI and Parliamentary Oversight of Oil, Gas, and Mining Revenues, 2014)

⁶³ (The Role of Governance and International Norms in Managing Natural Resources, 2018)

The CSO representatives in the MSG also need to be held accountable for their role in building the capacity of other member organisations in the umbrella body for natural resource governance⁶⁴. In addition, it is the role of the umbrella body to facilitate CSO mobilisation and understanding of the emerging issues in the sector. One risk associated with multi-stakeholder groups is that they can bring in the perception of capture; participating CSOs may be regarded as sellouts and accomplices with the “enemy” (in this case government and mining companies). It is therefore crucial that CSOs continue to involve and integrate other members of civil society in the different processes of the MWEITI to facilitate knowledge and skills transfer and continuous CSO participation in extractives governance. The representatives should adequately represent and support CSO interests in the platform.

References

African Natural Resources Center. (s.d.). Catalyzing Growth and Development Through Effective Natural Resources Management. Récupéré sur https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/anrc/AfDB_ANRC_BROCHURE_en.pdf

AFRODAD. (2013). The Revenue Costs and Benefits of Foreign Direct Investment in the Extractive Industry in Malawi: The Case of Kayelekera Uranium Mine.

Anders, G. (2017, February 8). Malawi faces toughest, most high-profile trial yet in massive Cashgate scandal. Récupéré sur African Arguments: <https://africanarguments.org/2017/02/08/malawi-faces-toughest-most-high-profile-trial-yet-in-cashgate-scandal/>

BBC News. (2014, January 27). ‘Cashgate’ - Malawi’s murky tale of shooting and corruption.

⁶⁴ NRJN and PWYP Malawi

BDO LLP. (2019). MWEITI Report for 2016/17 Fiscal Year. Government of Malawi.
 Beech, W. (2019, December 3). Does the mining industry have a future in Zimbabwe? Eversheds Sutherland International. Consulté le May 2020, sur https://www.eversheds-sutherland.com/global/en/what/articles/index.page?ArticleID=en/global/South-africa/Does_the_mining_industry_have_a_future_in_Zimbabwe

Catholic Commission for Justice and Peace. (2012). Mapping of Extractive Companies in Malawi.

CEPA. (2014). Status of Policy and Legal Framework for Mining in Malawi.

Chauwa, A. (2018, October 19). Malawi Govt Gets K5.6 Billion From Mining Sector - Activist Calls for Enactment of New Minerals Bill. Récupéré sur Nyasa Times: <https://allafrica.com/stories/201810190625.html>

Corrigan, C. C. (2017). The effects of increased revenue transparency in the extractives sector: The case of the Extractive Industries Transparency Initiative. *The Extractive Industries and Society*, 779-787. Consulté le June 2020, sur <https://reader.elsevier.com/reader/sd/pii/S2214790X16301289?token=33C-746D11716C73FC86AEDAF058565C052795656CC21710F6022D9DABBF175C3B-7C93DD869DDC7DF9F59DC371617B14C>

Cust, J. (2018). The Role of Governance and International Norms in Managing Natural Resources. Dans T. Addison, & A. Roe, *Extractive Industries: The Management of Resources as a Driver of Sustainable Development* (pp. 395-421).

David-Barrett, L., & Okamura, K. (2013, November). The Transparency Paradox: Why do Corrupt Countries Join EITI? ERCAS Working Paper. Récupéré sur <http://sro.sussex.ac.uk/id/eprint/52111/1/wp-38-the-transparency-paradox.-why-do-corrupt-countries-join-eiti.pdf>

Economics, T. (2010-2018). Malawi Government Debt to GDP. Récupéré sur Trading Economics: <https://tradingeconomics.com/malawi/government-debt-to-gdp>

Economy, C. (2020). Rating: Malawi Credit Rating. Récupéré sur Country Economy: <https://countryeconomy.com/ratings/malawi>

Economy, T. G. (2000-2018). Malawi: Economic Growth. Récupéré sur The Global Economy.com: https://www.theglobaleconomy.com/Malawi/Economic_growth/

EITI International Secretariat. (2018). Validation of Malawi: Report on Initial Data Collection and Stakeholder Consultation.

EITI International Secretariat. (2019, October 15). The EITI Standard 2019, 2.

Government of Malawi. (2005). Malawi Growth and Development Strategy I: From Poverty to Prosperity 2006-2011. Récupéré sur <https://www.malawi.gov.mw/Publications/MGDS%20November%202006%20-%20MEPD.pdf>

Government of Malawi. (2010). Malawi Growth and Development Strategy II 2011-2016.

Government of Malawi. (2013). Mines and Minerals Policy of Malawi.

Government of Malawi. (2016). National Agriculture Policy.

Government of Malawi. (2017). Building a Proactive, Competitive and Resilient Nation 2018-2022. Malawi Growth and Development Strategy III.

Government of Malawi. (2019). Mines and Minerals Act.

Index MUNDI. (2019, December 28). Malawi-CPIA Trade Rating. Récupéré sur Index MUNDI: <https://www.indexmundi.com/facts/malawi/indicator/IQ.CPA.TRAD.XQ>

International Council on Mining and Metals. (s.d.). Revenue Transparency. Récupéré sur ICMM: <https://www.icmm.com/en-gb/society-and-the-economy/governance-and-transparency/revenue-transparency>

Kauffman, D., Kraay, A., & Mastruzzi, M. (2010, September). The Worldwide Governance Indicators: Methodology and Analytical Issues. World Bank Policy Research Paper. Récupéré sur <https://openknowledge.worldbank.org/bitstream/handle/10986/3913/WPS5430.pdf?sequence=1>

Khomba, D. C., & Trew, A. (2019, February 1). Aid and Local Growth in Malawi. School of Economics and Finance Discussion Paper. Récupéré sur <https://www.st-andrews.ac.uk/~wwwecon/repecfiles/4/1612.pdf>

Malunga, G. (2018, February). The Geology and Mineral Potential of Malawi. *Mining and Trade Review*(58), p. 10. Consulté le May 2020, sur <https://miningin-malawi.files.wordpress.com/2018/02/mining-trade-review-february-2018-electronic-copy.pdf>

Matonga, G. (2017, July 26). K810 Mining Revenue Missing. *The Nation*. Consulté le May 2020, sur <https://www.mwnation.com/k810m-mining-revenue-missing/>

Matonga, G. (2017, July). K810m mining revenue 'missing'. Récupéré sur *The Malawi Nation*: <https://www.mwnation.com/k810m-mining-revenue-missing/>

Ministry of Finance, Economic Planning and Development. (2019). *Economic and Fiscal Policy Statement 2019*. Government of Malawi. Récupéré sur <https://www.finance.gov.mw/index.php/blog/documents/budget>

Ministry of Finance, Economic Planning & Development. (2019). *Annual Economic Report 2019*. Malawi Government.

Mweninguwe, R. (2015, September 28). Frozen Budget Support. Consulté le 06 2020, sur D+C: <https://www.dandc.eu/en/article/without-foreign-aid-malawi-government-cannot-operate-properly>

Natural Resource Governance Institute. (2014, September). *EITI and Parliamentary Oversight of Oil, Gas, and Mining Revenues*.

Natural Resource Governance Institute. (2014). *Natural Resource Charter*. NCA, ActionAid, & CEPA. (2014). *Joint Baseline Study on Malawi's Mining Sector*.

Neumann, L., & Kumwenda, H. (2016). *Malawi Extractive Industries Transparency Initiative (MWEITI) Scoping Study (Minerals, Oil and Gas, Forestry)*. MWEITI MSG.

OECD Task Force on Public Financial Management. (s.d.). *Manila Consensus on Public Financial Management Partnering to Strengthen Public Financial Management for Effective States*. Récupéré sur <http://www.oecd.org/dac/effectiveness/48780763.pdf>

OXFAM Malawi. (2017). *Malawi's Troubled Oil Sector: Licences, Contracts and their Implications*.

Paladin Africa. (2010, September). *Kayelekera Mine: In Production Ramp-up*. Consulté le May 2020, sur http://media.corporate-ir.net/media_files/irol/17/176316/Kayelekera.pdf

Parliament of Zimbabwe. (s.d.). *Roles and Functions of Parliament*. Récupéré sur Parliament of Zimbabwe: <https://www.parlzim.gov.zw/about-parliament>

Sachs, L. (2013, August 6). *On Solid Ground: Toward Effective Resource-Based Development*. *World Politics Review*. Consulté le February 2020, sur <http://www.worldpoliticsreview.com/articles/13140/onsolidgroundtowardeffectivere-sourcebaseddevelopment>

SOAS University of London. (s.d.). *Understanding Public Financial Management: How Is Your Money Spent?* Récupéré sur Future Learn: <https://www.futurelearn.com/courses/public-financial-management/0/steps/14718>

The World Bank. (2002-2018). *CPIA Africa*. Récupéré sur The World Bank: <http://datatopics.worldbank.org/cpia/country/malawi>

World Bank. (2009). *Malawi Mineral Sector Review: Source of Economic Growth and Development*. Oil, Gas and Mining Policy Divis



A case for Mozambique

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Acronyms and abbreviations

AGMM	Mozambique Geologists Association
AMOPI	International Oil/Petroleum Operators Mozambican Association
EITI	Extractive Industry Transparency Initiative
ENH	National oil company
FDI	Foreign direct investment
FID	Final investment decision
GIZ	Gesellschaft für Internationale Zusammenarbeit (German gency for international cooperation)
GJ	Giga joules
MAGTAP	Mozambique Mining and Gas Technical Assistance Project
MEF	Ministry of Economy and Finance
MEITI	Mozambique EITI
MIC	Ministry of Industry and Trade
MIREME	Ministry of Mineral Resources and Energy
MSG	Multi-stakeholder group
PSCIERN	Civil Society Platform for Extractive Industry and Natural Resources
PWYP	Publish What You Pay
SNJ	National Journalists Association
TCF	Trillion cubic feet
UNDP	United Nations Development Programme

1.Executive summary

Mozambique made its application to join the EITI in May 2009, but was only accepted as a compliant country in 2012. Since then the country was validated three times, and in last validation was found to have achieved meaningful progress with significant improvements. The next validation will be in 2021.

At the moment, EITI implementation is ruled by EITI standards and it is supported by the Terms of Reference (ToRs) of the multi-stakeholder group (MSG). The ToRs clarify the organisation of the MSG, duties of MSG, duties of the secretariat, constitution of the MSG, terms of office, decision-making and frequency of meetings.

The government of Mozambique from the beginning decided to establish a national EITI secretariat to support the MSG by carrying out the day-to-day activities related to EITI implementation. The national secretariat is housed within the Ministry of Mineral Resources and Energy (MIREME), responsible for EITI implementation in the country. Meeting quarterly, the MSG consists of 14 members and 11 alternates, with representatives from the government, private sector companies from the mining and petroleum sectors, civil society and two observers.

Women and youth representation was not taken into account as a criterion for representatives from the three stakeholders (government, private sector, and civil society) until the EITI standard introduced it. The MSG includes a number of women and young people, but in a disproportional way.

The EITI has had a significant impact on extractive industries in Mozambique and has also created a unique opportunity for Mozambicans to access the sort of detailed information that would not be possible in the country's normal governance system.

The improvements that Mozambique has registered present new opportunities for the country to move from minimum standards to systematic disclosure that leads to accountability.

As addressed by the EITI Board in the last validation, significant challenges still exist in implementation of the EITI. The evidence shows that the main challenge is related to political will to fulfil the country's own legislation and rules. Clearly, Mozambique hasn't been consistent in its commitment to transparency.

Since 2014, the level of commitment of government decreased and that led to suspension of the donors' support provided through the Mozambique Mining and Gas Technical Assistance Project (MAGTAP) for administrative staff and report production. This is problematic, because EITI sustainability and functioning are now guaranteed only by means of cooperation partners, among whom the MDTF fund managed by the World Bank stands out. The state budget was supposed to allocate some resources, although not enough to cover the expenses.

Assessments of the EITI reports have revealed some challenges related to the quality and reliability of information disclosed by government in budget expenditure reports and annual state accounts. And the data provided by multinationals in Mozambique differs from what is published in their annual reports or disclosed on their websites or in stock exchanges.

To address these challenges it is important for Mozambique to consider that:

- EITI needs to be understood as a tool and not an end itself.
- It is important to identify the possible and potential obstacles to EITI implementation within the country.
- There is a need to move fast towards EITI institutionalisation and it has to happen through specific laws, passed by the parliament, ruling on the implementation of the initiative and assuring that the state allocates human and financial resources, asserting the collaboration within the different government institutions, civil society, and the private sector. This will ensure that implementation continues regardless of changes in government.
- EITI standards can be used to enable systematic domestic disclosure by multinationals.
- It is urgent to address the issues of how MSG members are selected, rules for delegated attendance of meetings, rules for participation or observation by other stakeholders, and also to set up the guidelines on codes of conduct and conflicts of interest.

To Zimbabwe, the main recommendations would be to (i) be clear about the main goal, (ii) make sure that the assessment on the obstacles to transparency is done before joining to enable a quick response to address them once the application is made, and (iii) ensure the engagement of all stakeholders and address the rules of MSG functioning: selection of the members, participation or observation by other stakeholders, guidelines on codes of conduct and conflicts of interest.

2. Introduction

With the growth of the extractive industries mobilising billions of dollars in foreign direct investment (FDI), and with the potential to generate more billions of dollars in revenues for resource rich-countries, transparency and accountability become challenging.

The Extractive Industries Transparency Initiative (EITI) is the global standard to promote open and accountable management of oil, gas and mineral resources. Guided by the belief that a country's natural resources are public resources managed on behalf of its citizens, the EITI standard requires the disclosure of information along the extractive industry value chain from the point of extraction, to how revenues make their way through the government, and how they benefit the public. By doing so, the EITI seeks to strengthen public and corporate governance, promote understanding of natural resource management, and provide the data to inform reforms for greater transparency and accountability in the extractives sector. In each of the 53 implementing countries, the EITI is supported by a coalition of government, companies, and civil society and the process is conducted following the EITI standards.

By using EITI standards, not inventing the wheel, the countries can improve their own systems that can benefit the governance of the sector and, ultimately the citizens, improving access to information that is reliable, readable and updated, and from that hold the government accountable.

Mozambique has world-class reserves of base metals, gemstones, coal and hydrocarbons. Recently, natural gas became the most important resource with reserves estimated to exceed 160 trillion cubic feet (TCF), putting the country in the

14th position among the world's top 20 countries, and in the 3rd position among African countries with significant proven reserves (behind Nigeria and Algeria). The benefits generated by these resources are limited due to excessive and redundant fiscal incentives granted without transparency to multinationals in contracts signed from 2000 to early 2014. Assessments conducted by civil society organisations (CSOs) and think-tanks in Mozambique show that the future revenues from Rovuma Basin are at risk not only because of the unfavourable fiscal terms, but also because of opaque and secretive negotiations prior to the development phase.

This analysis discusses the benefits, opportunities, successes and challenges in terms of governance of the extractive industries in Mozambique as part of a wider study of SADC EITI countries which is being conducted by Southern Africa Resource Watch (SARW) and the Zimbabwe Environmental Law Association (ZELA), with the aim of encouraging countries that have not yet implemented the EITI standard (such as Zimbabwe) to do so.

The methodology used in this research includes a literature review combined with reflection on the experience as member of MSG. The study starts with an overview of the Mozambican extractive sector, followed by a description of the history, and the legal and institutional framework of EITI Mozambique. At the end are presented the opportunities and challenges for Mozambique, and recommendations for any country intending to implement EITI standards.

2.1. Overview of Mozambique's extractive industry

Mozambique has significant reserves of mineral coal, mineral heavy sands, ruby, copper, nickel, zinc, gold, tantalite, limestone, diatomite, bauxite, iron, silver, cobalt, graphite, plaster, diamonds and hydrocarbons (natural gas and light oil). To explore these resources, thousands of licenses were awarded to national and international collective and individual entities.

Coal is the mineral that stands out, with reserves estimated at 38,4 billion tonnes and 15 companies holding 20 mining concessions that are in force in Tete province where most coal production is taking place. Natural gas production is the

main resource, with enormous potential to generate significant revenues to the state. Currently, just one project is in production. This is the Pande-Temane deposits operated by Sasol Petroleum Temane Lda, producing 192 million gigajoules (GJ) of natural gas and 400 thousand barrels of condensate.

The main proven reserves of natural gas are located in Rovuma Basin, where the discoveries date from 2010. The projects related to these discoveries are now in pre-development phase. In Area 1, led by Total, the final investment decision (FID) was made in 2019 and the company began to build the LNG plant in Afungi Peninsula. Area 4, co-led by Eni (FLNG, Coral Sul field) and Exxon Mobil (Mamba Field), has a very advanced FLNG project expected to start production in early 2022, generating US\$9 billion in revenues to the state over the next 25 years of production. The Mamba project had its FID of almost US\$30 billion postponed to 2021 due to the Coronavirus pandemic.

The Ministry of Mineral Resources (MIREME) is responsible for managing and implementing geological research, survey and exploration of mineral resources, including coal and hydrocarbons. The extractive industries regulation is managed by the National Institute of Mining (INAMI) for solid minerals, and the National Petroleum Institute (INP) for hydrocarbons.¹ These two regulatory institutions are accountable to MIREME, which affects their independence.²

In 2019 the extractive sector contributed US\$128,1 million to the state revenues (24 per cent of total revenues earned by the state), representing a decrease of 24 per cent compared to 2018.³ According to the country's 8th EITI report, in 2017 and 2018 the extractive sector mobilised 77 and 58 per cent of the country's FDI, respectively. The sector, also led the country's exports, with 50 per cent and 47 per cent respectively, dominated by mineral coal (56/ 71 per cent), natural gas (21/ 13 per cent), heavy mineral sands (15/ 11 per cent) and rubies (8/ 5 per cent).

¹ https://eiti.org/files/documents/6o_relatorio_vfinal_en_1805.pdf

² <https://cipmoz.org/2017/10/22/inp-longe-de-ser-o-regulador-necessario-para-o-sector-petrolifero/>

³ <https://www.mef.gov.mz/index.php/documentos/instrumentos-de-gestao/-21/conta-geral-do-estado-cge/cge-2019/899-counta-geral-do-estado-2019-anexos-informativos-volume-i/file>

2.2. Background of the MEITI: a turbulent process

Mozambique made its application to join the EITI in May 2009 but was only accepted as a compliant country in 2012. The president reaffirmed the commitment to EITI implementation and to work together with civil society and the private sector under the auspices of MIREM⁴ in order to achieve EITI membership during his opening speech at the 11th annual private sector conference on 29 October 2008.

During the years of EITI implementation, Mozambique faced several setbacks. The country's application was rejected because the first validation conducted in 2011 concluded that the country hadn't met the necessary criteria: an updated work-plan, inclusion of civil society, disclosure of payments made by the companies and the respective cross-referencing with state revenues, and government assessment of the existing legal and institutional frameworks that affect transparency and accountability and could affect the implementation of the EITI.⁵

In 2017, a second validation started. This was the first conducted under the 2016 EITI standard. In a decision released on 25 October 2017, the EITI Board agreed that Mozambique had made meaningful progress, but the board agreed that Mozambique would need to take corrective actions outlined in its decision.⁶

The progress in addressing these corrective actions was assessed in a second validation that started in April 2019 (the second validation under the 2016 EITI standard), and in October Mozambique was found to have achieved meaningful progress with significant improvements.⁷ The International Secretariat assessed the progress made in addressing the 19 corrective actions identified by the EITI Board and found out that the country had only fully addressed six, with significant improvements on two other outstanding requirements. The Validation Committee recommended that the Board agree on corrective actions to be undertaken by Mozambique. In that regard, Mozambique will be subject to another validation expected to commence on 16 April 2021.

⁴ In 2011 the ministry was called Ministério dos Recursos Minerais (MIREM) and in 2015 was merged with the Ministry of Energy to become MIREME

⁵ The EITI board decision considered the need for the government to follow international standards in auditing revenues from mining resources, as well as a clear definition of relevant payments and receipts. The selection of only six companies in the first report was considered an inappropriate threshold.

⁶ <https://eiti.org/document/validation-of-mozambique-2017-reports>

⁷ <https://eiti.org/scorecard-pdf?filter%5Bcountry%5D=42&filter%5Byear%5D=2019>

Since 2010, Mozambique has published eight reports. In reality, it was supposed to be one report per year, for a total of 12. The first report was produced in 2009, and related to 2008.

Reports	Year	Period Covered	Publication
1st	2010	2008	March 2011
2nd	2011	2009	March 2012
3th	2012	2010	Dec 2012
4th	2013	2011	March 2014
5th	2014	2012	Dec 2014
6th	2015	2013/2014	Dec 2015
7th	2017	2015/2016	Feb 2018
8th	2019	2016/2017	Feb 2020

3. Legal and institutional framework of Mozambique's EITI

3.1. Legal framework

The implementation of EITI, despite the high-level commitment, was implemented from the beginning as an ad-hoc initiative and it is centralised in Maputo although some activities (such as report launch, debates and dissemination) are conducted in provinces. The country has not yet developed any specific legislation on EITI.

During the reform of the Petroleum Law, parliament attempted to include provisions about EITI. Its article 50 states that under the EITI all the petroleum companies operating in the country are required to disclose their annual results, the amounts paid to the state, and all investments made as corporate social responsibility (CSR). This is far from a formal recognition of the EITI process in the country.

At the moment, EITI implementation is ruled by EITI standards and it is supported by the Terms of Reference of the MSG.⁸ Those ToRs clarify the organisation of the MSG, duties of MSG, duties of the secretariat, constitution of the MSG, terms of office, decision-making and frequency of meetings.⁹

The ToRs do not explicitly indicate how the MSG members are selected, or include rules for delegates' attendance of meetings, or rules for participation or observation by other stakeholders. The ToRs also do not provide guidelines on codes of conduct and conflicts of interest. This situation impacts on the profile of the MSG members and their level of engagement.

3.2. Institutional framework

The Mozambican EITI Secretariat was established in early 2009. The multi-stakeholder group (MSG) consists of 14 members and 11 alternates, with representatives from the government, private sector companies from both mining and petroleum sectors, civil society, and two observers.

In Mozambique there have been ongoing discussions since 2017 on the institutionalisation of the EITI. An adequate legal basis could ultimately be developed and an institutional framework properly established. In that regard, with MAGTAP support, a consultancy to conduct an assessment was commissioned. As a result, three proposals emerged: (i) EITI to be an independent entity; (ii) EITI to be a department within MIREME, or (iii) EITI to be a department accountable to MEF or the Prime-Minister's Office. The decision on which model to adopt was not made and it is taking so long, compromising the proper functioning of the executive secretariat, and ultimately obstructing the implementation of EITI in the country.

Multi-stakeholder group

The multi-stakeholder group (MSG), which is responsible for organising, developing, executing and monitoring the implementation of the initiative in the country, consists of 14 members and 11 alternates with repre-

⁸ The first ToRs were approved in 2011 and updated in 2014.

⁹ See different Mozambique EITI reports.

sentatives from the government, extractive companies, civil society, and two observers, distributed as follows:¹⁰

- (i) Government (4 members): Ministry of Mineral Resources and Energy (the leader of the MSG), Ministry of Economy and Finance (MEF), Ministry of Environment and Land, Ministry of Industry and Commerce;
- (ii) Companies (4 members): Oil and mining companies and organisations representing oil and mining companies;
- (iii) Civil society (4 members): organisations working in the extractive sector, operating in different geographic areas (Maputo, Tete, Nampula and Cabo Delgado);
- (iv) Observers: Geological Mining Association of Mozambique and National Syndicate of Journalists.

Each group selects its own representatives in response to the government invitation to participate in EITI MSG. Each representative, in liaison with its own constituency, has a term of office of three years, renewable.

The government leads the process through MIREME, supported by the MEF which is the immediate alternate in case of absence of the chair.

Executive Secretariat

The government of Mozambique from the beginning decided to establish a national EITI secretariat to support the MSG by carrying out the day-to-day activities related to EITI implementation. The national secretariat is housed within the MIREME, and is responsible for EITI implementation in the country.

The country established a secretariat composed of four staff members:

¹⁰ It is important to mention that 2014 ToRs refers that the regulatory institutions such as INP and INAMI area member of MSG in Government side and the public enterprises, namely ENH and EMEM must be integrate in the company's group. Also, parliament and donors/partners are included as observers. But, just INP and INAMI participate as observers.

executive secretary, financial manager, institutional relations and procurement manager, and a driver. All of them were hired through a recruitment contest. In 2017, the government dismissed all of them due to lack of resources to pay their wages. Then, as an alternative, indicated the personnel at the MIREME as interim secretariat. In 2018, a dedicated national coordination commission was allocated to replace the personnel and the executive secretariat. This commission is composed of six members: a national coordinator, three assistants, an accountant, and an administrative assistant.¹¹ In reality the country does not have a properly professional and technical secretariat. All members of the commission are staff of MIREME.

The national MSG and the Executive Secretariat, now the national coordination commission, are in regular contact with the EITI International Secretariat which offers support and gives recommendations, safeguarding the independence of the national entities in accordance with the EITI standars

4. Opportunities and challenges of MEITI implementation

Indubitably, the EITI has a significant impact on extractive industries in Mozambique and has also created a unique opportunity for Mozambicans to access the sort of detailed information that would not be possible under the country's normal governance system. The EITI has helped the country to (i) improve the effectiveness and completeness of data recording between the Mining Cadaster and the Tax Authority; (ii) implement accurate recordings of payments by companies at the Tax Authority in the provinces and the Tax Authority at the central level, so that cross checking of information is automatic; and (iii) improve oversight by MIREME of concession transfers and the proper documentation of such transactions, which would allow the collection taxes applicable to such transfers. The EITI has also contributed to increased fiscal transparency as it can disclose disaggregated data on revenues that the state had not been able to publish.

¹¹ http://www.itie.org.mz/images/docs/relatorio_progresso2018_17.pdf and <http://itie.org.mz/index.php/sobre-nos/comite-de-coordenacao>

4.1. Opportunities of EITI implementation in Mozambique

The improvements that Mozambique registered present new opportunities to the country to move from minimum standards to systematic disclosure that leads to accountability.

Contract transparency

Mozambique disclosed the first contracts in 2013,¹² and in 2014 the legislation was reformed and included contract transparency provisions. Mining contracts are guaranteed full disclosure, and for oil and gas contracts just main terms can be disclosed safeguarding commercial and sensitive information.¹³

'Commercial and sensitive information' presents formal barriers to transparency and EITI standards offer a very good framework to address this issue, avoiding any possibility of abuse of this provision to keep the contracts secret.

Regular inventory of all revenues paid to government

The petroleum law requires that the companies publish their results, the amounts paid to the state, as well as any costs related to corporate social responsibility. The government is also required to maintain an inventory of petroleum operations revenue and publish them periodically¹⁴. This provision is not being implemented, but offers a very good opportunity for Mozambique to move towards systematic payment disclosure.

Mining cadastre reform

The country reformed the mining cadastre¹⁵ and it is electronic. Now the companies and citizens are able to know which areas are awarded to whom, the extent of land given under that concession, and the duration

¹² http://www.mireme.gov.mz/index.php?option=com_phocadownload&view=category&id=2&Itemid=118

¹³ idem

¹⁴ Petroleum Law article 27, and Mining Law, article 13

¹⁵ <https://portals.landfolio.com/mozambique/en/>

of the concession. There is huge potential to use the mining cadastre to disclose regular and detailed information about production, the terms of contract or licence, the costs, the beneficial owners as defined by EITI, and so forth.

Institutional arrangements to audit the sector

The EITI process led to technical improvements to revenue management systems and, importantly, on the site of tax collection important institutional reforms were made. The creation of a specific entity unit to deal with taxation of extractive industries within the revenue authority is the notable evidence.

However, there is an opportunity to strengthen the capacity of state institutions to ensure that the companies are paying what they are fairly supposed to pay. There are huge risks that revenues to be collected do not reach the expected levels. In 2018, the IMF downgraded its revenue projections for Rovuma Basin due to a low-price environment. But price is not the only villain. The costs are the big challenge when it comes to revenue maximisations. In general, the construction of LNG plants is susceptible to cost overruns that can reach 40 per cent due to variable costs of materials, technology, and other adverse conditions. In addition, inflated costs in exploration and development phases can affect the state revenues. Recently the INP revealed that companies operating in Rovuma basin inflated their recoverable costs by more than US\$33 million from 2015 to 2016.¹⁶

Mozambique has an opportunity within EITI to better its supervision of extractive companies, instituting a mandatory and regular disclosure based on EITI standards.

Increase the contribution to the public debate

One of the main goals of the EITI is to contribute to the public debate. In Mozambique, that contribution is substantial, but the problem is that this

¹⁶ <http://opais.sapo.mz/gas-do-rovuma-petroliferas-declararam-usd-33-milhoes-a-mais-em-custos>

debate is centered in Maputo and seldom includes the other provinces. With the decentralisation process in the country there is an opportunity to replicate the EITI coordination structure at provincial level, where the resources are extracted, in order to provide a platform for regular, institutionalised and inclusive debate about the management of resources.

This approach can provide a unique opportunity to address the sub-national allocations, ensuring that the revenues are transparently calculated, that communities are aware about the amounts canalised, and that the utilisation of the resources is the result of a participatory process that responds to the needs of communities.

Clean up the process by which contracts are awarded

EITI standards demand transparency in awarding licences. In 2014 Mozambique launched a fifth licence bidding process to award oil blocks. The process was concluded in October 2018 with the signature of 5 contracts.¹⁷ Although the petroleum law had suppressed all the biddable aspects and closed opportunities for secret negotiations between government and companies, during this process some negotiations took place over the four years. Normally the bidding licencing process takes almost a year to close.¹⁸ During this period the petroleum law, including its fiscal regime, was revised three times.¹⁹

EITI can play an important role in addressing and documenting these cases, helping the regulatory entities to act against irregularities and hold the public sector accountable for acting outside of their legal mandate to the benefit of certain groups.

Increase transparency in taxation and the use of capital gains

The terms that the government uses to tax the capital gains are very opaque, although the legislation is clear about it. Different formulas have

¹⁷ <http://www.inp.gov.mz/pt/Noticias/2018/O-Governo-de-Mocambique-Assina-Contratos-que-Poderao-Atrair-Investimentos-que-Ascendam-aos-700.00-Milhoes-de-USD>

¹⁸ <https://cipmoz.org/wp-content/uploads/2018/08/Industria-Extractiva-Recursos-Minerais-e-Energia-.pdf>

¹⁹ https://cipmoz.org/wp-content/uploads/2018/07/Licitacao_de_Blocos_Petroliferos.pdf, <https://cipmoz.org/wp-content/uploads/2018/07/Revisa%CC%83o-do-Regulamento-da-Lei-de-Petro%CC%81leos.pdf>, <https://cipmoz.org/2017/10/12/estabilidade-fiscal-moc%CC%a7ambique-volta-a-dar-um-passo-em-contra-ma%CC%83o-na-explorac%CC%a7a%CC%83o-petrolifera/>

been used to calculate the taxable income.²⁰

The capital gains are an appealing resource because of their extraordinary nature: unpredictability. A recent case was recorded in 2019. Mozambique earned US\$880 million by selling Anadarko's assets in area 1 of Rovuma Basin. A significant fraction of this amount was spent without parliament approval. Essentially, the money paid debts with the private sector and international creditors, election deficits, and some assistance to communities affected by cyclone Idai.²¹

The EITI requirement to describe the fiscal regime and resource allocation is an important tool to provide more transparency to these transactions and hold those in power accountable for any abuse of discretionary power.

Maximise the Access to Information law

EITI offers huge opportunities for Mozambique to use it as a tool to increase the transparency and accountability that will lead to sustainable and inclusive benefits for the country and its people.

Since 2014, the country has had an Access to Information law that can be used to promote greater transparency and accountability. The law states the principle of proactivity in disclosure of information that can be used to move forward and beyond the minimum standards.

4.2. Challenges in EITI implementation

As addressed by the EITI board, significant challenges still exist in the implementation of EITI. The evidence shows that the main challenge is related to political will to fulfil the country's own legislation and rules. Clearly, Mozambique hasn't been consistent with its commitment to transparency.

²⁰ <https://cipmoz.org/2017/03/27/transacciao-eni-e-exxon-mobil-nao-ha-transparencia-no-calculo-do-valor-das-mais-valias/>,
https://cipmoz.org/wp-content/uploads/2018/08/307_Spinformacao_2014_04_en.pdf

²¹ <http://www.verdade.co.mz/newsflash/70188-sobram- apenas-22-bilhoes-das-mais-valias-arrecadadas-em-2019>

Lack of commitment

Since 2014, the level of commitment of government decreased and that led to the suspension of the donor support provided through MAGTAP for administrative staff and report production.

The inauguration of a new government in 2015 exacerbated the situation and only in 2018 was the situation reversed. The appropriate leadership of EITI implementation requires the government, through its relevant institutions, to be collaborative and honest, providing all the necessary information to the EITI secretariat and to the independent consultant producing the reconciliation reports and informing the citizens about its decisions regarding resource management.

The regular and unpredictable changes in government had significant negative impacts on EITI implementation. In 2014, the deputy Minister of Mineral Resources, who was chairing the MEITI, was indicated as governor of Zambézia Province; and the national coordinator, who was the Planning and Cooperation Director at MIREME, was appointed as board member of the national oil company, ENH. That situation transformed the levels of commitment and affected the rhythm of implementation activities.

After the 2014 election, with the inauguration of a new government, EITI implementation hibernated due to lack of understanding of the process and its importance. But, also, the changes contributed to the situation. The Minister of Mineral Resources, the chair of the MSG, was changed twice, in 2016 and 2017. Several engagements from CSOs, EITI international secretariat, and donors based in Maputo were instrumental in bringing government back on board.

The last validation report also identified the lack of commitment from the side of the companies as compromising the implementation of the process.

Sustainability of the initiative

EITI sustainability and functioning are guaranteed, on the one hand, through funds allocated through state budget and, on other hand, by co-operation partners such as the MDTF, managed by the World Bank.

Since the implementation of EITI, the government has only been able to cover part of the needs of the initiative, specifically wages and facilities for functioning. Other expenses, such as EITI reports, are dependent on foreign aid. For example, for the production of the 7th MEITI report, the World Bank authorised a temporary bridge fund, through the Gas and Mines Technical Assistance Project (MAGTAP), which would be reinstated shortly after the new form of financing came into force.²²

Donors played a notable role in EITI implementation in Mozambique. The World Bank, IMF, GIZ, PNUD, NORAD, and DFID were prominent. Suspended in 2017, this support was provided through a common fund administered by the World Bank to cover the payment of secretariat salaries, consultancies, reporting, a large part of capacity building activities, and report dissemination. Direct support also came from other donors such as the United Nations Development Program (UNDP), Canada and GIZ Germany that financed some dissemination activities (seminars, production of audio-visual material and others).²³

Table: Resource allocation by government and donors (amounts in US\$)

Year	2009-2012	2013	2014	2015	2016	2017	2018	2019
Government	-	-	-	197.000	-	33.000	25.000	-
MAGTAP	-	318.00	-	251.400 ²⁴	-	-	-	353.000
GIZ	-	-	-	13.500	-	-	-	-
Canada	-	-	-	3 0.000	-	-	-	-
Total	-	502.200	658.000	760.000	251.400		509.000	353.000

²² <http://www.magtap.gov.mz/content/download/303/2177/file/SESA%20-%20Relat%C3%B3rio%20Final%20E2%80%93%20Sector%20de%20Minera%C3%A7%C3%A3o.pdf>

²³ <https://eiti.org/document/mozambique-20172018-eiti-annual-progress-report>

Lack of women and youth representation at MSG

The representation of women and youth was never taken into account as a criterion for representatives from the three stakeholder groups until the EITI standard introduced it. Article a) ii of Requirement 1.4 of the new 2019 EITI standard states that "the multi-stakeholder group and each Constituency shall take into account gender balance in their composition in order to progress towards parity".

Even though the MSG representation has a number of women and young people, they are represented in a disproportional way, as indicated in the table below. The MSG has 14 members and 11 alternates.

Year	2009-2011	2012-2014	2015-2017	2018-2020
Women	2	3	4 ²⁵	4 ²⁶
Youth	4	4 ²⁷	4	4 ²⁸

Data quality

One of the fundamental requirements of the EITI, and of most important transparency principles pointed out by the IMF, is the provision of reliable and verifiable information. Furthermore, for the purposes of these reports, as a rule, companies should present information certified by an external auditor and the government must present supporting documents that provide the data presented.

Assessments of EITI reports revealed that the information disclosed by government is not similar to that presented in other official documents such as the budget expenditure report and annual state accounts. From the companies' side, the data provided in Mozambique differs from what is published in their annual reports or disclosed in the mother company's website or on the stock exchanges.

²⁴ The total budget for the activities is US\$697.400.

²⁵ One is alternate member.

²⁶ Two are alternate members.

²⁷ One is alternate.

²⁸ One is alternate member

5. Conclusion and recommendations

EITI implementation in Mozambique was markedly challenging since the beginning. It is clear that from the declaration in 2008 to 2013, when a new standard replacing that of 2011 was approved, the government was very engaged with the process and that pushed the other stakeholders to commit themselves.

EITI is not about foreign investment mobilisation. Being an EITI-compliant country can certainly be an advantage regarding the global norms demanding transparency and accountability. But, ultimately, EITI has to serve the citizens by giving them relevant and accurate information that will allow them to participate in resource management and demand that the government makes better and well-informed decisions.

Indubitably, EITI processes have played a very instrumental role in the governance of extractive industries in Mozambique, reversing the secrecy that marked the way the government managed the projects approved before 2013.

The signals of a positive implementation trajectory are clear. However, there is still a need to translate the information disclosure into real transparency and accountability. To address these challenges, it is important for Mozambique to consider the following:

- EITI needs to be understood as a tool and not an end itself. This initiative gives to the country elements to improve transparency and accountability that demands a prior true commitment.
- The adequate implementation demands an assessment to identify the possible and potential obstacles to transparency that can constrain EITI implementation within the country. These obstacles can be legal or administrative. In Mozambique, confidentiality remains an obstacle to greater transparency that needs to be addressed properly.
- Mozambique urgently needs to define a way to address the sustainability challenges and allocate a technical and competent executive

secretariat to make sure that the implementation is run adequately. In that regard, a decision on the institutionalisation model has to be quick, clear and strategic, safeguarding the independence, transparency and effectiveness of EITI implementation in the country. EITI institutionalisation has to happen through specific laws, passed by the parliament, ruling the implementation of the initiative and ensuring that the state allocates human and financial resources, asserting the collaboration among the different government institutions, civil society, and the private sector. This will ensure that implementation continues regardless of changes in government.

- There needs to be a move to systematic disclosure of extractive industries data through the State Account, and use of electronic government portals to enable systematic open data. On one hand, that will provide a great opportunity to sort out the lack of resources to pay independent consultants to produce the EITI annual reports. On the other hand, this approach can help to deal with quality and reliability of information disclosed by government and reported in different MEITI reports.
- To improve state capacity to monitor the projects, government would use EITI standards in conjunction with domestic legal provisions to enable systematic and detailed in-country information disclosure by the multinationals.
- Review the instruments that rule the MSG to make sure that it addresses the issues of how the members are selected, rules for delegated attendance of meetings, rules for participation or observation by other stakeholders, and also set up the guidelines on codes of conduct and conflicts of interest.

To Zimbabwe, which is starting this journey, the main recommendations would be to (i) be clear about the main goal, (ii) make sure that the assessment of the obstacles to transparency is done before joining to enable a quick response to address them once the application is made, and (iii) ensure the engagement of all stakeholders and address the rules of MSG functioning, including selection of the members, participation or ob-

servation by other stakeholders, and guidelines on codes of conduct and conflicts of interest.

References

Mozambique Annual Progress Reports: http://www.itie.org.mz/images/docs/relatorio_progresso2018_17.pdf ; <https://eiti.org/document/mozambique-20172018-eiti-annual-progress-report>

Mozambique EITI Annual (reconciliation) Reports: <https://eiti.org/files/documents>

Mozambique EITI Validation Reports: <https://eiti.org/document/validation-of-mozambique-2017-reports>; <https://eiti.org/scorecard-pdf?filter%5Bcountry%5D=42&filter%5Byear%5D=2019>

Mozambique Mining Cadastre: <https://portals.landfolio.com/mozambique/en/>

Mozambique State Account: <https://www.mef.gov.mz/index.php/documentos/instrumentos-de-gestao/-21/conta-geral-do-estado-cge/cge-2019/899-Conta-geral-do-estado-2019-anexos-informativos-volume-i/file>

2014, Mozambique MSG Terms Of Reference, EITI-Mozambique <https://cipmoz.org/2017/10/22/inp-longo-de-ser-o-regulador-necessario-para-o-sector-petrolifero/>

<http://opais.sapo.mz/gas-do-rovuma-petroliferas-declararam-usd-33-milhoes-a-mais-em-custos>

<http://www.inp.gov.mz/pt/Noticias/2018/O-Governo-de-Mocambique-Assina-Contratos-que-Poderao-Atrair-Investimentos-que-Ascendam-aos-700.00-Milhoes-de-USD>

<https://cipmoz.org/wp-content/uploads/2018/08/Industria-Ex->

[tractiva-Recursos-Minerais-e-Energia-.pdf](#)

http://www.mireme.gov.mz/index.php?option=com_phocadownload&view=category&id=2&Itemid=118

https://cipmoz.org/wp-content/uploads/2018/07/Licitacao_de_Blocos_Petroliferos.pdf, <https://cipmoz.org/wp-content/uploads/2018/07/Revisa%CC%83o-do-Regulamento-da-Lei-de-Petro%CC%81leos.pdf>, <https://cipmoz.org/2017/10/12/estabilidade-fiscal-moc%cc%a7ambique-volta-a-dar-um-passo-em-contra-ma%cc%83o-na-explorac%c%a7a%cc%83o-petrolifera/>

<https://cipmoz.org/2017/03/27/transacao-eni-e-exxon-mobil-nao-ha-transparencia-no-calculo-do-valor-das-mais-valias/>, https://cipmoz.org/wp-content/uploads/2018/08/307_Spinformacao_2014_04_en.pdf

<http://www.verdade.co.mz/newsflash/70188-sobram- apenas-22-bilhoes-das-mais-valias-arrecadadas-em-2019>

<http://www.magtap.gov.mz/content/download/303/2177/file/SESA%20-%20Relat%C3%B3rio%20Final%20%E2%80%93%20Sector%20de%20Minera%C3%A7%C3%A3o.pdf>

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By Racheal Chagonja

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Acronyms and abbreviations

AMSA	Ambatovy Mining Société anonyme
BCMM	Bureau du Cadastre Minier de Madagascar/ Mining Cadastre Office of Madagascar
BP	British Petroleum
CPI	Corruption Perceptions Index
CSO	Civil Society organisation
DMSA	Dynatec Mining Société Anonyme
EITI	Extractive Industries Transparency Initiative
GDP	Gross domestic product
IGM	Institut de Gemmologie de Madagascar/ Gemmological Institute of Madagascar
LGIM	Law on Large Mining Investments/ Loi sur les Grands Investissements Miniers
LNIE	Laboratoire National des Industries Extractives/ National Laboratory of Extractive Industries
MMRS	Ministère des Mines et des Ressources Stratégiques/ Ministry of Mines and Strategic Resources
MSG	Multi-stakeholder group
OMNIS	Office of National Mines and Extractive Industries
PE	Permis d'Exploitation - Exploitation Permits
PR	Permis de Recherche - Research Permits
PRE	Small-scale mining permits
QMM	Quit Mineral Madagascar
SADC	Southern African Development Community
Tcf	Trillion cubic feet
TI-MG	Transparency International-Initiative Madagascar
USGS	US Geological Survey
ZELA	Zimbabwe Environmental Law Association

Introduction

Tanzania is endowed with significant mineral and hydrocarbon resources and is predominantly a mining country. Together, mining, oil and gas form part of the extractive sector. Tanzania has proven quantities of Tanzanite (12.6 tons), gold (2 222 tons), diamonds (50.9 million carats), copper (13.65 million tons), nickel (40 million tons), uranium (35.9 million pounds), coal (1.5 billion tons), iron ore, and over 57 trillion cubic feet of natural gas. The presence of such high-value resources has attracted many foreign and local companies to extract these resources (Muhongo, 2016). The sector makes up Tanzania's largest export earnings, with gold mining contributing 35 per cent of all exports (MoM budget speech 2020) and also contributing the highest rate of economic activities (at 17.7 per cent) (Ibid).

In the face of such wealth potential, with proper management revenues and other benefits accrued from extractives are expected to facilitate the country's economic growth, poverty alleviation and the journey towards becoming an industrialised state by 2025¹. However, the challenge lies on how these benefits are managed and distributed across different social and political groups. Also, the country's extractive resources have not been immune to malfeasant actions such as corruption, illicit financial flows (IFFs)² and complexities in tackling them³. The IFFs have been directly linked to low tax revenues that is accrued from the sector, making it important for the government of Tanzania (GoT) to strengthen the sector's legal and institutional frameworks⁴ in order to address the problems.^{5,6}

The majority of Tanzanians continue to live in conditions of material poverty. Recent estimates put the number of those living below the poverty line at 26.4 per cent of the total population (MoF, 2020)⁷ for the last five years⁸.

¹ <https://helda.helsinki.fi/bitstream/handle/10138/154641/Contemporary%20concerns%20in%20development%20studies.pdf>

² According to the World Bank Report on Illicit Financial Flows (IFFs) of 2016, Domestic resource mobilisation (DRM) and IFFs are closely linked to tax evasion which is the practice of illegally hiding income from tax authorities and sending it abroad, thereby hampering government efforts to mobilise local resources

³ Lucy Miyandazi, 2019. The complexities of tackling illicit financial flows in practice: A case of Tanzania. Discussion paper No. 255 (<https://ecdpm.org/wp-content/uploads/DP-255-The-complexities-of-tackling-illicit-financial-flows.pdf>)

⁴ The Written Laws (Miscellaneous Amendments) Act 2017; The Natural Wealth and Resources (Permanent Sovereignty) Act 2017¹ ("Sovereignty Act") and the Natural Wealth and Resources (Review and Re-Negotiation of Unconscionable Terms) Act 2017 ("Contract Review Act")

⁵ Tanzania new Natural resources ,what will change <https://resourcegovernance.org/sites/default/files/documents/tanzania-new-natural-legislation-what-will-change.pdf>

⁶ Analysis of the Natural Resource Wealth Bills, 2017; <https://www.hakirasilimali.or.tz/analysis-of-the-natural-resource-wealth-bills-2017/>

⁷ Economic Survey books, 2020. <https://www.mof.go.tz/index.php/economic-survey-books>

⁸ <https://helda.helsinki.fi/bitstream/handle/10138/154641/Contemporary%20concerns%20in%20development%20studies.pdf> <https://www.lexology.com/library/detail.aspx?g=a89be245-8915-42ce-8fa0-d9dbbf783de>

In order to address such challenges, the government has taken several measures, such as joining the Extractive Industry Transparency Initiative (EITI) in 2009 with the aim of promoting good governance in its natural resources (Kaiza 2013) and to enhance transparency and accountability. This was followed by the enactment of the Tanzania Extractive Industries (Transparency and Accountability) Act, 2015 (TEITA, 2015), the Oil and Gas Revenue Management Act 2015, the Petroleum Act 2015, the National Natural Gas Policy 2013, and the National Energy Policy 2015.

2. Overview of the extractive sector in Tanzania

Mining activities in the country are guided by the Mining Act of 2010 and its subsequent policies and amendments. It comprises heavily of solid minerals i.e. metallic, industrial and energy minerals such as gold, copper, diamonds, tanzanite, zinc, coal, uranium, coloured stones etc. (Heinrich-Boll, 2009). The sector is largely characterised by large-scale mining (LSM), mainly dominated by Geita Gold Mining Limited which owns the Geita Gold Mine (GGM) and Barrick Gold Corporation. The awarding of different types of mining licences is guided by the Mining Act, Cap 123, R.E.2018, mandating the Commission as established under section 21 to do so.

The contribution of mining and quarrying to the country's economic growth stands at 13.7 per cent, and the contribution to Gross Domestic Product (GDP) at 5.1 per cent, with a value of more than US\$960 million (MoM budget speech 2020/21). Tanzania also has sizable artisanal and small-scale mining (ASM) operations with some quarrying operations. The number of those engaged in ASM is estimated to be 600 000 (Ibid).

Oil and gas exploration activities have been ongoing over the past 60 years. According to the ministry of energy (MOE) geological data, discovered natural gas deposits currently account for 57.27 trillion cubic feet along the coast of the Indian ocean in Lindi and Mtwara regions (ibid). Oil has not yet been found, although there are ongoing exploration activities across the ocean coast and in lakes (in Nyasa and Tanganyika respectively). Natural gas is being used to generate electricity that feeds into the national grid, and according to Lexology May 2019,⁹

⁹ <https://www.lexology.com/library/detail.aspx?g=a89be245-8915-42ce-8fa0-d9dbbf783de>

natural gas is contributing 2.63 per cent of the total domestic energy consumption. Investment in liquefied natural gas (LNG) and compressed natural gas (CNG) processing plants are being pursued. The awarding and transferring of oil and gas licences in the country is governed by the Tanzania Petroleum Act of 2015¹⁰ with exclusive rights being given to the Tanzania Petroleum Development Corporation (TPDC) – the National Oil Company (NOC) (section 44). TPDC keeps records of license holder(s); coordinates of the license area; sets date of award and duration of the license; defines the commodity for which the license is issued for and the activity for the license, exploration or production. Any company wanting to carry out petroleum operations in Tanzania shall do so in conjunction with NOC, through a joint venture vehicle whereby the NOC shall hold at least 25 per cent of the shareholding. Also, according to sections 59 and 75, the Minister for Energy may grant or reject any of the licences upon conditions as stipulated in such sections.

3. Legal and institutional framework of Tanzania EITI

3.1. Legal framework

The move towards enhancing transparency and accountability was started by the former President of Tanzania, his Excellency Honorable Dr Jakaya Mrisho Kikwete who committed to good governance, transparency and accountability¹¹. In that move, Tanzania then joined the EITI in February 2009, and was declared compliant to EITI standards in December 2012, forming the Tanzania Extractive Industries Initiative (TEITI). Tanzania's membership to EITI has been mainly rationalised to EITI principles as a vehicle for the enhancement of transparency and strengthened governance¹².

The EITI process in Tanzania is guided by the Tanzania Extractive Industries (Transparency and Accountability) Act of 2015 (TEITA, 2015) (herein referred to as the Law) and its regulations as developed in 2019.^{13,14} The Law was passed by the parliament under a Certificate of Urgency during the tabling of the 2015/2016 national budget. The development of this law was complemented by the enactment

¹⁰ The Act regulates all upstream, midstream, and downstream petroleum activities in the United Republic of Tanzania

¹¹ 5 OGP Action Plan I, 2012, 2

¹² <https://eiti.org/files/documents/eiti-standard-principles.pdf>

¹³ Tanzania Extractive Industries (Transparency and Accountability) Act, 2015.

¹⁴ <https://www.madini.go.tz/wp-content/uploads/2019/02/TEITA-REGULATIONS-GN-NO.141-OF-2019.pdf>

of the Petroleum Act, 2015 and the Oil and Gas Revenues Management Act, 2015, aiming to regulate the entire extractive sector. The Law among others, demands for the disclosure of the payments, data on production and exports, local content, corporate social responsibility and capital expenditures (Section 15), conducting investigation into material discrepancies exposed by reconciliation reports (Section 18). It also has clear provision for the disclosure of contracts and beneficial ownership (Section 16 (b)). Through the multi-stakeholder group (MSG) committee, the law provides for effective citizen awareness and participation.

Despite impressive efforts to have the Law, there are still contentions among stakeholders on number of issues, for instance the role of the minister in the implementation of the Law. Until 2016 the extractive sector was overseen by the then one Ministry of Energy and Minerals, until ministerial changes (separating the ministries) were made in October 2017, causing all TEITI operations to be under the Ministry of Minerals¹⁵. No provisions are being provided in the law that describe the role of the Ministry of Energy despite amendments made in 2017.

A double role being played by the responsible ministry – i.e. the one who receives the information concerning revenues accrued at the same time provides scrutiny on accountability. For example, section 19 provides powers to the ministry to lay before the National Assembly reports on the status of the implementation of the Act, while section 18 provides for the minister to receive information related to the investigations of the discrepancies observed during the reconciliation processes.

TEITI-related operations have been narrowed within the limits of the TEITA law and its regulations. The law normally addresses the challenges of the time it is instituted. Challenges arising outside the scope of that law would require a different media of attention. If it were to adopt EITI for improving extractive resources governance, one would not expect to see the same government enacting laws to promote transparency and accountability in the sector and at the same time enacting others to limit the same goals. Such laws as the Media Services Act 2015, the Statistics Act and the Cybercrimes Act contain counterproductive provisions that may constrain the realisation of transparency and accountability goals enshrined in the laws concerning extractive industries.

¹⁵ The President of the United Republic of Tanzania amended the Notice on assignment of Ministerial Functions (Instrument No.144 of 22nd April, 2016)

The mandate of the Controller and Auditor General (CAG) as recognised by the Law has been challenged by inability to access information on finances and contracts from extractive companies and corporations. This makes it impossible for the CAG's office to carry out audits in such corporations. Article 143 of the constitution of Tanzania and sections 5 and 15 of the Public Audit Act 2008 are underpinned by section 26 of the Mining Amendment Act of 2010 and its subsequent amendments and section 93 of the 2017 Oil and Gas Act of 2015, which prohibit the disclosure of information on extractive issues to third parties except only with the consent of the owners of the mine or the license or the right to extraction.

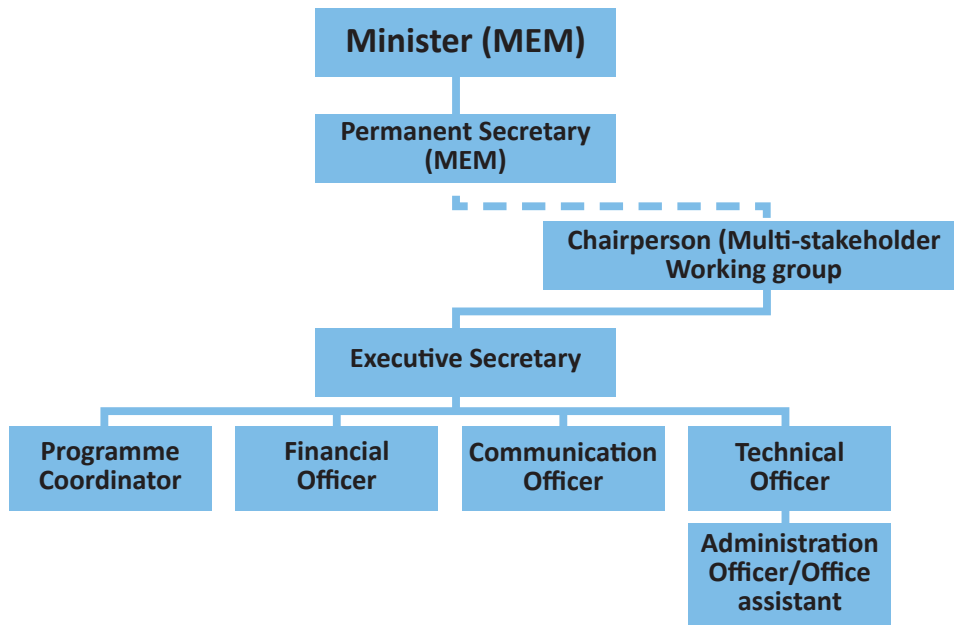
3.2. Institutional framework

The Tanzania Extractive Industries (Transparency and Accountability) Act (TEITA) of 2015 has provided for the establishment of the Tanzania Extractive Industries (Transparency and Accountability) Initiative (TEITI), its committees and organs¹⁶. TEITI is an independent government oversight body for promoting and enhancing transparency and accountability in the extractive industry. The initiative is composed of a 16-member multi-stakeholder working group- (MSG) that is constituted by a tripartite coalition of five representatives each from the government, extractive companies, and civil society organisations (CSOs). Under section 5 (4) the appointment of the MSG representatives is done within respective umbrella organisations in accordance with procedures set out by such organisations and submitted to the minister for announcement.

¹⁶ The Extractive Industries (Transparency and Accountability) Committee, the Nomination Committee, Secretariat, and an independent administrator.

¹⁶ Website of the Institute of Gemmology of Madagascar consulted on: <http://igm.mg/>

¹⁷ EITI Madagascar (June 2011), EITI Report for the years 2007, 2008, 2009 and first half of 2010

Figure 1: TEITI organisational Structure

Source: www.teiti.go.tz

The MSG has oversight responsibilities to ensure that the benefits of extractive industry are verified, duly accounted for, and prudently utilised for the benefit of the citizens of Tanzania (Section 10(1)). The committee is conferred with the responsibility of developing a framework for transparency and accountability in the reporting and disclosure, appointing the Independent Administrator (IA). The committee promotes citizen participation, makes reconciliations of payments, conducts investigations into the material discrepancy from revenue payments, disseminates information, and supervises the affairs of the TEITI secretariat¹⁷(TEITI Five year work plan May 2018; Poncian & Kigodi 2018).

For the past 3 years, TEITI has not had a full time Executive Secretary, despite the processes for recruitment being completed. And the government reports during the financial year 2020/21 provided no progress on the level reached for the recruitment of the Executive Secretary. Also, TEITI does not have a comprehensive

¹⁷ The Secretariat is headed by the Executive Secretary and all officers and staff are public servants. It is charged with day-to-day implementation of the activities of the Committee and undertaking any function vested in the Committee if delegated by the Committee.

and up-to-date database of all companies operating in the extractive sector.

Lastly, there is inadequate government commitment to finance TEITI-related development projects. Since the financial year 2018 to date, TEITI-related projects have been solely funded through government sources due to lack of funding from development partners (TEITI progress report, 2017). In the analysis done by HakiRasilimali in 2020, during the financial year (FY) 2018/19, out of TZShillings 1 629 379 543 (\$704 140) that was passed by the parliament for the ministerial proceedings, no funding for development projects had been released to TEITI. This was also the case with FY 2019/20 and 200/21, which caused delays in the implementation of activities such as publication of reconciled revenue reports, undertaking research, capacity building, and recruitment of staff (including the Executive Secretary).

Both the government of Tanzania (GoT) and extractive companies are key actors in the EITI implementation process. They both are members of the tripartite TEITI MSG coalition.¹⁸ Government representation consists of representatives from the Tanzania Revenue Authority (TRA), The Tanzania Petroleum Development Corporation (TPDC), and Commissioner for Minerals, President's Office Regional Administration and Local Government (TAMISENI), and the Attorney General (AG). The representation of extractive companies to the MSG includes the Oil and Gas Association of Tanzania (OGAT), Tanzania Chamber of Mines (TCM), and the Federation of Miners Associations of Tanzania (FEMATA). In general these companies are required to adhere to relevant legal and policy tools in the country, although this does not mean that they cannot go beyond what is required of them by domestic laws to implement EITI (EITI Business guide, May 2013). The two constituencies are required by the Law to disclose information on revenues (paid and received), beneficial ownership, etc. The GoT, however, is a key factor in that it defines how the EITI process has to be through formulating and enacting relevant policy and legal frameworks. The GoT is being criticised for eroding value and diminishing competitiveness mainly, through conflicting laws and uncoordinated institutions within the sector. Extractive companies are faulted for not assimilating their projects into the economies around host communities, negotiating unfair deals, being merely opportunistic, and evading tax (HakiRasilimali, 2019).

¹⁸ <https://www.teiti.go.tz/historia-ya-teiti>

Civil Society organisation (CSO) participation is guided by the TEITA law 2015 and the Protocol,¹⁹ providing not only for CSOs to form part of the tripartite coalition (MSG committee) but also outlining free, full independence for active and effective CSOs. The CSO MSG constituency within TEITI consists of five sub-constituencies: Publish What You Pay (PWYP), interfaith,²⁰ gender and disability, trade unions,²¹ and conventional NGOs. CSOs have continued to play a part in outreach and engagement by interpreting EITI-related reports and seeking spaces with policy makers and influencers to inform change and mobilising community voices for enhancing governance-related discussions in the sector. For example, CSOs have been able to influence the government to affirm its commitments to contract disclosure, the assentation of the Arbitration Act of 2020 No. 2²², development of the TEITI-related regulations of 2019,²³ providing for full implementation of TEITA 2015, introduction of the definition of Beneficial Ownership (BO) through the finance Act, calling for amendments of the Companies Act of 2002, among others. However, their role and representation in the Committee has been questioned, and the problem of conflicting interests. Subject to section 5(4) of TEITA 2015, the appointment or selection of the CSO representatives for the MSG is to be done through their respective umbrella organisations working in the extractive sector. However, there have been occasions when elected representatives had no background or knowledge of the sector whatsoever. This has stalled effective CSO participation in decision-making processes (HakiRasilimali, September 2019).

According to TLS (2019), the participation of women in the sector has been categorised into three criteria: the presence of women in institutions created by various laws that govern the extractive sector; the presence of specific provisions in pieces of legislation that offer protection for women's interests; and the requirement of a minimum number of women in decision-making processes. Findings during the assessment show that, women's representation in TEITI-related work is of paramount importance despite the fact that TEITA 2015 and its 2017 amendments and the Written Laws (Miscellaneous Amendments) Act, 2017 make no provision for women's inclusion in the sector. However, the ratio of women to

¹⁹ https://eiti.org/files/documents/eiti-standard_protocol_participation-civil-society_en.pdf

²⁰ The Interfaith Standing Committee on Economic Justice and Integrity of Creation (ISCEJIC). It is represented by the Christian Council of Tanzania, National Muslim Council of Tanzania and the assembly of the Catholic Bishops of Tanzania: <https://iscejic.org/>

²¹ Mostly composed of representatives from the National Union for Mining and Energy Workers.

²² On 14 February, 2020 The President of United Republic of Tanzania, His excellency Dr John Pombe Magufuli assented to the Arbitration Act of 2020 No. 2

²³ On 8 Feb 2019, The Government of Tanzania, through Minister of Minerals Dotto Biteko, formulated and published in the government gazette notice no. 141. The Tanzania Extractive Industry Transparency Accountability Act (TEITA) 2015. Regulations provide proper guidelines for the full enforcement of TEITA 2015.

men of the newly elected CSO MSG (for the period of 2019-2022) stands at 1:1. At the same time women's involvement is highly represented in artisanal and small-scale mining, participating as direct service providers. For the purpose of the analysis, there is limited data for women's direct participation in the oil and gas sub-sector, even though the National Energy Policy of 2015 and the Petroleum Act 2015, sections 3 and 220 (2), provide for the participation of women in the energy sector and related matters. Prevailing opportunities for women's participation, especially as extractive technical operators, is also inadequate. This is due to their lack of requisite capacity to be able to negotiate for better deals in the sector. Similarly, most of them lack clear understanding of policies, laws, and strategies that need to be followed regarding extractive benefits. There is the whole question of stereotypes, cultural taboos and gender disparities limiting access to markets, land and credit that hinder women's effective participation.

The understanding of 'youth' globally is subjective. In Tanzania, youth is defined as those who are aged between 15 and 35 years and this is the same for other East African countries. The composition of the current MSG includes such a group. At the outreach and engagements level, youth groups are playing key roles in disseminating information on transparency and accountability issues. For instance, HakiRasilimali members work with a group of social influencers in the dissemination of information. TEITI does not have youth-specific activities, programmes, etc within colleges or universities.

The participation of Development Partners (DP) has not been so obvious in relation to enhancing transparency and accountability except by providing financial support to TEITI-related activities. From 2009 up to 2017, most of TEITI finances came from the World Bank, the Africa Development Bank (AFDB), the European Union (EU), the Government of Canada, the Royal Norwegian Embassy and the Natural Resources Governance Institute (NRGI). In 2018 onwards, funds for its activities were solely coming from the government coffers with limited allocations.

In April 2020, however, the World Bank under the Extractive Industries Accountability and Governance Enhancement Project (P162493), approved US\$750 000 to support TEITI in its development-related projects.²⁴ These include supporting

²⁴ <https://projects.worldbank.org/en/projects-operations/project-detail/P162493>

compliance with validation requirements and building capacity to comply with the EITI 2019 standards; promoting public-private dialogue on the impacts and benefits of the extractive sector; and strengthening the framework for transparency and mainstreaming of EITI data. This funding will certainly improve TEITI’s implementation of the EITI standards.

4. Opportunities and challenges of TEITI implementation

Investment in the extractive sector and the implementation of EITI in Tanzania has been seen as an opportunity for economic transformation and human development towards poverty alleviation. A major opportunity has recently been presented by the government desire to review and revamp its legal framework, whereby transparency and accountability laws, regulations and guidelines have been and continue to be developed and amended. However, the practice has been faced with challenges of incoherence, implementation gaps, and inadequate institutional coordination and communication (as highlighted above).

4.1 TEITI validation status

Tanzania’s participation in the EITI validation process has been of utmost significance as it guaranteed quality assurance and also measured progress made in enhancing transparency and accountability in the sector. The process is guided by the EITI quality assurance mechanisms as articulated in the EITI standards (Section 3, EITI standard of 2019). Tanzania has had two validation processes to date (2017 and 2020). These processes involved a number of stakeholder consultation sessions and the country was found to have achieved its first meaningful progress in data collection against the 2016 EITI Standard (Tanzania progressive report;²⁵ EITI Board October, 2017).

4.2. Transparency of extractive revenues

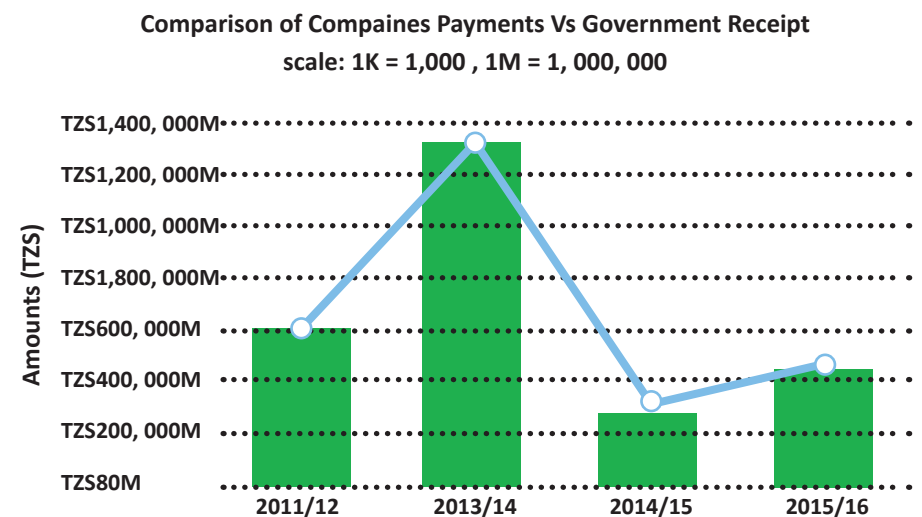
Within the eight years of TEITI implementation, from 2009 to 2017, there has been partial transparency on extractive revenues owing greatly to annual reconciliation reports by the TEITI. For instance, nine reconciled reports have been

²⁵ Satisfactory progress on requirements of the EITI standard concerning the engagement of industry and civil society (1.2 and 1.3), legal and fiscal framework (2.1), exploration data (3.1), disaggregation, timeliness (4.7, 4.8 and 4.9) and documenting outcomes and impact of implementation (7.4)

published covering the period from July 2008-June 2009, 2009/10, 2010/11, 2011/12, 2012/13, 2013/14, 2014/15 , 2015/16 and July 2016 to June 2017. This has contributed to the revenues collected. Currently, the extractive sector (mining, oil and gas) is contributing 35 per cent to total national exports, 5 per cent (4.8 per cent on average from the mining sector and 0.2 per cent from oil and gas) to GDP, and 1 per cent to government revenue.²⁶

At the same time, TEITA 2015 section 18(1) provides mandate for the TEITI committee to submit reconciliation reports to the Controller and Auditor General for investigation when such reports identify material discrepancy between payments and receipts. For example, The eighth TEITI report that was published on 30 April 2018, covering the period from 1 July 2015, to 30 June 2016, states that companies paid 465.1 billion Tanzanian Shillings, while the government reported receiving 434.6 Shillings, causing a discrepancy of 30.5 billion Tanzanian Shillings. The Office of the Controller and Auditor General has completed investigating this discrepancy. After discussion and approval by the MSG members, it was submitted to the Minister as stated in TEITA.

Graph 4: comparison of extractive company payments against receipts received by the GoT for selected years



Source: www.teiti.or.tz

²⁶ <https://eiti.org/tanzania>

Challenges

Inadequate allocation of resources from the government to TEITI development projects has delayed the development and publication of the 10th and 11th reconciliation reports and their effective operations (such as undertaking research, capacity building for staff and so on). Also disclosure of the spending side of revenues has not been addressed.

The most recent report- (the 9th report) has failed to indicate the contribution of the oil and gas sector; much emphasis is given on mining.

Corporate tax payments from extractive industries have been insignificant, and therefore have not assisted in enhancing government's domestic revenue because the majority of mining companies have not been paying corporate tax. Most of the contribution is coming from royalties and taxes on wages (TEITI progress Report 2017).

Despite the substantial contribution made by the sector, the public is becoming increasingly dissatisfied with the benefits accrued from the sector to support the national budget processes, growth, and the anticipated industrial economy as envisioned in the Tanzania Development Vision second implementation phase 2016/17 to 2020/21.²⁷ For instance for the past years, the GDP contribution of the sector has remained at an average of 5 per cent. Tanzania has anticipated a 10per cent GDP contribution from the mining sector by year 2025.

There have been constant delays in the publishing of TEITI reports, especially the 9th, 10th and 11th reports. This is because of financial constraints and different reporting timelines between the government calendar and that of extractive companies. At the same time, all TEITI procurements are supported by the MoM.

The failure of some companies to certify the reporting templates by external auditors is against the EITI requirement 4.9 and the process for ensuring data credibility.

The GoT has also been silent on the findings made by the CAG on the audited discrepancy reports.

²⁷ <https://www.mof.go.tz/mofdocs/overarch/Vision2025.pdf>

4.3. Improved disclosure and access to mining value chain information

Tanzania's membership of EITI has contributed to public availability of information such as reconciled reports, validation reports, local content and corporate social responsibility reports, among others. This has made it easier for CSOs to play their advocacy role in the sector and push for more openness and accountability (IHRB, 2016²⁸; Jukwaa la Uziduaji 2018, 2019²⁹). This has also made citizens, especially those living in communities hosting large extractive projects, to know and demand their rights over resources (Ibid). For example, Kilwa (a district in the southern part of Tanzania, where there are oil and gas activities) provides one of the best cases of where information dissemination has ignited popular demand for a fair share of service levies and proper management of the same (FES and OpenOil, 2015)³⁰.

This has not only pushed the government to be accountable³¹ but has also made extractive companies careful and considerate of local and national development needs. This has influenced the established process of renegotiating contracts with extractive companies – for example, the recently completed discussion between the GoT and Barrick Gold corporation that led to the establishment of the joint company Twiga Minerals, whereby the GoT owns 16 per cent non dilutable shares and Barrick 84 per cent) (MoM budget speech 2020/21; Barrick, 2019³²).

Tanzania EITI disclosures in the past had focused only on revenue payments and data on production and exports. However, sections 14, 15 and 16 of TEITA 2015 and its regulations now raises the disclosure bar. It provides for companies to also disclose information on local content, corporate social responsibility and capital expenditures. It also requires the disclosure of contracts and information on beneficial ownership. Section 16 of the Law provides for extractive companies to disclose all their contracts including Mineral Development Agreements (MDAs) and Production Sharing Agreements (PSAs). So far disclosed contracts are the PSA with Pan African Energy and amendments to the PSA with ExxonMobil and Statoil. These agreements are now publicly available.³³ There has been reaffirmation

²⁸ IHRB, 2016: Human Rights in Tanzania's Extractive Sector Exploring the Terrain

²⁹ <https://jukwaa.lauziduaji.or.tz/>

³⁰ Friedrich-Ebert-Stiftung Tanzania and OpenOil, 2015; Tanzania Oil and Gas Almanac

³¹ <https://www.madini.go.tz/bilioni-18-zimetumika-miradi-ya-csr-mkoani-geita/>

³² The Launch of Twiga Minerals Heralds Partnership Between Tanzanian Government and Barrick: <https://www.barrick.com/English/news/news-details/2019/The-Launch-of-Twiga-Minerals-Heralds-Partnership-Between-Tanzanian-Government-and-Barrick/default.aspx>

³³ <http://resourcecontracts.org/countries/tz>

by the GoT to disclose contracts (NRGI, 2019; HakiRasilimali, 2019). For example, during the EITI Global Conference held in Paris-France, June 2019, the Minister for Minerals on behalf of the GoT reaffirmed the country's commitment to ensure that all new contracts entered, granted or amended from January 2021 will be disclosed through the Ministry of Minerals or Energy Website and the TEITI Website.³⁴

Challenges

For a while now, contracts, related information, and negotiation processes have remained behind closed doors and shared among only a few individuals. Reading through various documents such as ministerial speeches, TEITI-related reports, the government is silent on progress made towards the commitment to disclose the details of contracts.

There is low compliance and inadequate effort to disclose information related to beneficial ownership (BO). The 9th TEITI report indicates that most of the extractive companies failed to submit full BO details. Inaccuracy and failure to disclose details has limited transparency, accountability, and revenue enhancement, putting the country at risk of tax evasion, conflicts of interest, corruption, and illicit financial flows in the extractive sector.

4.4. Stakeholder participation and engagement on extractive resource governance

TEITI's work has been mainstreamed into the operations of the GoT. For example, TEITI now works closely with the Performance Review Team of the Controller and Auditor General's (CAG) office. In particular, TEITI has assisted the team in familiarising itself with the operations of the Tanzania Petroleum Development Corporation (TPDC). As a result, the team produced the report "Performance Audit on the Management of Process Awarding Exploration and Development Contracts and Licenses for Natural Gas." The report, which was debated in parliament, is critical of the operations of TPDC.

³⁴ NRGI (2019) Minister of Minerals Doto Biteko made commitment on 19 June at the Extractive Industries Transparency Initiative Global Conference in Paris. The commitment follows the adoption of the new EITI Standard, which mandates all 52 implementing countries to publish contracts and licenses signed after January 2021 (<https://resourcegovernance.org/blog/tanzanian-government-reaffirms-commitment-disclose-mining-contracts>)

TEITI-related reports since 2010 have also focussed stakeholder's attention on spaces such as the parliament, CSO platforms and agendas, academia, and the media.³⁵ The Tanzania Extractive Industries Conferences have enabled stakeholders to critically discuss, exchange experiences, and to learn from one another to advance transparency and accountability agendas in the extractive industries in Tanzania.³⁶ Through evidence-based research and analysis done by CSOs, the level of debates and engagement of all stakeholders has been enhanced, including the media, academia, government, and community-based organisations. For example, in 2018 CSOs produced a report on two years assessment of the implementation of TEITA, documenting opportunities, challenges and lessons since its implementation in 2015. Among other things, this analysis led to the development of TEITA-related regulations in 2019³⁷.

Challenges

The law, through the MSG committee, provides for promoting effective citizen awareness and participation. However the practice shows limited citizen awareness and engagement, especially concerning the reconciliation report. This is exacerbated by the language used to develop TEITI-related reports. Reconciliation reports are complex, and are not disseminated in a simplified and friendly format that could facilitate stakeholder's engagement and demands for accountability.

Some stakeholders involved in the reconciliation process (particularly extractive companies and government entities) do not have a good understanding of EITI, its international significance, and Tanzania's membership. Certain stakeholders do not understand the management structure of EITI in Tanzania, what the regulations governing the process are, what their own role and involvement is in the reconciliation exercise, and, most of all, the importance of the data they are providing. Considerable time was taken to explain the EITI process and reconciliation to management, accountants from extractive companies, and some officials in government entities.

It is also argued that, in order to ensure there is transparency and accountability, TEITI needs to be an independent institution having its own source of funds and

³⁵ <https://www.madini.go.tz/wp-content/uploads/2019/05/DOC-20190529-WA00141.pdf>

³⁶ <https://jukwaalauziduaji.or.tz/>

³⁷ <https://www.hakirasilimali.or.tz/hakirasilimali-pwyp-in-the-library-volume-1/>

making decisions without the interference of the government. However, Section 4 (2) contradicts that argument. It states that TEITI is an ‘independent Government’ entity, effectively hindering its independence. There are double roles being played by the responsible ministry; one entity is supposed to receive the information (revenues accrued), and at the same time provide scrutiny and accountability.

5. Recommendations and conclusion

Extractive resource governance is more than just transparency. It encompasses how different stakeholders participate in determining key extractive decisions, accountability mechanisms, and so forth. On these fronts, one cannot confidently say that TEITI has improved the governance of resources to the expected extent. This has been mainly due to the political climate in the country, breeding meaningful public participation and strong accountability mechanisms (Poncian & Kigodi, 2018).

Enabling policy and legal framework

A strong, harmonised policy and legal framework (at the national and regional levels) is required to support transparency and accountability initiatives within the region, together with coordinated institutions and adequate technical and financial support. The extractive sector’s legal and policy provisions under EITI cannot materialise when the broader legal and political context is restrictive.

Coordination and institutional arrangements

The EITI legal and institutional framework needs to acknowledge a CSO umbrella organisation to coordinate the process of nominations. This will ensure a capacitated group of CSO representatives to the MSG, will facilitate their engagement in various decision-making processes.

Access to information and disclosure

More and stronger emphasis needs to be put on beneficial ownership disclosure and contract transparency. Access to such information will assist resource-rich countries to hold duty bearers accountable for resource management. Strengthened accountability mechanisms will ensure that EITI does not only deal with information disclosure but also becomes a tool to hold governments and companies accountable.

Lessons from other countries

There is a need for continuing to learn from neighboring states to provide further opportunities and lessons for the enhancement of transparency and accountability in the extractive sector.

Stakeholder participation and engagement

CSO participation is key in the EITI process, especially for enhancing transparency and accountability in the sector. There is a need to build a well-coordinated, informed, inclusive and influential civil society organisations who will be willing to enhance public debates related to EITI-related data and ensure improved extractive sector governance.

A well informed and strengthened citizen engagement in EITI implementation processes is critical for resource-rich countries. This requires an inclusive engagement of the youth, women, and host communities. This needs to go beyond the inclusion of female/youth/community representative faces in boards, etc.

REFERENCES

- Alvar Mwakyusa (2019): Tanzania; Gas pipeline provides frontier for Tanzanian Economy <https://allafrica.com/stories/201905300378.html>
- EITI Board October (2017): Board decision on the Validation of Tanzania, Decision reference 2017-53/BM-38- <https://eiti.org/es/node/9273>
- HakiRasilimali, 2019: Comparative position statement on extractive sector ministerial budgets for financial year 2018/19 and 2019/20 - <https://www.hakirasilimali.or.tz/wp-content/uploads/2019/06/ANALYSIS-DOC-ENGLISH.pdf>
- HakiRasilimali, September (2019): Report on the CSO meeting to elect representatives to the 4th TEITI Committee (2019-2022) - <https://www.hakirasilimali.or.tz/wp-content/uploads/2020/02/CSO-ELECTION-REPORT-2019.pdf>
- Japhace Poncian & Henry Michael Kigodi (2018) Transparency initiatives and Tanzania's extractive industry governance, *Development Studies Research*, 5:1, 106-121, DOI: 10.1080/21665095.2018.1486219
- NRGI (2019) Minister of Minerals Doto Biteko made commitment on 19 June at the Extractive Industries Transparency Initiative Global Conference in Paris - <https://resourcegovernance.org/blog/tanzanian-government-reaffirms-commitment-disclose-mining-contracts>)
- NRGI (2015): Country Strategy Note - https://resourcegovernance.org/sites/default/files/nrgi_TanzaniaStrategy_20151207.pdf
- Tanzania Extractive Industries (Transparency and Accountability) Initiative: <https://www.teiti.go.tz/>
- The national natural gas policy of 2013
- The Oil and Gas Revenue Management Act of 2015
- The Tanzania Extractive Industries (Transparency and Accountability) Act of 2015

The United Republic of Tanzania, Ministry of Energy:
<https://www.nishati.go.tz/ks/>

The United Republic of Tanzania, Ministry of Minerals: <https://www.madini.go.tz>

Muhongo, Sospeter Mwijarubi. 2016. Hotuba ya Waziri wa Nishati na Madini Mhe. Prof. Sospeter Mwijarubi Muhongo (Mb.), Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi kwa Mwaka 2016/17. Dar es Salaam: Ministry of Energy and Minerals.



A case for Zambia

By Edmond Kangamungazi

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Acronyms and abbreviations

EITI	Extractive Industries Transparency Initiative
CSO	Civil society organisation
GDP	Gross Domestic Product
IFIs	International financial institutions
MOU	Memorandum of understanding
MSG	Multi-stakeholder group
US\$	United States dollar
USGS	US Geological Survey
ZEC	Zambia EITI Council
ZEITI	Zambia Extractive Industries Transparency Initiative

Executive summary

Zambia has been implementing Extractive Industries Transparency Initiative (EITI) standards since 2009. Zambia EITI (ZEITI) has a secretariat that provides professional and administrative services to the ZEITI council, facilitating its programmes and projects.

Mining (especially copper) has always played an important role in the Zambian economy. However there has been growing mistrust between the government, mining companies, and civil society on the accrued benefits of mining in Zambia and how much the country is earning from the sector. Governance shortcomings in the extractive sector was the main reason Zambia joined the EITI; revenues from the mining companies were not adequately documented, decision-making was not always transparent, and public dissemination of information on government policies and outcomes was not prioritised. Measures of voice and accountability remained low, and where information was available, there were few intermediaries to help the public make an informed assessment of that information.

Zambia has EITI-compliant status. By May 2020, Zambia had published 10 EITI reconciliation reports covering 2008 to 2017. The 11th report (covering the 2018 financial year) is being drafted. EITI in Zambia is voluntary; there is no law that compels mining companies to disclose the information requested through the EITI. In the absence of a legal framework, mining companies and civil society organisations (CSOs) signed a memorandum of understanding (MOU) on 27 August 2010, and on 23 March 2020 Cabinet approved, in principle, the introduction of a EITI Bill in parliament to provide for a legal framework to strengthen transparency and accountability in the management of mineral resources. Among other things, the Bill will include penalties for failure to disclose information on taxes and other payments as and when requested for the preparation of EITI reports.

Overall, the results suggest that EITI has had a beneficial effect in reducing corruption in Zambia. Over the years, ZEITI has helped to strengthen government systems along the value chain of the extractive industries governance, focusing on making information available and proposing recommendations on improved governance based on that information (for example through the Zambian region-

al authorities and local councils). Challenges include inadequate political will and commitment, and dependency on external funding.

There is no “right” answer as to what kind of EITI programme a country should adopt – different stakeholders will have concerns about different aspects of the EITI program. Typically, these concerns will be raised at the early meetings of the EITI stakeholder working group, and decisions will be made on the scope of the programme. That said, some core factors can be discerned regarding the scope of the EITI programme:

- **Identify an EITI champion:** If the government wishes to commit to implementing an EITI program, one of the most immediate tasks would be to identify who would be the best senior-level champion to take forward the initiative.
- **Develop a comprehensive work-plan**
- **Have a secretariat and dedicated staff**
- **Establish a regulatory and legislative framework:** A quick enactment of the EITI would put a lot of emphasis on accountability and ensure that the public knows the amount due from the mining companies – not just the amounts already paid and received.

1. Introduction

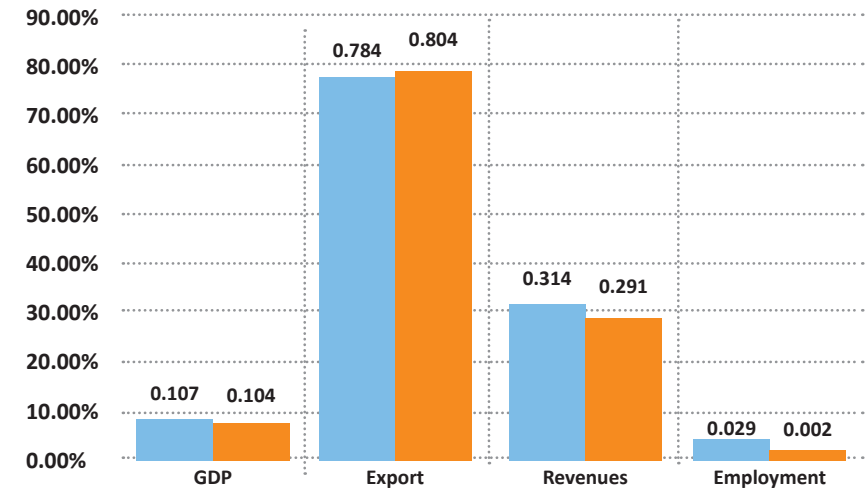
Zambia has been implementing EITI since 2009. There are lessons and challenges that can be identified from the implementation of this global initiative. This paper profiles why Zambia joined the EITI, and the benefits, opportunities, successes and challenges of EITI in Zambia.

The objective is to document lessons for Zimbabwe to understand how the EITI can accrue benefits that can help it to optimise value from mineral resources by addressing corruption and promoting transparency and accountability, which are key challenges in Zimbabwe’s mining sector. This paper used a mixed-methods approach which includes the use of secondary research in order to leverage on existing local and international literature on the subject, and the collection of primary data from relevant stakeholders.

2. Overview of Zambia’s extractive industry

Mining has always played an important role in the Zambian economy. Zambia is richly endowed with mineral resources and is one of the largest producers and exporters of copper in Africa. Copper has been mined for over 56 years. The mining sector contributes about 10 per cent to GDP and contributes to over 75 per cent of exports (see figure 1 below).

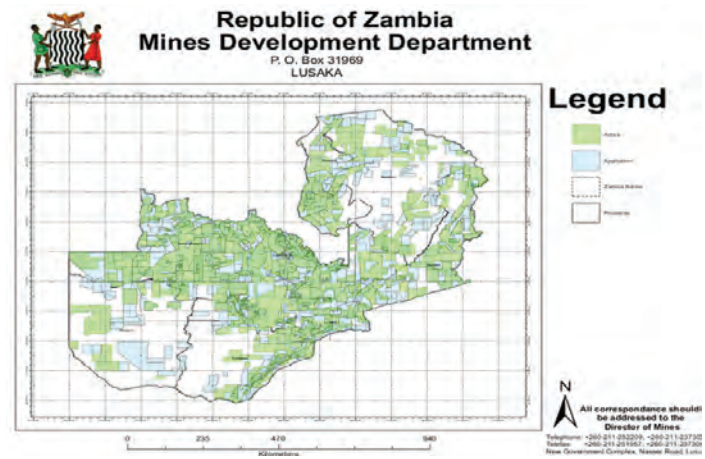
Figure 1 Mining sector contribution to the Zambian economy
Mining sector contribution to the Zambian Economy



Source: Figure compiled by author from extracts from the 2018 EITI reconciliation

Zambia is the eighth largest copper producer in the world. US Geological Survey (USGS) assessments estimated that the potential for undiscovered copper deposits in Zambia is larger than once thought.¹ The country also produces cement and lime products, crude steel from scrap, precious and semiprecious gemstones, and gold. Concentration of mining activity in Zambia has recently diversified out of the Copperbelt Province into virtually all the other nine provinces, but mainly into the North-Western Province (largely viewed as ‘the new Copperbelt’), Southern Province, Luapula Province, Central Province and Eastern Province.

¹ <https://www.usgs.gov/centers/nmic/copper-statistics-and-information>



While there has been repeated discussion of diversification to reduce dependency on copper, success in realising such a goal has been limited. There has been

growing mistrust between the government, mining companies and civil society on the accrued benefits of mining in Zambia and how much the country was earning from the sector. There was a growing need for transparency and accountability in the mining sector in Zambia, and to respond to this the Zambian government in July 2008 formally launched the Extractive Industry Transparency Initiative and officially joined the initiative in 2009 as a first step in being transparent to its people and to the world community.

2.1 The concept of EITI?

EITI is a global standard for the good governance of oil, gas and mineral resources.² It involves the reconciliation of company payments with government receipts by an independent administrator and the disclosure of that information to the public. In the last decades, there has been a growing awareness that improved transparency and accountability for revenues generated by oil, gas, and mineral industries is vital to improving their use in reducing poverty and generating economic growth.

The launch of the Extractive Industries Transparency Initiative (EITI) in September 2002 reflected this shared agenda. The EITI is a “world first” in which governments, civil society, companies, and investors are all directly involved in the development and governance of the initiative with the technical and financial support

² EITI International Secretariat (2019), The EITI Standard 2019, Edition 2, 15 October 2019, 0151 Oslo Norway.

of international financial institutions (IFIs).³ The objective of the EITI generally is to confirm that accurate audited figures about revenues are publicly available. Specifically, it will 1) identify potential discrepancies between payments and receipts, and (2) investigate and address the underlying causes as seen in figure 2 below. The process is managed by government, company and civil society stakeholders.

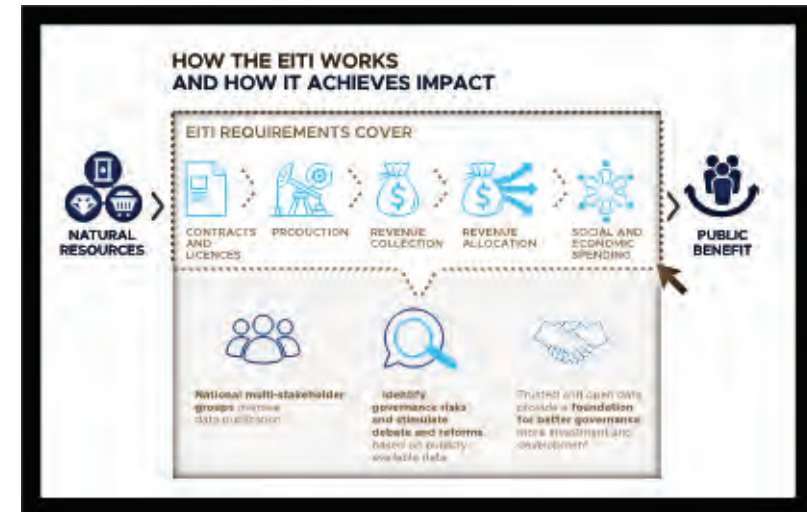


Figure 2 How EITI Works
SOURCE: EITI 2019 standards

EITI is managed globally by three bodies⁴: EITI International Board which consists of representatives from EITI implementing country governments, extractive companies, civil society groups, investors, and supporting country governments.

- EITI International Secretariat based in Oslo, Norway, which is responsible for turning policy decisions of the EITI International Board into action and coordinating efforts to implement EITI globally (including support to stakeholders in implementing countries and monitoring progress).
- EITI Members Meeting at the EITI International Conference which is the highest governing body; the most recent conference took place in Paris in March 2011.

³ Publish What You Pay and Revenue Watch institute (2006:P3), An Eye on EITI, United Kingdom.

⁴ EITI International Secretariat (2019), The EITI Standard 2019, Edition 2, 15 October 2019, 0151 Oslo Norway.

There are three tiers of EITI Rules: Principles, Criteria and Requirements⁵. The implementation of the EITI Standard includes⁶:

- **The EITI Principles** were agreed by all stakeholders in 2003. These Principles lay out the general aims and commitments by all stakeholders.
- **The EITI Requirements** must be adhered to by countries implementing the EITI.
- **EITI Board oversight of EITI implementation** outlines the timeframes that implementing countries must adhere to and the consequences of lack of progress with meeting the EITI Requirements.
- **The Validation overview** provides an overview of the key steps in validation, an impartial assessment of progress in EITI implementation towards meeting the requirements of the EITI Standard. It was first agreed in 2006 and has been significantly revised since.
- **The protocol “Participation of civil society”** was approved by the EITI Board on 1 January 2015. It sets out requirements and expectations regarding civil society participation in EITI implementation.

3. Background, and why Zambia joined EITI

Governance shortcomings in the extractive sector was the main reason for Zambia joining the EITI. Revenues from the mining companies were not adequately documented, decision-making was not always transparent, and public dissemination of information on government policies and outcomes was not prioritised as listed below. Measures of voice and accountability remained low, and where information was available, there were few intermediaries to help the public make an informed assessment of this data. There was growing mistrust of government, civil society and the mining companies. While some progress in the fight against corruption was being made over the past decades, corruption remained a serious issue in Zambia.

In early 2007 the government of Zambia requested assistance from the World Bank to carry out a scoping study⁷ on whether the country should join and implement the EITI. The findings of this scoping report, based on numerous interviews

⁵ EITI Standard is available on eiti.org/guide.

⁶ *ibid*

⁷ World Bank Group (2007:P3), Extractive Industries Transparency Initiative (EITI) Scoping Study For The Republic Of Zambia, Lusaka.

with a wide variety of stakeholders, was that a significant amount of tension existed between mining companies, the government, host communities and civil society groups in Zambia. This was attributed to:

- a history of opacity in the negotiation of mine development agreements (most of them are now publicly available);
- profound lack of information (or access to information) on what mining companies are paying to the government, and what the government was actually receiving from those companies; and
- growing concern and perceptions that indigenous people did not benefit from the country’s mineral resource endowments.

There was a perceived lack of access to information by civil society organisations on what mining companies were paying to government and a perceived lack of multi-stakeholder dialogue on these issues. Stakeholders felt that the implementation of EITI could reduce this tension and be beneficial to Zambia.⁸ There were very important issues (such as the provision of infrastructure and social services; working conditions in mines; and monitoring the environmental impact of mines) which could not be addressed by an EITI programme. This is not because they shouldn’t be addressed, but rather because (although EITI facilitated discussions of these issues) it was not designed to address them. So, in May 2009 after consultation and after the scoping study, the Zambian government assented to the EITI initiative so that it could help to facilitate these discussions and help resolve the mistrust that existed.

3.1 Progress on EITI in Zambia

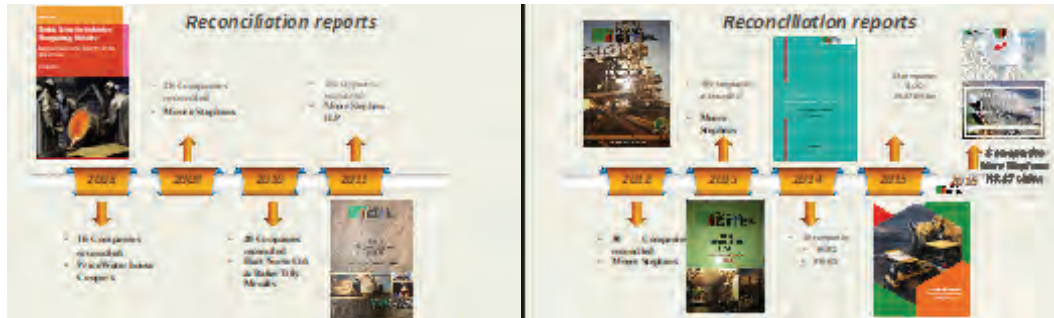
Zambia has EITI-compliant status. By May 2020, the country had published 10 EITI reconciliation reports, covering 2008 to 2017. The 11th report (covering 2018 financial year) is being drafted, but it is still awaiting the multi-stakeholder group (MSG) approval before being published.

3.2 What EITI compliance means for Zambia

As an EITI-compliant country, Zambia is expected to ensure the following:

- that a multi-stakeholder group (MSG) be established, including representatives from civil society, industry and government to oversee the EITI pro-

⁸ ZEITI Handbook Item 3.0, Page 6.



cess in Zambia, preferably including members of parliament who play a key oversight function;

- that mining companies operating in Zambia publish what they pay to the Zambian government;
- that the Zambian government publishes what it receives from the mining companies;
- that an independent administrator reconciles these declarations, and that any discrepancies be investigated;
- that the Zambian government disclose information on licenses and license allocations, in-kind revenues, mandated social expenditures, sub-national payments, transportation revenues, and production;
- that the Zambian government discloses contracts and licences and releases information that identifies the real, ultimate owners of extractive companies, and not just the name of the company.

The implementation of EITI in Zambia has created a platform for the three stakeholders (government, civil society and mining companies) to work together to improve the management of mineral resources in the country. Information which was restricted to the mines and government institutions has become public, making it possible for the public to debate mining issues from an informed position. Through the EITI, capacity of civil society organisations to watch over what government is doing with the country's mineral resources is enhanced. It has contributed to the creation of an enabling environment for the country to attract investment.

4. Legal and institutional framework for ZEITI

EITI in Zambia is voluntary. There is no law that compels mining companies to disclose the information requested through the EITI. There were many open discussions of the issues that needed to be resolved before the signing of the EITI and during the implementation. Despite the mistrust of the different stakeholders (in government, civil society, and mining companies), there was genuine commitment on the part of government to increase transparency and accountability in the management of public resources, especially in the mining sector. In addition, there was also considerable public interest in ensuring that revenues from mining are used to help develop mining communities and to ensure that mining companies pay more than they presently do (specifically in the Copperbelt and North Western Province). The revelation of the details of tax holidays and incentives in development agreements increased the commitment to opening up and being transparent to the public. The robustness of civil society groups and the church ignited and guaranteed interest and sustainability of the implementation of EITI and made it easier in Zambia.

In the absence of a legal framework on the EITI, stakeholders from government, mining companies and civil society organisations (CSOs) signed a memorandum of understanding (MOU) on 27 August 2010. The aim of the MOU was to reaffirm their commitment to the implementation of EITI in Zambia. Following the signing of the MOU, mining companies issued public statements in the media expressing their support for the implementation of EITI in Zambia.⁹

The government appointed a senior government official (Secretary to the Treasury) to champion EITI programme implementation, showing a high level of commitment, and also assigned resources (both human and financial) to ensuring that an EITI programme got off the ground. The EITI Secretariat was located in the Ministry of Mines and Minerals Development.

As earlier mentioned, EITI in Zambia is voluntary. However, on Monday 23 March 2020, Cabinet approved in principle the introduction of a Bill in to provide for a legal framework to strengthen transparency and accountability in the management

⁹ ZEITI Handbook Page 11 Item 3.6 Paragraph 1.

of mineral resources. Among other things, the Bill will provide for:¹⁰

- the mandatory disclosure of taxes and other payments including mining costs which extractive companies pay to the government, and what the government receives as revenue from extractive companies;
- penalties for failure to disclose information on taxes and other payments as and when requested for the preparation of Extractive Industries Transparency Initiative (EITI) reports;
- the systematic disclosure of information by government agencies and companies through various electronic platforms and official publications; the establishment of the institutional arrangements and funding mechanisms for the implementation of the initiative¹¹.

The undertakings of the EITI in Zambia are managed by Zambia EITI Council, (ZEC). The Council is composed of representatives from the three stakeholders, namely the government, mining companies, and civil society organisations. The ZEC coordinates and oversees the implementation of EITI. The Council has a total of 18 members, each of the three-stakeholder groups being represented by six members. The ZEC is chaired by the Secretary to the Treasury, and is serviced by a secretariat which is located in the Ministry of Mines Energy and Water Development. The representation of numbers of stakeholders was agreed upon by consensus.

<p>2008</p> <ul style="list-style-type: none"> • Government announces commitment to EITI. • MSG formed consisting of stakeholders from government, civil society and 	<p>2009</p> <ul style="list-style-type: none"> • Zambia EITI Council (ZEC) and EITI Secretariat established. • Zambia EITI Candidature application submitted. • Zambia becomes an EITI candidate country (May, 2009) 	<p>2010</p>
<p>2011</p> <ul style="list-style-type: none"> • 1st Zambia EITI Reconciliation Report for the year 2008 is completed and published 	<p>2012</p> <ul style="list-style-type: none"> • 2nd EITI report - 2009 Report published • Secretariat Review • Zambia declared "Complaint country" with 2011 EITI Standard (September, 2012) 	<p>2013</p> <ul style="list-style-type: none"> • 3rd EITI report published - 2010 Reconciliation report • 2010 EITI Reconciliation Report dissemination

¹⁰ Press statement by the chief government spokesperson on the decisions made by cabinet at the 6th cabinet meeting held at state house on Monday, 23rd march, 2020.

¹¹ Ibid.

4.1 Timeline of ZEITI implementation

<p>2014</p> <ul style="list-style-type: none"> • 4th EITI Reconciliation Report for 2011 produced. • Zambia EITI Bill drafted and Steps taken to enact as Law • 5th and 6th EITI Reconciliation Reports for 2012 and 2013 produced and published. • Dissemination of 5th and 6th ZEITI Reports. 	<p>2015</p> <ul style="list-style-type: none"> • 7th EITI Reconciliation Report - 2014; completed and published. Dissemination of 2014 EITI Reconciliation Report. 	<p>2016</p> <ul style="list-style-type: none"> • ZEITI Strategic Plan for 2016-2020 Developed • Development of Beneficial Ownership Roadmap • 8th EITI Reconciliation Report for 2015 completed and Published. • 2016 EITI Standard is launched.
<p>2017</p> <ul style="list-style-type: none"> • Government amends Companies requirements regulation to include beneficial ownership. • Dissemination of 2015 EITI Reconciliation Report. • 2nd Validation exercise starts. 	<p>2018</p> <ul style="list-style-type: none"> • Government regulation to include beneficial ownership passed and becomes operational • 9th EITI Reconciliation Report - 2016 completed and published. 	<p>2019</p> <ul style="list-style-type: none"> • 10th EITI Report - 2017; published (December, 2019) • 2nd Validation Report submitted • Global EITI Board declares "meaningful progress" • 2019 EITI Standard is launched.
<p>2020</p> <ul style="list-style-type: none"> • 11th EITI report to be published 		

4.2 Coordination of ZEITI

Zambia EITI (ZEITI) has a secretariat that handles all the administrative and programme and projects of ZEITI in the country. The purpose of the secretariat is to provide professional and administrative services to the ZEC, facilitating its programmes and projects. The ZEITI secretariat has about six members of staff, including a Coordinator, an Economics, Accountant, a Communications Manager, an Administrative Assistant and a Driver¹².

When the council of EITI in Zambia was established, terms of reference (TORs) were also developed which were agreed upon by its members. The ZEC is an autonomous body peernting the three stakeholders (government, mining companies and civil society organisations). Part of the function of the ZEC is to provide inputs and formulate guidelines and pass resolutions on the implementation of the ZEITI, developing strategies and considering reports and updates prepared by the secretariat and any other body approved by the Council. The ZEC also approves the engagement of a Validator/reconciler.

¹² Republic of Zambia (March 2011), Terms of Reference of the Zambia EITI Council (ZEC), Lusaka.

In ensuring that the ZEC functions properly, the government has the mandate to appoint a senior individual when required as the Council Chairperson. The ZEC is currently chaired by the Secretary to the Treasury.¹³ The Vice Chairperson of the council is elected by the Council members from among themselves. The Vice Chairperson chairs meetings of the ZEC in the absence of the Chair, and coordinates the Council's work during the proceedings of the meeting. In the absence of the Chairperson and Vice Chairperson, the TOR states that members shall elect a member to chair meetings and coordinate the Council's work for that particular period.

In the ZEC, each stakeholder group has right to independently select and replace its members on the Council. The period of tenure for members is three years or as decided by ZEC. Each stakeholder or constituency replaces members whose tenure expires or who are unable to continue as members of the Council for whatever reason.

Civil society organisations have developed their own TORs which they use to elect members on the Council. This has helped them in identifying organisations that add value to the whole process of EITI implementation in Zambia.

Other organisations not listed among the stakeholders of the Council are allowed to apply as independent observers on the Board and sit in. However, they are not allowed to vote

5. Opportunities and challenges of EITI

5.1 The benefits and opportunities of ZEITI

The purpose of publishing and popularising EITI reports has been to reconcile the data provided by companies in the extractive industries with the data provided by relevant government ministries and entities, with the objective of assisting the government of Zambia in identifying the positive contribution that mineral resources are making to the economic and social development of the country and to realise their potential through improving resource governance that encompasses and fully implements the principles of the EITI. Before 2008 Zambia

¹³ ZEITI Handbook Page 18, Item 4.2; Paragraph 2

did not publish monies received from the extractive industries, and this contributed to the growing mistrust between the mining companies and the civil society. People believed that they had not benefited as much as they should have from the mineral resources in their country. EITI disclosures of funds received from the companies and government confirming the funds received has encouraged greater transparency and accountability in these resources, and also help to mitigate the follow-up impacts.

The ZEITI has increased the amount of information in the public domain about the revenues that the government and its agencies manage on behalf of citizens, thereby making government more transparent. This further aids in making evidence-based policy amendment submissions that address all the gaps noted in the publicised information so as to ensure inclusiveness.

The public understanding of government revenues and expenditure over time (2008 to date) has supported public debate and also informed the choice of appropriate and realistic options for taxation, and how the country can support sustainable development through mining. In the context of the EITI, extractive companies and government entities report payments and revenue respectively. Undoubtedly some sections of the reports provide clear, complete information about revenues from mining, whilst other sections leave readers frustrated and confused. Most, fortunately, fall somewhere in the middle. Despite their varied quality, the reports represent a wealth of information on government revenues from the extractive sector. To realise the potential of this heightened transparency of revenue flows, increased analysis and use of the data is needed.

Over the years, ZEITI has helped to strengthen government systems along the value chain of the extractive industries governance, focusing on making information available and proposing recommendations for improved governance based on that information (for instance the regional and local councils). The EITI reports detail how much councils and different government agencies receive from the various mining companies. The availability of this information promotes a well-informed citizenry who can make further enquiries, explanations and justifications.

ZEITI has over the years also supported the mitigation of political and reputational risks, as well as creating a level playing field for the mining and oil companies.

Political instability caused by bad governance is undoubtedly a clear threat to investments. Mitigating this threat, as well as the instability it involves, is beneficial for business where investments are capital-intensive and dependent on long-term stability to generate returns¹⁴. This transparency of payments remitted to the government reveals the contribution that these investments make to the “national cake”.

5.2 Challenges of ZEITI

Since the inception of EITI in Zambia in 2009, ZEITI has faced a number of challenges, among which are:

- **Inadequate political will and commitment:** The Zambia EITI Board is supposed to be chaired by a very high political figure in the government – the Secretary to the Treasury – to show government’s commitment to the EITI process in Zambia. However, the Chair is never available for these meetings, and they are normally chaired by the Vice Chairperson. This makes it difficult to make decisions, especially ones that have a policy implication or involve government intervention, because the Vice Chairperson (who is normally representing civil society) cannot commit the government to anything. This has been a very big challenge for EITI implementation in Zambia.
- **Dependency on external funding:** ZEITI has been dependent on donor funding. EITI reconciliation reports are expensive. For instance, Zambia has spent over US\$1 million for the 11 reports.¹⁵ This raises questions about the sustainability of the initiative and about competing needs. The government has been very slow in increasing the allocation to the ZEITI secretariat, necessary for it to carry out its mandates. Mining companies, however, have been very helpful in taking up some of the cost of producing the EITI reconciliation reports.

¹⁴ <https://eiti.org/benefits#:~:text=For%20a%20relatively%20low%20cost,greater%20economic%20and%20political>
¹⁴ Compiled author by from the 2011-2016 EITI reconciliation reports.



- **Lack of a legal framework:** EITI in Zambia remains voluntary, which has made it difficult for ZEITI to fully execute its mandate in collecting reconciliation and audited figures from the mining companies. There are currently no penalties for failure to disclose information on taxes and other payments as and when requested for the preparation of EITI reports. This has been one of the biggest challenges for the reconciler in preparing EITI reports.
- **EITI’s mandate does not explicitly or directly address human rights:** Zambia recognises that transparency is important in national development and the building of trust. However, the 11 EITI reports that Zambia has produced on transparency of payments and revenue streams from different companies does not necessarily translate into ensuring that populations have an adequate standard of living or other social and economic rights associated with revenue that is generated from natural resources. Zambia is an EITI-compliant country, meeting EITI’s transparency standards on extractive industry payments and revenue, but it is still entitled to use that revenue however it wishes — which may include direct funding of human rights abuses.
- **ZEITI reconciliation reports only capture large mining companies:** There were over 634 active mining licenses in 2010,¹⁶ and the EITI reports only

¹⁶ 2010 EITI reconciliation report, page 35.

capture about 4 per cent of the mining companies with licenses – only those who meet the materiality threshold. There is no separate report that captures the payments and contribution of the other 96 per cent of mining companies, who could be paying (or not paying) any taxes or fees at all. In addition there is no discussion on the materiality threshold by the public. If a company manages its tax avoidance and tax evasion well, then the materiality threshold will help them evade further, since they won't be reconciled by the reconciler.

- No local language reports are available: Reports are currently written in English, not in the local languages of especially affected communities in the provinces where the mining companies are hosted. There also does not appear to be accommodation for illiterate communities or the blind. In addition, it appears that there is no formal process for these communities to file a complaint that extractive industry revenue and payments have led to human rights violations.
- Covid-19 pandemic: Crises such as the current Coronavirus pandemic have had a negative impact on the implementation of EITI in Zambia because of the restrictions in movement that have been put in place by the government. Most of the EITI activities involve some level of engagement between and among stakeholders, which cannot happen under these conditions.

6. Recommendations for an effective in-country EITI

There is no “right” or “correct” answer as to what kind of EITI programme a country should adopt – different stakeholders will have concerns about different aspects of the EITI programme. Typically, these concerns will be raised at the early meetings of the EITI multi-stakeholder working group, and decisions will be made regarding the scope of the programme. That said, some core factors can be discerned regarding the scope of EITI programmes:

1. Identify an EITI champion: If any government wishes to commit to implementing an EITI programme, one of the most immediate tasks would be identifying the champion that would motivate and inspire people to support the initiative. He or she will also chair the MSG. This needs to be the best available senior-level champion to take forward the Initiative.
2. Establish regulatory and legislative framework: There is a need for EITI-implementing states to put in place a regulatory or legislative framework which would allow (and where necessary compel) government agencies and companies to disclose payments and revenue data which they are presently unable to disclose to third parties.
3. Involvement of parliament: There is a need to involve the legislature in the EITI process. The lack of role for parliament undermines the reports and exacerbates the non-accountability of government officials in not following up tax and non-tax payments.
4. Development of a comprehensive work-plan: The EITI candidate is supposed to develop a comprehensive work-plan for approaching EITI (and its requirements for political commitment and funding). This is an important pre-requisite of EITI implementation.
5. Secretariat and dedicated staff: EITI programmes require a full-time implementation unit and secretariat capable of coordinating government policy on EITI.

There must be consistency between government reporting to the EITI and the official public finance information. There is an urgent need to establish this consistency, and at the same time to enhance the transparency of the EITI process. Government reporting to the EITI and the mining companies should be reconciled with official information on revenue outcome reviewed by the government auditor and submitted to parliament.

7. Conclusion

A ‘lonely transparency’ has less impact: transparency with sanction has more power, and the government should therefore ensure that cases of corruption and theft are prosecuted.

Laws, regulations, and codes of conduct in the extractive industries are insufficient on their own. Their observance has to be monitored, deviations identified with those responsible, and corrective and deterrent steps taken. This is the more difficult side of the coin. The EITI reports will mention the companies that have paid (and not paid) some of their taxes and fees. There will need to be sanctions to those wanting. This will increase accountability.

Endnotes

1. Daily Mail, 7th August 2009
2. Economist Intelligence Unit (2008) 'Zambia Country profiling'
3. EITI International Secretariat (2019), The EITI Standard 2019, Edition 2, 15 October 2019, 0151 Oslo Norway
4. Kabemba C (Oct 2012): Civil Society on EITI progress, impacts and Challenges – Open Society Initiative for Southern Africa, Session 3
5. Kangamungazi, E, (2009), tax avoidance and inequity, 198.170.85.29/Tax-avoidance-and-inequitable-mine-contracts-Zambia-Kangamungazi-6-Oct-2009.doc
6. Ley, E (2010), Exhaustible Resource, and Fiscal Policy: Copper mining in Zambia, Lusaka
7. Lungu J and Fraser, A (2006), For whom the windfalls. Catholic Center for Justice Development and Peace, CSTNZ
8. Lungu. J (2009), The politics of reforming Zambia mine tax reform regime. Southern Africa Resource Watch
9. Moore Stephens (2012), Zambia Extractive Industries Transparency Initiative (ZEITI) independent reconciliation report for the year 2009, Zambia
10. Press statement by the chief government spokesperson on the decisions made by cabinet at the 6th cabinet meeting held at state house on Monday, 23rd march, 2020
11. Publish What You Pay and Revenue Watch institute (2006: P3), An Eye on EITI, United Kingdom
12. Republic of Zambia , Central Statistical Office (2011), Living Conditions Monitoring Survey Report 2006 and 2010 Living Conditions , Monitoring Branch, Central Statistical Office, Lusaka,
13. Republic of Zambia (2018), 2010 EITI reconciliation report, ZEITI, Lusaka
14. Republic of Zambia (2020), 2018 EITI reconciliation report, ZEITI, Lusaka
15. Republic of Zambia (March 2011), Terms of Reference of the Zambia EITI Council (ZEC), Lusaka
16. Simpere A S (2010), The Mopani Copper mine in Zambia- How European development money has fed a mining scandal, CEE Bank watch Network
17. World Bank (2005), Extractive Industries and Sustainable Development- An Evaluation of World Bank Group Experience, Washington, D.C.
18. World Bank (2007), Extractive Industries Transparency Initiative (EITI) Scoping Study for the Republic Of Zambia (September 2007), World Bank
19. World Bank (2011), What Would it Take Zambia's Copper Mining Industry to achieve its Potential? (Report No. 62378-ZM), World Bank, USA,
20. World Bank Group (2007), Extractive Industries Transparency Initiative (EITI) Scoping Study for The Republic of Zambia, Lusaka

Conclusion

Recommendations for Zimbabwe

The multi-country assessment on opportunities and challenges in the governance of extractive industries in the DRC, Malawi, Mozambique, Madagascar, Tanzania and Zambia brought to fore key lessons for Zimbabwe to consider in its quest to join the EITI. The experiences of the six countries that were assessed through this study show that the EITI standard is an important transparency and accountability mechanism and not similar in any way to the structural adjustment programmes of the early 90s. The general mistrust of the EITI and the suspicion that it could be linked to structural adjustment programmes that caused untold suffering in many countries in the global South is one of the key factors that motivated this study. The study shows that the leading EITI implementing countries in SADC are Malawi, Mozambique and Zambia. These countries have a similar political economy and history to Zimbabwe, and also suffered the consequences of structural adjustment programmes. This study defines what EITI is and what value it adds. More importantly it discusses whether (and how) EITI could be implemented by sovereign independent African countries like Zimbabwe.

The study on the six countries shows that the EITI is a useful global standard to promote the open and accountable management of oil, gas and mineral resources through addressing the information deficiency in the governance of the extractive sector. Beyond answering this research question, the experiences of the six countries assessed here shows that the process of implementing the EITI involves challenges that are shaped by a combination of factors, a majority of them being contextual and technical. One of the key challenges cited in the six country case studies is the financial costs associated with joining and implementing EITI. The Zambian and Malawian case studies reveal that the production of EITI reconciliation reports is expensive. Zambia, for instance, has spent over US\$1 million on the production of 11 EITI reports since 2011. Another challenge is lack of political will which is necessary for the effective implementation of the EITI standard. Notwithstanding these challenges, the experiences of the six countries that were assessed revealed that the standard can be implemented and can unlock value in the governance of the extractive sector in SADC region. Based on the experiences of these six SADC EITI-implementing countries, we propose the following recommendations to the government of Zimbabwe, civil society organisations (CSOs), and the mining industry:

- **Adoption of EITI:** The first and most important recommendation from this assessment is that Zimbabwe would benefit from adopting EITI standards. Since 2011, the government of Zimbabwe has through a series of annual national budget statements expressed an interest in joining the EITI. These policy intents to joining EITI have not translated into anything concrete except the attempt to domesticate EITI standards through the establishment of the Zimbabwe Mining Revenue Transparency Initiative (ZMRTI) in 2011. This domesticated version of the EITI has not proved effective. Joining the EITI would compliment two key policy pronouncements by the government of Zimbabwe, i.e. opening up Zimbabwe for business and unlocking \$12 billion annually from mining by 2023.

- **EITI legislation:** There is a need for Zimbabwe to put in place EITI legislation. The law could serve the purpose of institutionalising the EITI and compelling government agencies and companies to disclose payments and revenue data which they are presently unable to disclose to third parties.

- **Institutionalisation of the EITI:** Effective implementation of the EITI cannot be done without an institutional framework that promotes and supports the initiative. The country case studies have affirmed that the value of joining EITI can only be fully unlocked through effective implementation of EITI activities, such as tracking, monitoring reforms, follow-up on reports, continuous engagement of stakeholders, and making the information understandable for everyone. All these activities require a dedicated secretariat which implements the in-country EITI work-plan. The six countries assessed have institutionalised the EITI through the creation of in-country EITI institutions or secretariat. If Zimbabwe is to effectively implement the EITI, it would need need similar institutions. Zimbabwe could consider reviving the idea behind the establishment of the ZMRTI and expand its focus. It is important to note however that the downside to the institutionalisation of EITI is the cost, as the establishment of an in-country EITI secretariat needs financial commitment.

- **Political will:** The Zimbabwean experience has thus far shown that political will is the key ingredient to moving beyond the policy rhetoric of wanting to join EITI. The experiences of the six countries assessed also attest that political will is crucial, especially at the implementation stage. One way to foster political will is to have an EITI champion within the highest political offices. In the six countries assessed here, work on the EITI has progressed through having an EITI champion

especially at the executive level. In Zimbabwe, the Minister of Finance and Economic Development has been one of the main advocates for Zimbabwe to join the EITI standard. There is a need for CSOs to continuously capitalise on this policy energy and to engage the Minister of Finance and Economic Development as the EITI champion. Having the Minister of Finance and Economic Development as an EITI champion would allow relevant EITI stakeholders to engage directly with the Minister on EITI-related issues where political and policy muscle is required.

- **Parliamentary oversight:** Civil society in Zimbabwe could move the EITI policy discourse forward through engaging and working with parliament. While a lot has been done in training of parliament on EITI, CSOs and industry could consider engaging parliament in developing model EITI legislation in line with the founding values and principles provided in the constitution. Over and above this, CSOs should identify EITI champions within parliament who can hold the executive to account on joining EITI and implementing the standard.

- **Multi-stakeholder group:** the country case studies have shown that the multi-stakeholder group (MSG) is a key component in effective EITI implementation. Civil society in Zimbabwe, working in partnership with parliament and industry, could consider leading the establishment of a model MSG. Establishment of a model MSG is key especially at this stage of influencing government to join the EITI. The MSG will provide a platform to formally engage government on EITI-related issues. Through this platform CSOs, parliament and mining companies will have a unified voice in demanding for Zimbabwe to join the standard. More importantly, having this model MSG would allow stakeholders to collectively reflect on how to operationalise some of the crucial enablers for effective EITI implementation, such as having a work-plan and monitoring framework, developing an EITI budget, developing a strategy of continuous stakeholder engagement, and engaging beyond the MSG and capacitation of stakeholders by the secretariat.

- **Sustainable funding of the EITI process:** The experiences of the six EITI implementing countries in SADC shows that funding is a key part of effective implementation of the EITI and unlocking value from joining the standard. With Zimbabwe planning to unlock \$12 billion annually from mining by 2023, EITI financing is one of the strategic ways to ensure that Zimbabwe unlocks this much-needed revenue from mining. The government of Zimbabwe and parliament through the national budget needs to set aside financial resources for EITI Implementation.

These resources will go towards EITI membership fees, setting up an EITI secretariat, and implementation of EITI activities. If the government of Zimbabwe commits financial resources to joining and implementing the EITI, this becomes an important demonstration of the government's commitment to reforming the extractive sector. CSOs and industry also have a role to play in providing financial support.



SARW Objectives

Monitor corporate and state conduct in the extraction and beneficiation of natural resources in Southern Africa, and assess to what extent these activities uplift the economic conditions of the region's communities.

- Generate and consolidate research and advocacy on natural resource extraction in Southern Africa.
- Create informed awareness of the specific dynamics of natural resources in Southern Africa, building a distinctive understanding of the regional geo-political dynamics of resource economics.
- Provide a platform of action, coordination and organisation for communities, activists, researchers, policy-makers, corporations, regional and global governing bodies in the watching and strengthening of corporate and state accountability in extractive industries.
- Engage with and support government on building accountable and transparent management of extractive resources.
- Build capacity for communities, civil society, parliaments, and media to hold governments and corporations to account, and to participate in decisions about resource management.
- Advocate and promote human rights and environmental protection in resource extraction activities.
- Support efforts to legislate mandatory public disclosure of and access to financial, social, environmental and regulatory compliance information in the extractives industry.
- Promote extractive industries that create wealth for local communities.

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