

# Validation of Malawi

## Report on initial data collection and stakeholder consultation

## Abbreviations

AER	Annual Economic Report
ASM	Artisanal and Small-scale Mining
BO	Beneficial ownership
CBO	Community-Based Organisation
CEAR	Central and East African Railways Company Limited
CEPA	Centre for Environmental Policy and Advocacy
CONGOMA	The Council for Non-Governmental Organisations in Malawi
CSO	Civil Society Organisation
DFID	Department for International Development
DoF	Department of Forestry
DoM	Department of Mines
FIA	Financial Intelligence Authority
Focus	Foundation for Community Support Services
GDP	Gross domestic product
GFS	Government Finance Statistics
GIZ	Gesellschaft für Internationale Zusammenarbeit
GoM	Government of Malawi
IA	Independent Administrator
ISRS	International Standard on Related Services
MoF	Ministry of Finance, Economic Planning and Development
MoJ	Ministry of Justice and Constitutional Affairs
MoTPW	Ministry of Transport and Public Works
MNREM	Ministry of Natural Resources, Energy and Mining
MRA	Malawi Revenue Authority
MSG	Multi-stakeholder group
MW	Malawi
MWK	Malawi Kwacha
MWEITI	Malawi Extractive Industries Transparency Initiative
NAO	National Audit Office
NGO	Non-Governmental Organisation
NOCMA	National Oil Company of Malawi
NRJN	Natural Resource Justice Network
NS	National secretariat
NSO	National Statistical Office
OGP	Open Government Partnership
PAYE	Pay-As-You-Earn
PPP	Public Private Partnership
PPPC	Public Private Partnership Commission
PSA	Production Sharing Agreement
PSM	Pamodzi Stone Mining
PWYP	Publish What You Pay
RBM	Reserve Bank of Malawi
SC	Social contributions
SOE	State-owned enterprise
ToR	Terms of References
TUAM	Tanzania Uranium Awareness Mission
USD	United States Dollar
VAT	Value-added tax

## Table of Contents

<b>Abbreviations .....</b>	<b>2</b>
<b>Executive Summary .....</b>	<b>5</b>
Overall conclusions.....	5
Recommendations .....	6
Introduction .....	13
Brief recap of the sign-up phase.....	13
Objectives for implementation and overall progress in implementing the work plan.....	13
History of EITI Reporting.....	13
Summary of engagement by government, civil society and industry .....	13
Key features of the extractive industry.....	14
Explanation of the Validation process .....	15
<b>Part I – MSG Oversight .....</b>	<b>17</b>
1. Oversight of the EITI process.....	17
Government engagement in the EITI process (#1.1).....	17
Industry engagement in the EITI process (#1.2) .....	19
Civil society engagement in the EITI process (#1.3) .....	21
MSG governance and functioning (#1.4).....	26
Work plan (#1.5) .....	32
<b>Part II – EITI Disclosures.....</b>	<b>37</b>
2. Award of contracts and licenses .....	37
Legal framework (#2.1).....	37
License allocations (#2.2) .....	38
License registers (#2.3) .....	41
Contract disclosures (#2.4).....	43
Beneficial ownership disclosure (#2.5) .....	45
State participation (#2.6) .....	47
3. Monitoring and production .....	52
Overview of the extractive sector, including exploration activities (#3.1) .....	52
Production data (#3.2).....	52
Export data (#3.3).....	53
4. Revenue collection .....	56
Materiality (#4.1) .....	56
In-kind revenues (#4.2).....	59
Barter and infrastructure transactions (#4.3).....	60
Transport revenues (#4.4).....	61
Transactions between SOEs and government (#4.5) .....	63
Subnational direct payments (#4.6).....	63
Level of disaggregation (#4.7) .....	64
Data timeliness (#4.8).....	64
Data quality (#4.9).....	65
5. Revenue management and distribution.....	75

Distribution of revenues (#5.1) .....	75
Sub-national transfers (#5.2).....	76
Additional information on revenue management and expenditures (#5.3).....	77
6. Social and economic spending.....	79
Social expenditures (#6.1).....	79
SOE quasi fiscal expenditures (#6.2) .....	81
Contribution of the extractive sector to the economy (#6.3) .....	81
<b>Part III – Outcomes and Impact.....</b>	<b>85</b>
<b>7. Outcomes and Impact.....</b>	<b>85</b>
Public debate (#7.1).....	85
Data Accessibility (#7.2).....	88
Lessons Learned and follow-up on recommendations (#7.3) .....	89
Outcomes and impact of implementation (#7.4).....	91
8. Impact analysis (not to be considered in assessing compliance with the EITI provisions).....	95
<b>Annexes .....</b>	<b>97</b>
Annex A: List of MSG members and contact details .....	97
Annex B: MSG meeting attendance .....	99
Annex C: Cost of EITI Reports .....	106
Annex D: List of stakeholders consulted .....	106
Annex E: List of reference documents .....	107
Annex F: Sample of mining licenses used for spot checks of requirement 2.3 .....	109

## Index of figures and tables

Figure 1: Initial assessment card .....	11
Table 1: Summary initial assessment table: MSG oversight.....	34
Table 2: Summary initial assessment table: Award of contracts and licenses .....	49
Table 3: Summary initial assessment table: Monitoring and production .....	54
Table 4: Summary initial assessment table: Revenue collection.....	70
Table 5: Summary initial assessment table: Revenue management and distribution .....	78
Table 6: Summary initial assessment table: Social and economic spending.....	83
Table 7: Summary initial assessment table: Outcomes and impact.....	93

## Executive Summary

The Government of Malawi committed to implementing the EITI on 17 June 2014, during the opening of the 45<sup>th</sup> session of Parliament by the President of Malawi, H.E. Professor Arthur Peter Mutharika. The President later appointed the Minister of Finance, Goodall Gondwe as the EITI Champion. The interim multi-stakeholder group (MSG), the EITI Task Force, was set up in November 2010, consisting of stakeholders from all constituencies. The MSG formally met for the first time on 18 March 2015, after several months of constituency elections. On 22 October 2015 the EITI Board accepted Malawi as an implementing country. By the commencement of Validation, Malawi EITI had published two reports covering fiscal years 2014-15 and 2015-16.

On 25 October 2016, the Board agreed that Malawi's Validation under the 2016 EITI Standard would commence on 1 September 2018. This report presents the findings and initial assessment of the International Secretariat's data gathering and stakeholder consultations. The International Secretariat has followed the Validation Procedures and applied the Validation Guide in assessing Malawi's progress with the EITI Standard.

While the assessment has not yet been reviewed by the MSG or been quality assured, the Secretariat's preliminary assessment is that seven of the requirements of the EITI Standard have not been fully addressed in Malawi. Two of these are unmet with inadequate or no progress. The suggested corrective actions relate to industry engagement (#1.2), work plans (#1.5), comprehensiveness (#4.1), data quality (#4.9), distribution of revenues (#5.1), mandatory social expenditures (#6.1), and documentation of outcomes and impact of implementation (#7.4). Strategic recommendations to improve implementation of other EITI requirements are also included.

## Overall conclusions

The extractive sector in Malawi is relatively undeveloped, and revenue from the extractive industries constitutes less than 1% of total government revenue. Nonetheless, the EITI has succeeded in creating a platform for dialogue and introducing a considerable level of transparency, which has enabled a more mature and fact-based public debate. The key strength of Malawi's EITI implementation is the strong focus on addressing recommendations from EITI reporting, made possible through inter-agency cooperation and the active role played by civil society. As a result of EITI implementation, collaboration has improved both between the government, company and civil society constituencies and within them.

Recommendations arising from EITI reporting have been actively addressed by government agencies. The EITI process has revealed inconsistencies between in production and export data, which are important for determining the Malawian government's correct share of the value-added from the sector. As a result, inconsistencies between these numbers is now an area where the Department of Mines and Malawi Revenue Authority are making progress. In combination with recent publication of all mining contracts, and other improvements identified in this paper, Malawi's may ease its transition to greater dependence on extractive sector contributions, especially in the medium-to-long term. As some stakeholders pointed out: "Let's get our house in order *before* the cash-flow begins."

Civil society organisations (CSO) have successfully advocated for contract transparency through the EITI

and with support from other MSG members. Civil society stakeholders have analysed the oil, gas and mining contracts and engaged with government agencies to discuss the fiscal implications of the agreements terms. Malawi EITI has also gone beyond the scope of the EITI Standard by including certain aspects of the forestry and mineral transportation sectors in the EITI process. The recommendations from the findings of these additional disclosures has contributed to ongoing efforts to update the electronic forestry cadastre.

The national secretariat is undertaking considerable efforts to ensure that recommendations from EITI reporting are addressed and that relevant agencies participate in implementation. Since the beginning, civil society has been a key driver of the process. Malawi EITI has produced an impressive array of strategies and policy documents but is lacking human and financial resources to implement these.

Malawi's implementation has been highly reliant on financial support by partners such as the German development agency, Gesellschaft für Internationale Zusammenarbeit (GIZ) and formerly of United Kingdom's Department for International Development (DFID). Although GIZ is continuing its significant support, it will be necessary to increase prioritisation between activities while raising government funding and seeking transitional funding from other sources. Systematic disclosures by the primary sources of information are essential for ensuring the timeliness and cost effectiveness of EITI implementation.

Although Malawi's extractive sector is in its infancy, as is the EITI process, Malawi has made considerable leaps in public availability of information. Licenses are now publicly accessible through various cadastre systems, petroleum contracts and mining development agreements are published, and all stakeholders now have access to disaggregated data on revenues. Reports now confirm that there is no devolution of fiscal responsibilities.

Some gaps do remain: uncertainty surrounding some revenue streams in the petroleum sector and lack of companies' adherence to agreed assurances of data quality are causes for concern regarding comprehensiveness and reliability of reporting. In addition, the lack of clarity surrounding some of Malawi's off-budget funds remains a gap in an otherwise transparent environment, as are the precise identities and functions of those benefitting from companies' *mandatory* social contributions.

## Recommendations

The International Secretariat has identified seven *corrective actions* that Malawi should undertake to address shortcomings in meeting EITI Requirements, as well as 29 *strategic recommendations* that Malawi is encouraged to consider for strengthening implementation.

### Corrective actions

1. To meet **Requirement 1.2**, the company constituency should seek to extend the membership of the Chamber of Mines or find other ways to ensure that the broader industry constituency is fully engaged and that all extractive companies have a channel to participate.
2. In accordance with **Requirement 1.5**, Malawi should ensure that the work plan is based on consultations with stakeholders beyond multi-stakeholder group members, that sources of funding are identified for the activities and that the work plan is made widely available to the public. The multi-stakeholder group should use the work plan as a tool for discussing, identifying

and addressing challenges and ambitions related to the scope of EITI reporting.

3. In accordance with **Requirement 4.1**, MWEITI should work with the Department of Mines to ensure that all receipts from extractive companies are included more clearly in the report, including all mandatory social contributions and payments to the Petroleum Training Fund.
4. In accordance with the overall objective of **Requirement 4.9**, and to improve on adherence to quality assurance procedures by industry, the MSG should review the agreed quality assurances that companies must provide for EITI reporting. They may also consider extending deadlines for data submissions, and work more closely with companies to ensure that reporting templates and quality assurances are fully met. Several stakeholders highlighted benefits of data collection simultaneously to regular and annual audit procedures, which industry stakeholders clearly indicated they were in favour of. MWEITI may also wish to ensure that all the submitted data is publicly accessible by publishing the data online. This would also enhance the timeliness of MWEITI data.
5. As according to **Requirement 5.1.a**, Malawi should indicate which extractive industry revenues are not recorded in the national budget and provide amounts for these said revenue streams. Training fees included in the 2015-16 are reported as zero although all stakeholders provided statements to the contrary; stakeholders confirmed the existence of training fee payments from companies to the Department of Mines during the period under review, and that no reports nor data is available concerning the amounts nor management of these off-budget funds. The multi-stakeholder group should therefore work with the Department of Mines to ensure that a comprehensive overview is provided for the management of the Petroleum Training Fund, including incoming revenues to the fund. Such an overview could also include the precise allocations and use of the finances of the fund.
6. In accordance with **Requirement 6.1.a**, Malawi should ensure that social expenditures by companies which are mandated by law or contract with the government are disclosed. Such payments should be disaggregated by whether provided in cash or in kind, and by the identity and function of non-government beneficiaries. The nature of in-kind contributions should be explained and where possible, these disclosures should be adequately reconciled. If not possible to reconcile, MWEITI is encouraged to provide an explanation.
7. In accordance with **Requirement 7.4**, Malawi EITI should document the impact of EITI implementation in annual progress reports and assess progress towards meeting EITI requirements with a focus on specific sub-requirements as outlined in Requirement 7.4.a.ii.

### Strategic recommendations

1. In the spirit of **Requirement 1.1**, the International Secretariat recommends that the government proceeds with the plan to institutionalise the national secretariat and channels regular funding to EITI implementation to improve the sustainability of the process, while seeking ways to ensure that implementation is proportionate and cost effective.
2. To strengthen implementation of **Requirement 1.1**, the EITI Champion is encouraged to engage regularly with the multi-stakeholder group and support it in ensuring the government agencies address recommendations from EITI reporting.
1. To strengthen implementation of **Requirement 1.2**, companies are encouraged to actively engage in developing an approach to reporting that facilitates the submission of data and assurances in a

timely manner and to ensure that all material companies comply with the assurances agreed by the MSG (*see Requirement 4.9*).

2. In line with **Requirement 1.3**, the government is encouraged to ensure both in policy and practice that issues related to natural resource governance can continue to be freely debated ahead of the 2019 general and presidential elections.
3. To strengthen implementation of **Requirement 1.4**, all constituencies are encouraged to establish a clear procedure for consulting the broader constituency in a systematic manner. Constituencies are recommended to ensure that the communications and consultations reach all CSOs, companies and government agencies that have a stake and interest in EITI implementation.
4. In line with **Requirement 1.5**, Malawi EITI is encouraged to revisit its strategies and work plan to ensure that planned activities reflect available resources. This will help the multi-stakeholder group and the national secretariat prioritise the activities considered most relevant by the stakeholders.
5. To further strengthen the public's access to relevant laws, fiscal terms and the role of relevant government entities, as according to **EITI Requirement 2.1**, the government is encouraged to ensure that laws and regulations are systematically disclosed by the relevant government agencies and/or through a centralised government portal.
6. The government, through the Department of Mines, may wish to explore options for systematically disclosing information on procedures leading to license awards and transfers, in line with **Requirement 2.2**. For instance, the government could publish application documents and assessments through the mining cadastre system. Malawi may also wish to include a description or guide for how to assess whether statutory procedures are followed during license awards and transfers.
7. The government is encouraged to further develop their cadastre systems to include precise coordinates, the dates of applications, awards and expiries, as per **EITI Requirement 2.3**. Further information could also be included, such as license specific payments, and the potential for greater access through customised downloads in open data formats.
8. As encouraged by **EITI Requirement 2.4**, the Government of Malawi is encouraged to develop a clear policy contract transparency in its extractive sector. This policy should clarify whether agreements and contracts should be disclosed on government websites.
9. In preparation of beneficial ownership disclosures as per **Requirement 2.5**, the government is encouraged to develop an explicit policy on beneficial ownership disclosure, and to ensure beneficial ownership information is available for all material companies operating in Malawi, possibly by cooperating with the Office of the Registrar General.
10. The government may wish to, under **Requirement 2.6**, ensure state participation is better clarified by agreeing a precise definition of what equity-levels constitute a state-owned enterprise in the Malawian context, and to deliberate further on the role of the National Oil Company of Malawi.
11. The Government of Malawi may wish to ensure that an overview of the extractive sector and exploration activities are systematically disclosed by the government, as per **Requirement 3.1** possibly as part of government websites related to the sector.
12. The government may wish to improve on production and export data reliability, as per **EITI Requirement 3.2** and **3.3**, by ensuring that data is comparable. The government could introduce



commodity-classifications such as the Harmonised System (Commodity) Codes or other classifications, as part of systematic disclosures of the National Statistical Office of Malawi.

13. To better communicate reporting decisions and materiality thresholds, as per **Requirement 4.1**, Malawi may wish to ensure that the inception report is made publicly accessible. MWEITI may also wish to work with the Independent Administrator to ensure that government agencies' reporting templates are included in the report, or systematically disclosed online.
14. MWEITI is encouraged to include direct references and guidance, as per **requirements 4.1** and **5.3**, to where budget documents, data, and government audit reports are located.
15. The government may wish to, for systematic implementation of **Requirement 4.2**, ensure that relevant government agencies clarify the existence of in-kind payments for each fiscal year. Malawi should ensure that any information on collection should include volumes sold, and proceeds, and that sales are publicly accessible and disaggregated by purchasing company.
16. To better identify which agreements may contain infrastructure and barter arrangements, as per **Requirement 4.3**, MWEITI is encouraged to review all development agreements between the government and extractive companies to ensure none of the terms give rise provisions of goods and services in exchange for extraction or exploration rights, or physical delivery of commodities.
17. To strengthen implementation for **Requirement 4.4**, Malawi is encouraged to clarify that the state does not participate directly in the transportation sector, and that no payments arise from tariffs levied specifically on the transportation of minerals.
18. To strengthen implementation, Malawi is encouraged to provide an explicit statement which clarifies the non-existence of direct subnational extractive payments in Malawi, as per **Requirement 4.6**.
19. In preparation of project-level disclosures under **Requirement 4.7**, the multi-stakeholder group may wish to task the Independent Administrator to identify revenue streams that are imposed per project, rather entity-wide (company-level).
20. To enhance data timeliness, under **Requirement 4.8**, the government through the Department of Mines may wish to systematically disclose companies' quarterly filings to the Department of Mines.
21. For greater clarity on MSG decisions related to reporting procedures, under **Requirement 4.9**, Malawi may wish to consider publishing the inception report alongside the final report. The MSG is also encouraged to consider alternative approaches to assessing the reliability of data, in the absence of full adherence to agreed quality assurances by all material companies. For instance, the MSG may wish to task the IA with in-depth investigations of initial versus final discrepancies caused by government versus companies. If government-caused discrepancies are low or non-significant, these numbers may still prove to be more reliable than company-reported data. This in turn could increase the confidence of report readers in the reliability of the data.
22. To ensure adherence to quality assurance, as per **Requirement 4.9**, Malawi may wish to use longer deadlines for data submissions, and work with companies to ensure reporting templates are available for companies simultaneously to annual audit procedures. MWEITI may also wish to ensure that all the submitted data is also publicly accessible online.
23. In accordance with **Requirement 6.1.b**, Malawi may consider developing an additional approach to reconcile voluntary social expenditures, as for the above-mentioned mandatory social expenditures.

24. The government may wish to systematically disclosure macroeconomic indicators under **EITI Requirement 6.3** by relevant government agencies such as the National Statistical Office, Reserve Bank of Malawi and the Ministry of Finance, Economic Planning and Development.
25. To strengthen implementation of **Requirements 7.1. and 7.2**, Malawi EITI is encouraged to update the Open Data Policy to include a clearer policy on the access, release and re-use of EITI data and to keep the MWEITI website up to date. Malawi EITI is encouraged to publicise the availability of information in open data format and to make users aware that information can be reused without prior consent. The multi-stakeholder group is encouraged to continue exploring options for mainstreaming EITI disclosures.
26. Malawi, including the Department of Mines, is encouraged to continue addressing recommendations from the 2014-2015 and 2015-2016 EITI Reports, as well as the recommendations arising from Validation to strengthen implementation of **Requirement 7.3**.
27. In line with **Requirement 7.4**, Malawi EITI is encouraged to ensure that all stakeholders are invited to effectively participate in the drafting of the annual progress report. MWEITI is encouraged to make the annual progress report available online.

Figure 1: Initial assessment card

EITI Requirements		LEVEL OF PROGRESS				
		No progress	Inadequate	Meaningful	Satisfactory	Beyond
Categories	Requirements					
MSG oversight	Government engagement (#1.1)					
	Industry engagement (#1.2)					
	Civil society engagement (#1.3)					
	MSG governance (#1.4)					
	Work plan (#1.5)					
Licenses and contracts	Legal framework (#2.1)					
	License allocations (#2.2)					
	License register (#2.3)					
	Policy on contract disclosure (#2.4)					
	Beneficial ownership (#2.5)					
	State participation (#2.6)					
Monitoring production	Exploration data (#3.1)					
	Production data (#3.2)					
	Export data (#3.3)					
Revenue collection	Comprehensiveness (#4.1)					
	In-kind revenues (#4.2)					
	Barter agreements (#4.3)					
	Transportation revenues (#4.4)					
	SOE transactions (#4.5)					
	Direct subnational payments (#4.6)					
	Disaggregation (#4.7)					
	Data timeliness (#4.8)					
Data quality (#4.9)						
Revenue allocation	Distribution of revenues (#5.1)					
	Subnational transfers (#5.2)					
	Revenue management and expenditures (#5.3)					
Socio-economic contribution	Mandatory social expenditures (#6.1.)					
	SOE quasi-fiscal expenditures (#6.2)					
	Economic contribution (#6.3)					
Outcomes and impact	Public debate (#7.1)					
	Data accessibility (#7.2)					
	Follow up on recommendations (#7.3)					
	Outcomes and impact of implementation (#7.4)					

*Legend to the assessment card*

	<b>No progress.</b> The country has made no progress in addressing the requirement. The broader objective of the requirement is in no way fulfilled.
	<b>Inadequate progress.</b> The country has made inadequate progress in meeting the requirement. Significant elements of the requirement are outstanding, and the broader objective of the requirement is far from being fulfilled.
	<b>Meaningful progress.</b> The country has made progress in meeting the requirement. Significant elements of the requirement are being implemented and the broader objective of the requirement is being fulfilled.
	<b>Satisfactory progress.</b> All aspects of the requirement have been implemented and the broader objective of the requirement has been fulfilled.
	<b>Beyond.</b> The country has gone beyond the requirement.
	This requirement is only encouraged or recommended and should not be considered in assessing compliance.
	The MSG has demonstrated that this requirement is not applicable in the country.

## Introduction

### Brief recap of the sign-up phase

Malawi was admitted as an EITI candidate country in October 2015. Discussions about the possibility of EITI implementation in Malawi started in 2008, and the first workshop for stakeholders was held in 2010. There was however little concrete progress until the election of Peter Mutharika as President in May 2014 restarted preparations for EITI candidature. Soon after taking office, he publicly announced Malawi's commitment to implement the EITI.<sup>1</sup> Following the announcement, the sign-up process was steered by the Revenue Policy Division of the Ministry of Finance, Economic Planning and Development (MoF), where the national secretariat is now housed. The CSO Citizens for Justice was also a key driver advocating for EITI implementation.

### Objectives for implementation and overall progress in implementing the work plan

The objectives of EITI implementation are outlined in the Malawi EITI strategic plan and the 2018 work plan. They relate to increasing the public understanding of the sector and its economic contribution. Due to a combination of limited human and financial resources, and a relatively short history of implementation, activities have largely focused on EITI reporting and addressing recommendations arising from them. Some outreach activities have also taken place.

### History of EITI Reporting

Malawi has published two EITI Reports. The first one covers the fiscal year 2014-2015 and was published in June 2017. The second covers fiscal year 2015-2016 and was published in June 2018. Both were produced by Moore Stephens. The fiscal year in Malawi runs from 1 July to 30 June. Malawi is developing the terms of references for their third report at the time of writing.

### Summary of engagement by government, civil society and industry

Relevant stakeholders are engaged, and the MSG functions in an equitable and effective manner. Communication within constituencies could be further systematised, and there is a need to develop a mechanism for engaging with mining and oil companies that are not members of the industry association. Government agencies are cooperating to follow up on recommendations from EITI Reports and to meet requirements. Civil society has formed networks and coalitions comprising CSOs that work on issues related to the extractive sector. Due to substantial challenges in human and financial resources of the national secretariat, there have also been certain challenges in documentation and publications through their online portal, the MWEITI website.<sup>2</sup>

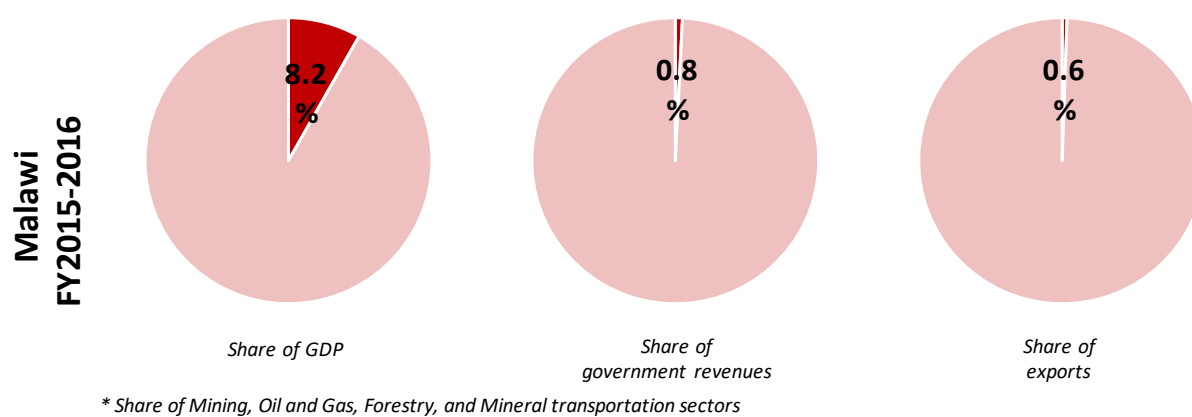
---

<sup>1</sup> Mining in Malawi, 17 June 2014. <http://mininginmalawi.com/2014/06/17/mining-on-mutharikas-agenda-malawis-new-president-opens-45th-session-of-parliament/>

<sup>2</sup> MWEITI (2018), 'Malawi Extractive Industries Transparency Initiative'. Accessed 31 October 2018. Available at: <http://mweiti.gov.mw/>

## Key features of the extractive industry

Malawi's economy relies mostly on agriculture and has recently recuperated after consecutive years of drought and economic downturn. The extractive sector is minuscule, and expectations for the growth of the sector have so far not been met. According to the 2015-2016 MWEITI Report, oil, gas and mining contributed less than one per cent of gross domestic product (GDP) for the period under review. The forestry and mineral transportation sectors, which MWEITI has included in its scope, are far more significant to the economy, representing 10.0 per cent of GDP. Despite this, all the sectors combined represented only 0.8 per cent of government revenue. Malawi produces coal, rock aggregate and limestone, as well as small quantities of iron ore and phosphate rock.<sup>3</sup>



The most significant mining project, the Kayelekera uranium mine, seized its operations in 2014 due to low uranium prices. It is now on "care and maintenance". In 2012, when production was at its peak, the mine represented 10 per cent of Malawi's GDP. In the period 2013-2015 the government undertook geophysical mapping to promote the mining sector and made the data publicly available.<sup>4</sup> According to the government, Malawi's soil is known to contain, for example, heavy mineral sands, rare earth minerals, bauxite and precious and semi-precious stones.<sup>5</sup>

The mine and its operator, Paladin Africa Limited, have been criticised for causing environmental damage and failing to deliver government revenues and positive social impact.<sup>6</sup> As a result of the controversy surrounding the mine, companies and civil society organisations were often in verbal and legal conflicts.

<sup>3</sup> MWEITI Report 2015-2016, p. 9-10.

<sup>4</sup> World Bank. 2018. *Malawi Overview*. Accessed 28 September 2018. Available at: <https://www.worldbank.org/en/country/malawi/overview#3>.

<sup>5</sup> Government of Malawi. 2013. *Mining and Minerals Policy*. Accessed 28 September 2018. Available at: <http://www.eisourcebook.org/cms/Malawi%20Mines%20%26%20Minerals%20Policy%202013.pdf>.

<sup>6</sup> See e.g. Mining and Trade Review. 2018. *Kayelekera Nightmare*. Accessed 28 September 2018. Available at: <https://mininginmalawi.files.wordpress.com/2018/05/mining-trade-review-april-2018-edition-electronic-copy.pdf> and ActionAid. 2015. *An Extractive Affair. How one Australian mining company's tax dealings are costing the world's poorest country millions*. Accessed 28 September 2018. Available at: [http://www.actionaid.org/sites/files/actionaid/malawi\\_tax\\_report\\_updated\\_table\\_16\\_june.pdf](http://www.actionaid.org/sites/files/actionaid/malawi_tax_report_updated_table_16_june.pdf).

This did not improve between 2011 and 2013, as the government awarded licenses for oil exploration in six blocks. Following allegations that there were irregularities in awarding the licenses, all exploration activities were halted in 2014. The ban was lifted in 2016. Blocks 2 and 3 cover the northern part of Lake Malawi, which is disputed by Tanzania. Tanzania argues that the border runs through the middle of the lake, while Malawi claims that the entire northern part of the lake belongs to it.<sup>7</sup>

## Explanation of the Validation process

Validation is an essential feature of the EITI implementation process. It is intended to provide all stakeholders with an impartial assessment of whether EITI implementation in a country is consistent with the provisions of the EITI Standard. It also addresses the impact of the EITI, the implementation of activities encouraged by the EITI Standard, lessons learnt in EITI implementation, as well as any concerns stakeholders have expressed and recommendations for future implementation of the EITI.

The Validation process is outlined in chapter 4 of the EITI Standard<sup>8</sup>. It has four phases:

1. Preparation for Validation by the multi-stakeholder group (MSG)
2. Initial data collection and stakeholder consultation was undertaken by the EITI International Secretariat.
3. Independent quality assurance by an independent Validator who reports directly the EITI Board
4. Board review.

The [Validation Guide](#) provides detailed guidance on assessing EITI Requirements, and more detailed [Validation procedures](#), including a standardised procedure for data collection and stakeholder consultation by the EITI International Secretariat and standardised terms of reference for the Validator.

The Validation Guide includes a provision that: “Where the MSG wishes that validation pays particular attention to assessing certain objectives or activities in accordance with the MSG work plan, these should be outlined upon the request of the MSG”. No such requests were made by the Malawi EITI MSG.

In accordance with the Validation procedures, the International Secretariat’s work on the initial data collection and stakeholder consultation was conducted in three phases:

### 1. Desk Review

Prior to visiting the country, the Secretariat conducted a detailed desk review of the available documentation relating to the country’s compliance with the EITI Standard, including but not limited to:

- The EITI work plan and other planning documents such as budgets and communication plans;
- The multi-stakeholder group’s Terms of Reference, and minutes from multi-stakeholder group meetings;
- EITI Reports, and supplementary information such as summary reports and scoping studies;

<sup>7</sup> The Sun. 2018. *Talks to Resolve Tanzania, Malawi Border Dispute Still On-going - Minister*. Accessed 28 September 2018. Available at: <http://sunnewsonline.com/talks-tanzania-malawi-border-dispute/>.

<sup>8</sup> See also <https://eiti.org/validation>.

- Communication materials;
- Annual progress reports; and
- Any other information of relevance to Validation.

In accordance with the Validation procedures, the Secretariat has not considered actions undertaken after the commencement of Validation.

## 2. Country visit

A country visit took place on 22-26 October 2018. All meetings took place in the capital Lilongwe. The secretariat met with the multi-stakeholder group and its members, the Independent Administrator and other key stakeholders, including stakeholder groups that are represented on, but not directly participating in, the multi-stakeholder group. In addition to meeting with the MSG as a group, the Secretariat met with its constituent parts (government, companies and civil society) either individually or in constituency groups, with appropriate protocols to ensure that stakeholders can freely express their views and that requests for confidentiality are respected. The list of stakeholders consulted is outlined in Annex D.

## 3. Reporting on progress against requirements

This report provides the International Secretariat initial assessment of progress against requirements in accordance with the Validation Guide. It does not include an overall assessment of compliance.

The International Secretariat's team comprised: Christoffer Claussen, Technical Manager and Lyddia Kilpi, Validation Manager. Support and quality assurances was provided by Alex Gordy, Ines Schjolberg Marques and Sam Bartlett.



## Part I – MSG Oversight

### 1. Oversight of the EITI process

This section relates to stakeholder engagement and the environment for implementation of EITI in the country, the governance and functioning of the multi-stakeholder group (MSG), and the EITI work plan.

#### Government engagement in the EITI process (#1.1)

##### Documentation of progress

###### *Public statement:*

Discussions about the possibility of EITI implementation in Malawi started in 2008, and the first workshop for stakeholders was held in 2010. However, this drive slowed in subsequent years. The process for joining the EITI picked up when Peter Mutharika became president in 2014. He committed Malawi to the EITI in his Inaugural State of the Nation speech to the parliament soon after his appointment.<sup>9</sup> In Malawi, the president is both the head of state and head of government.<sup>10</sup> In a cabinet reshuffle in July 2017, Aggrey Masi replaced Bright Msaka as Minister of Natural Resources, Energy and Mining (MNREM).<sup>11</sup> Minister Masi was present at the launch event of the first Malawi EITI Report in September 2017, making the following statement: “We have successfully joined the EITI, a global standard for the good governance of oil, gas and mineral resources, which will provide accountability and transparency around mining and petroleum revenues.”<sup>12</sup> The EITI Champion, Minister of Finance, Economic Planning and Development Goodall Gondwe, reconfirmed the government’s commitment in his budget speech to the parliament in May 2018. The EITI, and beneficial ownership (BO) transparency particularly, are a priority in Malawi’s Open Government Partnership (OGP) National Action Plan 2016-2018.<sup>13</sup>

###### *Senior lead:*

Minister of Finance Goodall Gondwe has acted as EITI Champion since Malawi joined the EITI. He was appointed by President Mutharika<sup>14</sup>. While he is in the position to mobilise resources, Malawi EITI has remained dependant on funding from international partners, especially GIZ. The MSG Chair is the Director of the Revenue Policy Division of the Ministry of Finance Kenneth C. Matupa. Following the retirement of the previous chair Crispin Kulemeka, Mr. Matupa became chair in 2017. Other government MSG members

<sup>9</sup> Malawi News Agency, 2014. Accessed 27 September 2018. Available at:

<http://www.manaonline.gov.mw/index.php/component/k2/item/380-state-of-the-nation-address-president-mutharika>.

<sup>10</sup> Tostensen, A. 2017. *Malawi: A Political Economy Analysis*. NUPI. Available at:

[https://brage.bibsys.no/xmlui/bitstream/handle/11250/2461122/NUPI\\_rapport\\_Malawi\\_Tostensen.pdf?sequence=1&isAllowed=y](https://brage.bibsys.no/xmlui/bitstream/handle/11250/2461122/NUPI_rapport_Malawi_Tostensen.pdf?sequence=1&isAllowed=y).

<sup>11</sup> Nyasa Times, 2017. Accessed 27 September 2018. Available at: <https://www.nyasatimes.com/mutharika-reshuffles-malawi-cabinet-kumpalume-fired-massi-elevated-kachikho-back-ghambi-dropped-kasaila-demoted/>.

<sup>12</sup> Mining Review, 2017. Accessed 27 September 2018. Available at: <https://www.miningreview.com/sovereign-metals-receives-backing-malawi-government/>

<sup>13</sup> Government of Malawi. 2016. *OGP National Action Plan 2016-2018*. Accessed 9 October 2018. Available at: [https://www.opengovpartnership.org/sites/default/files/Malawi\\_NAP\\_2016-2018.pdf](https://www.opengovpartnership.org/sites/default/files/Malawi_NAP_2016-2018.pdf).

<sup>14</sup> Malawi EITI. 2015. *Candidature application*. Available at: <http://mweiti.gov.mw/wp-content/uploads/2017/04/Malawi-EITI-Candidature-Application-Form-FINAL.pdf>.

also hold senior positions.

#### Active engagement:

The national secretariat is housed within the Revenue Policy Division of the Ministry of Finance. Secretariat staff, including the National Coordinator, split their time between the EITI and other responsibilities. Ministry officials who do not formally work for the secretariat provide support due to a shortage of staff. The government's financial contribution to implementation has until recently been limited to housing the national secretariat within the Ministry of Finance and covering operational costs. However, the ministry recently committed funds to support MSG meetings and to upgrade the forestry cadastre. EITI implementation does not have its own line or "vote" in the national budget, limiting opportunities for government funding.

Relevant government agencies are represented on the MSG and according to MSG minutes, their representatives participate in the MSG's work actively. Attendance of the full government MSG members has been rather irregular, apart from the Chair, but usually an alternate member has been present.

The national secretariat has worked with different government agencies to follow up on recommendations from EITI Reports. This includes, for example, coordination with the Department of Mines (DoM) on the electronic mining cadastre and discussions with the National Audit Office (NAO) about data reliability. Malawi Revenue Authority (MRA) has investigated discrepancies in production data.<sup>15</sup> The Department of the Registrar General, which is central for implementing beneficial ownership transparency, appears fully engaged in the process. All government entities submitted the requested data for the 2015-2016 EITI Report<sup>16</sup>, although there are contradicting statements on this regarding training fees (*See Requirements 4.1 and 5.1*).

Government agencies beyond the national secretariat have also participated in outreach activities. In 2017, the DoM, as well as the local traditional authority, joined CSOs and the secretariat in an outreach event in Karonga district, where the Kayelekera uranium mine is located. Several government agencies participated in the launch events of the 2014-2015 and 2015-2016 EITI Reports, held in September 2017 and October 2018, respectively.

#### Stakeholder views

Stakeholder consultations indicate strong government engagement. EITI Champion Minister Gondwe appears to enjoy the trust of all stakeholders. However, especially civil society and government representatives pointed out that he had not been actively engaged in EITI implementation or accessible to stakeholders. It was indicated that stronger involvement would be beneficial for the follow up of recommendations with other government agencies. Both the MSG Chair and the National Coordinator appear to be highly respected by stakeholders involved in implementation.

#### Initial assessment

The International Secretariat's initial assessment is that Malawi has made satisfactory progress in meeting

---

<sup>15</sup> MWEITI. 2018. *Annual Progress Report 2017*. Available at: [https://eiti.org/sites/default/files/documents/malawi\\_eiti\\_annual\\_progress\\_report\\_2017.pdf](https://eiti.org/sites/default/files/documents/malawi_eiti_annual_progress_report_2017.pdf).

<sup>16</sup> For further information, see section 4 of this assessment.

this requirement. The government is fully, actively and effectively engaged in EITI implementation. Government agencies participate actively in the MSG's work and appear committed to resolving recommendations arising from EITI reporting, as well as advancing systematic disclosures and beneficial ownership transparency. The national secretariat is an engine for inter-agency cooperation. The lack of engagement of the Oil and Gas Unit of the Department of Mines, which collects and manages the training fees, is a concern.

The national secretariat is tightly embedded in the Revenue Policy Division of the Ministry of Finance. While turnover of staff dedicated to the EITI has delayed activities planned for 2018, support from other ministry officials enabled progress on the most urgent issues.

The lack of financial resources is a clear threat to the sustainability of the process. Recently the Ministry of Finance has identified funds for upgrading the forestry cadastre. Sustainability of implementation and government funding would require that EITI is institutionalised as its own unit within either the MoF or the MNREM and has its own vote in the national budget.

To strengthen implementation, the International Secretariat recommends that the government proceeds with the plan to institutionalise the national secretariat and channels regular funding to EITI implementation to improve the sustainability of the process, while seeking ways to ensure that implementation is proportionate and cost effective. The EITI Champion is encouraged to engage regularly with the MSG and support it in ensuring the government agencies address recommendations from EITI reporting.

## Industry engagement in the EITI process (#1.2)

### Documentation of progress

#### Active engagement:

Company engagement in the EITI is organised through the Chamber of Mines and Energy and its 14 member companies. Oil companies and a considerable number of mining companies operating in Malawi are not members of the chamber. The chamber was established in 2015, and only two members have joined since. In principle, membership is open to all extractive companies, but there is an application process that includes due diligence on the companies' responsibility practices. No company has been rejected membership.

The companies in the MSG are selected from members of the chamber and represent the mining and quarrying sector. They are either operating or developing projects in Malawi. Oil companies are not represented in the MSG. The 2015-2016 EITI Reports recommends including representatives from petroleum and forestry companies in the MSG (p.97).

Company representatives have attended MSG meetings regularly. During the term of the 2015-2017 MSG, two of the companies were mainly represented by the full member, while in the case of the other two, the alternate member usually attended meetings. Often the alternate attended in addition to the full member. In each of the first three meetings of the new MSG, at least three out of four company

representatives were present.<sup>17</sup>

The national secretariat has proposed in the 2018 work plan that the Chamber of Mines and Energy commit roughly USD 1,800 in funding for setting up a task force for relevant institutions to drive systemic reforms. This is, however, yet to be discussed within the chamber.

Out of the 19 material companies, all but three companies submitted reporting templates for the 2015-2016 EITI Report.<sup>18</sup> The value of payments by the non-reporting companies was MWK 68 million (less than USD 100,000). This represents an improvement, as eight companies failed to submit data for the 2014-2015 EITI Report. Most reporting companies, however, failed to submit agreed data quality assurances. None of the companies that complied fully were members of the Chamber of Mines and Energy.

Communications within the industry constituency is focused in the council meetings of the Chamber of Mines and Energy. All reporting companies were, however, invited to a session by the Independent Administrator (IA) on meeting the reporting requirements. Companies beyond the members of the chamber have also been invited and present in constituency consultations organised by the national secretariat.

#### Enabling environment:

There is no legal provision requiring companies to disclose data required by EITI but the government's commitment to EITI was enshrined in the 2013 Mines and Minerals Policy.<sup>19</sup> A draft Mines and Minerals Bill introduced in 2015 includes provisions on revenue transparency.<sup>20</sup> The draft law, however, is yet to be tabled in parliament. According to stakeholders, the cabinet approved the draft bill on 25 October 2018, and the bill will be presented to the Parliament during their next sitting in November. The 2018 EITI work plan foresees the development of an EITI Policy, and based on that, an EITI Act. There are no confidentiality provisions that prevent the government from unilaterally disclosing payments by companies.

#### Stakeholder views

Company representatives who were or had been engaged in the MSG saw more value in the process than those who were not. They considered the EITI as a useful tool for engaging in dialogue with civil society and considered that it had reduced conflict in the public. Others viewed the EITI as a compliance exercise. All company representatives were concerned about the short time provided for submitting data for EITI Reports and the costs related to providing assurances.

It had until recently been unclear to oil companies that membership of the Chamber of Mines and Energy was open to them. Some of them are now in the process of becoming members. Companies generally considered the chamber a useful association for coordinating and voicing industry views. A company representative noted that most mining companies were in exploration stage and due to this could not

<sup>17</sup> Annex B: MSG attendance chart.

<sup>18</sup> Kaziwiziwi Mining Company Ltd, M.A. Kharafi & Sons, and Pamodzi Stone Mining (PSM) Investments.

<sup>19</sup> <http://www.eisourcebook.org/cms/Malawi%20Mines%20%26%20Minerals%20Policy%202013.pdf>

<sup>20</sup> Nyondo, E. 2016. The draft mining bill: What's in it? *The Nation*. Accessed 1 October 2018. Available at: <https://mwnation.com/the-draft-mining-bill-whats-in-it/>.

contribute financially to EITI implementation.

### Initial assessment

The International Secretariat's initial assessment is that Malawi has made meaningful progress in meeting this requirement. The companies represented on the MSG are fully engaged in the process. However, constituency communications, the nomination of MSG members and reaching out to non-reporting companies is restricted to members of the Chamber of Mines and Energy. It appears that while membership in the chamber is open in principle, there has not been active outreach towards extractive companies that are not members. The level of consultations within the constituency are called into question by the lack of adherence to data quality assurances agreed by the constituency's own MSG representatives (*see requirement 4.9*). On the other hand, the national secretariat and the Independent Administrator have reached out to the broader company constituency.

In order to meet Requirement 1.2, the company constituency should seek to find ways to ensure that the broader industry constituency is fully engaged and that all extractive companies have a channel to participate in EITI implementation.

Companies are encouraged to actively engage in developing an approach to reporting that facilitates the submission of data and assurances in a timely manner and to ensure that all material companies comply with the assurances agreed by the MSG (*see Requirement 4.9*).

### Civil society engagement in the EITI process (#1.3)<sup>21</sup>

#### Documentation of progress

Freedom House rates Malawi as 'partly free' in its 2018 assessment. It states that "political rights and civil liberties are for the most part respected by the state." However, corruption is endemic and arbitrary arrests are common.<sup>22</sup> CIVICUS Monitor rates civic space in Malawi as 'obstructed', which is the middle one of CIVICUS's five categories of civic space, ranging from 'open' to 'closed'.<sup>23</sup> Corruption appears to be a key concern for civil society, and tension is mounting as the 2019 general and presidential elections approach.<sup>24</sup> Arbitrary arrests and other forms of obstruction do not appear to be linked to natural

<sup>21</sup> The first Validation under the EITI Standard (Azerbaijan 2016) established precedent for the Validation of requirement 1.3. The CSO protocol "operationalises" requirement 1.3. Each part of the CSO protocol speaks to specific parts of Requirement 1.3:

2.1 of the CSO protocol is intended to assess provisions 1.3(d), 1.3(e)(i), 1.3(e)(iv).

2.2 of the CSO protocol is intended to assess provisions 1.3.(b) and 1.3(c).

2.3 of the CSO protocol is intended to assess provision 1.3(e)(iii).

2.4 of the CSO protocol is intended to assess provisions 1.3.(a) and 1.3(e)(ii)

2.5 of the CSO protocol is intended to assess provision 1.3(d). <https://eiti.org/document/eiti-protocol-participation-of-civil-society>

<sup>22</sup> Freedom House, 2018. Freedom in the World. Accessed 27 September 2018. Available at: <https://freedomhouse.org/report/freedom-world/2018/malawi>.

<sup>23</sup> CIVICUS. 2018. CIVICUS Monitor. Accessed 27 September 2018. Available at: <https://monitor.civicus.org/country/malawi/>.

<sup>24</sup> CIVICUS. 2018. *Fed up with corruption, civil society organises Malawians to take to the streets*. Accessed 27

resource governance.

Expression:

The constitution guarantees freedom of expression. However, the penal code includes provisions on “sedition”, which limit this freedom.<sup>25</sup> The provision has been used to silence opposition members.<sup>26</sup> There is no indication, however, that freedom expression had been restricted on issues related to natural resource governance.

Local CSOs have actively and publicly criticised, for example, the Kayelekera uranium mine for having negative social and environmental impacts. CSOs have also published critical analysis and recommendations regarding oil exploration and mining.<sup>27</sup> CSO representatives have expressed critical views of the government and extractive companies in the media and in public events. MSG meeting minutes show that civil society representatives have actively participated in discussions and voiced critical views.

MWEITI has established a Media Task Force that consists of journalists reporting on the extractive sector. The task force functions as a platform for sharing information, supporting the communications of MWEITI and providing training. Members regularly report about the sector in a critical tone.<sup>28</sup>

There is no indication that expressing critical views related to natural resource governance has led to reprisal or that civil society representatives are practicing self-censorship.

Operation:

In Malawi, CSOs are registered either as community-based organisations (CBOs) or non-governmental organisations (NGOs). The NGO Act of 2000 regulates non-governmental organisations.<sup>29</sup> For an organisation to receive the benefits related to NGO status, it needs to register with the NGO Board, as well as The Council for Non-Governmental Organisations in Malawi (CONGOMA). The formation of “unregistered groups” is prohibited. The NGO Board can de-register an organisation if it fails to comply

---

September 2018. Available at: <https://www.civicus.org/index.php/media-resources/news/interviews/3202-fed-up-with-corruption-civil-society-organises-malawians-to-take-to-the-streets>.

<sup>25</sup> ICNL. 2018. *Civic Freedom Monitor: Malawi*. Accessed 3 October 2018. Available at: <http://www.icnl.org/research/monitor/malawi.html#analysis>.

<sup>26</sup> Chiumia, T. 2016. Malawi sedition laws ‘declared invalid’: law scholars discuss inconsistencies. *Nyasa Times*. Accessed 30 October 2018. Available at: <https://www.nyasatimes.com/malawi-sedition-laws-declared-invalid-law-scholars-discuss-inconsistencies/>.

<sup>27</sup> See e.g. PWYP Malawi. 2016. *Five Unanswered Questions on Exploration of Oil & Gas in Malawi’s Lake and Land*. Available at: <http://mweiti.gov.mw/wp-content/uploads/2017/04/2016-02-pwyp-press-release-on-oil-and-gas.pdf>. And Citizens for Justice. 2014. *Oil Exploration and Production in Malawi. Policy and Legal Audit*. Available at: <http://mweiti.gov.mw/wp-content/uploads/2017/04/CFJ-September-2014-Oil-Policy-and-Legal-Audit-in-Malawi.pdf>

<sup>28</sup> See e.g. Matonga, G. 2017. Report recommends probe into oil deals. *The Nation*. Accessed 30 October 2018. Available at: <https://mwnation.com/report-recommends-probe-into-oil-deals/>.

<sup>29</sup> Government of Malawi. 2000. *Malawi Non-Governmental Organisations Bill*. Accessed 29 October 2018. Available at: <http://www.icnl.org/research/library/files/Malawi/ngo.pdf>



with the NGO Act or engages in partisan politics.<sup>30</sup>

There is no evidence that any NGO working on extractive issues has had difficulties registering with CONGOMA or the NGO Board. The procedures for registration and applicable fees do not seem to pose any legal, regulatory or administrative barrier to operation. In addition, MSG membership is not tied to the membership of these bodies.

CONGOMA, despite being a body established by law and with compulsory membership, appears to operate independently from the government. It has, for example, heavily criticised the government's attempt to raise the annual fee that NGOs are required to pay.<sup>31</sup> CSOs have also criticised the government for failing to consult them when drafting a new NGO Policy and an amendment bill to the NGO Act. The amendment increases the government's oversight of NGOs and weakens the position of CONGOMA.<sup>32</sup> There is no indication that these developments have negatively affected civil society's ability to participate in EITI implementation. There is also no indication of regulatory or practical barriers to receiving foreign funding. Norwegian Church Aid and Oxfam were referred to as central sources for funding.

In late 2016, eight Tanzanian citizens sponsored by the NGO Caritas Tanzania were arrested in Malawi for spying on the Kayelekera uranium mine. They are claimed to have been mistreated during detention. Several local and international CSOs called for their release.<sup>33</sup> The group was convicted for criminal trespassing and reconnaissance without permit in April 2017. The sentence was later overturned by the High Court in October 2017. Front Line Defenders, and Irish NGO seeking to protect human rights defenders, considers the group as environmental defenders. The detained were part of a civil society consortium called Tanzania Uranium Awareness Mission (TUAM). According to Front Line Defenders, "TUAM is a platform for knowledge exchange and information sharing on the socio-economic and environmental impacts related to mining and extractives."<sup>34</sup> There is no indication that the case has had a wider impact on CSOs' ability operate or engage in natural resource governance.

#### Association:

As noted previously, all NGOs are required to become members of CONGOMA, which has 1,200 member organisations. In addition, there are thousands of community-based organisations that operate locally.

CONGOMA coordinates the nomination procedure for selecting civil society MSG members, which it has in practice delegated to the Natural Resource Justice Network (NRJN). NRJN is a network of CSOs that

---

<sup>30</sup> ICNL. 2018. *Civic Freedom Monitor: Malawi*. Accessed 3 October 2018. Available at:

<http://www.icnl.org/research/monitor/malawi.html#analysis>.

<sup>31</sup> Muntahli, R. 2018. CONGOMA to Seek Court Injunction on NGOs Fees Hike. *Nyasa Times*. Available at:

<https://www.nyasatimes.com/143322-2/>.

<sup>32</sup> ICNL. 2018. *Civic Freedom Monitor: Malawi*. Accessed 3 October 2018. Available at:

<http://www.icnl.org/research/monitor/malawi.html#analysis>.

<sup>33</sup> CIVICUS. 2018. *Foreign activists sentenced and deported for investigations into uranium mining*. Accessed 27 September 2018. Available at: <https://monitor.civicus.org/newsfeed/2017/04/18/activists-sentenced-deported/>

<sup>34</sup> Front Line Defenders. 2017. Accessed 27 September 2018. Available at:

<https://www.frontlinedefenders.org/en/case/8-tanzanian-environmental-defenders-convicted>

focuses on the extractive sector. The local Publish What You Pay (PWYP) coalition operates under the broader mandate of NRJN.<sup>35</sup> NRJN has 33 member organisations, most of which are among the 19 members of the PWYP coalition.<sup>36</sup> The two networks work closely together and are working towards aligning their work under a joint strategy. The Memorandum of Understanding (MoU) and strategy of PWYP was made available to the International Secretariat.

The PWYP MoU requires that information about the EITI process is made available to coalition members regularly via email.<sup>37</sup> MSG members communicate with the broader constituency through a mailing lists that contain all PWYP and NRJN coalition members, as well as a WhatsApp group. There are also occasional in-person meetings, for example, in conjunction with the annual Malawi Alternative Mining Indaba. There is no evidence to suggest that there are any restrictions or limitations on NGOs in terms of their ability to associate, communicate and cooperate with other national or international NGOs.

#### Engagement:

Evidence suggests that civil society is a key driver of the EITI process, and CSOs actively promoted for Malawi to join the EITI. MSG meeting minutes demonstrate that civil society representatives have actively participated in discussions. Civil society provided extensive commentary to the draft 2014-2015 and 2015-2016 EITI Reports.<sup>38</sup> Civil society has arranged constituency meetings to discuss the reports, coordinated outreach efforts in mining communities and participated in EITI events organised by the national secretariat. CSOs have provided funding for the printing of EITI documents and for organising meetings. The strategy of PWYP Malawi outlines plans to use the EITI process to, for example, lobby for further disclosures and raise public awareness.<sup>39</sup>

Civil society MSG members attend meetings relatively regularly, although there has been considerable variation among organisations. ActionAid, for example, was represented in only one meeting between April 2016 and December 2017. Some organisations were in practice represented by the alternate member. However, in all but two meetings, at least three civil society representatives were present.<sup>40</sup>

#### Access to public decision-making:

Several Malawian civil society groups have produced and published critical analysis and recommendations related to the extractive sector.<sup>41</sup> Civil society used the EITI successfully to push for contract transparency. The MSG's efforts to address recommendations arising from EITI Reports also provide civil society the opportunity to promote reform. Civil society representatives have actively participated in EITI events, including the launch of EITI Reports and have voiced critical views of the government and the reports.

---

<sup>35</sup> Publish What You Pay. 2018. *Malawi country page*. Accessed 3 October 2018. Available at: <http://www.publishwhatyoupay.org/members/malawi/>.

<sup>36</sup> Ibid.

<sup>37</sup> PWYP Malawi. 2015. *Memorandum of Understanding between the PWYP-Malawi Steering Committee and the individual member organisations for establishing the PWYP coalition in Malawi*. Not available online.

<sup>38</sup> Minutes of the 11<sup>th</sup> extraordinary MSG meeting and the 14<sup>th</sup> MSG meeting.

<sup>39</sup> PWYP Malawi. 2017. *PWYP Malawi Strategic Plan June 2017 – May 2019*. Not available online.

<sup>40</sup> Annex B: MSG attendance chart.

<sup>41</sup> See footnote 27.



An Access to Information Act (2017) was enacted by the parliament in late 2016, but it still has not been operationalised. In April 2018, the government committed to operationalise it by the end of the year.<sup>42</sup> The law stipulates that Malawi Human Rights Commission will serve as the Public Information Commission. Before the Public Information Commission is established, there is no mechanism for enforcing the law. The act, however, already helped civil society gain access to oil and mining contracts in 2016 and 2017.

### Stakeholder views

Stakeholders from civil society and the media confirmed that they were free to express, associate and operate on issues related to extractive sector governance. Civil society representatives noted that if a wrong-doing involving high-level officials was uncovered, there could be reprisal, but no examples were given of reprisal taking place in practice.

Some government and company representatives criticised both civil society and media for being too critical in the public. A civil society representative and former MSG member noted that occasionally industry representatives would criticise civil society members for speaking out in the media, rather than discussing the issue within the MSG. This does not, however, seem to have limited civil society's freedom of expression in practice.

CSO representatives did not consider that the arrest of the Tanzanian activists had affected their freedom to operate, and details of the case seem to remain unclear. In fact, a civil society representative referred the positive advocacy results achieved through a peaceful mining-related protest that was held in October 2018 in Mangochi.<sup>43</sup>

Stakeholders from different constituencies, including civil society itself, considered that CSOs had benefitted from the EITI as a platform to access government and companies and raise concerns with them. This includes issues regarding grassroots communities in mining areas. Civil society representatives noted that EITI implementation and especially MSG membership had improved their access to government officials. They confirmed that civil society had access to government officials and parliamentarians, especially if they were known to them. Civil society's ability to participate in the legislative process depends on the discretion of parliament. Wide consultations were undertaken in preparation of the draft mining bill, but it is unclear to what extent they are reflected in the bill.

Civil society members of the MSG stated that they share draft documents, such as the work plan and annual progress report, with the broader constituency for feedback. They also noted that they relayed the concerns of CSOs to the MSG. According to the MSG members, meetings with the broader constituency attracted wide participation from coalition members. However, a civil society representative outside the MSG also noted that lately communications with the broader constituency had been sporadic. It was also noted that turnover in civil society representation was a challenge for the functioning of the MSG during

---

<sup>42</sup> Chitete, S. 2018. ATI law before year end—govt. *The Nation*. Accessed 4 October 2018. Available at: <https://mwngation.com/ati-law-year-end-govt/>.

<sup>43</sup> For further information, please see: Magombo-Mana, K. 2018. Malawi army pounces on illegal miners in Mangochi. *Nyasa Times*. Accessed 30 October 2018. Available at: <https://www.nyasatimes.com/malawi-army-pounces-on-illegal-miners-in-mangochi/>.

the 2015-2017 term, as institutional memory was easily lost.

### Initial assessment

The International Secretariat's initial assessment is that Malawi has made satisfactory progress in meeting this requirement. It appears that civil society in Malawi is vibrant and an active watchdog of the government and companies. There is no indication that free expression, operation, association or engagement of civil society in extractive sector governance or EITI implementation has been restricted. CONGOMA, the platform of all NGOs, has delegated coordination on extractives issues to the Natural Resource Justice Network, which operates in an independent and inclusive manner in collaboration with the local PWYP coalition.

Civil society has produced high-quality analysis about the sector, as well as critical recommendations. CSOs have also successfully formed networks and channels for cooperation, although it has been difficult to confirm how systematic communication between MSG members and broader civil society is. There is an evident tension between advocacy NGOs, which have voiced concerns about endemic corruption, and the government, which is preparing for elections in 2019. The government is encouraged to ensure both in policy and practice that issues related to natural resource governance can continue to be freely debated ahead of the 2019 general and presidential elections.

## MSG governance and functioning (#1.4)

### Documentation of progress

#### MSG composition and membership:

The three constituencies, government, civil society and industry are represented in equal numbers in the MSG. Each sector has four representatives, who have alternate members from the same organisation. The structure was decided by the government in consultation with stakeholders before the MSG was established in 2015. The structure is codified in the MSG Terms of Reference (ToR).<sup>44</sup>

According to the MSG ToR, the term of MSG members is three years, with the possibility of re-appointment once. The first MSG served from 2015 until the end of 2017. The term of the current MSG started in January 2018 and will thus run until the end of 2020. Each of the constituencies shall select their own representatives and may change representation during the MSG's term according to their own internal procedures. The nomination of civil society and industry members is coordinated by CONGOMA and the Chamber of Mines and Energy, respectively. The previous MSG's three-year term ended in 2017, and a new MSG took office in early 2018. Current MSG members are listed in Annex A. Changes in membership during the term of the previous MSG (2015-2017) are documented in the MSG attendance chart (Annex B).

The ToR define that the Chair is a representative of the Ministry of Finance. The ToR remind that MSG members represent their constituency. Members are obliged to consult their constituencies, communicate results to them and assess and build their capacity. The MSG may by consensus alter the composition of the group, and invite new members, for example, from the petroleum, forestry or

---

<sup>44</sup> Section 3. MSG Membership.

fisheries sectors. The MSG has three sub-committees: beneficial ownership disclosures, communications, and finance, risk and audit. According to the MSG ToR, these sub-committees must have at least one representative from each of the three constituencies.

The ToR state that the “MSG shall endeavour to abide by national gender policy”. The ToR do not iterate what this policy is or how it can be accessed. The Gender Equality Act states that any public service department should not recruit more than 60% or less than 40% of either sex<sup>45</sup>. Only two out of twelve full MSG members are women. Counting in alternate members, the number is five out of twenty-four.

Members may propose observers and experts ahead of meetings. The final decision to allow them is taken by the Chair. Permanent observers must be approved by the MSG. At the time Validation commenced, a representative of MRA was the only permanent observer. In October 2018, the MSG approved the Department of Forestry (DoF) as a permanent observer. Parliamentary committees and the International Secretariat are welcomed as standing observers.

#### Civil society representation:

Civil society is represented by the following organisations: Centre for Environmental Policy and Advocacy (CEPA), Foundation for Community Support Services (Focus), CCAP Livingstonia Synod – Church & Society Programme and Oxfam Malawi. Civil society selected new representatives for the MSG in December 2017. The Ministry of Finance invited the CONGOMA to oversee the nomination process. CONGOMA delegated responsibility for coordinating nominations to Natural Resource Justice Network (NRJN).

The selection of MSG members was undertaken at the annual meeting of NRJN. It was decided that local NGOs, international NGOs and faith-based organisation should each be represented. Within this framework, three MSG members were selected by vote. The chair of NRJN was assigned a seat directly. CONGOMA oversaw the process and reported the selected representatives to the Ministry of Finance.<sup>46</sup> Minutes of the meeting, including results of the vote, were provided to the International Secretariat.<sup>47</sup> In total, 14 organisations put forward candidates for the vote. According to stakeholders, the nomination procedure was similar when the MSG was first established in 2015.

According to the NGO Act, an organisation needs to register with CONGOMA before it can register with the NGO Board. The nomination of MSG members, however, was not limited to CONGOMA members, but tied to the membership of Natural Resource Justice Network. NRJN membership is open to CSOs that work on issues related to the extractive sector.

Focus is the only current civil society MSG member that was also represented in the 2015-2017 MSG. The representative from CCAP Livingstonia chairs PWYP Malawi, the representative from Oxfam Malawi is the Vice Chair and CEPA hosts the coalition. The MSG representative from Focus also chairs the Natural Resource Justice Network. Focus and CCAP Livingstonia Synod are based in northern Malawi, in Karonga and Mzuzu respectively. CEPA is based in Blantyre. The represented organisations are independent of

<sup>45</sup> Government of Malawi. 2013. Gender Equality Act. Accessed 29 October 2018. Available at: <https://womenlawyersmalawi.files.wordpress.com/2017/06/gender-equality-act.pdf>.

<sup>46</sup> Letter from CONGOMA to the MWEITI Secretariat. Dated 13 February 2018. Accessed 1 October 2018. Available at: <http://mweiti.gov.mw/wp-content/uploads/2017/04/CSO-Membership-in-the-MWEITI-MSG-for-the-Tenure-ending-December-2010.pdf?platform=hootsuite>.

<sup>47</sup> Minutes of the NRJN Annual General Meeting, 20 Dec 2017.

government and companies operationally and in policy terms.

Industry representation:

The Chamber of Mines and Energy, an industry association, was invited by the national secretariat to coordinate the nomination process. The chamber has 14 members. MSG members were selected in a meeting of the chamber's council, which includes all members. The decision was taken by consensus based on expressions of interest from companies. The International Secretariat has no documentation of the meeting. Oil and gas companies are currently not members of the chamber and are not represented on the MSG.

Industry is represented by the following companies: Bwanje Cement Ltd, Mkango Resources, Shayona Corporation and Sovereign Services Limited. The two latter are new members that joined in 2018. They replaced Globe Metals & Mining and Paladin. Bwanje and Shayona are cement producers. Mkango Resources is a Canadian listed company prospecting for rare earth elements in southern Malawi. Sovereign Services is an Australian company that is developing a graphite mine near the capital Lilongwe. Industry membership and attendance in the 2015-2017 MSG is available in Annex B.

Government representation:

Kenneth Matupa from the Ministry of Finance became the MSG Chair in 2017, following the retirement of Crispin Kulemeka. He is also Kulemeka's successor as the director of the ministry's Revenue Policy Division. The other three government seats are occupied by the Reserve Bank of Malawi (RBM), the National Audit Office and the Department of Mines. The agencies represented in the MSG were decided in a meeting ahead of Malawi's application for EITI candidature in 2015. Government agencies, which have a stake in EITI implementation, attended the meeting and the most relevant ones were invited to name representatives. The International Secretariat has no documentation of the meeting. The government agencies represented in the MSG have remained unchanged.

MRA has been a permanent observer since 2015, and the DoF was named as a permanent observer in a recent MSG meeting. Membership is tied to a position within the agency, and the individual representing the agency in the MSG changes when the position-holder changes. The government representatives are senior civil servants.<sup>48</sup> Government membership and attendance in the MSG is available in Annex B.

Terms of reference:

The terms of reference of the MSG and its sub-committees were reviewed in 2017. The ToR were originally agreed in 2015, ahead of Malawi's application for EITI candidature. MSG minutes demonstrate that a team with one representative from each constituency was tasked to prepare the revision. The purpose of the revision was to ensure that the ToR reflect the MSG's practices and to include a policy on permanent and occasional observers.<sup>49</sup> The revised ToR were approved in December 2017.<sup>50</sup> At the time Validation commenced, they were not available on the MWEITI website, but have been circulated to MSG

---

<sup>48</sup> See Annex A for the names and positions of MSG members.

<sup>49</sup> Minutes of the 11<sup>th</sup> ordinary MSG meeting.

<sup>50</sup> Minutes of the 12<sup>th</sup> ordinary MSG meeting.

members and are available upon request from the national secretariat.

The ToR outline the role, responsibilities and principles of the MSG.<sup>51</sup> The MSG provides strategic direction to the EITI process and oversees implementation. The MSG is responsible for ensuring reporting entities submit requested data, while civil society's role is to monitor disclosures. The MSG is tasked to develop a communications protocol. The Communications and Engagement plan was drafted with support from the MWEITI Media Task Force and was approved by the MSG in August 2017.<sup>52</sup>

The ToR state that the MSG shall develop a work plan, approve the ToR of the Independent Administrator and develop an "annual activity plan". It appears that the latter is a mistake and should read "annual activity report". The ToR do not include language on reviewing or approving the nomination of the IA nor EITI Reports. Endorsement of work plans and progress reports is also only implicit. In practice, meeting minutes show that the MSG has approved documents in accordance with Requirement 1.4.iv.

The MSG meeting minutes demonstrate that the 2018 work plan and the revised terms of reference for the MSG and its sub-committees were approved by the group in December 2017. The ToR of the Independent Administrator for the 2015-2016 EITI Report were approved in August 2017 and an update to the ToR following feedback from GIZ in December 2017.<sup>53</sup> The ToR for the IA were prepared by a sub-committee of the MSG. The 2015-2016 EITI Report and the 2017 Annual Progress Report were approved by the MSG in June 2018.<sup>54</sup>

#### Internal governance and procedures:

The MSG ToR outline procedures for MSG governance.<sup>55</sup> Meetings are to be held quarterly, or more often if the need arises. MSG meeting minutes demonstrate that the provision has been followed, and extraordinary meetings have been called upon need, for example, to endorse documents. Notice of meetings and the agenda is to be sent to members two weeks in advance. It is not explicitly stated when other documents that are to be discussed should be sent.

The MSG is chaired by a representative of the Ministry of Finance. In practice, this is the Director of Revenue Policy. The ToR do not mention that issues can be tabled for discussion by any MSG member, but stakeholders confirmed that this is the practice. In general, the provisions on internal governance appear to be followed in practice, and there is no evidence of conflict of interests.

Integrity is one of the principles mentioned in the ToR, and an MSG member can be removed if the member's participation would be detrimental to MWEITI's work or reputation. The MSG can also exclude from meetings a member who fails to adhere to the ToR. In practice, a member has never been excluded or removed from the MSG.

#### Decision-making:

According to the ToR, the MSG will seek to take decisions by consensus. If voting is necessary, a decision

---

<sup>51</sup> Section 2.2.

<sup>52</sup> Minutes of the 11<sup>th</sup> ordinary MSG meeting.

<sup>53</sup> Minutes of the 11<sup>th</sup> and 12<sup>th</sup> ordinary MSG meetings.

<sup>54</sup> Minutes of the 14<sup>th</sup> extraordinary MSG meeting.

<sup>55</sup> Section 4.

will require a qualified majority with two thirds of votes in favour. In addition, at least one third of each constituency must be in favour. Thus, no constituency can be overruled. The ToR does not define whether the ballot is open or closed. In practice, the MSG has never taken a decision by vote, as confirmed by stakeholders from all constituencies.

#### Record-keeping:

MSG meeting minutes are kept by the national secretariat. After the meeting, draft minutes and other documents are to be circulated within a week. Members have one week to comment, after which the minutes will be considered endorsed. The national secretariat is responsible for maintaining a record of documents. Final minutes will be circulated to the MSG and published on the MWEITI website. Minutes of all the MSG meetings were made available to the International Secretariat. However, they were not available on the website at the time this assessment was drafted.

#### Capacity of the MSG:

The ToR mention that members must assess and build the capacity of their constituency to fully participate in EITI implementation. There is no explicit language about the capacity of MSG members themselves, although this is implicit in the outlined responsibilities. MSG minutes demonstrate the stakeholders have technical discussions about EITI reporting and the follow-up of recommendations. Civil society, for example, has provided detailed comments to the drafts of both EITI Reports that were discussed in the MSG. The 2018 work plan includes activities to strengthen the MSG's capacity (*see Requirement 1.5*).

#### Per diems:

The ToR do not include language on per diems, but it states that costs incurred while “conducting EITI business” will be reimbursed “according to the prevailing guidelines”. The ToR do not define what these guidelines are. The national secretariat clarified in consultations that “EITI business” refers to MSG meetings, technical meetings and sub-committee meetings called by the secretariat. Costs are covered for participants travelling to meetings from other locations according to the harmonised guidelines of development partners. The guidelines define, for example, which transportation and accommodation costs are covered. If hotel accommodation with full board is not provided, a daily allowance is 30,000 MWK (approx. USD 40) is paid instead.<sup>56</sup>

#### Attendance:

The MSG minutes document the MSG members, as well as observers, that were present. In addition, the national secretariat provided the International Secretariat with an MSG attendance chart (*see Annex B*). Quorum requires that fifty per cent of MSG members, and at least one representative from each constituency, is present. While more than one member from each constituency has been present at every meeting, there are considerable differences in attendance across different organisations and individuals.

During the term of the 2015-2017 MSG, overall attendance by civil society members was slightly lower than that of government and industry. Overall average attendance for MSG meetings in 2015-2018 was over 75% (either the full or alternate member from the organisation present). Attendance varied from meeting to meeting between 67% and 92%, albeit without a clear trend over time. According to the ToR,

---

<sup>56</sup> Letter from UN Resident Coordinator Maria Jose Torres on behalf of Development Partners to the Office of the President and Cabinet. Dated 26 June 2018.



either the full member or the alternate is permitted to attend meetings and vote. Despite this, the attendance chart demonstrates that in many cases both have been present. The ToR does not include a policy on replacing a member who regularly fails to attend meetings.

#### National Secretariat:

According to the MSG ToR, the MSG Chair is responsible for organising the national secretariat, which coordinates the work of Malawi EITI. The MSG shall direct and supervise the secretariat. The secretariat prepares meeting minutes and other documents and keeps a record of documents. The ToR state that the national secretariat is housed within the Revenue Policy Division. The National Coordinator has also other tasks in the ministry, and in practice, the line between national secretariat staff and ministry staff is blurred. Due to staff shortages in the national secretariat, other officials have stepped in to support the process. The MSG ToR also mentions that the national secretariat shall have its own terms of reference. The ToR has been drafted and awaits MSG discussion and approval.

#### Stakeholder views

Stakeholders did not express any concerns related to the practices of MSG governance. Consulted MSG members were content that, for example, meeting agendas and documents were shared well ahead of the meetings. All constituencies considered decision-making to be consensus-seeking and confirmed that they were able to table issues for discussion. Oil and gas companies did not express an interest in being represented in the MSG, but they did note that they were considering joining the Chamber of Mines and Energy.

Attendance in meetings by both the full member and the alternate is a deviation from the MSG ToR, but stakeholders did not express any concerns related to this. On the contrary, a civil society representative noted that it was positive that there was more than one representative from an organisation present, as it strengthened the institutional memory of the MSG:

#### Initial assessment

The International Secretariat's initial assessment is that Malawi has made satisfactory progress towards meeting this requirement. The MSG includes self-appointed representatives from each stakeholder group with no suggestion of interference or coercion. CSOs on the MSG are operationally and in policy terms independent of the government and companies and have expertise on natural resource governance. The nomination procedure for MSG members from civil society was open to CSOs working on issues related to natural resource governance.

The MSG appears to be functioning in a regular and equitable manner. The three-year term limit of the first MSG was respected and led to a considerable change in membership. Meetings are regular and adequately attended. Meeting minutes document discussions and decisions. There is no indication of non-trivial deviations from the MSG terms of reference in practice. While all MSG responsibilities required under Requirement 1.4 are not explicitly outlined in the ToR, MSG meeting minutes demonstrate that they are undertaken in practice.

To strengthen implementation, all constituencies are encouraged to establish a clear procedure for consulting the broader constituency in a systematic manner. Constituencies are recommended to ensure that the communications and consultations reach all CSOs, companies and government agencies that

have a stake and interest in EITI implementation. In the case of the industry constituency, this means extending communications beyond members of the Chamber of Mines and Energy.

## Work plan (#1.5)

### Documentation of progress

The 2018 work plan was approved by the MSG in December 2017. In addition, MWEITI has a 2018-2022 strategic plan. The analysis of this initial assessment will focus on the current 2018 work plan, which largely reflects the framework laid out in the strategic plan.

#### Publicly accessible workplan:

The 2018 work plan is not available on the MWEITI website.<sup>57</sup> The national secretariat indicated that the work plan had been circulated to MSG members and was available from the national secretariat upon request.

#### Objectives:

The 2018 work plan consists of four strategic objectives: 1) increased sector contribution to the GDP, 2) improved extractive sector growth and performance, 3) enhanced understanding of the extractive industries, and 4) enhanced capacity of MWEITI to implement EITI Standards. Each of these objectives is linked to an expected outcome and an EITI Requirement. The work plan outlines concrete activities and parties responsible for them.

While the strategic objectives are to a certain extent linked to national priorities<sup>58</sup> and the EITI Principles, it is unclear how the activities further the objectives that they are grouped under. Activities focus largely on the EITI process, with few visible links to other developments, priorities or plans in the sector.

#### Measurable and time-bound activities:

Each activity in the work plan comes with an expected output, required input, a timeline, cost and the responsible party. Outputs are concrete consequences of the activity and most are clearly measurable. Some of the outputs are very extensive, especially under communications and outreach. A single output may, for instance, include several outreach events in different locations and a timeline that spans the entire year.

#### Capacity constraints:

The work plan includes several activities related to building the capacity and awareness of stakeholders, including the national secretariat. These include, for instance, workshops on open data and beneficial ownership transparency, and training for the Auditor General, reporting entities and the media. Training on mainstreaming EITI disclosures is also included, as expected by the EITI Board, although the work plan does not specify who this is targeted to. Due to shortages in staff and resources, most of these activities have so far not been implemented. The work plan includes a self-assessment of the MSG, scheduled for the end of the year, which may prove helpful in identifying capacity constraints and prioritising activities

<sup>57</sup> Accessed 12 November 2018.

<sup>58</sup> Government of Malawi. 2013. *Mining and Minerals Policy*. Accessed 28 September 2018. Available at: <http://www.eisourcebook.org/cms/Malawi%20Mines%20%26%20Minerals%20Policy%202013.pdf>.



to address them.

Scope of EITI reporting:

The work plan includes drafting the ToR for the Independent Administration, as well as activities aimed at furthering beneficial ownership disclosures and systematic disclosures. There is no explicit reference to the scope of EITI reporting, although planned workshops on MWEITI recommendations, remedial action plan and implementation may include discussion on this. In general, the work plan does not refer to specific challenges or opportunities related to EITI reporting or the extractive sector more broadly, apart from beneficial ownership transparency.

Legal or regulatory obstacles:

Activities include drafting a MWEITI Policy, and following that, a MWEITI Bill. The work plan does not specify the intended contents of the policy or law. The plan involves consulting with and seeking input from a wide range of stakeholders.<sup>59</sup> Once the policy is approved, further consultations are planned to be held in different parts of the country to seek views on draft legislation.

Follow-up on EITI recommendations:

The work plan outlines two workshops for different stakeholders on MWEITI recommendations, remedial action plan and implementation. The aim of these is to ensure that recommendations contained in the EITI Report are followed through. The work plan indeed refers to a “remedial action plan” but does not outline how this plan is produced and by whom. The design and printing of the plan is included in the work plan.

Costings and funding sources:

The activities included in the work plan are fully costed, and the attached budget mostly follows the work plan. However, the two are not fully consistent. For example, the work plan includes training for the media on EITI reporting, but this is not included in the budget. The same applies, for instance, to the training on mainstreaming EITI disclosures and stakeholder consultations related to the draft MWEITI Bill. As a result, the grand total of the budget is lower than that of the work plan. It is not clear, whether funding has been secured for the lines included in the budget.

The budget also includes a substantial objective that is not mentioned in the work plan: “Lobby and facilitate the setting up of MWEITI as an autonomous secretariat in Malawi in the national budget with its own government funding vote.”

## Stakeholder views

Based on stakeholder consultations, it appears that the work plan was drafted by the national secretariat and then discussed and approved by the MSG. Some MSG members noted that they had shared the draft work plan with their constituency. However, there is no indication that broader consultations took place. Overall, all consulted stakeholders appear to hold the view that they can influence the agenda of the EITI process, but most do not seem to be familiar with the work plan.

---

<sup>59</sup> CSOs, government agencies, companies and legal professional bodies.

## Initial assessment

The International Secretariat's initial assessment is that Malawi has made meaningful progress towards meeting this requirement. The work plan's objectives and activities are linked to national priorities and EITI Requirements, as well as to following up on recommendations from EITI reporting. Activities also reflect objectives and activities agreed by the MSG in the 2018-2020 MWEITI strategy, the Communications and Engagement Strategy and the Open Data Policy.

However, the work plan does not appear to be a functioning planning tool for the MSG. The link between objectives and activities is not clear, and the plan is unrealistic considering available resources. Funding sources have not been indicated for most activities. While the 2018 work plan is available upon request from the national secretariat and has been circulated to MSG members, it has not been published online or made otherwise widely available.

In accordance with Requirement 1.5, Malawi should ensure that the work plan is based on consultations with stakeholders beyond MSG members, that sources of funding are identified for the activities and that the work plan is made widely available to the public. The MSG should use the work plan as a tool for discussing, identifying and addressing challenges and ambitions related to the scope of EITI reporting.

When drafting the 2019 work plan, the MSG may wish to revisit the number of activities to ensure that the work plan is realistic and that activities deemed priorities by the MSG are funded and implemented within the decided timeline. Due to funding challenges, Malawi EITI would benefit from a work plan that includes different scenarios depending on available resources.

Breaking down the outputs would improve the measurability of activities and help stakeholders understand, for example, when an outreach event in a certain location is expected to take place. Topics that are currently covered under activities, such as mainstreaming disclosures and beneficial ownership transparency, could be reflected on the level of objectives or outcomes.

**Table 1: Summary initial assessment table: MSG oversight**

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions (to be completed for 'required' provisions)
Government oversight of the EITI process (#1.1)	The government is fully engaged, and agencies are cooperating to address recommendations from reporting and EITI Requirements.	Satisfactory progress
Company engagement (#1.2)	Companies participate actively in the MSG's work, and the Chamber of Mines and Energy effectively engages with its members on EITI issues. However, companies that are not members of the chamber	Meaningful progress

	have limited opportunities to participate. In addition, the level of consultations within the constituency are called into question by the lack of adherence to data quality assurances agreed by the constituency's own MSG representatives (see requirement 4.9).	
Civil society engagement (#1.3)	Civil society is an active stakeholder in the process and can fully engage. CSOs support the EITI, use it to promote reforms and produce analysis of the sector. Networks that enable coordination have been successfully formed.	Satisfactory progress
MSG governance and functioning (#1.4)	The MSG functions in an equitable and effective manner, and the ToR is followed. Constituencies are adequately represented. The nomination process of CSO members was free and transparent.	Satisfactory progress
Work plan (#1.5)	The work plan is linked to priorities and includes relevant activities, but the level of stakeholder consultation remains unclear and funding has not been identified for most activities. The plan has not been widely available to the public.	Meaningful progress
<p>Secretariat's suggested corrective actions:</p> <ul style="list-style-type: none"> <li>• In order to meet Requirement 1.2, the company constituency should seek to extend the membership of the Chamber of Mines or find other ways to ensure that the broader industry constituency is fully engaged and that all extractive companies have a channel to participate.</li> <li>•</li> <li>• In accordance with Requirement 1.5, Malawi should ensure that the work plan is based on consultations with stakeholders beyond MSG members, that sources of funding are identified for the activities and that the work plan is made widely available to the public. The MSG should use the work plan as a tool for discussing, identifying and addressing challenges and ambitions related to the scope of EITI reporting.</li> </ul> <p>Secretariat's recommendations:</p> <ul style="list-style-type: none"> <li>• When drafting the 2019 work plan, the MSG may wish to revisit the number of activities to ensure that the work plan is realistic and that activities deemed priorities by the MSG are funded and implemented within the decided timeline.</li> </ul>		

- The International Secretariat recommends that the government proceeds with the plan to institutionalise the national secretariat and channels regular funding to EITI implementation to improve the sustainability of the process, while seeking ways to ensure that implementation is proportionate and cost effective.
- To strengthen implementation, the EITI Champion is encouraged to engage regularly with the MSG and support it in ensuring the government agencies address recommendations from EITI reporting.
- The government is encouraged to ensure both in policy and practice that issues related to natural resource governance can continue to be freely debated ahead of the 2019 general and presidential elections.
- Companies are encouraged to actively engage in developing an approach to reporting that facilitates the submission of data and assurances in a timely manner and to ensure that all material companies comply with the assurances agreed by the MSG (*see Requirement 4.9*).
- To strengthen implementation, all constituencies are encouraged to establish a clear procedure for consulting the broader constituency in a systematic manner. Constituencies are recommended to ensure that the communications and consultations reach all CSOs, companies and government agencies that have a stake and interest in EITI implementation.

## Part II – EITI Disclosures

### 2. Award of contracts and licenses

This section provides details on the implementation of the EITI requirements related to the legal framework for the extractive sector, licensing activities, contracts, beneficial ownership and state participation.

#### Legal framework (#2.1)

##### Documentation of progress

*Legal framework:* A searchable repository of Malawi's laws and regulations, including other legal documents, is available through a third-party source online.<sup>60</sup> The 2015-16 EITI Report describes the legal framework for mining, including a list and summary of the regulations for the Mines and Minerals Act (pp.23-24), and for oil and gas (p.38).

*Government agencies' roles:* The roles of government agencies overseeing both mining oil and gas sector operations and activities are also comprehensively described (pp.22-23).

*Fiscal regime:* The fiscal regime for mining is described, including a description of the taxes and payment types and applicable rates (pp.25-26). The report describes certain tax exemptions for specific companies, based on development agreements.<sup>61</sup> The report confirms that the Taxation Act of 2006 is applicable to both the mining and petroleum sector and describes the terms associated with Production Sharing Agreements (PSAs) for oil and gas (p.36).

*The degree of fiscal devolution:* Devolution of fiscal responsibilities, i.e. between centralised and non-central government institutions, is described in very general terms (p.60). The section does not seem to specify whether there is any fiscal devolution of revenues from the extractive sectors and does not provide in-depth commentary on the distribution of fiscal responsibilities between national and sub-national levels. This seems uncontroversial as there are no extractive-specific responsibilities at a subnational level (please refer stakeholders' views below and under requirements 4.6 and 5.1).

*Reforms:* Ongoing reforms and efforts to improve sector governance are described for mining (p.24). The report's coverage of the legal framework for oil and gas explains that a petroleum policy and model production sharing agreement (PSA) are being drafted and that the Petroleum Exploration and Production Act is being reviewed (p.39).

*Recommendations:* The report recommends clarifying the basis for calculating royalties in the current legislation, to clearly specify whether royalties are imposed on production values or sales values (p.113). In addition, the report mentions legal developments during the period, including drafting a policy on

<sup>60</sup> Malawi Legal Information Institute (2018), 'Malawi Legal Information Institute: <https://malawilii.org/>', accessed on 29 October 2018. Available at: <https://malawilii.org/>

<sup>61</sup> Paladin Africa Limited and Nyala Mines Limited are exempt from Resource rent tax, VAT and Customs and excise tax.

Artisanal and Small-scale Mining (ASM), yet to be approved by the office of the President and cabinet).

### Stakeholder views

Several government officials consulted confirmed that license fees enter the department-wide accounts located within the RBM, which they do not have discretionary authority over without explicit disbursement requests. None of these are retained nor managed at a subnational level and are therefore not considered as devolution of fiscal responsibility.

According to stakeholders, more progress has been made on the new Mines and Minerals Bill since the publication of the MWEITI 2015-16 Report; the bill was approved by the Cabinet and will be presented to the Parliament during their next sitting, which is scheduled for November 2018. This was confirmed by all constituencies, although no written documentation was obtained.

### Initial assessment

The International Secretariat's initial assessment is that Malawi has made satisfactory progress in meeting this requirement. The 2015-16 report provides a description and overview of the existing legal and fiscal frameworks. This also encompasses on-going reforms and recommendations for further reforms.

To further strengthen the public's access to relevant laws, fiscal terms and the role of relevant government entities, Malawi is encouraged to ensure that laws and regulations, including brief summaries, are systematically disclosed by the relevant government agencies and/or through a centralised *government* portal.

## License allocations (#2.2)

### Documentation of progress

**Awards/transfers:** The 2015-16 EITI Report includes a description of different types of licenses used in the mining (p.27) and in oil and gas sectors (p.43). For the *mining* sector, the report confirms the award of two mining licenses in 2015-16, alongside the award of 434 small-scale licenses that are listed by type (pp.29-30). The full list of licenses awarded, including the names of the company receiving the license, dates of award and expiry, license type and number, is provided in Annex 9 (pp.136-146). The report confirms that no mining licenses were transferred during the period under review (p.29). None of the awarded licenses were given to material mining companies.

For *oil and gas* rights, the report identifies that no licenses or contracts were awarded nor transferred in the year under review. However, the report does note a change in participation for Surestream Petroleum Limited's holdings in the prospecting licenses for blocks 2 and 3 in 2015. The report describes a transfer of participating interests to Hamra Oil Holdings in 2015 after they disposed several of their participating interests in 2013. According to the table (p.38), Hamra Oil now holds a sole interest in the prospecting license for blocks 2 and 3. SacOil, the holder of block 1 prospecting rights, relinquished their claims to the

license in 2017.<sup>62</sup>

*Award/transfer process:* In *mining*, the report includes a description of the process of awarding mining licenses and contracts (pp.28-29). The report refers to requirements related to license transferability in mining, and highlights that the same requirements as for new awardees of licenses are used for mining rights transfers (p.29). The report notes that written consent from MNREM is required for all mining license transfers as well, as codified in the Mines and Minerals Act (1981).<sup>63</sup> There does not seem to be a full description of the procedures on government websites.

In *oil and gas*, the process of *awarding* oil and gas licenses and contracts are described (pp.40-42). It also mentions that the Minister may exempt an applicant from any requirements listed in regulations<sup>64</sup>, at his/her own discretion (p.40). The process for *transferring* rights is not provided, beyond noting that prior written consent of the MNREM is required (p.42). The report does not further describe the procedure of *how* companies gain ministerial consent for transfers, merely that it is needed.

*Technical and financial criteria:* For the *mining* sector, the report describes “administrative and technical criteria” required from applicants for mining and prospecting licenses (p.29). However, the criteria refer an application’s contents, rather than a description of *how* applications are assessed. The report therefore does not clarify whether there are other more precise technical and financial criteria used by the Mineral Licensing Committee when assessing companies’ eligibility for obtaining mineral rights. The report itself is inconsistent toward the existence of such criteria; at times suggesting that no technical nor financial criteria are assessed, while in other cases claiming that such criteria exists (section 3.2.9, pp.28-29). As highlighted previously the *technical criteria* seem to refer to contents of applications, rather than the assessors’ method for reviewing them. This was confirmed across all stakeholder constituencies and the IA.

In *oil and gas*, the report states that technical and financial criteria are not required by legislation (p. 40). Nonetheless the report does describe how technical and financial criteria were applied in previous bidding rounds including how applications were scored or ranked (pp.40-42). The transferability of petroleum rights is also noted on page 42, describing that the Petroleum (Registration and Transfer of Licences) Regulations, allows for the transfer of rights at the discretion of the Minister of Natural Resources, Energy and Mining.

A recommendation from the 2014-15 EITI Report noted that there did not appear to be any technical or financial criteria for assessing license applications either in mining or oil and gas (pp.108, 113). The implementation of these recommendations is underway and, although no additional information is provided in the reports, stakeholders provided updates indicating that technical and financial criteria are currently being developed. These will form part of future regulations by the DoM, upon enactment of the new Mines and Minerals Bill.

<sup>62</sup> The prospecting license covered the period of 2012 to December 2016 with the possibility of two separate three-year extensions.

<sup>63</sup> MalawiLii (2018), ‘Mines and Minerals Act 1981’, accessed on 29 October 2018. Available at: [https://malawilii.org/mw/consolidated\\_legislation/6101](https://malawilii.org/mw/consolidated_legislation/6101)

<sup>64</sup> MalawiLii (2018), ‘Petroleum (Exploration and Production) Act (1983)’, accessed on 29 October 2018. Available at: [https://malawilii.org/mw/consolidated\\_legislation/6102](https://malawilii.org/mw/consolidated_legislation/6102)



License awardee information: Detailed information about mining license recipients is provided in Annex 9 (p.136). The report confirms the lack of awards or transfers of oil and gas licenses during the period under review.

Non-trivial deviations: In *mining*, the report states that the IA did not identify any non-trivial deviations from the legal and regulatory framework governing mining license awards and transfers (p.30). The report does not claim that there were no deviations, merely that none were identified. Nor does it clarify how this conclusion was reached. However, when consulted the IA did clarify that they reviewed the application portfolio of the awarded mining licenses to reach this conclusion.

In *oil and gas*, the report notes that all exploration activities were suspended in November 2014 (p.36), following the launch of a review of the oil and gas licensing process prompted by concerns that two companies<sup>65</sup> having received oil and gas rights were owned by the same ultimate beneficial owners, in contravention of Malawian law.<sup>66</sup> The suspension was lifted in February 2016.

Comprehensiveness: The report lists all the 434 awarded licenses of 2015-16 by type (pp.29-30), with additional information on awardees in Annex 9 (p.136). In addition, the report includes Petroleum blocks in Malawi that have been divided into six distinct blocks, data for which are comprehensively covered by the report and the cadastre, irrespective of award or transfer year. The name of the rights holders of petroleum prospecting licenses (and PSAs) are listed (p.38), but the report only covers mineral rights awarded during the period under review.

Bidding process: Although no tenders or auctions were relevant for oil and gas during the fiscal year, the report does describe previous bidding rounds in very general terms (pp.35-36). No additional information was located from government-managed websites.

Commentary on efficiency: A recommendation from the previous EITI Report highlighted gaps in legislation and regulations regarding license and contract awards and transfers. A new recommendation encourages the MSG to comment on the effectiveness of licensing procedures, albeit only noting that there are multiple reforms underway (p.113). The Petroleum Exploration and Production Act of 1983 and Mines and Minerals Act of 1981 are both identified as undergoing review and revisions (p.39).

## Stakeholder views

Government representatives confirmed the *lack of technical and financial criteria* (or 'scorecard') for assessing mining applications, as did the IA. This is also the case for *transfers* of mining rights. Both are subject to assessments by a mining license committee which also requires ministerial approval. The only relevant criteria for mining applications are administrative. The criteria ensure the comprehensiveness of documentation for applications, not deliberating on the licensing committee's assessment of them. In the petroleum sector a 'scorecard' including weighting of issues is being used, and a similar procedure or suggestion is currently being drafted for the mining sector, as part of mitigating previous weaknesses uncovered by MWEITI reports. The recommendations and the progress are summarised the 2015-2016 MWEITI Report. As noted under requirement 2.3 below, there is also a work-stream to ensure public

<sup>65</sup> Rak Gas MB45 and Pacific Oil Ltd.

<sup>66</sup> MWEITI (2016), *Scoping study (Minerals, oil and gas, forestry)*, accessed in August 2018. Available at: [https://eiti.org/sites/default/files/documents/160120\\_mweiti\\_scoping\\_study\\_draft\\_final\\_report.pdf](https://eiti.org/sites/default/files/documents/160120_mweiti_scoping_study_draft_final_report.pdf)



accessibility to the precise procedures of license awards through the cadastre. It was also noted that such provisions are also considered in the draft Mines and Minerals Bill, which was reviewed by the cabinet on 25 October 2018.

Civil society representatives had confidence in the statements of the reports, claiming that there were no license allocations during the year under review. They were therefore also confident that there were no non-trivial deviations of awards or transfers for the period under review, as concluded by the IA. Still, certain members of the constituency did indicate that there are transfers underway but that the process is not transparent nor codified. Government representatives also confirmed that there are no formal codified procedures for transfers of oil and gas rights, other than ministerial approval and payment of capital gains tax ahead of approval. Still, the representatives claimed that a committee would perform a due diligence review of the new potential rights holder. Some of the representatives also claimed that new regulations are currently being drafted and are being reviewed by the Ministry of Justice and Constitutional Affairs (MoJ).

### Initial assessment

The International Secretariat's initial assessment is that Malawi has made satisfactory progress towards meeting this requirement. The 2015-16 Report highlights the awarded licenses by type of mineral rights and clarifies that no transfers of mining or petroleum rights occurred during the reporting period. Details of awardees are included in the annexes. The 2015-16 EITI Report clarifies the process for awards and, although not precisely clarifying the necessary process for license transfers, these are fully detailed in legislation beyond what is covered by the report. No evidence has been provided to suggest deviations from statutory procedures, although the precise method for reaching such a conclusion was not provided. Given the lack of oil and gas license awards in the period under review, the description of technical and financial criteria used, though limited, is deemed sufficient.

The government, through the DoM, may wish to explore options for systematically disclosing information in line with Requirement 2.2. For instance, the government could begin publishing application documents and assessments of them, contributing to a transparent and accountable system for awarding licenses and PSAs through their mining cadastre system. Malawi may also wish to include a description or guide on how to assess whether statutory procedures are followed during license awards and transfers.

## License registers (#2.3)

### Documentation of progress

*Public Cadastre/register*: The 2015-16 EITI Report does not itself list all material companies' licenses but refers to Malawi's centralised Mining Cadastre Portal<sup>67</sup>. The portal contains all licenses held by both material and non-material companies and is hosted by Trimble Landfolio (formerly known as FlexiCadastre). The report describes the types of information available on the portal, with specific hyperlinks to each section.

During this initial assessment, the International Secretariat undertook spot checks on a random sample of

---

<sup>67</sup> Trimble Landfolio (2018), *Malawi Mining Cadastre Portal*, accessed August 2018. Available at: <http://portals.flexicadastre.com/malawi/>

licenses held by a selection of material companies (see Appendix F on page 109). The review of information from the online cadastre for this selection of licenses indicates that all information listed under Requirement 2.3.b is publicly-accessible.

License-holder names: The cadastre associates all licenses with licensee names, including partner interests in licenses held by a consortium.

License coordinates: The cadastre does not explicitly provide the precise license coordinates. However, the cadastre does offer a map user interface that allows zoom-in to 1:5,000.

Dates: Mining license information includes all required aspects apart from dates of application. Petroleum contracts in the cadastre do not include dates of application, award or expiry.

Commodity: The mining cadastre does include the relevant commodities of each mining license, although petroleum rights are only associated with oil in the cadastre. The publicly available PSAs between the Government of Malawi (GoM) and the material companies<sup>68</sup> confirms that natural gas (incl. associated gases) are included in the PSAs, meaning both oil and gas are covered by exploration licenses.

Licenses held by non-material companies: The review detailed of the mining cadastre as indicated above suggests it is comprehensive and up to date. No evidence suggests that this is not the case for non-material companies.

## Stakeholder views

Government officials highlighted the existence of non-public modules to the mining cadastre, which are in the process of being updated and made readily available to the public. Other government representatives confirmed the existence of non-public modules, while describing some of them; the precise license coordinates of mining licenses, inclusion of dates of applications, and a functionality that allows for cadastre-users to trace the stages of mining applications. Government representatives also claimed that the above-mentioned modules and their contents are accessible to any member of the public, through physical visitation to the DoM and requesting the relevant information. Civil society representatives could confirm these claims with specific examples, as license information are considered public documents. Although, there is still a concern that this access may not be awarded to citizens less aware of their rights. A barrier of access to the information was also highlighted by CSOs, as the information is not available at the district level.

In addition, government representatives claimed the forestry cadastre will be updated, at the cost of USD 150,000, approved by the Minister of Finance.

## Initial assessment

The International Secretariat's initial assessment is that Malawi has made satisfactory progress towards meeting this requirement. The 2015-16 EITI Report references an external license registry, systematically

---

<sup>68</sup> Natural Resource Governance Institute (2018), *ResourceContracts.org: RAK Gas MB45 Limited, Block 5 PSA, 2014*. Accessed September 2018. Available at: <https://www.resourcecontracts.org/contract/ocds-591adf-4853835578/view#/text>

disclosed through the Department of Mines' cadastre portal. Although coordinates are not explicitly detailed per individual license, the contracted areas are visible through the cadastre system to a scale of 1:5,000. Dates of applications are also not always visible through the cadastre system. However, as government and civil society constituencies both confirm access of such information through the DoM, this information can still be deemed publicly accessible.

The Government of Malawi is encouraged to further develop their cadastre systems, to include precise coordinates, the dates of applications, awards and expiries. Further information could also be included, such as license specific payments, and the potential for greater access through customised downloads in open data formats.

## Contract disclosures (#2.4)

### Documentation of progress

***Government policy:*** There is no evidence in the report that the Government of Malawi has an explicit policy on contract transparency within extractive industries. The 2015-16 EITI Report describes the key provisions and regulations which relate to contract disclosure, noting that there is no explicit government policy preventing disclosure of agreements. Also, although the Access to Information Act of 2017 should ensure access to the existing contracts in Malawi (p.30), stakeholders claimed that the law is not operationalised yet, which means that non-compliant government agencies cannot be held accountable. Still, as evident below, implementation suggests a pro-disclosure interpretation of relevant laws and regulations.

***Actual practice:*** At the time of writing, evidence suggests that all contracts are disclosed in Malawi. Although not published by government, a blog written by a CSO representative<sup>69</sup> claims government representatives clarified that contracts were already available upon request. The blog goes on to describe how CSOs worked through the MWEITI MSG to ensure that contracts are disclosed in Malawi. The statements have also been confirmed through MSG meeting minutes.<sup>70</sup> The report does include an overview of available contracts and a list of where these can be accessed is provided (p.31). The list in the report only mentions two concession agreements associated with the operations of Nyala Mines Ltd and Paladin (Africa) Ltd and provides a link to the third-party website, which publishes the contracts.<sup>71</sup> The same contracts are also published on the MWEITI website.<sup>72</sup> An additional three contracts are published on ResourceContracts.org, including the PSAs related to Rak Gas MB45 Limited's block 4<sup>73</sup> and 5<sup>74</sup>, and the

<sup>69</sup> Rachel Etter-Phoya (2018), *Malawi's journey to full contract transparency*. Accessed September 2018. Available at: <https://eiti.org/blog/malawis-journey-to-full-contract-transparency>

<sup>70</sup> MWEITI (2016), *MWEITI MSG Meeting minutes for 7<sup>th</sup> Ordinary Meeting of the MWEITI MSG, 29 April 2016*. MWEITI (2017), *MWEITI MSG Meeting minutes for 9<sup>th</sup> Ordinary Meeting of the MWEITI MSG, 29 July 2016*. Unpublished, provided by MWEITI Secretariat.

<sup>71</sup> Natural Resource Governance Institute (2018), *Resource Contracts: Malawi*, accessed August 2018. Available at: <https://resourcecontracts.org/search?q=&country%5B%5D=mw>

<sup>72</sup> MWEITI (2018), *Contracts*, accessed August 2018. Available at: <http://mweiti.gov.mw/resources/contracts/>

<sup>73</sup> Natural Resource Governance Institute (2018), *Resource Contracts: Rak Gas MB45 Ltd Block 4 PSA*, accessed August 2018. Available at: <https://resourcecontracts.org/contract/ocds-591adf-6422560237/view#/pdf>

<sup>74</sup> Natural Resource Governance Institute (2018), *Resource Contracts: Rak Gas MB45 Ltd Block 5 PSA*, accessed

PSA of Pacific Oil.<sup>75</sup>

**Accessibility:** The report makes clear that Malawi's mining contracts are made available on ResourceContracts.org. Although not explicitly mentioning petroleum contracts, these are also available through the portal. Stakeholders from all constituencies suggest that the published PSAs and concession agreements account for all contracts between GoM and extractive companies.

### Stakeholder views

Government representatives clarified that there is no government policy on contract disclosure, apart from a public statement made by relevant government officials. The statements cited a press release of PWYP Malawi as evidence.<sup>76</sup> Although this statement has formed the basis for pursuing an implementation of contract transparency and publication, we were unable to retrieve unequivocal evidence from the GoM. The government, civil society, and industry members of the MSG confirmed the comprehensiveness of mining contract disclosures, which encompass the only two mining agreements in existence. The same confirmations were made towards petroleum sector contracts, including any amendments. No concerns were identified, for any other mining licenses departing from the standards licensing agreements in the sector.

Lastly, representatives also highlighted a current negotiation between the Malawian government and Globe Metals and Mining Africa Limited, regarding the Kanyika Niobium Mine, as a test of the government's resolve to publish government agreements with mining companies. These mediations are expected to be finalised in late 2018.<sup>77</sup> Several company representatives also highlighted other agreements being negotiated or commencing negotiation shortly. Companies widely held the view that the new legislation (Mines and Minerals Bill) will render development agreements unnecessary and therefore several are awaiting further legislative development before moving beyond exploration stages.

### Initial assessment

The International Secretariat's initial assessment is that Malawi has made satisfactory progress towards meeting this requirement. The 2015-16 EITI Report describes the key provisions and regulations which may relate to contract disclosure, noting that there is no explicit government policy which prevents disclosure of agreements. Although the government itself does not publish the precise agreements, the report and MSG meeting minutes confirm that Malawi relies on the comprehensive third-party disclosures through ResourceContracts.org, and the concession agreements for two significant mining operations are disclosed on the MWEITI website.

To help ensure the continued transparency and publication of mining and petroleum contracts, as

---

August 2018. Available at: <https://resourcecontracts.org/contract/ocds-591adf-4853835578/view#/pdf>

<sup>75</sup> Natural Resource Governance Institute (2018), *Resource Contracts: Pacific Oil Ltd Block 6 PSA*, accessed August 2018. Available at: <https://resourcecontracts.org/contract/ocds-591adf-9981564942/view#/pdf>

<sup>76</sup> PWYP Malawi (2016), 'Five Unanswered Questions on Exploration of Oil & Gas in Malawi's Lake and Land', accessed on 29 October 2018. Available at: <https://mininginmalawi.files.wordpress.com/2016/02/2016-02-pwyp-press-release-on-oil-and-gas.pdf>

<sup>77</sup> Nyasa Times (3 September 2018), 'Kanyika and Globe Metals compensation case, mediation starts on good note', accessed on 24 October 2018. Available at: <https://www.nyasatimes.com/kanyika-and-globe-metals-compensation-case-mediation-starts-on-good-note/>

encouraged by EITI Requirement 2.4, the Government of Malawi may wish to engage the MWEITI MSG to develop a clear and explicit policy towards contract transparency in its extractive sector. This policy may also clarify whether the agreements and contracts should be disclosed by the government, on public websites.

## Beneficial ownership disclosure (#2.5)

### Documentation of progress

*Government policy:* The 2015-16 EITI Report documents the government's *lack of policy* on disclosures of beneficial owners (pp.64-66). The definition of controlling or beneficial owner has not been treated in the Companies Act of 2013 but a definition *is* provided in the recent Financial Crimes Act of 2017. The report also specifies that no rules exists to compel government officials to disclose their economic interests, incomes or assets from the extractives sector.

A Beneficial Ownership Roadmap is available on MWEITI's website.<sup>78</sup> It defines 5% of direct or indirect ownership as beneficial ownership. The MSG have also agreed upon a definition on Beneficial Ownership and Politically Exposed Person (p.66). When consulted, stakeholders confirmed that drafting of regulations (and a potential amendment to Malawi's Companies Act (2017)) is currently underway to ensure companies disclose their beneficial owners to the national company register. However, as the registry currently exists in a hybrid form of electronic and manual registration, additional efforts are needed for ensuring systematic disclosure of beneficial owners by 2020. The roadmap also distinguishes between short-term solutions such as reporting in MWEITI reports, versus long-term solutions such as developing sector-wide or national registries for capturing BO data.

*Actual practice:* No beneficial ownership disclosures could be located directly on government websites. Beneficial ownership data is included in the MWEITI 2015-16 Report in annex 15 (pp.190-191). The annex covers 12 of the 19 companies in the scope of reconciliation, although only eight of these seemingly name their beneficial owners. Other sections covering legal ownership (see below) clarifies that Paladin Africa Ltd and Sovereign Services Limited are listed on stock exchanges and are therefore not required to disclose their beneficial owners. It is still not clear why remaining companies are not listed in the table. Master Stone Breakers lists six separate legal owners in annex 4 (pp.122-123), seemingly individuals which may be its beneficial owners. The remaining four companies did not report their *legal* owners.<sup>79</sup> As noted below, this adds to a lack of clarity in reporting on ownership in the report.

The disclosures include the identity of the beneficial owner of each company, their nationality as well as country of residence. The table continues to expand on the share of both ownership interests and voting shares including when the interest was acquired (when disclosed). However, much of the required information is not reported by the companies consistently, in terms of nationality, country of residence,

<sup>78</sup> EITI (2016), *MWEITI Beneficial Ownership Disclosure Roadmap*, accessed August 2018. Available at: [http://mweiti.gov.mw/wp-content/uploads/2017/04/malawi\\_beneficial\\_ownership\\_disclosure\\_roadmap.pdf](http://mweiti.gov.mw/wp-content/uploads/2017/04/malawi_beneficial_ownership_disclosure_roadmap.pdf)

<sup>79</sup> Remaining companies include Kaziwiziwi Coal Mine Limited, M.A. Kharafi & Sons, Malawi University of Science and Technology, and Pamodzi Stone Mining Investments. The Independent Administrator provided additional information detailing the ownership of some of these companies after commencement of Validation, however the report itself does not present the same information.

votes and shares, as well as date of acquisition.

*Legal owners of material companies:* Legal ownership data is disclosed in Annex 4 (pp.122-123), including shareholder name, level of ownership and nationality of the owner(s). The disclosures are collected from the 19 companies included in the scope of reconciliation. Where quoted, the table indicates which stock exchange the company is listed on. If not quoted, precise owners are disclosed. Although the annex is named “Legal ownership” there is no distinction between legal and beneficial ownership in the information presented.

Some of the publicly listed companies included their stock symbols, but there is no link to the stock exchange filings where they are listed. Where the GoM is listed as the beneficial owner, the report does not specify which government entity holds the participating interest.

### Stakeholder views

Beneficial ownership information is of interest to representatives from all constituencies. Civil society and government wish to use the information to identify red flags and political connections, including enforcement of anti-money laundering provisions. Companies expressed a real need for publicly disclosing beneficial ownership to assist in due diligence exercises. Still, several stakeholders from companies and government cited a short deadline as problematic for companies to receive proper authorisation or sign off from management. This was also confirmed by the IA, clarifying that companies were subject to a two-week deadline, although in fact there were many informal extensions for specific companies.

The lack of government policy on beneficial ownership disclosures was confirmed by multiple government officials; explaining that there are no laws in place demanding such information, although the definition is available in the Financial Crimes Act (2017).<sup>80</sup> Stakeholders from government claim that they are currently drafting procedures in regulation<sup>81</sup>, which uses the definitions codified in Malawi’s beneficial ownership roadmap.

The same stakeholders also highlighted two main challenges; one legal and one implementation challenge. First, there are concerns that the procedures will not have basis in legal requirements and will not ensure sustainability of such disclosures, and therefore amendments to the Company’s Act<sup>82</sup> must be revisited, for tangible, long-term sustainability of such reporting. Another issue is the technical capability of government agencies to take on this burden of reporting. The Registrar General lacks a fully functional technical solution for automated reporting to the registry. This operational challenge therefore creates a significant barrier to systematically disclosing beneficial ownership data, unless it is limited to companies in the scope of the reconciliation exercise.

---

<sup>80</sup> MalawiLii (2018), ‘Financial Crimes Act, 2017’, accessed 26 October 2018. Available at: <https://malawilii.org/mw/legislation/act/2017/14>

<sup>81</sup> The draft regulations were shared with the International Secretariat for review and confirmation.

<sup>82</sup> MalawiLii (2018), ‘Companies Act, 1984’, accessed on 26 October 2018. Available at: [https://malawilii.org/mw/consolidated\\_legislation/4603](https://malawilii.org/mw/consolidated_legislation/4603)



## Initial assessment

Implementing countries are not yet required to address beneficial ownership and progress with this requirement does not yet have any implications for a country's EITI status. It is encouraging that MWEITI has taken steps to clarify the government's policy on beneficial ownership disclosure for extractives companies, including a description of supporting legislation. MWEITI's beneficial ownership roadmap is described and the report discloses beneficial owners for a minority of material companies. The *legal* owners of each material company are included in the report, with reference to securities exchanges where several material companies are listed, albeit without (direct or indirect) hyperlinks to specific filings.

In preparation of the enforcement of Requirement 2.5, the government of Malawi is encouraged to develop an explicit policy and legal framework on beneficial ownership disclosure. Furthermore, MWEITI is encouraged to ensure that beneficial ownership information is disclosed by all material companies operating in Malawi. Lastly, while the inclusion of a low threshold is commendable, it may prove challenging to implement as it may capture non-essential/-controlling owners of companies.

## State participation (#2.6)

### Documentation of progress

The 2015-16 Report clearly states and documents that there are no extractive sector state-owned enterprises (SOEs) in Malawi (p.31).<sup>83</sup> The MSG have not agreed an explicit definition of SOEs. The report explains that the government holds *minority* shares in two mining companies, but there were no dividends paid for the period under review (p.31). Details on the tax rebates provided by the government in exchange for the shares in the two mining companies are provided, with reference to the contracts (p.31) and the terms attached to state equity in each. The report also asserts that there were no changes in levels of government ownership. No government entities reported any loans or loan guarantees towards private or public companies (p.88), as confirmed by stakeholders (see below).

Upon investigation the International Secretariat came across the National Oil Company of Malawi (NOCMA).<sup>84</sup> The company, which was established in 2010, was the product of Malawi's Energy Policy of 2003<sup>85</sup> to function as a downstream actor in importation and fuel storage, including in promoting exploration and production activities in the upstream petroleum sector through direct participation. However, as confirmed by the regulated entities list of Malawi Energy Regulatory Authority from 2014<sup>86</sup>,

---

<sup>83</sup> MWEITI (2018), *MWEITI Report for 2015-2016 Financial Year*, accessed August 2018. Available at: <https://eiti.org/document/malawi-eiti-report-20152016>

<sup>84</sup> NOCMA (2018), 'National Oil Company of Malawi Limited', accessed 31 October 2018. Available at: <http://www.nocma.mw/>

<sup>85</sup> Department of Energy Affairs (2018), 'Malawi Energy Policy, 2003', accessed 31 October 2018. Available at: <https://www.energy.gov.mw/index.php/resource-centre/documents/policies-strategies?download=9:malawi-energy-policy-2003>

<sup>86</sup> Malawi Energy Authority (2018), 'Regulated entities as of November 2014', accessed 31 October 2018. Available at: <https://www.energy.gov.mw/index.php/resource-centre/documents/policies-strategies?download=9:malawi-energy-policy-2003>



NOCMA did not obtain any license beyond importation. Also, according to more recent energy policies from 2015<sup>87</sup> and 2018<sup>88</sup>, the activities associated with promoting upstream petroleum sector operation were not operationalised and in fact the DoM is designated as the responsible government entity. This could be confirmed by reviewing the three PSAs in Malawi, none of which refer to NOCMA nor any other public company. Also, according to news outlets, there is a growing controversy concerning the government's sale of NOCMA to Gunvor Group Limited.<sup>89,90</sup> The MWEITI 2015-16 Report does not mention NOCMA at all in any of its sections. It is not clear why Malawi EITI nor any of the stakeholders have considered providing further clarity regarding NOCMA through EITI reporting.

### Stakeholder views

When asked, government representatives provided a clear explanation, which they claimed guarantees the non-applicability of state participation in extractives sector. As all government departments report their interests, stakes and equity positions in any company to the RBM, public or private, none were identified beyond the 10-15% free carried interest that the government holds in the mining operations highlighted in the report. Although the IA was hesitant to guarantee the lack of SOEs in the sector<sup>91</sup>, the officials also cited the mandatory reporting to MoF and RBM on government and public corporations' liabilities, as a certain indication of existence of loans and/or loan guarantees toward extractive sector companies. Due to mandatory controls of capital accounts in Malawi, no companies have registered any liabilities to any foreign company, nor their subsidiaries in Malawi.

### Initial assessment

The International Secretariat's initial assessment is that this requirement is not applicable in Malawi. The 2015-16 EITI Report adequately demonstrates that state participation is through minority shares in two operations, which are not associated with any material payments to government. Ideally, the EITI Report should also have addressed the existence and operations of the National Oil Company of Malawi (NOCMA) in their justification. However, based on other publicly available data it is deemed highly unlikely that NOCMA was relevant during the period under review. Therefore, there are no state-owned enterprises in Malawi according to the definition provided under Requirement 2.6.a.

To ensure greater clarity on state participation in Malawi's extractive sector, the MSG is encouraged to agree a precise definition of what equity-levels constitute a state-owned enterprise in the Malawian context. The MSG may also wish to further clarify why the National Oil Company of Malawi does not constitute a state-owned enterprise in Malawi's upstream extractive sector.

---

<sup>87</sup> Department of Energy Affairs (2018), 'Malawi Energy Policy, 2015', accessed 31 October 2018. Available at: <https://www.energy.gov.mw/index.php/resource-centre/documents/policies-strategies?download=2:policies-and-strategies>

<sup>88</sup> Department of Energy Affairs (2018), 'Malawi Energy Policy, 2018', accessed 31 October 2018. Available at: <https://www.energy.gov.mw/index.php/resource-centre/documents/policies-strategies?download=15:energy-policy>

<sup>89</sup> Malawi24 (13 October 2018), 'Government illegally sells Malawi National oil Company', accessed 31 October 2018. Available at: <https://malawi24.com/2018/10/13/govt-illegally-sells-malawi-national-oil-company/>

<sup>90</sup> Malawi24 (27 October 2018), 'Foreign firms plotting takeover of Malawi fuel supply', accessed 31 October 2018. Available at: <https://malawi24.com/2018/10/27/foreign-firms-plotting-takeover-of-malawi-fuel-supply/>

<sup>91</sup> The IA explained that their reporting of "no SOEs" was on the basis of attested reporting templates from the DoM and MoF.

**Table 2: Summary initial assessment table: Award of contracts and licenses**

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Legal framework (#2.1)	MWEITI provides a description and overview of the existing legal and fiscal frameworks. This also encompasses on-going reforms and recommendations for further reforms.	Satisfactory progress
License allocations (#2.2)	MWEITI presents license awards by type of mineral rights and clarifies that no transfers of rights occurred during the reporting period. Awardees are included in the annexes. The process for awards and transfers, including how these are fully detailed in legislation beyond what is covered by the report. No evidence has been provided suggesting there are deviations from statutory procedures. Descriptions of technical and financial criteria used, though limited, is deemed sufficient.	Satisfactory progress
License registers (#2.3)	MWEITI references an external license registry, systematically disclosed through the Department of Mines' cadastre portal. Although coordinates are not explicitly detailed per individual license, the contracted areas are visible through the cadastre system to a scale of 1:5,000. Dates of applications are also not always visible through the cadastre system. However, as government and civil society constituencies both confirm access of such information through the DoM, this information can still be deemed publicly accessible.	Satisfactory progress
Contract disclosures (#2.4)	The 2015-16 EITI Report describes the key provisions and regulations which may relate to contract disclosure, noting that there is no explicit government policy which prevents disclosure of agreements. Although the government itself does not provide the precise agreements, the report and MSG meeting minutes confirm that Malawi relies on the comprehensive third-party disclosures through ResourceContracts.org, and the concession agreements for two significant mining operations are disclosed on the MWEITI website.	Satisfactory progress
Beneficial ownership disclosure (#2.5)	It is encouraging that MWEITI has taken steps to clarify the government's policy on beneficial ownership disclosure for extractives companies,	

	including a description of supporting legislation. MWEITI's beneficial ownership roadmap is described and the report discloses beneficial owners for a minority of material companies. The <i>legal</i> owners of each material company are included in the report, with reference to securities exchanges where several material companies are listed, albeit without (direct or indirect) hyperlinks to specific filings.	
State-participation (#2.6)	The 2015-16 EITI Report adequately demonstrates that state participation is through minority shares in two operations, which are not associated with any material payments to government. Ideally, the EITI Report should also have addressed the existence and operations of the National Oil Company of Malawi (NOCMA) in their justification. However, based on other publicly available data it is deemed highly unlikely that NOCMA was relevant during the period under review. Therefore, there are no state-owned enterprises in Malawi according to the definition provided under Requirement 2.6.a.	Not applicable
<p>Secretariat's suggested corrective actions:</p> <ul style="list-style-type: none"> <li>• None</li> </ul> <p>Secretariat's recommendations:</p> <ul style="list-style-type: none"> <li>• To further strengthen the public's access to relevant laws, fiscal terms and the role of relevant government entities, Malawi is encouraged to ensure that laws and regulations, including brief summaries, are systematically disclosed by the relevant government agencies and/or through a centralised <i>government</i> portal.</li> <li>• The government, through the DoM, may wish to explore options for systematically disclosing information in line with Requirement 2.2. For instance, the government could begin publishing application documents and assessments of them, contributing to a transparent and accountable system for awarding licenses and PSAs through their mining cadastre system. Malawi may also wish to include a description or guide for how to assess whether statutory procedures are followed during license awards and transfers.</li> <li>• The Government of Malawi is encouraged to further develop their cadastre systems, to include precise coordinates, the dates of applications, awards and expiries. Further information could also be included, such as license specific payments, and the potential for greater access through customised downloads in open data formats.</li> <li>• To help ensure the continued transparency and publication of mining and petroleum contracts, as encouraged by EITI Requirement 2.4, the Government of Malawi may wish to engage the MWEITI MSG to develop a clear and explicit policy towards contract transparency in its extractive sector. This policy may also clarify whether the agreements and contracts should be disclosed by the government, on public websites.</li> <li>• In preparation of the enforcement of Requirement 2.5, the government of Malawi is</li> </ul>		

encouraged to develop an explicit policy on beneficial ownership disclosure. Furthermore, MWEITI are encouraged to ensure companies disclose further beneficial ownership information, for all material companies operating in Malawi. Lastly, while the inclusion of a low threshold is commendable, it may prove challenging to implement as it may capture non-essential/-controlling owners of companies.

- To ensure greater clarity on state participation in Malawi's extractive sector, the MSG is encouraged to agree a precise definition of what equity-levels constitute a state-owned enterprise in the Malawian context. The MSG may also wish to further clarify why the National Oil Company of Malawi does not constitute a state-owned enterprise in Malawi's upstream extractive sector.

### 3. Monitoring and production

This section provides details on the implementation of the EITI requirements related to exploration, production and exports.

#### Overview of the extractive sector, including exploration activities (#3.1)

##### Documentation of progress

The 2015-16 EITI Report provides an overview of the extractive industries (pp.18-19), including a list of the main types of minerals, the locations of deposits and estimated reserves. The report also provides a list of prospective projects, including the companies, minerals to be mined, the sites and the status of the projects. For oil and gas, the report provides an overview of the sector, including a brief history of exploration activities and a map of the oil and gas blocks (p.35).

##### Stakeholder views

There were no comments nor concerns expressed by stakeholders toward this requirement.

##### Initial assessment

The International Secretariat's initial assessment is that Malawi has made satisfactory progress towards meeting this requirement. The 2015-16 Report provides a current overview of the extractive industries, and lists the main type of mineral reserves, prospective projects, and a brief history of the sectors in Malawi.

The Government of Malawi may wish to ensure that an overview of the extractive sector and exploration activities are systematically disclosed by the government, possibly as part of government websites related to the sector. Such disclosures would ideally include the same information as in the MWEITI Report, but to be updated centrally by the relevant government agencies themselves. This could serve to inform annual economic reporting as well as attracting investors.

#### Production data (#3.2)

##### Documentation of progress

*Production volumes and values:* The petroleum sector is still in exploration stage and has therefore not commenced production (pp.35-36). For mining, production volumes and values are reported by nine companies for coal, iron, phosphate rocks and rock aggregates, with numbers for two companies completed by the DoM for limestone (p.10). Data is also provided through the Annual Economic Report (AER) (p.21). The report emphasises changes in production level (p.21) explaining that differences in numbers (particularly for phosphate) are due to miscalculations of the AER. Recommendations for dealing with these issues are listed on page 92.

*Location:* The report does not disclose production volumes and values by location, other than rough estimates through description of commodities (p.19-20). However, the location of production is easily attainable as all the companies were found to report production per individual license. Companies were

therefore reporting production by project, if making use of the definition of the EU Accounting and Transparency Directives.

### Stakeholder views

Civil society stakeholders noted that there has been a significant improvement in production data, and its granularity, from the first to the second MWEITI reports. Although there are differences in the data between sources, no concerns were raised towards their reliability. Companies also indicated that they report to the DoM through quarterly reports, which may be made public by the DoM.

### Initial assessment

The International Secretariat's initial assessment is that Malawi has made satisfactory progress in meeting this requirement. The report includes all the necessary data for satisfying the requirement of the EITI Standard, including production volumes and values for each revenue, supplementing data from different sources when not available or when questions arise regarding reliability.

In the Secretariat's view, Malawi have made efforts to go beyond the minimum requirements by highlighting differences of numbers between different reporting structures, clarifying which data is more reliable. The report then goes on to provide recommendations for how to improve production statistics. Lastly, the MWEITI report goes beyond the requirements in disaggregation, as production is not only disaggregated by commodity, but also by company and individual license, implicitly addressing the issue of location too.

## Export data (#3.3)

### Documentation of progress

*Export volumes and values:* Exports are not applicable for the petroleum sector, as it is still in exploration stage. For mining, the report discloses export volumes and values for each commodity (p.34). The report distinguishes between coal, lime, dimension stones, rock aggregates, gemstones, soil samples and uranium cake. Data on volumes relies mainly on the AER 2017, while export values are sourced from three different government sources (the AER, the MRA and the National Statistical Office). Data by company is provided on page 88. No explanation is provided for how these estimates are combined to ensure consistency in methodology. The report does comment that MRA export figures are significantly lower than AER data, without any further deliberation.

*Location:* Export data is disaggregated by company. Therefore, export data is implicitly (partially) by location, for single-asset companies.<sup>92</sup>

### Stakeholder views

Certain government stakeholders highlighted the usefulness of the reports' export data, which enables cross-checking of data between MWEITI reported volumes and values, and data from other sources. Although the National Statistical Office was cited as the authority on official government statistics, data

---

<sup>92</sup> Single-asset companies refer to extractive companies which owns or operates a single extractive project.

on exports and production (including other data covered in the reports), are deemed instrumental for reviewing company filings through different systems. As an example, some of the differences in export data were not regarded as significant to government officials with intimate knowledge of sector-wide statistics. According to the other officials MRA often includes export data, as well as re-exports under the same commodities, which artificially inflate numbers reported. Some stakeholders also claimed that these discrepancies may occur due to data systems shutting down, at which time data is collected manually. These issues were welcomed for being highlighted in MWEITI reports.

### Initial assessment

The International Secretariat's initial assessment is that Malawi has made satisfactory progress in meeting this requirement. The MWEITI Report covers available data for export volumes and values for all commodities, combining various sources to ensure comprehensiveness. Differences in numbers are noted, although the methodology for ensuring comparability is not identified.

Malawi may wish to take the differences in data into account, ensuring that information is comparable by introducing data standards and commodity-classifications such as the Harmonised System (Commodity) Codes<sup>93</sup> or other classifications, and include such disclosures as part of the regular (and harmonised) publications of the National Statistical Office of Malawi.<sup>94</sup>

**Table 3: Summary initial assessment table: Monitoring and production**

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Overview of the extractive sector, including exploration activities (#3.1)	The 2015-16 Report provides a current overview of the extractive industries, and lists the main type of mineral reserves, prospective projects, and a brief history of the sectors in Malawi.	Satisfactory progress
Production data (#3.2)	The report includes all the necessary data for satisfying the requirement of the EITI Standard, including production volumes and values for each revenue, supplementing data from different sources when not available or when questions arise regarding reliability.  In the Secretariat's view, Malawi have made efforts to go beyond the minimum requirements by highlighting differences of numbers between different reporting	Beyond

<sup>93</sup> United Nations Statistics Division (2018), 'Harmonised Commodity Description and Coding Systems (HS)', accessed on 30 October 2018. Available at: <https://unstats.un.org/unsd/tradekb/Knowledgebase/50018/Harmonized-Commodity-Description-and-Coding-Systems-HS>

<sup>94</sup> National Statistical Office (2018), 'International Merchandise Trade Statistics', accessed on 30 October 2018. Available at: [http://www.nsomalawi.mw/index.php?option=com\\_content&view=article&id=158&Itemid=49](http://www.nsomalawi.mw/index.php?option=com_content&view=article&id=158&Itemid=49)



	structures, clarifying which data is more reliable. The report then goes on to provide recommendations for how to improve production statistics. Lastly, the MWEITI report goes beyond the requirements in disaggregation, as production is not only disaggregated by commodity, but also by company and individual license, implicitly addressing the issue of location too.	
Export data (#3.3)	The MWEITI Report covers available data for export volumes and values for all commodities, combining various sources to ensure comprehensiveness. Differences in numbers are noted, although the methodology for ensuring comparability is not identified.	Satisfactory progress
<p>Secretariat's suggested corrective actions:</p> <ul style="list-style-type: none"> <li>• None</li> </ul> <p>Secretariat's recommendations:</p> <ul style="list-style-type: none"> <li>• The Government of Malawi may wish to ensure that an overview of the extractive sector and exploration activities are systematically disclosed by the government, possibly as part of government websites related to the sector. Such disclosures would ideally include the same information as in the MWEITI Report, but to be updated centrally by the relevant government agencies themselves. This could serve to inform annual economic reporting as well as attracting investors.</li> <li>• Malawi may wish to take differences in export data into account, ensuring that information is comparable by introducing data standards and commodity-classifications such as the Harmonised System (Commodity) Codes or other classifications, and include such disclosures as part of the regular (and harmonised) publications of the National Statistical Office of Malawi.</li> </ul>		

## 4. Revenue collection

This section provides details on the implementation of the EITI requirements related to revenue transparency, including the comprehensiveness, quality and level of detail disclosed. It also considers compliance with the EITI Requirements related to procedures for producing EITI Reports.

### Materiality (#4.1)

#### Documentation of progress

***Materiality threshold for revenue streams:*** The report explains that the MSG agreed to set a materiality threshold of MWK 33 million<sup>95</sup>, or less than 1% of total revenues, to cover at least 90% of total revenues collected by the DoM and MRA during the reporting year (p.10). This corresponds to eight revenue streams as listed (p.68) and is confirmed by the scoping study.<sup>96</sup> In addition, total government revenues per revenue streams are listed in annex 13 (p.171).

The total universe of possible payments from mining, oil and gas sectors are listed diagrammatically (pp.62,63) in the EITI Report. The diagrams include several non-material revenue streams, implying that the following revenue streams were excluded<sup>97</sup>:

#### Excluded mining sector revenue streams

- Penalties
- Resource rent taxes

#### Excluded petroleum sector revenue streams

- Signature bonus
- Training fees

Dividends, not included above, were indeed identified in reporting templates, but have been excluded from other revenue tables seemingly without justification. However, as the International Secretariat was provided with the inception report, all these exclusions are justified as all these revenue streams amounted to zero.<sup>98</sup> The only exception is signature bonuses, which may be considered not applicable as there were no new awards in the petroleum sector during the period under review. In addition, MWEITI did attempt to capture any additional and significant payments that may have been made by companies as the MSG obliged companies to report any payment above MWK 5 million, labelled as 'other material payments' to MRA and DoM. Lastly, customs duty and excise taxes were reported in aggregate rather than as two distinct taxes, which is further discussed under EITI Requirement 4.7 on disaggregation of financial data.

<sup>95</sup> Corresponds to approximately USD 52,000 using the exchange rate of Malawi's summary data for the period under review, USD 1 = MWK 630.31. Accessed September 2018. Available at:

[https://eiti.org/sites/default/files/spreadsheets/2015-2016\\_malawi\\_summary\\_data\\_san.xlsx](https://eiti.org/sites/default/files/spreadsheets/2015-2016_malawi_summary_data_san.xlsx)

<sup>96</sup> EITI (2016), *MWEITI Scoping study: Minerals, Oil and Gas, Forestry*, accessed August 2018. Available at:

<https://eiti.org/document/malawi-eiti-scoping-study>

<sup>97</sup> The material revenue streams include corporate income tax, royalties, annual charges, non-resident taxes, PAYE, withholding taxes, fringe benefit tax, VAT, customs duty / excise taxes, dividends to governments as well as other significant payments to each of the government agencies.

<sup>98</sup> MWEITI (2018), 'Inception Report MWEITI for the Year Ended 30 June 2016', page 60. Unpublished but shared with the International Secretariat for this assessment.

Descriptions of material revenue streams: The report provides tables including thorough descriptions and definitions of revenue streams for both mining and the petroleum sector (pp.25-27,39).

Materiality threshold for companies: The materiality of companies is discussed in chapter 4.2.1 for the mining sector and 4.2.2 for oil companies and explains that the same materiality threshold was used for companies as for the revenue streams; i.e. total payments to government of MWK 33 million or more or 1.94% of total revenues from mining, oil and gas (p.171). The rationale was to ensure at least 90% coverage of company payments (pp.70-71).

Material companies: Based on this materiality threshold, it was estimated that roughly ten per cent of mining sector revenues and one per cent of petroleum sector revenues would be excluded based on company-selection. Sixteen mining and three oil and gas companies were identified as having made material payments to government (p.10). The report also explicitly mentions eight companies that were no longer considered material, although they reported in the previous EITI Report (2014-15).

Material company reporting: Of the material companies, all but three companies (Kaziwiziwi Mining Company Ltd, M.A. Kharafi & Sons, and Pamodzi Stone Mining (PSM) Investments) submitted reporting templates. The report provides an assessment of the materiality of payments from non-reporting companies, which accounted for MWK 68 million<sup>99</sup> or 4.0% of the total revenues reported by government for oil, gas and mining companies. These unilateral disclosures by government are listed per company and government entity in annex 7 (pp.127-134).

Material government entities: The report confirms that three government entities were considered material, namely the DoM, MRA, and the MoF (p.71). Of the total extractive sector revenue based on all government reporting templates (see government reporting below), mining and petroleum sector receipts by these agencies accounted for 29% of what is considered as total government revenues from all sectors, including forestry and mineral transports (p.14).

Government reporting: The report confirms that all government entities reported (p.12). MRA, DoM and MoF, reported in detail for the 29% of revenues as required for reconciliation. In addition, they also reported unilaterally for the remainder of non-material revenue streams and companies. The report notes that all government entities submitted their reporting templates (p.12). The report does not publish government agencies' reporting templates, rather the figures are presented in various sections of the report.

Discrepancies: Discrepancies are covered in the report's sections on reconciliation, section 5.1 and 5.2 (pp.72-82). We could not locate any materiality threshold for investigating discrepancies. Based on the reconciliation results, initial discrepancies were significant when compared to initially reported government revenues. Initial gross discrepancies amounted to MWK 8.75 billion, or 66% of government reported revenues. Post-reconciliation gross discrepancies were much lower, a mere MWK 118.4 million (p.78), or 7.66% of final government-reported revenues. These unresolved discrepancies are detailed in

---

<sup>99</sup> Corresponds to approximately USD 108,000 using the exchange rate of Malawi's summary data for the period under review, USD 1 = MWK 630.31. Accessed September 2018. Available at: [https://eiti.org/sites/default/files/spreadsheets/2015-2016\\_malawi\\_summary\\_data\\_san.xlsx](https://eiti.org/sites/default/files/spreadsheets/2015-2016_malawi_summary_data_san.xlsx)

section 5.3 of the report and are categorised by type of reason for discrepancies.

*Full government disclosure:* MWEITI covers full government disclosure disaggregated by revenue stream and highly comprehensive manner under section 6.2 (pp.85-87) and annex 13 (p.117). The report describes that government entities have reported revenues unilaterally for companies that were not included in the scope of reconciliation, with the results presented in annex 7 (p.127-134). However, resource rent taxes, penalties and signature bonuses were not disclosed in the final report, although included with a zero amount in the inception report as indicated previously. Lastly, the DoF, Ministry of Transport and Public Works (MoTPW), and Social Contributions (SC; not truly a government entity) reported unilaterally by petroleum and mining companies, in addition to the unilateral government disclosures for the private mining transportation and forestry sectors.

### Stakeholder views

Government stakeholders of the MSG clarified that EITI Reports are the most comprehensive assessments available for estimating government revenues arising from the extractive sector. Although hesitant to categorically guarantee the comprehensiveness of the revenue data provided, there was a clear indication that government officials consider the MWEITI reports as the authoritative estimates of such contributions to government revenues. They claim MWEITI is the only institution directly engaging all significant operators across these sectors. In addition, government and companies both exclaimed that excluded revenue streams were either not applicable during the period under review or amounted to zero. Industry representatives indicated that the reported numbers were comprehensive, and that no other significant payments could be omitted in reporting.

Some civil society members highlighted the lack of reporting by three companies as a cause of concern regarding the comprehensiveness of the government reported revenue data, as it could not be compared with government disclosures. Still the increase in reporting companies was also noted as significant, and other civil society members cited this as a cause for confidence in the comprehensiveness of revenue data. The same representatives noted that full company submission could not be guaranteed unless there are mandatory compliance rules, with associated sanctions for non-compliance. They all voiced appreciation towards the companies leading the way in disclosing all the agreed-upon information.

Petroleum companies confirmed that training fees were mandatory and paid every year, as are the mandatory social contributions (MWK 7 million for each exploration license and MWK 21 million for each production license). However, no payments to the Petroleum Training Fund were included in the report although these payments would be as material as social contributions for the period under review.<sup>100</sup> Government officials still confirmed that, although such payments are suspended upon the suspension of exploration activities, several petroleum exploration licenses were released from suspension during or ahead of the reporting period and should have performed such payments.<sup>101</sup> According to the IA and government entities, no such payments were reported by the DoM, as no numbers were available within the deadline for submissions. Still, it was also noted that as companies operate using the calendar year as

<sup>100</sup> As social contributions, training fees amount to MWK 7 million per exploration license per annum. For the five active blocks it means MWK 35 million accrued for the period under review. This is higher than the materiality threshold used for reconciliation.

<sup>101</sup> The representatives identified that Rak Gas' operations were suspended up until February 2016, while SacOil's operations continued from July 2015 onwards.

a financial year, actual payments of these obligations may have been made after the end of the government's fiscal year.

### Initial assessment

The International Secretariat's assessment is that Malawi has made meaningful progress towards meeting this requirement. The MSG was involved in setting the materiality threshold for payments and for companies. Malawi has set clear thresholds for selecting material revenue streams and reporting entities for reconciliation. The 2015-16 EITI Report lists and describes all material companies, government entities and revenue streams, although certain non-material revenue streams were excluded in the final report. It names the non-reporting companies and assesses the materiality of their payments. Company omissions were not considered to significantly influence comprehensiveness of reporting, meaning the report provides full government disclosures, including for non-material companies. However, as several stakeholders indicated that there were indeed both mandatory social contributions and training fees paid in the fiscal year, and that statutorily these payments exceed the materiality threshold, we cannot conclusively determine that material payments have not been omitted by the report.

In accordance with Requirement 4.1, MWEITI should work with the Department of Mines to ensure that all receipts from extractive companies are included in the report, including mandatory social contributions and payments to the Petroleum Training Fund.

In addition, MWEITI may wish to enhance the clarity of the MWEITI Report by including all government revenue streams, including those that did not give rise to any payments, to ensure that the non-payment for certain revenue streams are explicitly covered in the various tables of the reports. MWEITI may also wish to work with the IA to ensure that government agencies' reporting templates are included in the report, as companies' reporting templates are currently.

### In-kind revenues (#4.2)

#### Documentation of progress

**Materiality:** The MWEITI report's section on fiscal regime for the mining, oil and gas sectors (p.39) explains that royalties may be paid in kind at the discretion of the Minister of Natural Resources, Energy and Mining. The report clearly states that no payments were made in kind for oil companies, but it is not explicit in terms of mining companies for the fiscal year (p.69). No further information was included in the EITI Report.

#### Stakeholder views

Government officials indicated that any such decision by the minister to request in-kind payment of revenues would have to be coupled with a ministerial decree or public statement. All stakeholders consulted confirmed the lack of such payments for the period under review. Some civil society members voiced concerns of access to ministerial decrees and, by extension, the reliability of the claim that there were no in-kind revenues paid during the period under review. Still no specific concerns were voiced, especially regarding the materiality of such transactions. It should be noted that most civil society members considered that in-kind revenues were not paid in 2015-16.

## Initial assessment

The International Secretariat's initial assessment is that this requirement is not applicable in Malawi. The 2015-16 EITI Report confirms that there are statutory provisions for royalties in mining, oil and gas sectors, which enable in-kind payments, at the discretion of the Minister of Natural Resources, Energy and Mining. However, the report and stakeholders confirm that no in-kind payments were made by either mining or petroleum companies during the period under review, on the basis that there were no petroleum projects in production stage.

To ensure that there is unequivocal understanding amongst all stakeholders that no payments are made in kind for future reporting periods, MWEITI may wish to ensure that the DoM explicitly clarifies the existence or non-existence of such payments through their reporting templates should assess the existence of in-kind revenues in the year under review, ahead of data collection. Malawi should ensure that information on volumes collected as the state's in-kind revenues, volumes sold, and proceeds of the sales are publicly accessible and disaggregated by purchasing company.

## Barter and infrastructure transactions (#4.3)

### Documentation of progress

The 2015-16 EITI Report states that no infrastructure provisions or barter arrangements were reported for the period under review (p.88), confirming the findings of Malawi's scoping study from 2016.<sup>102</sup> However, a Development Agreement<sup>103</sup> between the government and a non-material mining company (Nyala Mines) includes provisions to renovate a hospital, install a solar panel, financial support to a clinic and buildings for a school, in exchange of several tax exemptions: Duty free on import of materials, consumables and equipment used in the mining and processing of minerals exemption of Resource Rent Tax, Exemption of VAT, Exemption of Fuel Duty used in direct mining operations, and Certification of exemption from duties and taxes (p.32). The agreement is explicitly listed under the heading of an infrastructure and barter arrangement in the report, described as an "agreement involving the provision of goods and services in exchange of mining concessions" (p. 32). However, upon review of the documentation, the terms of the development agreement<sup>104</sup> did not conform with the EITI Standard's definition. We were unable to view the company's payments in detail as the company was deemed not material (p.127, Annex 7).

### Stakeholder views

When asked about the contents of Nyala Mines Limited's development agreement with the Malawian government, most government officials, civil society members and industry representatives, mirrored a common understanding that the terms did not entail provisions of infrastructure in exchange for license

<sup>102</sup> MWEITI (2016), *Scoping study (Minerals, oil and gas, forestry)*, accessed in August 2018, see section 3.4, page 36. Available at:

[https://eiti.org/sites/default/files/documents/160120\\_mweiti\\_scoping\\_study\\_draft\\_final\\_report.pdf](https://eiti.org/sites/default/files/documents/160120_mweiti_scoping_study_draft_final_report.pdf)

<sup>103</sup> Natural Resource Governance Institute (2018), *Resource Contracts: Nyala Mines Limited, Concession, 2008*, accessed September 2018. Available at: <https://www.resourcecontracts.org/contract/ocds-591adf-1002152174/view#/>

<sup>104</sup> Ibid.

awards, nor that these agreements involved transactions of commodities in their physical form. Rather, there was a common understanding that these are mandatory social expenditures arising from the development agreements. One representative highlighted the nature of the Nyala Mine as a less capital-intensive operation, and therefore with low need for infrastructure and subsequently any such provisions. The operations were focused on high-value precious stones (ruby and sapphire), although the official refrained from commenting further due to an ongoing litigation involving the company, due to the government's decision not to renew their mining license after expiration in late 2017.<sup>105</sup> Although less assertive of their conclusions, similar explanations were provided by civil society representatives. However, a few government officials were of the understanding that these were indeed infrastructure provisions, as the provisions were included in exchange for tax exemptions and rebates. Company constituency members on the other hand, claimed that there were no exchanges towards their infrastructure investments needed for operations. They justified their claims by referencing legislation and regulations, which are silent on the matter and therefore the provisions are considered a grey area.

### Initial assessment

The International Secretariat's initial assessment is that this requirement is not applicable in Malawi. The 2015-16 MWEITI Report claims that there were no active infrastructure provisions nor barter arrangements for the year under review. The report still describes one agreement as an infrastructure and barter arrangement, without clarifying whether the related transactions are material. However, based on consultation and a general agreement among discrete representatives from government, the terms of the agreements give rise to mandatory social expenditures rather than arrangements involving transactions of physical goods or terms required for license awards. The agreement and its related transactions is therefore treated under requirement 6.1 on social expenditures.

Still, Malawi, together with the IA, is encouraged to gain a better understanding of the terms of all relevant agreements and contracts in the country, and explicitly confirm that the terms give rise to mandatory social expenditures only, and that no provisions of goods and services were given by private companies in exchange for extraction or exploration rights, or physical delivery of commodities.

## Transport revenues (#4.4)

### Documentation of progress

Transportation revenues are described under chapter 3.5 (pp.55-60). The report describes how minerals are transported in Malawi (pp.53-60). For domestically produced minerals, companies make use of their own transportation arrangements (p.53). However, coal extracted outside of Malawi, in Mozambique, is transported through Malawi to the coast. The railway system used for this purpose is operated under two Public-Private Partnerships (PPPs), governed through concessions. The two PPP concessions are between the Railway Division within the MoTPW and Vale Logistics Ltd, and the Public Private Partnership Commission (PPPC) with the Central and East African Railways Company Limited (CEAR) for the development, maintenance and operation of the Nacala Railway Corridor (pp.58-59). The PPPs report

---

<sup>105</sup> The Nation (10 March 2018), 'Nyala Mines to appeal licence snub', accessed on 24 October 2018. Available at: <https://mwnation.com/nyala-mines-appeal-licence-snub/>



itself does not clarify any shares of ownerships between the government and the two operating companies. Based on the two companies' websites, there is no transfer of ownership to the government, and that the companies merely act as service providers through PPP concessions.<sup>106</sup> Vale Logistics Limited in fact held a significant shareholding interest in CEAR by the end of fiscal year 2016.<sup>107</sup> Also, no revenue streams arising from these agreements are in fact extractive sector specific nor commodity specific.

The report highlights that concession fees arise as four per cent of gross turnover of product transportation, without explicitly identifying any one product. This implies that it is a general tariff, levied regardless of the type of product transported (p.27). The payments are meant to be collected by the PPPC, although in practice they are received by the MoTPW. These revenues are described as earmarked for railway maintenance and improvement of the old railway network for transportation of general goods. This also implies that the PPP entities retain all earnings from transportation revenues to reinvest in its operations and is therefore not applicable as transportation revenues under Requirement 4.4. While not available for the scoping study, the 2015-16 EITI Report includes details of the contractual arrangements of the PPPs, described under section 3.5.4 and 3.5.5 (pp.58-59), and an overview of specific payment obligations of companies involved in coal transportation in section 3.5.3 (pp.56-57). This includes tax obligations, allowances and exemptions.

### Stakeholder views

Government officials guaranteed that no government stake was held in the Vale Logistics Limited's operations. They also emphasised that CEAR is owned by a consortium of private companies, including Vale Logistics Limited. As such, the PPP concession agreements are not viewed as government income through participation, but through a lease for private companies, regardless of quantities transported. This confirms the indication from documentation reviewed by the International Secretariat, that government revenues do not arise from transport of minerals specifically, and that there are no transport revenues in Malawi. Civil society representatives did not voice specific concerns related to transportation revenues, although a former MSG member highlighted that CSOs pushed for the inclusion of this information, to ensure a greater scale of transparency by encompassing more than upstream extractive sector operations.

### Initial assessment

The International Secretariat's initial assessment is that this requirement is not applicable in Malawi. The report does provide unilateral disclosures of total government revenues from the mineral transportation sector, disaggregated by revenue stream. Concession fees amounted to approximately MWK 336 million in 2015-16, which is higher than the stated materiality threshold. However, as none of the companies are partially nor fully owned by the Malawian government, nor is either company involved in upstream extractive sector activities in the country, the requirement is therefore not applicable for inclusion under the MSG's materiality definitions nor EITI requirements.

To strengthen implementation, Malawi is encouraged to expand on their justification of why

<sup>106</sup> Central East African Railways Company (CEAR) (2018), 'CEAR website: About', accessed on 4 October 2018. Available at: <http://www.cear.mw/about>

<sup>107</sup> Vale S.A. (2017), 'Vale S.A. (VALE) SEC Filing 20-F Annual report for the fiscal year ending Saturday, December 31, 2016', accessed on 4 October 2018. Available at: <https://www.last10k.com/sec-filings/vale/0001047469-17-002477.htm>

reconciliation has not taken place, by ensuring there is an explicit clarification from the Government of Malawi that the state does not participate directly in the transportation sector, and that no payment related to these PPP concessions arise from tariffs levied specifically on transportation of minerals.

## Transactions between SOEs and government (#4.5)

### Documentation of progress

The report confirms that there are no SOEs operating in Malawi's extractive sector (p.31). This requirement is therefore not applicable.

### Stakeholder views

No stakeholders provided any comments for this requirement.

### Initial assessment

The International Secretariat's initial assessment is this requirement is not applicable in Malawi. For more details please refer to requirement 2.6 on state participation.

## Subnational direct payments (#4.6)

### Documentation of progress

According to the 2015-16 EITI Report, direct subnational payments are not applicable (p.69). The existence of such payments was also addressed in Malawi's scoping study from 2016<sup>108</sup>, which highlighted the lack of subnational government entities receiving direct or indirect revenues from the extractives, except for license fees. However, based on further documentation these fees are not considered as subnational payments as they are collected by a central government entity, DoM. For more information regarding these receipts, please refer to requirement 5.1 below.

### Stakeholder views

Senior expert government officials consulted confirmed that license fees enter department-wide accounts which are located within the RBM, which departments cannot directly access without explicit disbursement requests. None of these are retained nor managed at a subnational level and are therefore not considered as subnational payments. Locally generated revenues do exist, but none of these are either extractive-specific nor significant. None of the other constituencies voiced any concerns regarding this conclusion.

### Initial assessment

The International Secretariat's initial assessment is this requirement is not applicable in Malawi. The 2015-16 MWEITI Report presents ambiguous statements about the applicability of direct sub-national payments in Malawi, but further documentation and stakeholder consultations confirm that no such fees

---

<sup>108</sup> MWEITI (2016), *Scoping study (Minerals, oil and gas, forestry)*, accessed in August 2018, see section 3.4, page 45. Available at:

[https://eiti.org/sites/default/files/documents/160120\\_mweiti\\_scoping\\_study\\_draft\\_final\\_report.pdf](https://eiti.org/sites/default/files/documents/160120_mweiti_scoping_study_draft_final_report.pdf)

are extractive specific nor material.

To strengthen implementation, Malawi is encouraged to provide an explicit statement clarifying the non-existence of *direct* subnational extractive payments in Malawi.

## Level of disaggregation (#4.7)

### Documentation of progress

The 2015-16 EITI Report presents reconciled financial data disaggregated by individual government entity and by sector (p.8), by company (Annex 10, pp. 147-166,171) and by revenue stream (p.84 and Annex 13). Customs duties and excise taxes are considered by MRA as a single revenue stream, which was also confirmed by stakeholders. The data is not disaggregated by project and the report explains in section 7.2 that the report does not disaggregate payments/receipts by project as government entities do not record / monitor these in such a manner (p.89). However, the report includes recommendations which will assist MWEITI to expand the granularity of disclosures to also report by project, and stakeholders made comments on such progress.

### Stakeholder views

Government stakeholders claim that a reporting template which will enable project-level reporting is currently under development, as a response to an amendment to the Taxation Act (2006). It will also require enactment of the Mines and Minerals Bill which is scheduled to be presented to the Parliament in November 2018. These laws will require companies to ring-fence their accounts (and Taxpayer IDs) to each operation. Company representatives claimed that such reporting is also currently possible as data is reported per license to the DoM every quarter. Similar reporting practices were claimed as underway for oil and gas companies.

### Initial assessment

The International Secretariat's initial assessment is that Malawi has made satisfactory progress in meeting this requirement. Reconciled financial data in the 2015-16 EITI Report is disaggregated by company, revenue stream and government entity. The report also presents recommendations for further disaggregation of data by individual project.

To further strengthen implementation, the MSG may wish to make progress in project-level reporting ahead of the deadline for all EITI Reports covering fiscal periods ending on or after 31 December 2018. Specifically, MWEITI can still clarify which revenue streams are levied on a project level, rather than at entity (company) level.

## Data timeliness (#4.8)

### Documentation of progress

Malawi's 2015-16 EITI Report was published 30 June 2018, within the second to last complete accounting

period.<sup>109</sup> The fiscal period was clarified and approved by the MSG via the terms of reference for the independent administrator, provided in the EITI Report (p.173), and page 2 of the ToR. At the time of publication, MWEITI's website was not functioning, however, at the time of Validation commencement the MWEITI 2015-16 Report was made available via the MWEITI website.<sup>110</sup>

### Stakeholder views

Stakeholders of all constituencies highlighted that improving data timeliness would make EITI data more relevant. Companies also mirrored this claim, and cited difficulty of returning to two-year old financial statements and supporting documents. They also cited challenges associated with the different financial years used by companies versus the government. Companies' financial years usually corresponds to the calendar year while the government's fiscal year is from July to June. Companies indicated that they are willing to complete reporting templates as part of their annual audit procedures, if provided with the reporting templates ahead of time. This could save time and avoid duplication of efforts, although there is still a challenge due to differences in accounting methods; companies use accrual-based accounts while the Malawian government does not.

### Initial assessment

The International Secretariat's initial assessment is that Malawi has made satisfactory progress towards meeting this requirement. The MWEITI report was published within the two-year deadline of the EITI Standard, although online access was not as timely. Stakeholder consultations also revealed that companies are willing and able to provide more timely data, if provided with reporting templates in alongside other reporting processes.

To enhance data timeliness, the Government of Malawi may wish to work with MWEITI and the DoM to ensure regular publication of companies' quarterly filings with the DoM. In addition, to avoid duplication and ensure even more timely and reliable data, MWEITI is encouraged to work with reporting companies to ensure that reporting templates are made available for their annual auditing procedures.

## Data quality (#4.9)

### Documentation of progress

Terms of Reference for the Independent Administrator: The ToR for the IA were approved via MWEITI's 12<sup>th</sup> Ordinary MSG meeting.<sup>111</sup> Later, an amended ToR was adopted by the MSG's 13<sup>th</sup> ordinary meeting on 27 March 2018<sup>112</sup>, due to minor changes requested by the International Secretariat and the funding partner (GIZ). The agreed ToR are provided in the report under Annex 14. The ToR deviate from the

<sup>109</sup> MWEITI (2018), *MWEITI Reports*. Accessed September 2018. Available at:

<http://mweiti.gov.mw/resources/mweiti-reports/>

<sup>110</sup> Ibid.

<sup>111</sup> MWEITI (2017), '12<sup>th</sup> Ordinary meeting of the MWEITI MSG, 19 Dec 2017', unpublished, provided by MWEITI Secretariat.

<sup>112</sup> MWEITI (2018), '13<sup>th</sup> Ordinary meeting of the MWEITI MSG, 27 Mar 2018', unpublished, provided by MWEITI Secretariat.

standard ToR for IAs as both the MSG's scoping decisions and Annex 1 tables have been omitted. The ToR also deviate from the standard template as they include language requiring additional work from the IA, similar to scoping, to confirm all MSG decisions in detail via the inception report. The inception report, which was provided to the Secretariat by MWEITI, confirms the choices of the MSG concerning the scope of materiality and wider reporting.

Appointment of the Independent Administrator (IA): The MSG endorsed the selection of the IA at its meeting on 27 March 2018.<sup>113</sup> The IA for the 2015-16 EITI Report, Moore Stephens, was the same as for Malawi's first EITI Report covering 2014-15. The minutes also highlight that members of the MSG wished to designate a local counterpart to cooperate with the IA to ensure that lessons learned and capacity is internalised in the country.

Agreement on the reporting templates: There is no evidence of discussion on the reporting templates in MSG meeting minutes, although MSG members claimed these were agreed alongside the ToR and IA appointment. The inception report, nor model reporting templates are made available online. According to MWEITI MSG's 11<sup>th</sup> meeting stakeholders, it was noted that the reporting template should be made available, to ensure MSG decisions and entity-specific reported data are well documented. Upon request, the reporting templates were shared with the International Secretariat by the IA.

Review of audit practices: The EITI Report explains that companies are required to produce annual audited financial statements according to the Companies Act of 1984 (under section 3.9.1, pp.66-67). Nine companies provided audited financial statements while ten companies failed to submit such documents, according to annex 8 (p.135). The IA highlighted that they did not consider companies to have audited financial statements if not submitted to them, and that those who did submit, included statements for both overlapping calendar years associated with the fiscal year 2015-16. Additionally, the report lacks guidance for how or where to access companies audited financial statements, even for publicly listed companies, or subsidiaries of such entities.

Government agencies are audited under the Public Audit Act (2003), by the Office of the Auditor-General and its attendant NAO. Although the Act ensures annual audits of government finances as well as Parliament scrutiny, the report does highlight potential challenges of independence as there is potential for executive government influence (p. 67). There is a risk in conflict of interests as the Constitution renders NAO as dependent on the Ministry of Finance, one of its auditees, for controlling its own budget. In addition, the NAO neither has the authority to hire or fire personnel.<sup>114</sup> The report does not provide guidance for accessing government audits, although these are available online.<sup>115</sup>

Assurance methodology: The necessary assurances agreed by the IA and the MSG are listed under section

---

<sup>113</sup> Ibid.

<sup>114</sup> Norwegian Institute of International Affairs (2017), *Malawi: A Political Economy Analysis*, page 35. Accessed on September 2018. Available at: [https://brage.bibsys.no/xmlui/bitstream/handle/11250/2461122/NUPI\\_rapport\\_Malawi\\_Tostensen.pdf?sequence=1&isAllowed=y](https://brage.bibsys.no/xmlui/bitstream/handle/11250/2461122/NUPI_rapport_Malawi_Tostensen.pdf?sequence=1&isAllowed=y)

<sup>115</sup> National Audit Office of Malawi (2018), 'Documents', accessed on 30 October 2018. Available at: <http://www.nao.gov.mw/index.php/docs>

2.4. This includes a description of the assurances to be provided by reporting entities (p.14), which includes (i) submission of audited financial statements (for both of companies' overlapping calendar years), (ii) sign-off by senior management officers, and (iii) certification of reporting templates by an external auditor. The reconciliation process itself is described in section 2.3 (p.16). Prior to this information on page 7 the report highlights that the work has been performed in accordance with International Standard on Related Services (ISRS) 4400<sup>116</sup>, but that reconciliation procedures were not designed to constitute an audit / review equivalent to International Standard on Auditing (ISA) or ISRS.

**Confidentiality:** The ToR include language asking the IA to agree and confirm any additional provisions to ensure confidentiality of company and government reporting templates. These types of confidentiality mechanisms are covered under ISRS 4400, which the IA confirms was employed for this report (p.7).

**Reconciliation coverage:** Based on the materiality decisions in section 4.2 (p.69), the report provides an estimated 91% reconciliation coverage compared to total government revenues from the mining and petroleum sectors. The report explains that three mining companies did not submit data, and payments made by these companies amounted to MWK 68 million accounting for 4.3% of the reconciled revenues (p.12).

Under requirement 4.1 we have already noted certain that certain revenue streams were reported as zero. We also noted that several stakeholders claim non-reporting was the cause, rather than lack of payments. This leads to concerns of the 91% reconciliation coverage as training fees and mandatory social contributions may be material after all, but not adequately reported. Annual mandatory social expenditures alone would give rise to MWK 7 million per block, implying that payment liabilities may have amounted to MWK 35 million in total, which is above the materiality threshold. The same amount would accrue for training fees. However, we were unable to confirm the actual amounts paid per revenue stream.

**Assurance omissions:** The report summarises data submission by reporting entities. It notes that all government agencies submitted reporting templates. The report provides evidence that government entities' templates were certified by the Auditor General (p.98) and highlights that these declarations were based on the audited government accounts for the period under review (p.13). The IA also noted that ten companies did not provide signatures of senior management attesting to the reliability of the data. In addition, fifteen companies did not have their reporting template certified by their auditor, as evident in annex 8. Ten companies were identified as providing at least one of the agreed assurances. The reason for these significant omissions of companies' data assurances was cited as being due to short deadlines<sup>117</sup>, issues of contracting external auditors in such a short timeframe, and finally the differences between company and government financial years. These accounted for MWK 823 million or 53% of reconciliation scope. Although the report does not break down this figure by company, it is possible to

---

<sup>116</sup> International Federation of Accountants (2018), 'International Standard on Related Services (ISRS) 4400, Engagements to Perform Agreed-Upon Procedures Regarding Financial Information', accessed on 13 November 2018. Available at: <http://www.ifac.org/content/international-standard-related-services-isrs-4400-engagements-perform-agreed-upon-procedures>

<sup>117</sup> The IA specified that two weeks were the official deadline, although there were several informal extensions.



estimate this by using available data in the report.

However, this *overestimates* companies' compliance. Only three companies complied with *all* agreed assurances, as the methodology requires. These three companies, Hamra Oil Holdings Limited, RakGas MB45 and Terrastone Limited, accounted for MWK 471 735 356 government revenues. This is equivalent to 30.5% of reconciled revenues.<sup>118</sup> Therefore there is sufficient data in the EITI Report to calculate the materiality of payments from each non-compliant company, although the report itself provides misleading information.

**Data reliability assessment:** Based on the estimates of coverage on the previous page, the IA concludes that all significant contributions by extractive sector companies were covered (p.12). However, based on the above-mentioned shortcomings in data assurances provided (pp.13-14), the IA states that they were unable to conclude that the much of the reconciled data, or total figures of the report (i.e. including the unilateral disclosures), are reliable (p.14). The IA makes no attempt to form such a conclusion by comparing government-caused discrepancies versus company-caused discrepancies, although such an analysis is made possible in the report.

**Sourcing of information:** The 2015-16 EITI Report provides the sources of data to a large extent, especially for contextual data such as production and exports. However, for certain documents there is no hyperlink provided nor guidance on accessing the documents: for AERs for 2015 and 2016, Railway gazette, Forest Landscape Restoration Opportunities Assessment for Malawi, and others.

**Summary tables:** In line with the IA's ToR, the IA and MWEITI secretariat submitted the summary data template to the International Secretariat, and it can be located on EITI's database and API<sup>119</sup>, and the MWEITI website.<sup>120</sup>

**Recommendations:** Recommendations are covered under sections 7.1 to 7.12. Section 7.13 identifies the recommendations of the previous MWEITI Report and comments on the progress of implementation. They highlight the relevant EITI Requirements, which weaknesses or challenges have been identified, as well as the recommended actions for mitigation. However, the sections do not provide much detail on responsible parties for implementation.

## Stakeholder views

The changes to the ToR were minor amendments, according to government stakeholders, which were made at the request of GIZ and the EITI International Secretariat. The 27 March 2018 MSG meeting also resulted in the endorsement of Moore Stephens as the Independent Administrator. Some former MSG members of the CSO constituency highlighted the usefulness company-level overviews of quality assurance submissions, which was mirrored by certain company and government stakeholders as well. Although the overviews do not necessarily provide sources for how to access audited financial statements of different companies, CSOs stressed the added value of providing indications of companies' compliance

<sup>118</sup> Based on numbers from section 5.1.1 and 6.1 of the MWEITI report for 2015-16.

<sup>119</sup> EITI (2018), *2015-2016 Malawi Summary Data*. Accessed on September 2018. Available at: [https://eiti.org/sites/default/files/spreadsheets/2015-2016\\_malawi\\_summary\\_data\\_san.xlsx](https://eiti.org/sites/default/files/spreadsheets/2015-2016_malawi_summary_data_san.xlsx)

<sup>120</sup> MWEITI (2018), *Summary Data Template MWEITI 2018 Report*. Accessed on September 2018. Available at: <http://mweiti.gov.mw/wp-content/uploads/2017/04/Summary-Data-Template-MWEITI-2018-Report-.xlsx>



with wider regulations. These could also assist certain government agencies to ensure that such filings exist, as maintaining a strict overview of such corporate filings is challenging. A general comment from media representatives was that the reports are highly accessible – although technical in terms of language – but do not always provide a good enough explanation on how to access information at the original sources.

Most CSO representatives expressed a concern regarding revenue data quality and the procedure for procuring the IA. The former is related to the lack of adherence by companies to the agreed data assurances for EITI reporting as reported above. Stakeholders clarified that they were confident of the independence and reliability of the IA's work, however their concern remains for the *underlying* data submissions and assurances. The latter concern, related to the procedure, was regarding the procurement process leading up to the 2015-16 MWEITI Report.

Civil society members wished to ensure a more inclusive approach by incorporating Malawian nationals in the reporting and reconciliation process. This would enhance MWEITI's ability to internalise the procedures and lessons learned. However, CSOs claimed that in the end Malawian involvement was minimal with no tangible transfers of skills. Additionally, and related to the procedural concerns, civil society cited a heavy reliance on foreign funding for the MWEITI Report which dictated certain aspects of procurement. Still, the same representatives highlighted that although the concern is valid from a capacity-building perspective, it did not affect the credibility of the reconciliation process nor the wider reporting process of MWEITI. One stakeholder highlighted that their "... concerns are related to the data and capacity, not credibility of the process."

CSO representatives stressed that their concerns regarding the comprehensiveness, reliability and other aspects of the reporting process, were also voiced publicly during the launch of the second MWEITI Report on 18 October 2018. The International Secretariat was not provided with external documentation to confirm such claims. Government representatives, although unwilling to guarantee the reliability of data, confirmed that the reported data is as comprehensive and reliable as possible, referring to the National Audit Service's certification and advisory role for reporting templates. Concerns regarding companies' submissions were still noted.

Industry representatives did not report concerns regarding the quality of data. When confronted on lack of submissions of data assurances, short deadlines and differences in accounting periods<sup>121</sup> were cited as reason for shortcomings, including differences in accounting methods.<sup>122</sup> The stakeholders all seemed to be aware of the agreed assurance-procedures. Companies also indicated that they are willing to complete reporting templates as part of their annual audit procedures, if provided with the reporting templates ahead of time. This could save time and avoid duplication of efforts, although there is still a challenge due to differences in accounting periods; companies follow the calendar year while the Malawian government does not. In addition to the above-mentioned improvements, companies cited a need for further sensitisation towards other, non-engaged companies.

---

<sup>121</sup> Companies were awarded a one-month deadline for submitting all reporting templates, which were to be certified by external auditors, senior officials, and accompanied by supporting documents (audited financial statements).

<sup>122</sup> Companies in Malawi normally account using financial year corresponding to calendar years, while the Malawian government's fiscal year is from July 2015 to June 2016.

## Initial assessment

The International Secretariat's initial assessment is that Malawi has made meaningful progress towards meeting this requirement. Although MWEITI deviates from the standard ToR, all the key steps of the procedures are met and upheld. The ToR was also altered to include additional tasks for the Independent Administrator (IA), providing for a similar approach as scoping procedures, although incorporated into the inception report. However, without public access to this inception report there are concerns that all necessary MSG decisions and procedures are not necessarily made and followed.

The IA provides a clear assessment that the reconciled data is not necessarily reliable, given widespread gaps in submission of the agreed quality assurances. Only one third of reconciled revenues adhered to the agreed quality assurances. The IA documents their inability to conclude that the data is reliable due to the low level of industry adherence to MSG-agreed quality assurance procedures, although stakeholders' confidence in the data's reliability remains strong. However, contrary to the overall objective of requirement 4.9, only three companies adhered to the agreed quality assurances of the multi-stakeholder group which calls into question the quality of the data in the report. Therefore, it is not possible to conclude that the overall objective of the requirement has been met.

In accordance with the overall objective of requirement 4.9, and to improve on adherence to quality assurance procedures by industry, the MSG should review the agreed quality assurances that companies must provide for EITI reporting. They may also consider extending deadlines for data submissions, and work more closely with companies to ensure that reporting templates and quality assurances are fully met. Several stakeholders highlighted benefits of data collection simultaneously to regular and annual audit procedures, which industry stakeholders clearly indicated they were in favour of. MWEITI may also wish to ensure that all the submitted data is publicly accessible by publishing the data online. This would also enhance the timeliness of MWEITI data.

For greater clarity on MSG decisions related to reporting procedures, Malawi may wish to consider publishing the inception report alongside the final report. The MSG is also encouraged to consider alternative approaches to assessing the reliability of data, in the absence of full adherence to agreed quality assurances by all material companies. For instance, the MSG may wish to task the IA with in-depth investigations of initial versus final discrepancies caused by government versus companies. If government-caused discrepancies are low or non-significant, these numbers may still prove to be more reliable than company-reported data. This in turn could increase the confidence of report readers in the reliability of the data. MWEITI may also wish to ensure that all submitted data is also publicly accessible by publishing the data online.

**Table 4: Summary initial assessment table: Revenue collection**

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Comprehensiveness	The MSG was involved in setting the materiality threshold for payments and for companies. Malawi	Meaningful

(#4.1)	has set clear thresholds for selecting material revenue streams and reporting entities for reconciliation. The 2015-16 EITI Report lists and describes all material companies, government entities and revenue streams, although certain non-material revenue streams were excluded in the final report. It names the non-reporting companies and assesses the materiality of their payments. Company omissions were not considered to significantly influence comprehensiveness of reporting, meaning the report provides full government disclosures, including for non-material companies. However, as several stakeholders indicated that there were indeed both mandatory social contributions and training fees paid in the fiscal year, and that statutorily these payments exceed the materiality threshold, we cannot conclusively determine that material payments have not been omitted by the report.	progress
In-kind revenues (#4.2)	The 2015-16 EITI Report confirms that there are statutory provisions for royalties in mining, oil and gas sectors which enable in kind payments, at the discretion of the Minister of Natural Resources, Energy and Mining. However, the report and stakeholders confirm that no in-kind payments were made by either mining or petroleum companies during the period under review.	Not applicable
Barter and infrastructure transactions (#4.3)	The 2015-16 MWEITI Report claims that there were no active infrastructure provisions nor barter arrangements for the year under review. The report still describes one agreement as an infrastructure and barter arrangement, without clarifying whether the related transactions are material. However, based on consultation and a general agreement among discrete representatives from government, the terms of the agreements give rise to mandatory social expenditures rather than arrangements involving transactions of physical goods or terms required for license awards. The agreement and its related transactions is therefore treated under requirement 6.1 on social expenditures.	Not applicable
Transport revenues (#4.4)	The report does provide unilateral disclosures of total government revenues from the mineral transportation sector, disaggregated by revenue stream. Concession fees amounted to MWK 336 715 113 in 2015-16, which is higher than the stated materiality threshold. However, as none of the companies are partially nor fully owned by the Malawian government, nor is either company	Not applicable

	involved in upstream extractive sector activities in the country and are therefore not applicable for inclusion under the materiality definitions nor EITI requirements.	
Transactions between SOEs and government (#4.5)	The International Secretariat's initial assessment is this requirement is not applicable in Malawi. For more details please refer to requirement 2.6 on state participation and the existence of state-owned enterprises.	Not applicable
Subnational direct payments (#4.6)	The 2015-16 MWEITI Report presents ambiguous statements of the applicability of direct sub-national payments in Malawi, but further documentation and stakeholder consultations confirm that no such fees are extractive specific nor material.	Not applicable
Level of disaggregation (#4.7)	Reconciled financial data in the 2015-16 EITI Report is disaggregated by company, revenue stream and government entity. The report also presents recommendations for further disaggregation of data by individual project.	Satisfactory progress
Data timeliness (#4.8)	The MWEITI report was published within the two-year deadline of the EITI Standard, although online access was not as timely. Stakeholder consultations also revealed that companies are willing and able to provide more timely data, if provided with reporting templates in alongside other reporting processes.	Satisfactory progress
Data quality (#4.9)	<p>Although MWEITI deviates from the standard ToR, all the key steps of the procedures are met and upheld. The ToR was also altered to include additional tasks for the Independent Administrator (IA), providing for a similar approach as scoping procedures, although incorporated into the inception report. However, without public access to this inception report there are concerns that all necessary MSG decisions and procedures are not necessarily made and followed.</p> <p>The IA provides a clear assessment that the reconciled data is not necessarily reliable, given widespread gaps in submission of the agreed quality assurances. Only one third of reconciled revenues adhered to the agreed quality assurances. The IA documents their inability to conclude that the data is reliable due to the low level of industry adherence to MSG-agreed quality assurance procedures, although stakeholders' confidence in the data's reliability remains strong. However, contrary to the overall objective of requirement 4.9, only three companies adhered to the agreed quality assurances of the multi-</p>	Meaningful progress

	<p>stakeholder group which calls into question the quality of the data in the report. Therefore, it is not possible to conclude that the overall objective of the requirement has been met.</p>	
<p>Secretariat's suggested corrective actions:</p> <ul style="list-style-type: none"> <li>• In accordance with Requirement 4.1, MWEITI should work with the Department of Mines to ensure that all receipts from extractive companies are included more clearly in the report, including all mandatory social contributions and payments to the Petroleum Training Fund.</li> <li>• In accordance with the overall objective of requirement 4.9, and to improve on adherence to quality assurance procedures by industry, the MSG should review the agreed quality assurances that companies must provide for EITI reporting. They may also consider extending deadlines for data submissions, and work more closely with companies to ensure that reporting templates and quality assurances are fully met. Several stakeholders highlighted benefits of data collection simultaneously to regular and annual audit procedures, which industry stakeholders clearly indicated they were in favour of. MWEITI may also wish to ensure that all the submitted data is publicly accessible by publishing the data online. This would also enhance the timeliness of MWEITI data.</li> </ul> <p>Secretariat's recommendations:</p> <ul style="list-style-type: none"> <li>• MWEITI may wish to include to enhance the clarity of the MWEITI Report by including all government revenue streams, including those that did not give rise to any payments, to ensure that the non-payment for certain revenue streams are explicitly covered in the various tables of the reports. MWEITI may also wish to work with the IA to ensure that government agencies' reporting templates are included in the report, as companies' reporting templates are currently.</li> <li>• To ensure that there is unequivocal understanding amongst all stakeholders that no payments are made in kind for future reporting periods, MWEITI may wish to ensure that the DoM explicitly clarifies the existence or non-existence of such payments through their reporting templates should assess the existence of in-kind revenues in the year under review, ahead of data collection. Malawi should ensure that information on volumes collected as the state's in-kind revenues, volumes sold, and proceeds of the sales are publicly accessible and disaggregated by purchasing company.</li> <li>• MWEITI, together with the IA, are encouraged to gain a better understanding of the terms of all relevant agreements and contracts in the country, and explicitly confirm that the terms give rise to mandatory social expenditures only, and that no provisions of goods and services were given by private companies in exchange for extraction or exploration rights, or physical delivery of commodities.</li> <li>• To strengthen implementation, Malawi is encouraged to expand on their justification of why reconciliation has not taken place, by ensuring there is an explicit clarification from the Government of Malawi that the state does not participate directly in the transportation sector, and that no payment related to these PPP concessions arise from tariffs levied specifically on transportation of minerals.</li> <li>• To strengthen implementation, Malawi is encouraged to provide an explicit statement which</li> </ul>		

clarifies the non-existence of *direct* subnational extractive payments in Malawi.

- To further strengthen implementation, the MSG may wish to make progress in project-level reporting ahead of the deadline for all EITI Reports covering fiscal periods ending on or after 31 December 2018. Specifically, MWEITI can still clarify which revenue streams are levied on a project level, rather than at entity (company) level.
- To enhance data timeliness, the Government of Malawi may wish to work with MWEITI and the DoM to ensure regular publication of companies' quarterly filings with the DoM. In addition, to avoid duplication and ensure even more timely and reliable data, MWEITI is encouraged to work with reporting companies to ensure that reporting templates are made available for their annual auditing procedures.
- For greater clarity on MSG decisions related to reporting procedures, Malawi may wish to consider publishing the inception report alongside the final report. The MSG is also encouraged to consider alternative approaches to assessing the reliability of data, in the absence of full adherence to agreed quality assurances by all material companies. For instance, the MSG may wish to task the IA with in-depth investigations of initial versus final discrepancies caused by government versus companies. If government-caused discrepancies are low or non-significant, these numbers may still prove to be more reliable than company-reported data. This in turn could increase the confidence of report readers in the reliability of the data.

## 5. Revenue management and distribution

This section provides details on the implementation of the EITI requirements related to revenue management and distribution.

### Distribution of revenues (#5.1)

#### Documentation of progress

The EITI Report indicates that all extractive sector revenue streams are transferred to the Consolidated Fund and recorded in the national budget (section 3.7.2 and 3.7.3), as the constitution requires all revenues to be paid to the single treasury account (p.60). Still, in section 7.7 the report identifies two funds which do not form part of the single treasury account known as the Consolidated Fund. “Training fees” from petroleum companies are paid to the Petroleum Training Fund, managed by DoM. There are no publicly available documents that either confirm the existence of this fund, nor any details concerning the management and allocations of these funds. The report also confirms that there are no such reports or disclosures (p.93) as did relevant government stakeholders, and the IA confirmed that no data on payments or allocations had been received.

The above is also relevant concession fees which are paid directly to a separate Road Administration Fund (p.64), although these are related to the non-extractive specific payments of Vale Logistics Limited and CEAR, and therefore not applicable for this assessment. The report does clarify that 80% of receipts by the Forestry Department were further allocated to the Forest Development and Management Fund. While the Forestry Department is part of the Consolidated Fund, the fund is not and there are no additional reports regarding the fund’s further distribution (p.64).

The scoping study elaborates on the fiscal devolution of non-tax revenues, such as license fees. It explains that there are three regional offices of DoM which receive non-tax payments: north, centre (headquarters) and south.<sup>123</sup> Although located at subnational levels, the various payments are deposited to the RBM department-wide account who then transfers the funds to the departmental accounts at the Accountant General, entering the Consolidated Fund. This claim was confirmed independently by representatives across multiple government agencies. The 2015-16 EITI Report does not otherwise identify any extractive sector revenues that are not recorded in the national budget, however it does highlight how funds are allocated after entering the Consolidated Fund. Lastly, we could not locate any evidence nor references to national nor international budget classification.

#### Stakeholder views

Civil society representatives, newly elected as MSG members, could not recall specific deliberations on the Petroleum Training Fund. Stakeholders from all constituencies were unclear regarding the management and operations of the Petroleum Training Fund and claimed that there was even uncertainty regarding who is responsible for managing the fund. None were aware of any reports containing data on allocations and distributions of the fund, although one civil society member claimed that the DoM did not

---

<sup>123</sup> EITI (2016), *MWEITI Scoping study: Minerals, Oil and Gas, Forestry*, pages 45-47, accessed August 2018. Available at: <https://eiti.org/document/malawi-eiti-scoping-study>



report any information on incoming or outgoing cash flows related to the fund.

Government officials with intimate knowledge of the Petroleum Training Fund confirmed that the fund is off-budget, although the account exists within the RBM. It is managed by the Oil and Gas Section of the DoM. While there are claims that operational and financial reports of the funds are audited and do exist, these reports were described as internal and not subject to public access. There were also claims that there will be future annual reports of such nature which will be made available to the public. The same representatives confirmed that no reporting templates were submitted to the IA, as the consultants never followed up on previous engagements. The IA challenged the allegation. However, accrued payments are easily calculated as there are five active petroleum blocks that are subject to reconciliation. Combined these amount to MWK 35 million annually (or USD 250,000 if using the estimates of the 2015-16 Report, p.93) which is higher than the general materiality threshold.

### Initial assessment

The International Secretariat's initial assessment is that Malawi has made inadequate progress in meeting this requirement. The EITI Report indicates that extractive sector revenue streams are largely transmitted to and recorded in the single treasury account. It also identifies some revenues retained internally in various off-budget funds, such as the Petroleum Training Fund which is managed by the Department of Mines. The existence of revenues that are allocated towards the funds have been confirmed by all stakeholder groups. But significant information is still missing or unclear for most stakeholders. As no values of incoming or outgoing cash-flows have been disclosed, either through MWEITI reporting or otherwise, Malawi faces a significant gap in its otherwise comprehensive disclosures.

In accordance with EITI Requirement 5.1.a, Malawi should indicate which extractive industry revenues are not recorded in the national budget. The allocation of these revenues must be explained, with links provided to relevant financial reports as applicable. Training fees included in the 2015-16 are reported as zero although all stakeholders provided statements to the contrary. The MSG should therefore work with the Department of Mines to ensure that a comprehensive overview is provided for the management of the Petroleum Training Fund, including incoming revenues to the fund. Such an overview could also include the precise allocations and use of the finances of the fund.

## Sub-national transfers (#5.2)

### Documentation of progress

Under section 3.7.3 of the MWEITI 2015-16 report it is noted that there are no provisions for any sub-national transfers under Malawian legislation (p.63). Therefore, it has been determined that this requirement is not applicable (4.1.5, p.69). This statement is also confirmed by the scoping study from 2016 (p.56): "There are no subnational government entities that receive direct or indirect revenues from the extractive sector, except for license fees [...]". As noted under requirements 4.6 and 5.1 above, license fees are not considered to be sub-national in nature and are therefore not considered as applicable.

### Stakeholder views

Several government officials consulted confirmed that license fees enter the department-wide accounts which are located within the RBM, which the department do not have authority over without explicit

disbursement requests. None of these are retained at nor transferred to a sub-national level and are therefore not considered as sub-national transfers, as no legal framework obligate the government to distribute these funds in a specific way. Industry and civil society members did not object to this explanation.

### Initial assessment

The International Secretariat's initial assessment is this requirement is not applicable in Malawi. The 2015-16 MWEITI Report presents ambiguous statements of the applicability of sub-national transfers in Malawi, but further documentation and stakeholder consultations confirm that there are no such transfers in Malawi.

To strengthen implementation, Malawi is still encouraged to provide an explicit statement clarifying the non-existence of sub-national transfers of extractive payments in Malawi.

## Additional information on revenue management and expenditures (#5.3)

### Documentation of progress

The 2015-16 EITI Report includes a description of the budget process and audit practices in section 3.7. As part of the description, it references Malawi's budget framework paper for the relevant year.<sup>124</sup> We could not locate any reference to government audit reports relevant for the fiscal year in the report (p.67) nor did it include links to online reports. Upon the Secretariat's review, the general government audit report for the period under review has in fact been published on the website of the National Audit Office, including several other audit documents and reports.<sup>125</sup>

As described under requirement 5.1, the EITI Report highlights the petroleum training fees, which are deposited into the Petroleum Training Fund (p.62). According to section 7.7 these revenues do not enter the Consolidated Fund, which is also the case for concession fees of the Road Administration Fund. However, the report does explain that the precise allocations of these revenues are not published and proposed recommendations for how to make the information publicly available.

The report does not provide commodity or budget forecasts, projections or price-analyses.

### Stakeholder views

No stakeholders presented any views towards this requirement.

### Initial assessment

It is encouraging that the MSG has made some attempt to including information on the budget-making process through references and documentation of the budget framework of Malawi for 2015-16. The general description of the key documents and procedures related to the budgeting process provides a

---

<sup>124</sup> Government of Malawi: Ministry of Finance, Development and Planning (2015), *2015-16 Budget Framework Paper*, accessed in August 2018. Available at: <https://www.mfdp.gov.lr/index.php/the-budget>

<sup>125</sup> National Audit Office (2018), 'Audit Reports', accessed on 30 October 2018. Available at: <http://www.nao.gov.mw/index.php/docs/audit-reports>

clear guide for interested readers and users of the EITI Report.

Still, MWEITI is encouraged to include direct references to where potential stakeholders may locate the budget documents and data, including any references to government audit reports for the specific fiscal year (or more recent publications).

**Table 5: Summary initial assessment table: Revenue management and distribution**

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Distribution of revenues (#5.1)	The EITI Report indicates that extractive sector revenue streams are largely transmitted to and recorded in the single treasury account. It also identifies some revenues retained internally in various off-budget funds, such as the Petroleum Training Fund which is managed by the Department of Mines. The existence of revenues that are allocated towards the funds have been confirmed by all stakeholder groups. But significant information is still missing or unclear for most stakeholders. As no values of incoming or outgoing cash-flows have been disclosed, either through MWEITI reporting or otherwise, Malawi faces a significant gap in its otherwise comprehensive disclosures.	Inadequate progress
Sub-national transfers (#5.2)	The 2015-16 MWEITI Report presents ambiguous statements of the applicability of sub-national transfers in Malawi, but further documentation and stakeholder consultations confirm that there are no such transfers in Malawi.	Not applicable
Information on revenue management and expenditures (#5.3)	It is encouraging that the MSG has made some attempt to including information on the budget-making process through references and documentation of the budget framework of Malawi for 2015-16. The general description of the key documents and procedures related to the budgeting process provides a clear guide for interested readers and users of the EITI Report.	
<p>Secretariat's suggested corrective actions:</p> <ul style="list-style-type: none"> <li>As according to EITI Requirement 5.1.a, Malawi should indicate which extractive industry revenues are not recorded in the national budget and provide amounts for these said revenue streams. Training fees included in the 2015-16 are reported as zero although all stakeholders provided statements to the contrary; stakeholders confirmed the existence of training fee payments from companies to the Department of Mines during the period under review, and that no reports nor data is available concerning the amounts nor management of these off-</li> </ul>		

budget funds. The MSG should therefore work with the Department of Mines to ensure that a comprehensive overview is provided for the management of the Petroleum Training Fund, including incoming revenues to the fund. Such an overview could also include the precise allocations and use of the finances of the fund.

Secretariat's recommendations:

- To strengthen implementation, Malawi is still encouraged to provide an explicit statement which clarifies the non-existence of sub-national transfers of extractive payments in Malawi.
- MWEITI is encouraged to include direct references to where potential stakeholders may locate the budget documents and data, including any references to government audit reports for the specific fiscal year (or more recent publications).

## 6. Social and economic spending

This section provides details on the implementation of the EITI requirements related to social and economic spending (SOE quasi-fiscal expenditures, social expenditures and contribution of the extractive sector to the economy).

### Social expenditures (#6.1)

#### Documentation of progress

The 2015-16 EITI Report identifies mandatory social expenditures, or 'social contributions' levied on *oil and gas* companies according to the Third Schedule of the Petroleum Regulations which forms part of the Petroleum (Exploration and Production) Act (1983)<sup>126</sup>. They amount to an annual minimum MWK 7 million for exploration licenses and MWK 21 million for production licenses (p.39). These are payable per block, but the report states that no such payments were made by petroleum companies in 2015-16. This is confirmed by reviewing company reporting templates (p.111). The report does not provide any explanation for the lack of such payments in the year under review, nor why no penalties were issued for non-payment.

For mining companies, annex 12 lists mandatory social contributions of roughly MWK 47 million from Paladin (Africa) Ltd made to the communities of Karonga District, as mandated by the Development agreement (p.167). Therefore, mandatory social expenditures for mining companies do exist and are material. These contributions cover only one mining company. None of the above expenditures were reconciled as the companies reported unilaterally for both mandatory and voluntary social expenditures (or contributions). The mandatory expenditures of Paladin Africa Limited are not disaggregated by each individual beneficiary as required by the EITI Standard. Beneficiaries are lumped together as "Communities in Karonga district". The contributions are described as various social responsibility payments (p.167).

The report also notes that there are mandatory infrastructure provisions included in the Nyala Mines

<sup>126</sup> MalawiLii (2018), 'Petroleum (Exploration and Production) Act (1983)', accessed on 29 October 2018. Available at: [https://malawilii.org/mw/consolidated\\_legislation/6102](https://malawilii.org/mw/consolidated_legislation/6102)

Limited Development Agreement, as noted under EITI Requirements 4.3. However, as explained under that requirement, it is the view of the International Secretariat that this is a mis-categorisation of social expenditures. No values association with this company were reported on behalf of the company and it was not deemed material for the period under review. When assessing the precise terms of its development agreement, *one* of Nyala's obligations include a financial contribution at minimum the value of USD 20,000. By reverse calculation that is equivalent to less than MWK 13 million. Even if combined with the unilateral disclosures of annex 7 (p.127,) Nyala Mines Limited's total payments to government would still fall short of the general agreed materiality threshold: totalling MWK 19 million which is significantly lower than MWK 33 million. Still there may be additional contributions that were made to third-party beneficiaries, as was the case for Paladin Africa Limited during the period under review. As Nyala Mining Limited was not asked to unilaterally disclose this information we have been unable to provide evidence to the contrary, ensuring a comprehensive overview of mandatory social expenditures of the company.

*Voluntary* social expenditures highlighted above, include the paying company, name and function of the beneficiaries, districts of the beneficiaries, the type of social contribution (mandatory or voluntary) as well as references to mandating law or contracts (p.167). The only voluntary social payments in the report by oil companies were MWK 70 million by RakGas MB45, but these are not indicated in the reporting template 167 annex 11. These are declared as in-kind contributions, to the benefit of Malawian students studying in United Arab Emirates (p.87). Still, it is unclear how these unilateral disclosures came about, and the report does not include detailed information regarding beneficiaries.

### Stakeholder views

Stakeholders from all constituencies confirmed the existence of mandatory social expenditures in the cases of development agreements and for petroleum companies. Most stakeholders from government, civil society and industry also confirmed the mis-categorisation of Nyala Mines Limited's liabilities towards the GoM and third-party beneficiaries, although one government official and one civil society representative indicated that these may in fact be infrastructure and barter provisions after all. The IA was clear in that there had been significant difficulties related to distinguishing between the two forms of payment obligations. They also confirmed the lack of disaggregation of Paladin Africa Limited's mandatory social payments by each individual non-government beneficiary, including their name and function. In addition, certain government stakeholders also indicated that 50% of voluntary social expenditures are deductible from taxable profits. Therefore, there is indication of MRA receiving detailed evidence through tax filings which may be used for the basis of reconciliation or systematic disclosure. However, stakeholders were unable to fully agree whether such developments are feasible.

### Initial assessment

The International Secretariat's initial assessment is that Malawi has made inadequate progress towards meeting this requirement. Although the report describes the existence of mandatory social expenditures for two mining companies and all petroleum sector companies, the report fails to report any payments or identify any reasons for the lack of payments. Although the mandatory social payments of one mining company is covered, these are not disaggregated by individual non-government beneficiary, nor does the report provide an explanation of their function. The report does describe and disclose *voluntary* social payments associated with one reporting oil and gas company. As there has been no reconciliation of mandatory nor voluntary disclosures, nor a clarification of non-reporting for petroleum companies

although stakeholders confirm such payments have taken place, we cannot conclude that Malawi has adequately addressed this requirement.

In accordance with Requirement 6.1.a, Malawi should ensure that social expenditures by companies which are mandated by law or contract with the government are disclosed. Such payments should be disaggregated by whether provided in cash or in kind, and by the identity and function of non-government beneficiaries. The nature of in-kind contributions should be explained and where possible, these disclosures should be adequately reconciled. If not possible to reconcile, MWEITI must provide an explanation.

In accordance with Requirement 6.1.b, Malawi may consider developing an additional approach to reconcile voluntary social expenditures, like the above-mentioned mandatory social expenditures.

## SOE quasi fiscal expenditures (#6.2)

### Documentation of progress

The International Secretariat has confirmed that there are no SOEs operating in Malawi's extractive sector. This requirement is therefore not applicable.

### Stakeholder views

No stakeholders provided any comments for this requirement.

### Initial assessment

The International Secretariat's initial assessment is this requirement is not applicable in Malawi. For more details please refer to requirement 2.6 on state participation.

## Contribution of the extractive sector to the economy (#6.3)

### Documentation of progress

Share of GDP: The executive summary provides an overview of revenues from mining, petroleum, forestry and transport sectors to the Malawian economy (p.9). Absolute and relative contributions are also provided for the subsectors:

- The mining sector (p.33)
- The oil and gas sector (pp.44-45)
- The forestry sector on (p.51)
- The mineral transportation sector (p.59)

ASM activity is briefly described (p.20), and highlights that the MNREM has plans to set up a gemstone marketing centre. The report does not provide estimates of how large the informal sectors are, nor are these estimates included under ASM activities.

Government revenues: Total government revenues and contribution of the extractive industries is presented both in absolute and relative terms (p.9).

Exports: The absolute value and percentage share of total exports is provided for mining and forestry (p. 9). A comparison of the different government sources on export data and what they report as being the contribution of export as percentage share is provided (p.34). There is no oil/gas production and thus no exports.

Employment: Employment in the extractive industries is reported (p.9), both absolute and as a share of total employment. It is also broken down for each sector (pp.33,45,51,59). While noting the lack of a new Labour Market Survey since 2013, the report does estimate the number of employees in the mining and petroleum sectors (p.10,33,45). Annex 1 breaks down employment numbers by company, distinguishing between expatriate and Malawian employees (p.118).

Location: The overview of the extractives sector (pp.19-20) highlights the areas where production is taking place.

### Stakeholder views

Government representatives highlighted that MWEITI's granular data, alongside macroeconomic indices, support other efforts to understand the extractive sector and its trajectory. Some members cited the usefulness of MWEITI reports to provide more accurate estimates of the sectors' economic contributions. It was explained as providing the basis for understanding the sectors' consequences for future monetary and fiscal policies, in addition to the country's position and foreign currency reserves, as most operations and investments are of significant size and largely involves foreign companies.

As to the informal sector, multiple representatives from both government and company constituencies, emphasised the difficulty of estimating informal sector activities, as a separate sub-sector than ASM. Certain government officials with interests in macroeconomic statistics referred to occasional inclusion of certain estimates in their work, although there are no uniform nor consistent methodology for doing so. Therefore, it was deemed unlikely that a reliable estimate could be provided for the MWEITI 2015-16 Report. They representatives cited a recent revision of official statistics in August 2018 as the basis for this claim.

### Initial assessment

The International Secretariat's initial assessment is that Malawi has made satisfactory progress towards meeting this requirement. Estimates are provided for the extractive sector's contribution to gross domestic product, exports, government revenues and employment, including to highlight areas of significant production operations. No estimates were provided for the informal sector's contribution to gross domestic product, although estimates are available for the artisanal and small-scale miners' contributions. Even so, the disclosures of the MWEITI 2015-16 Report are regarded as comprehensive.

Malawi may still wish to improve upon the availability and timeliness of such macroeconomic indicators, if available. By leveraging the participation of certain national accounts compilers at the MSG, there may be scope for MWEITI to ensure, draw upon, and perhaps confirm the national accounts indices of Malawi,



which are produced for the United Nations Statistical Division. These indices could be systematically disclosed by relevant government agencies such as the National Statistical Office, Reserve Bank of Malawi or the Ministry of Finance, Economic Planning and Development.

**Table 6: Summary initial assessment table: Social and economic spending**

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Social expenditures (#6.1)	Although the report does describe the existence of mandatory social expenditures for two mining companies and all petroleum sector companies, the report fails to report any payments or identify any reasons for the lack of payments. Although the mandatory social payments of one mining companies are covered, these are not disaggregated by individual non-government beneficiary, nor provides and explanation of their function. The report does describe and disclose <i>voluntary</i> social payments associated with one reporting oil and gas company. As there has been no reconciliation of mandatory nor voluntary disclosures, nor a clarification of non-reporting for petroleum companies although stakeholders confirm such payments have taken place, we cannot conclude that Malawi has adequately addressed this requirement.	Inadequate progress
SOE quasi fiscal expenditures (#6.2)	The International Secretariat's initial assessment is this requirement is not applicable in Malawi. For more details please refer to requirement 2.6 on state participation.	Not applicable
Contribution of the extractive sector to the economy (#6.3)	Estimates are provided for the extractive sector's contribution to gross domestic product, exports, government revenues and employment, including to highlight areas of significant production operations. No estimates were provided for the informal sector's contribution to gross domestic product, although estimates are available for the artisanal and small-scale miners' contributions. Even so, the disclosures of the MWEITI 2015-16 Report are regarded as comprehensive.	Satisfactory progress
<p>Secretariat's suggested corrective actions:</p> <ul style="list-style-type: none"> <li>In accordance with Requirement 6.1.a, Malawi should ensure that social expenditures by companies which are mandated by law or contract with the government are disclosed. Such payments should be disaggregated by whether provided in cash or in kind, and by the identity and function of non-government beneficiaries. The nature of in-kind contributions should be explained and where possible, these disclosures should be adequately reconciled. If not possible to reconcile, MWEITI must provide an explanation.</li> </ul>		

**Secretariat's recommendations:**

- In accordance with Requirement 6.1.b, Malawi may consider developing an additional approach to reconcile voluntary social expenditures, as for the above-mentioned mandatory social expenditures.
- Malawi may still wish to improve upon the availability and timeliness of such macroeconomic indicators, if available. By leveraging the participation of certain national accounts compilers at the MSG, there may be scope for MWEITI to ensure, draw upon, and perhaps confirm the national accounts indices of Malawi, which are produced for the United Nations Statistical Division. These indices could be systematically disclosed by relevant government agencies such as the National Statistical Office, Reserve Bank of Malawi or the Ministry of Finance, Economic Planning and Development.

## Part III – Outcomes and Impact

### 7. Outcomes and Impact

This section assesses implementation of the EITI Requirements related to the outcomes and impact of the EITI process.

#### Public debate (#7.1)

##### Documentation of progress

###### Comprehensibility:

MWEITI produced a summary report of the first EITI Report, covering 2014-2015. The report is publicly available on the MWEITI website.<sup>127</sup> A summary report of the 2015-2016 EITI Report was published in October 2018. The EITI Report itself is written in a clear, accessible manner. The EITI Reports and other documents are in English, which is the official language. Chichewa is the most commonly spoken local language. In addition, several other local languages are spoken in different regions. Civil society translated parts of the 2014-2015 EITI Report to local languages spoken in northern Malawi.

The recommendations from the 2014-2015 EITI Report are collated into a separate publication, which presents them in a clear and accessible manner. The publication is available on the MWEITI website.<sup>128</sup> MWEITI has also produced brochures about the EITI.

###### Promotion:

Since the first EITI Report was published in mid-2017, there have been outreach efforts both in the capital Lilongwe and in mining districts. The 2017 Annual Progress Report documents outreach efforts by the civil society coalition Natural Resource Justice Network. CSOs, the national secretariat and the DoM organised a local launch event of the 2014-2015 EITI Report in Karonga district, where the Kayelekera uranium mine is located. Civil society has also organised debates on television and the radio.<sup>129</sup>

The 2018 work plan includes several outreach activities in mining communities and among different stakeholders, including the media. The 2015-2016 EITI Report was launched in October 2015-2016, and stakeholders confirmed that the national secretariat organised constituency meetings for discussing the report.

Malawi EITI has a Communications and Engagement Strategy that spans the years 2017 to 2020. It was drafted by the Media Task Force and approved by the MSG in August 2017<sup>130</sup>. Stakeholders from government, civil society, media and industry provided input, according to the strategy itself. The strategy

<sup>127</sup> Available at: [http://mweiti.gov.mw/wp-content/uploads/2017/04/EITI-Summary-Report\\_Final.pdf](http://mweiti.gov.mw/wp-content/uploads/2017/04/EITI-Summary-Report_Final.pdf).

<sup>128</sup> Available at: <http://mweiti.gov.mw/wp-content/uploads/2017/04/Report-Recommendations-9.pdf>

<sup>129</sup> See e.g. Jere, C. 2017. *Oxfam Organises Stakeholder Debate on Malawi's Natural Resource Governance*. Mining & Trade Review. Accessed 29 October 2018. Available at: <https://mininginmalawi.files.wordpress.com/2017/11/mining-trade-review-november-2017-edition-electronic-copy.pdf>.

<sup>130</sup> Minutes of the 11<sup>th</sup> ordinary MSG meeting.

is extensive: it includes producing and airing communications materials, as well as engaging civil society, media and communities through workshops and meetings. The strategy also includes a workshop on open data and beneficial ownership transparency. The strategy is consistent with and complements the MWEITI Open Data Policy. It takes a comprehensive view on communications and engagement, covering both the production of accessible information and ensuring that stakeholders reach it and have the capacity to contribute to public debate. Many of the activities featured in the strategy are included in the 2018 work plan. Due to lack of staff and funding, most of the planned activities have not been implemented.

Public accessibility:

Malawi EITI's Open Data Policy dates from December 2016.<sup>131</sup> The objectives of the policy include increasing transparency, empowering stakeholders to use the data and informing policy-making. The corresponding strategies reflect these comprehensive objectives. There is a strong focus on building the capacity of government agencies on systematic disclosures. The policy also aims to support civil society's and media's work on extractives and to collaborate with the Public Sector Reform Commission and OGP. The proposed activities, however, are vague and it is unclear how their implementation is being followed up. While the focus on open data in government systems and supporting the use of data is highly relevant, the policy lacks language on the accessibility of EITI data.

Publication of EITI data and other documents related to the EITI process on the MWEITI website appears sporadic. At the time Validation commenced, the website included the open data files in Microsoft Excel format for both EITI Reports, but the data file for the 2015-2016 was named only "Open Data IA June 2018".<sup>132</sup> The files are not accompanied by advice regarding their use and this not included in the Open Data Policy either. There is no indication that the availability of the data in open format was publicised. At the time Validation commenced, the website was also lacking the 2018 work plan and the 2017 Annual Progress Report.

Contribution to public debate:

The clearest contribution EITI implementation has had on public debate appears to have been achieved through contract transparency. Civil society made use of the MSG to encourage the government to publish petroleum and mining contracts. Civil society has analysed the contracts, used them for financial modelling and published reports.<sup>133</sup> CSOs have also used analysis based on the contracts to lobby for reforms.<sup>134</sup>

The Mining in Malawi blog site includes active commentary on extractive sector governance and EITI data.

---

<sup>131</sup> Available at: [http://mweiti.gov.mw/wp-content/uploads/2017/04/malawi\\_open\\_data\\_policy.pdf](http://mweiti.gov.mw/wp-content/uploads/2017/04/malawi_open_data_policy.pdf).

<sup>132</sup> Accessed 5 October 2018.

<sup>133</sup> Etter-Phoya, R. 2018. *Malawi's Journey to Full Contract Transparency*. EITI website. Accessed 9 October 2018. Available at: <https://eiti.org/blog/malawis-journey-to-full-contract-transparency>. And Hubert, D. et al. 2017. *Malawi's troubled oil sector: Licenses, contracts and their implications*. Oxfam Malawi. Accessed 31 October 2018. Available at: <http://mweiti.gov.mw/wp-content/uploads/2017/04/OXFAM-REPORT-8-Review-of-Petroleum-Sector-in-Malawi.pdf>.

<sup>134</sup> See e.g. Chimwala, M. 2018. Oxfam Lobbies Legislators to Push for Fair Oil Deals. *Mining & Trade Review*. Accessed 29 October 2018. Available at: <https://mininginmalawi.files.wordpress.com/2018/06/mining-trade-review-june-2018-edition-electronic-copy.pdf>

The site is maintained by a former civil society MSG member.<sup>135</sup> The Mining and Trade Review has also featured articles on the EITI.<sup>136</sup> The 2017 Annual Progress Report notes that in addition, other media outlets have sporadically covered stories on the EITI. Apart from analysis published on Mining in Malawi, media seems to have covered stories related to the EITI process, for example report launch, rather than ones drawing on the data.

A Media Task Force was launched in January 2017. After a slower period, the task force has resumed meetings in 2018. The 2018 work plan sets out plans for extensive collaboration with the media, including training and op-eds. These have been hindered by the lack of staff in the national secretariat, as well as lack of funding.

### Stakeholder views

Several stakeholders from civil society and the government noted that before EITI implementation, information about the extractive sector had not been available. This had made the debates more fact-based than before.

In addition to disclosures through EITI reporting, contract transparency was considered as significant progress. Civil society representatives had worked together with other MSG members and the national secretariat to successfully promote for the publication of oil and mining contracts. A civil society representative noted that EITI had enabled CSOs to share their research to a wider audience than before.

While companies considered that the EITI had to some extent helped build trust among stakeholders, they still expressed concerns that CSOs and the media were spreading misinformation about oil and mining companies. Stakeholders across constituencies agreed that there was a need for further outreach to the communities affected by mining. Civil society representatives noted that feedback on the outreach events held in mining districts has been positive.

Representatives of the media considered EITI Reports useful for their reporting. They viewed the Media Task Force as a helpful platform for bringing together journalists in the sector and sharing information. Contracts, beneficial ownership transparency and improving disclosures regarding social payments were especially of interest to the media representatives.

### Initial assessment

The International Secretariat's initial assessment is that Malawi has made satisfactory progress in meeting this requirement. Especially the public availability of oil and mining contracts has contributed to public debate, as they have been used by civil society and the media for analysis and advocacy. EITI also seems to have guided debate on the extractive sector in a more fact-based direction. MWEITI's efforts to engage with journalists reporting on the extractive sector are commendable.

Outreach activities have been conducted in the capital Lilongwe and to some extent in other parts of the

---

<sup>135</sup> Available at: <https://mininginmalawi.com/>

<sup>136</sup> See e.g. Jere, C. 2017. Malawi Moves to Safeguard Mineral Sector Revenue. *Mining and Trade Review*. Accessed 5 October 2018. Available at: <https://mininginmalawi.files.wordpress.com/2018/01/mining-trade-review-december-2017-edition-electronic-copy.pdf>.

country. The strategies and work plan of MWEITI foresee extensive outreach, but lack of resources has hindered progress. Implementing all the communications, open data and outreach activities outlined in the Communications and Engagement Strategy, the Open Data Policy and the work plan does not appear realistic in the foreseeable future.

It does not appear that data disclosed through EITI reporting has been used for quantitative analysis. While information is available in an open data format (xlsx) on the MWEITI website, the MSG has not fully agreed on a clear policy on the access, release and re-use of EITI data. The availability of EITI data in open format does not seem to be widely publicised. However, in practice the data is available and its use is not restricted.

To strengthen implementation for Requirement 7.1, the MSG is encouraged to agree on a clear policy on the access, release and re-use of EITI data. Malawi EITI should publicise the availability of information in open data format.

In addition, Malawi EITI is encouraged to make users aware that information can be reused without prior consent. Malawi EITI is also encouraged to revisit its strategies and work plan to ensure that planned activities reflect available resources. This will help the MSG and the national secretariat prioritise the activities considered most relevant by the stakeholders.

## Data Accessibility (#7.2)

### Documentation of progress

The summary data following IMF Government Finance Statistics (GFS) classification is available on the MWEITI website for both reporting periods. Clear and balanced summary versions of the 2014-2015 and 2015-2016 EITI Report are also available.<sup>137</sup> Authorship of the summary report is not indicated. The report is attributed to Malawi EITI and includes the contact details of the national secretariat. The 2018 work plan foresees that a summary report will be produced also for the 2015-2016 EITI Report.

The 2015-2016 EITI Report (pp. 83-85) includes analysis on different revenue streams, including the percentage of revenue by sector (oil, mining, forestry), the percentage of revenue contributed by each of the top five companies and the percentage of revenue by revenue stream. These are however slightly misleading as the point of comparison is not total government extractive revenue.

Malawi EITI is considering systematic EITI disclosures and the 2018 work plan foresees a feasibility study on mainstreaming. The work plan also includes extensive capacity-building efforts, including workshops and training for different stakeholders on mainstreaming. These have mostly not been implemented due to shortages in staff and resources.

### Stakeholder views

There is strong support for mainstreaming EITI disclosures, especially in the Ministry of Finance. This is

---

<sup>137</sup> 2014-2015 Summary EITI Report available at: [http://mweiti.gov.mw/wp-content/uploads/2017/04/EITI-Summary-Report\\_Final.pdf](http://mweiti.gov.mw/wp-content/uploads/2017/04/EITI-Summary-Report_Final.pdf). 2015-2016 EITI Report not available online.

seen by government and companies to improve the timeliness and cost-effectiveness of reporting. The license cadastre was considered by many to have improved data accessibility significantly.

Stakeholders do not appear to be using the GFS classified data or the data published in open format in general. However, national secretariat officers and other stakeholders from the MoF participated in a GFS workshop focused on using EITI data from 15 to 17 October 2018, to build analytical skills necessary for such use.

### Initial assessment

The provisions of EITI Requirement 7.2 are encouraged and will not be considered when assessing compliance with the EITI Standard. Malawi EITI has made efforts to make data available in accessible in open format and following GFS classification. Key government agencies appear committed to improving the accessibility of data. However, the weak existing government systems pose a challenge to systematic disclosures. Lack of resources hinders capacity-building efforts, but as the assessment of Requirement 1.3 demonstrates, there are CSOs that have the capacity to undertake sophisticated analysis. Considering the low level of literacy and Internet penetration in Malawi, CSOs and the media play a key role in interpreting information and relaying it to the broader public in an accessible manner.

To strengthen implementation, updating the Open Data Policy to include a clear policy on the publication of EITI data and keeping the MWEITI website up to date accordingly is recommended. The MSG is encouraged to continue exploring options for mainstreaming EITI disclosures.

## Lessons Learned and follow-up on recommendations (#7.3)

### Documentation of progress

#### MSG input and follow-up:

According to MSG minutes, the group has on several occasions discussed follow-up on recommendations arising from EITI reporting. This includes, for example, discussion about the need to better monitor production. To follow up on the recommendations of the 2014-2015 EITI Report, MWEITI developed a Remedial Action Plan. The plan was discussed and approved by the MSG in August 2017, shortly after the EITI Report was published.<sup>138</sup> In December 2017, the MSG discussed progress and plans related to the implementation of the plan.

MWEITI's progress on addressing recommendations from the 2014-2015 EITI Report is described in the 2017 Annual Progress Report (*see Requirement 7.4*). The 2015-2016 EITI Report also documents progress in a similar manner.

The recommendations of the 2014-2015 EITI Report focused on improving disclosures and their quality, including license information and the quality of statistics. The recommendations included in the 2015-2016 EITI Report are more policy-oriented in nature, including recommendations on mainstreaming, access to transport and forestry contracts and petroleum policy revisions. A remedial action plan has also

---

<sup>138</sup> Minutes of the 11<sup>th</sup> ordinary MSG meeting.



been drafted for the 2015-2016 EITI Report and is awaiting MSG approval.

#### Discrepancies:

The first 2014-2015 EITI Report showed a significant discrepancy between payments disclosed by companies and revenues received by government but this was mainly due to omissions. Eight material companies failed to submit their reporting templates. The MSG discussed the discrepancies in December 2017.<sup>139</sup>

The 2018 work plan includes activities to resolve discrepancies in the 2015-2016 EITI Report. These were however significantly smaller than in the first EITI Report. The number of material companies that did not disclose their payments reduced to three. In the 2015-2016 EITI Report final net discrepancies were six per cent of total revenue reported by the government, while in the 2014-2015 EITI Report they were over 33 per cent. In the 2015-2016 EITI Report, final net discrepancies were MWK 99 million in absolute terms (roughly USD 130,000). Net adjustments during the reconciliation process amounted to MWK 4 billion for companies and MWK 11.6 billion for government agencies (pp. 75-77). Most irregularities were thus solved during reconciliation. The remaining discrepancies were largely due to omissions by reporting companies and taxes reported by the government agencies but not the companies. The improvement in the 2015-2016 EITI Report was at least partly due to efforts by the national secretariat to meet with reporting entities.

#### Reforms:

Addressing the recommendations arising from the 2014-2015 EITI Report has so far mainly led to stronger inter-agency cooperation and improvements in, for example, electronic cadastre systems. It remains to be seen whether EITI disclosures will contribute to strengthening governance in the sector more broadly. The revisions of mining and petroleum legislation have been repeatedly postponed. The most recent draft of the mining bill includes a provision on payment transparency and refers to international transparency initiatives as a reason for reforming the law.<sup>140</sup>

The potential of Malawi EITI to incite reform is limited due to the small size of the sector. However, the EITI has led to contract transparency in Malawi. Civil society successfully used the MSG as a platform to demand for contracts to be published. First mining contracts were published in 2016, followed by petroleum contracts in 2017. The government however lacks a clear policy ensuring that future contracts and addendums are consistently published.<sup>141</sup>

The recommendations of the 2015-2016 EITI Report are more policy-oriented than the recommendations of the first report. They include, for example, mainstreaming disclosures, publishing transport and forestry contracts, and accelerating the revision of the petroleum policy. This provides the MSG an opportunity to promote further reforms.

### Stakeholder views

Stakeholders considered the remedial action plans as useful tools for following up on recommendations

<sup>139</sup> Minutes of the 12<sup>th</sup> ordinary MSG meeting.

<sup>140</sup> Government of Malawi. 2018. *Draft Mines and Minerals Bill 2018*. Article 268. Unpublished, made available to the International Secretariat.

<sup>141</sup> See EITI Requirement 2.4 for more details.

from EITI Reports. CSOs noted that they had been able to influence the content of the plan. Government representatives highlighted that EITI Reports had enabled them to cross-check information and address inconsistencies. Several government representatives referred to inter-agency meetings that had been held to address recommendations.

Many of the recommendations are directed towards the Department of Mines and it was sometimes considered challenging for officials at the Ministry of Finance to follow up on their implementation. A government representative stressed the importance of following through with the remaining recommendations of the first EITI Report, even after the publication of the second one.

### Initial assessment

The International Secretariat's initial assessment is that Malawi has made satisfactory progress in meeting this requirement. Malawi EITI has a clear process for addressing recommendations arising from EITI Reports. Remedial action plans function as an implementation plan for recommendations, with clear actions and responsibilities. The 2017 Annual Progress Report and the 2015-2016 EITI Report demonstrate that the first remedial action plan was followed through. There is evidence of the MSG discussing and following up on discrepancies in EITI reporting. The MSG may wish to task the IA to further investigate the reasons behind discrepancies (*see Requirement 4.9*).

Malawi, including the Department of Mines, is encouraged to continue addressing recommendations from the 2014-2015 and 2015-2016 EITI Reports, as well as the recommendations arising from Validation.

## Outcomes and impact of implementation (#7.4)

### Documentation of progress

Malawi EITI has published annual progress reports since 2015 when it became an implementing country. The 2017 annual progress report was discussed and approved by the MSG in June 2018. All stakeholders were invited to send contributions and comments to the annual progress report at the meeting. The report was not available on the MWEITI website at the time Validation commenced.<sup>142</sup>

The 2017 annual progress report includes a general assessment of performance, as well as progress against the targets set out in the work plan. Activities in 2017 focused mainly on producing the first EITI Report. Several other activities were outlined in the work plan but not pursued. Most of the activities that were completed were process-oriented and the annual progress reports does not document the outcome or impact of these activities.

The report also includes a brief description of progress against meeting EITI Requirements. The assessment, however, is very general and refers to the publication of the first EITI Report, rather than describing efforts and progress in addressing specific areas of disclosure. The progress report does link EITI reporting and recommendations arising from it to broader policy processes, such as the revision of the mining, petroleum and forestry bills.

---

<sup>142</sup> Accessed 4 October 2018.

The annual progress report lists the recommendations made in the 2014-2015 EITI Report, the required actions, the responsible party and progress made so far. In most cases, the responsible party is the national secretariat or the MSG, but MRA and the DoM are also indicated. According to the report, all recommendations had been at least partly addressed. The report describes collaboration among key government agencies and demonstrates an interest in using the recommendations to strengthen government systems, such as the mining and forestry cadastres.

In addition, the annual progress report includes a foreword by the MSG Chair Kenneth Matupa, a brief narrative, cost of implementation, and a list of MSG members, including changes during the year. The annual progress report also includes an analysis of strengths, weaknesses, opportunities and threats to MWEITI. Strong governance structures, political support and potential for the sector to grow are considered as strengths and opportunities, while for example lack of a legal basis, limited resources and an outdated regulatory framework are identified as weaknesses and threats.

### Stakeholder views

The national secretariat described that it had collected views from stakeholder before drafting the annual progress report and submitting it to the MSG for discussion and approval. Civil society members of the MSG noted that they had shared draft annual progress report with their constituency and invited feedback. Stakeholders did not comment, whether the annual progress report was considered a useful tool for assessing progress.

### Initial assessment

The International Secretariat's initial assessment is that Malawi has made meaningful progress in meeting this requirement. The 2017 Annual Progress Report provides a comprehensive view of activities, and MWEITI's progress on addressing the recommendations from the 2014-2015 EITI Report is commendable.

The annual progress report, however, lacks documentation on the outcomes and impact of activities. While the report documents clear outcomes from addressing the recommendations, it remains unclear what the actual or potential impact of addressing the recommendations is. The annual progress report describes some outreach activities by civil society but does not document whether stakeholders made use of EITI data or the multi-stakeholder process. The International Secretariat could not locate evidence that the annual progress report was made publicly available.

MSG meeting minutes demonstrate that the MSG has regularly discussed progress in addressing recommendations from the first EITI Report and the implementation of work plans. However, there is no indication of the MSG discussing the impact of EITI implementation. Examples of realised and potential impact could be captured in the narrative section of future annual progress reports.

In accordance with Requirement 7.4, Malawi EITI should document the impact of EITI implementation in annual progress reports and assess progress towards meeting EITI requirements with a focus on specific sub-requirements as outlined in Requirement 7.4.a.ii.

In addition, Malawi EITI is encouraged to ensure that all stakeholders are invited to effectively participate in the drafting of the annual progress report. MWEITI is encouraged to make the annual progress report

available online.

**Table 7: Summary initial assessment table: Outcomes and impact**

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Public debate (#7.1)	EITI Reports are comprehensible, and CSOs and the media are spreading awareness. Especially contract transparency has contributed to public debate. Data is available in open formats and its use is not restricted.	Satisfactory progress
Data accessibility (#7.2)	MWEITI has made efforts to make data accessible. There is further potential for systematic disclosures.	
Lessons learned and follow up on recommendations (7.3)	MWEITI has produced remedial action plans, which it used to follow up on recommendations from reporting. Government agencies have collaborated to address recommendations, and the MSG has discussed progress.	Satisfactory progress
Outcomes and impact of implementation (#7.4)	The annual progress report captures activities and follow-up on recommendations but lacks a review of the impact of EITI implementation. The description of progress in meeting EITI requirements is vague.	Meaningful progress
<p>Secretariat's suggested corrective actions:</p> <ul style="list-style-type: none"> <li>In accordance with Requirement 7.4, Malawi EITI should document the impact of EITI implementation in annual progress reports and assess progress towards meeting EITI requirements with a focus on specific sub-requirements as outlined in Requirement 7.4.a.ii.</li> </ul> <p>Secretariat's recommendations:</p> <ul style="list-style-type: none"> <li>To strengthen implementation for Requirement 7.1, the MSG is encouraged to agree on a clearer policy on the access, release and re-use of EITI data. Malawi EITI should publicise the availability of information in open data format. Malawi EITI is encouraged to make users aware that information can be reused without prior consent.</li> <li>Malawi EITI is encouraged to revisit its strategies and work plan to ensure that planned activities reflect available resources. This will help the MSG and the national secretariat prioritise the activities considered most relevant by the stakeholders.</li> <li>To strengthen implementation, updating the Open Data Policy to include a clear policy on the publication of EITI data and keeping the MWEITI website up to date accordingly is recommended. The MSG is encouraged to continue exploring options for mainstreaming EITI disclosures.</li> </ul>		

- Malawi, including the Department of Mines, is encouraged to continue addressing recommendations from the 2014-2015 and 2015-2016 EITI Reports, as well as the recommendations arising from Validation.
- Malawi EITI is encouraged to ensure that all stakeholders are invited to effectively participate in the drafting of the annual progress report. MWEITI is encouraged to make the annual progress report available online.

## 8. Impact analysis (not to be considered in assessing compliance with the EITI provisions)

### Impact

Despite the modest size of the extractive sector, Malawi has had several controversial experiences with mining and oil projects. It seems that Malawi was partly motivated to join the EITI to avoid past mistakes. While extractive revenue remains at less than 1% of total government revenue, EITI has succeeded in creating a platform for dialogue and introducing a considerable level of transparency.

Past experiences contributed to distrust between stakeholders, especially civil society and companies. EITI has resulted in an improvement due to both the MSG and disclosures, that enable more fact-based debate. While the conversations have matured distrust is hardly resolved. Therefore, ensuring the engagement of CSOs and companies that have so far not been active in the EITI could deepen dialogue, recognising that the viewpoints of companies and freely operating CSOs are bound to differ. There is potential for the EITI to further increase understanding between mining communities and companies.

Civil society was able to promote for contract transparency through the EITI and with support from other MSG members. CSOs have analysed the contracts and engaged with government agencies to discuss the terms. This has led to increased awareness about the fiscal implications. Transparency has in some cases enabled CSOs to complement capacity gaps within the government. Civil society reports have also contributed to a better public understanding of the sector, although there is further need to increase CSOs' and the media's capacity and resources to relay information to the public.

While revenues remain modest, EITI has identified weaknesses in the systems for collecting royalty, as well as in production and export data. Government agencies are undertaking activities to address these, and some mentioned that EITI data enabled them to identify transfer pricing risks. The EITI has the potential to strengthen revenue-collection and accountability ahead of mining projects' transition from exploration and development to production. Inconsistencies between production and export numbers have been highlighted by MWEITI Reports and stakeholders, as an area where improvements are occurring. The DoM and MRA rely on precise figures for production and exports to ensure that the Malawian government receives its correct share of the added-value from the sector. These efforts combined may ease Malawi's transition to greater dependence on extractive sector contributions, especially in the medium-to-long term.

Advances in fiscal and contract transparency, as well as the online license cadastre, help ensure a basis for governing the sector in an inclusive and equitable manner, despite an overall weak governance environment. The on-going and planned work on mainstreaming and beneficial ownership transparency may even serve to strengthen government systems beyond the extractive sector.

Irregularities in awarding oil exploration licenses were partly related to the same beneficial owner having interests in several companies. The lack of beneficial ownership transparency was also identified as a challenge in the forestry sector. The objective is cross-sectoral disclosure of beneficial owners, and MWEITI has been working with the Office of the Registrar General, the Financial Intelligence Authority and the Ministry of Justice to achieve this. Beneficial ownership transparency that covers all companies could have a significant impact in Malawi, which has suffered from numerous corruption scandals in

recent years. It could strengthen the confidence of investors and development partners, not to mention citizens.

## Sustainability

Financial sustainability is one of MWEITI's biggest challenges. The process relies on support from development partners, especially GIZ. To secure government funding beyond operational costs of the secretariat, MWEITI would need to be institutionalised as a unit within a ministry and have its own line or "vote" in the national budget. The process for achieving this appears to move slowly. The 2018 MWEITI work plan includes the drafting of a MWEITI policy, to be succeeded by a MWEITI Bill. The MSG has established a working group to promote the institutionalisation of MWEITI, and officials at the Ministry of Finance seem to be strongly supportive. Still, there is an urgent need to ensure that there are transitional funding arrangements before the Malawian government can fully fund the process.

Embedding the national secretariat within the MoF appears to have had a positive impact on implementation. The downside is that it is challenging for officials from the MoF to follow up on recommendations directed towards the MNREM, and some stakeholders indicated that recommendations seemed to be solely focused towards MNREM and its Department of Mines. Establishing the secretariat as a unit within MNREM is also being considered as an option.

Ensuring that implementation is cost effective and proportionate to the size of the sector is a challenge. Mainstreaming disclosures may require significant initial investments but would bring reporting costs down in the medium-to-long term. The MSG may also control the cost of reporting by ensuring that materiality thresholds are prudent. MWEITI can also contribute to strengthening transparency and revenue management beyond the extractive sector, for example through beneficial ownership transparency.



## Annexes

## Annex A: List of MSG members and contact details

Civil Society Organisations (CSOs)		
	Main Member	Alternate Member
<b>Centre for Environmental Policy and Advocacy (CEPA)</b>	William Chadza, Country Director <a href="mailto:william@cepa.org.mw">william@cepa.org.mw</a>	Cynthia Simukonda, Programme Officer
<b>Church &amp; Society Programme</b>	Moses Mkandawire, Country Director <a href="mailto:mosesmkanawire@yahoo.co.uk">mosesmkanawire@yahoo.co.uk</a>	Fumu Moyo, Finance Director
<b>Oxfam</b>	Elyvin Nkhonjera, Extractive Programme Coordinator <a href="mailto:enkhonjera@oxfam.org.uk">enkhonjera@oxfam.org.uk</a>	Lusungu Dzinkambani, Governance Programme Manager
<b>FOCUS</b>	Kossam Munthali, Director <a href="mailto:kmunthali@focusmalawi.org">kmunthali@focusmalawi.org</a>	Jabess Nyirenda, Programme Officer

Companies		
	Main Member	Alternate Member
<b>Sovereign Services Limited</b>	Andries Kruger, Country Manager <a href="mailto:akruger@sovereignmetals.com.au">akruger@sovereignmetals.com.au</a>	Andrew Musavengana, Financial Controller
<b>Bwanje Cement Ltd</b>	Dina Longwe, Director <a href="mailto:longwedina@hotmail.com">longwedina@hotmail.com</a>	Mesheck Munthali, Director
<b>Mkango Resources</b>	Burton Kachinjika, Country Manager <a href="mailto:bkachinjika@yahoo.co.uk">bkachinjika@yahoo.co.uk</a>	Chikondi Mcheka, Chief Geologist
<b>Shayona Cement Co.</b>	Prajeesh Padmanabhan, Operations Manager <i>No email provided</i>	Rowland Mwalweni, Public Relations Officer

Government		
	Main Member	Alternate Member
<b>Ministry of Finance</b>	Kenneth Matupa, Director of Revenue <a href="mailto:kmatupa@yahoo.com">kmatupa@yahoo.com</a>	Grecium Kandio, Deputy Director-Tax Policy
<b>Reserve Bank of Malawi</b>	Ken Khoswe, Manager-Foreign Exchange Operations <a href="mailto:kkhoswe@rbm.mw">kkhoswe@rbm.mw</a>	Chisomo Kuyenda, Senior Economist
<b>Ministry of Natural Resources Energy and Mining (MNREM)</b>	Jalf Salima, Director of Mines <a href="mailto:jalf.salima@yahoo.com">jalf.salima@yahoo.com</a>	Peter Chilumanga, Deputy Director of Mines
<b>National Audit Office</b>	Charles Maseya, Deputy Auditor General <a href="mailto:charlesmaseya@gmail.com">charlesmaseya@gmail.com</a>	G. Chikwana, Chief Auditor

Permanent observers		
	Main Member	Alternate Member
Malawi Revenue Authority	Davie Khonje, Head -Mining Unit <a href="mailto:dkhonje@mra.mw">dkhonje@mra.mw</a>	Evelet Manda, Auditor

## Annex B: MSG meeting attendance

MSG Meeting		1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	10Bth	11Ath	11Bth	12th	13th	14th	15th	16th	17th	No attendance	Attend ed
<b>MSG Members from 2015 to 2017</b>																						
<b>Government Full Members</b>	<b>Delegated Members/Change or replacement</b>																					
Crispin C. Kulemeka (Ministry of Finance)	Kenneth Matupa (19th Dec 2017), George Harawa (No change)	Green	Green	Green	Green	Red	Green	Green	Green	Green	Green	Green	Green	Green	Green							
Birtwell Chingoli (Reserve Bank of Malawi)	Innocent Mughandira (Was delegated 15 March 2015 1st MSG Meeting), Ken Khoswe (Was delegated)	Green	Green	Red	Green	Red	Green	Green	Red	Red	Red	Red	Red	Red	Green							
Charles Kaphwiyo (Ministry of Natural Resources, Energy and Mining)	James Namalima (He delegated on 16th March 2015 first meeting)	Green	Green	Red	Red	Green	Red	Red	Red	Red	Red	Red	Red	Red	Red							



	attendance once.																			
Lernford Mwangonde (CfJ)																				
<b>Civil society - alternate members</b>																				
Jabesi Nyirenda (FOCUS)																				
Success Sikwese (CCJP)	Agness Mpoto ( Replaced Success on 19th December 2017)																			
Elyvin Nkhonjera Chawinga (ACTIONAID)	Mathar Kwataine (joined 28 January 2016), Chisomo Manthalu (joined 28th January 2016), Peter Pangani (joined 25th Aug 2017)																			
Rachel Etter-Phoya (CfJ)	Kaulungu Simwaka (Delegated on 2nd May 2015 MSG 2nd meeting.)																			
<b>Industry - full members</b>																				











## Annex C: Cost of EITI Reports

Reporting year	Independent Administrator	Costs (USD)
Fiscal year 2014-15	Moore Stephens	USD 66,675.00
Fiscal year 2015-16	Moore Stephens	USD 76,115.00

Source: Provided by GIZ Malawi

## Annex D: List of stakeholders consulted

### Government

**Cassius Chiwambo** and **Tikondane Phiri** - Department of Mines; **Teddie Kamoto** - Department of Forestry; **Davie Khonje** - Malawi Revenue Authority; **Ken Khoswe** and **Chisomo Kuyenda** - Reserve Bank of Malawi; **Charles Maseya** - National Audit Office; **Hon. Goodall Gondwe**, **Kenneth Matupa**, **George Harawa**, **Leonard Mushani** and **Abdul Chiwamo** - Ministry of Finance; **Chikumbutso Namelo** and **Ada Kasopa** - Office of the Registrar General.

### Industry

**Rowland Browne** and **Meenakshi Sundaram** - Hamra Oil; **Chimwemwe Chikusa**, **Jimmy Chifungo** and **Martin Kansichi** - RakGas; **Lisungu Banda** and **Neville Huxham** - Globe Metals & Mining; **Burton Kachinjika** - Mkango Resources; **Bruno Kloser** - Rukuru Mining; **Andries Kruger** - Sovereign Services; **Dina Longwe** and **Mesheck Munthali** - Bwanje Cement; **Grain Malunga** - Chamber of Mines and Energy; **Spencer M'baka** and **Prajeesh Padmanabhan** - Shayona Cement.

### Civil Society

**William Chadza** - CEPA; **Rachel Etter-Phoya** - Tax Justice Network (formerly Citizens for Justice); **Moses Mkandawire** - Church and Society; **Kossam Munthali** - Focus; **Elyvin Nkhonjera** - Oxfam Malawi; **Success Sikwese** - CCJP.

### Independent administrators

**Rached Maalej** - Moore Stephens.

### Development partners

**Javier Aguilar** - World Bank; **Bent Bakken** - Norwegian Embassy in Lilongwe; **Andrew Bowden** - DFID; **Rolf Drescher** and **Vitima Mkandawire** - GIZ.

### Media

**Golden Matonga** - Nations Publications Limited (NPL) (Chair of Media Task Force); **Chiku Jere** - Mining and Trade Review; **Rabecca Chimjeka** - Times Group; **Isaac Jali** - Nyengo Msisya - MBC; **Llyod Mbwana** - Maravi Post; **Tamanda Matebule** - MIJ Radio Station; **Georgia Chirombo** - MIJ Radio Station.

## Annex E: List of reference documents

Key documents and sources are listed below. Please see footnotes for further references.

### Workplans and Annual progress reports:

- MWEITI 2018 work plan. Not available online.
- MWEITI Strategy 2018-2020. Not available online.
- MWEITI Communications and Engagement Strategy. Not available online.
- MWEITI Open Data Policy. Available at: [http://mweiti.gov.mw/wp-content/uploads/2017/04/malawi\\_open\\_data\\_policy.pdf](http://mweiti.gov.mw/wp-content/uploads/2017/04/malawi_open_data_policy.pdf).
- MWEITI Beneficial Ownership Disclosure Roadmap. Available at: [http://mweiti.gov.mw/wp-content/uploads/2017/04/malawi\\_beneficial\\_ownership\\_disclosure\\_roadmap.pdf](http://mweiti.gov.mw/wp-content/uploads/2017/04/malawi_beneficial_ownership_disclosure_roadmap.pdf).
- Annual Progress Report 2017. Available at: [https://eiti.org/sites/default/files/documents/malawi\\_eiti\\_annual\\_progress\\_report\\_2017.pdf017](https://eiti.org/sites/default/files/documents/malawi_eiti_annual_progress_report_2017.pdf017).

### EITI Reports, Summaries, Validation Report and Secretariat Review:

- MWEITI 2015-2016 EITI Report. Available at: <http://mweiti.gov.mw/wp-content/uploads/2017/04/MWEITI-2015-16-EITI-2nd-EITI-Final-Report-.pdf>.
- MWEITI 2015-2016 Summary Report. Not available online.
- MWEITI 2014-2015 EITI Report. Available at: <http://mweiti.gov.mw/wp-content/uploads/2017/04/MWEITI-2014-15-EITI-Report-final.pdf>.
- MWEITI 2014-2015 Summary Report. Available at: [http://mweiti.gov.mw/wp-content/uploads/2017/04/EITI-Summary-Report\\_Final.pdf](http://mweiti.gov.mw/wp-content/uploads/2017/04/EITI-Summary-Report_Final.pdf).
- MWEITI Recommendations from EITI Report 2017. Available at: <http://mweiti.gov.mw/wp-content/uploads/2017/04/Report-Recommendations-9.pdf>
- Remedial Action Plan. Not available online.
- Malawi EITI Candidature application. Available at: <http://mweiti.gov.mw/wp-content/uploads/2017/04/Malawi-EITI-Candidature-Application-Form-FINAL.pdf>.

### Legal documents and ToRs related to EITI implementation:

- MSG Terms of Reference 2017. Not available online.
- MSG Terms of Reference 2015. Not available online.
- Letter from CONGOMA to the MWEITI Secretariat. Dated 13 February 2018. Accessed 1 October 2018. Available at: <http://mweiti.gov.mw/wp-content/uploads/2017/04/CSO-Membership-in-the-MWEITI-MSG-for-the-Tenure-ending-December-2010.pdf?platform=hootsuite>.
- Government of Malawi. 2013. *Mining and Minerals Policy*. Accessed 28 September 2018. Available at: <http://www.eisourcebook.org/cms/Malawi%20Mines%20%26%20Minerals%20Policy%202013.pdf>.
- Government of Malawi. 2018. *Draft Mines and Minerals Bill*. Not available online.
- Government of Malawi. 2000. *Malawi Non-Governmental Organisations Bill*. Accessed 29 October 2018. Available at: <http://www.icnl.org/research/library/files/Malawi/ngo.pdf>.

- Government of Malawi. 2013. *Gender Equality Act*. Accessed 29 October 2018. Available at: <https://womenlawyersmalawi.files.wordpress.com/2017/06/gender-equality-act.pdf>.
- PWYP Malawi. 2015. *Memorandum of Understanding between the PWYP-Malawi Steering Committee and the individual member organisations for establishing the PWYP coalition in Malawi*. Not available online.

### Meeting minutes:

All the meeting minutes listed below are not published online, but were provided to the International Secretariat for the purpose of Validation:

- MWEITI (2015), '1st Ordinary meeting of the MSG, 18 Mar 2015'.
- MWEITI (2015), '2nd Ordinary meeting of the MSG, 08 May 2015'.
- MWEITI (2015), '3rd Ordinary meeting of the MSG, 16 Jun 2015'.
- MWEITI (2015), '4th Ordinary meeting of the MSG, 24 Sep 2015'.
- MWEITI (2016), '5th Ordinary meeting of the MSG, 28 Jan 2016'.
- MWEITI (2016), '6th Ordinary meeting of the MSG, 28 Jan 2016'.
- MWEITI (2016), '7th Ordinary meeting of the MSG, 29 Apr 2016'.
- MWEITI (2016), '8th Extraordinary meeting of the MSG, 03 Jun 2016'.
- MWEITI (2016), '9th Extraordinary meeting of the MSG, 29 Jun 2016'.
- MWEITI (2016), '10th Ordinary meeting of the MSG, 02 Dec 2016'.
- MWEITI (2016), '10th Extraordinary meeting of the MSG, 27 Dec 2016'.
- MWEITI (2017), '11th Extraordinary meeting of the MSG, 27 Mar 2017'.
- MWEITI (2017), '11th Ordinary meeting of the MSG, 25 Aug 2017'.
- MWEITI (2017), '12th Ordinary meeting of the MSG, 19 Dec 2017'.
- MWEITI (2018), '13th Ordinary meeting of the MSG, 27 Mar 2018'.
- MWEITI (2018), '14th Ordinary meeting of the MSG, 11 May 2018'.
- MWEITI (2018), '15th Extraordinary meeting of the MSG, 22 Jun 2018'.
- MWEITI (2018), '16th Extraordinary meeting of the MSG, 29 Aug 2018'.
- MWEITI (2018), 'draft 17th Ordinary meeting of the MSG, 18 Oct 2018'.

### Other government documents/reports:

- Government of Malawi. 2016. *OGP National Action Plan 2016-2018*. Accessed 9 October 2018. Available at: [https://www.opengovpartnership.org/sites/default/files/Malawi\\_NAP\\_2016-2018.pdf](https://www.opengovpartnership.org/sites/default/files/Malawi_NAP_2016-2018.pdf).

### Other online sources:

- Etter-Phoya, R. 2018. *Malawi's Journey to Full Contract Transparency*. EITI website. Accessed 9 October 2018. Available at: <https://eiti.org/blog/malawis-journey-to-full-contract-transparency>.
- ICNL. 2018. *Civic Freedom Monitor: Malawi*. Accessed 3 October 2018. Available at: <http://www.icnl.org/research/monitor/malawi.html#analysis>.
- Hubert, D. et al. 2017. *Malawi's troubled oil sector: Licenses, contracts and their implications*. Oxfam Malawi. Accessed 31 October 2018. Available at: <http://mweiti.gov.mw/wp-content/uploads/2017/04/OXFAM-REPORT-8-Review-of-Petroleum-Sector-in-Malawi.pdf>.
- Tostensen, A. 2017. *Malawi: A Political Economy Analysis*. NUPI. Accessed 3 October 2018. Available at:

[https://brage.bibsys.no/xmlui/bitstream/handle/11250/2461122/NUPI\\_rapport\\_Malawi\\_Tostensen.pdf?sequence=1&isAllowed=y](https://brage.bibsys.no/xmlui/bitstream/handle/11250/2461122/NUPI_rapport_Malawi_Tostensen.pdf?sequence=1&isAllowed=y).

## Annex F: Sample of mining licenses used for spot checks of requirement 2.3

License-holders	Active Licenses (as of August 2018*)
<b>Cement Products (MW) Ltd</b>	ML0180, ML0187
<b>Hamra Oil Company</b>	Block 2 Petroleum Exploration License (80%), Block 3 Petroleum Exploration License (80%)
<b>Lafarge Cement Company Ltd</b>	ML0200, ML0220A, EPL0493
<b>Mota Engel Engenharia E Construcao Africa</b>	ML0189, ML0223, ML0222, ML0217, ML0184, ML0196, ML0194, ML0221
<b>Paladin (Africa) Ltd</b>	ML0152, EPL0225, EPL0417, EPL0418, EPL0489, EPL0502
<b>Rak Gas MB45</b>	Block 4 Petroleum Exploration License (100%), Block 5 Petroleum Exploration License (100%)
<b>SacOil Holdings</b>	Block 1 Petroleum Exploration License (100%)
<b>Shayona Cement Corporation</b>	ML0046, ML0142, ML0130, EPL0445, EPL0446, EPL0460, EPL0444
<b>Terrastone Limited</b>	ML0002, ML0125, ML0134, ML0159

\*All spot checks were made through Malawi's Mining Cadastre Portal: <http://portals.flexiCadastre.com/malawi/>.