

Validation Committee Paper 71-5

Submitted by: EITI International Secretariat

on: 30 January 2019

Validation of Malawi

For decision

For discussion

For information

Subject to the Validator's consideration of the MSG's comments and finalisation of the Validation Report, the International Secretariat recommends that the Validation Committee recommends the EITI Board to agree that Malawi has made *meaningful progress* in implementing the 2016 EITI Standard. In accordance with requirement 8.3c, Malawi will be requested to undertake corrective actions before the second Validation on **<date of Board decision + 18 months>**.

Supporting documentation

Validation report [TBC]

Comments on the draft Validation Report by the MSG [TBC].

Draft Validation report [English][French].

Initial assessment by the International Secretariat [English].

Has the EITI competence for any proposed actions been considered?

The Articles of Association mandate the Board to classify implementing countries as candidate countries or compliant countries (Article 5(2)(i)(a)). The EITI Standard ([Requirement 8.3](#)) addresses [EITI Validation deadlines and the consequences](#) following Validation.

Financial implications of any actions

The recommendation implies a second Validation commencing in mid-2020. The cost of second Validations varies depending on the complexity of the extractive industries and the number of corrective actions. In this case, a second Validation is expected to cost circa 25 000 USD, including staff time and travel (if needed).

Document history

Draft Board Paper (for discussion) reviewed by the Validation Committee	6 February 2018
Validation Committee agreement on a Board Paper (for discussion)	TBC

VALIDATION OF MALAWI

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Proposed Board decision on the Validation of Malawi

Subject to reviewing the comments from the MSG and the final Validation report, the Validation Committee recommends that the EITI Board takes the following decision:

Following the conclusion of Malawi’s Validation of 2018, the EITI Board concludes that Malawi has made meaningful progress overall in implementing the EITI Standard.

The Board commends the Government of Malawi and the multi-stakeholder group for their efforts to enhance transparency in the management of its extractive industries and encourages continued progress. Despite the modest size of its extractive industries, Malawi has successfully established a platform for multi-stakeholder dialogue on extractives governance to drive improvements in transparency and accountability. The Board recognises that consistent follow-up on recommendations from EITI reporting, together with the Ministry of Finance’s hosting of Malawi EITI (MWEITI), have helped drive concrete reforms. Advances in fiscal and contract transparency, as well as the launch of an online license cadastre and publication of extractives contracts, have helped create the basis for governing the sector in an inclusive and equitable manner. In taking this decision, the Board welcomes Malawi’s efforts to go beyond the requirements of the EITI Standard in disclosing extractives production data, providing an effective diagnostic of inconsistencies across various sources. The Board encourages the government to continue work on systematic disclosures of EITI data and efforts to ensure beneficial ownership transparency as a means of strengthening effective government oversight of the extractive industries.

The Board nonetheless encourages additional efforts to ensure that published extractives information is complete and reliable in order to further build trust and accountability. Malawi is encouraged to ensure that transparency in revenue flows in its developing petroleum sector as well as companies’ social expenditures is commensurate with the clarity achieved in mining. While noting that financial sustainability remains a significant challenge, the EITI Board commends the government’s existing support for MWEITI and encourages further institutionalisation of its support for this platform for multi-stakeholder dialogue and governance. These improvements could help support the translation of transparency into greater accountability in the management of the extractive industries and help support their development into a key driver of economic growth over the medium term.

*The Board has determined that Malawi will have 18 months, i.e. until **<date of Board decision + 18 months>** to carry out corrective actions regarding requirements relating to industry engagement (1.2), work plan (1.5), license register (2.3), data comprehensiveness (4.1) and quality (4.9), distribution of revenues (5.1), mandatory social expenditures (6.1) and outcomes and impact of implementation (7.4). expenditures (6.2) and economic contribution (6.3). Failure to achieve meaningful progress with considerable improvements across several individual requirements in the second Validation will result in suspension in accordance with the EITI Standard. In accordance with the EITI Standard, Malawi may request an extension of this timeframe, or request that Validation commences earlier than scheduled.*

The Board's decision followed a Validation that commenced on 1 September 2018. In accordance with the 2016 EITI Standard, an initial assessment was undertaken by the International Secretariat. The findings were reviewed by an Independent Validator, who submitted a draft Validation report to the multi-stakeholder group for comment. The multi-stakeholder group's comments on the report were taken into consideration by the Independent Validator in finalising the report, who also responded to the multi-stakeholder group's comments. The final decision was taken by the EITI Board.

Background

The Government of Malawi committed to implementing the EITI on 17 June 2014. On 22 October 2015 the EITI Board accepted Malawi as an implementing country. By the commencement of Validation, Malawi has published two EITI Reports. The fiscal year in Malawi runs from 1 July to 30 June. 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 and Malawi is developing the terms of references for their third report at the time of writing.

On 25 October 2016, the Board agreed that Malawi's Validation under the 2016 EITI Standard would commence on 1 September 2018. In accordance with the Validation procedures, an initial assessment [English] was prepared by the International Secretariat and a draft Validation report was prepared by the Independent Validator [English | French]. Comments from the MSG are expected on 31 January 2019. The Independent Validator will review the comments and respond to the MSG, before finalising the Validation report.

The Validation Committee reviewed the case on 6 February 2019 and [TBC]. Based on the findings above, the Validation Committee agreed to recommend the assessment card and corrective actions outlined below.

The Committee agreed to recommend an overall assessment of "meaningful progress" in implementing the 2016 EITI Standard. Requirement 8.3.c. of the EITI Standard states that:

- ii. Overall assessments. Pursuant to the Validation Process, the EITI Board will make an assessment of overall compliance with all requirements in the EITI Standard.

...

- iii. **Meaningful progress.** The country will be considered an EITI candidate and requested to undertake corrective actions until the second Validation.

The Validation Committee agreed to recommend a period of **18 months** to undertake corrective actions. This recommendation takes into account that the challenges identified are significant and seeks to align the Validation deadline with the Malawi's reporting deadlines of 30 June annually.

Assessment card

The Validation Committee recommends the following assessment:

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

	No progress. All or nearly all aspects of the requirement remain outstanding and the broader objective of the requirement is not fulfilled.
	Inadequate progress. Significant aspects of the requirement have not been implemented and the broader objective of the requirement is far from fulfilled.
	Meaningful progress. Significant aspects of the requirement have been implemented and the broader objective of the requirement is being fulfilled.
	Satisfactory progress. All aspects of the requirement have been implemented and the broader objective of the requirement has been fulfilled.
	Beyond. The country has gone beyond the requirements.
	This requirement is only encouraged or recommended and should not be taken into account in assessing compliance.
	The MSG has demonstrated that this requirement is not applicable in the country.

Corrective actions

The EITI Board agreed the following corrective actions to be undertaken by Malawi. Progress in addressing these corrective actions will be assessed in a second Validation commencing on **<date of Board decision + 18 months>**:

1. In accordance with 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 2.3, Malawi should work with key stakeholders in the EITI process to ensure that the date of application, date of award and duration of the license is included for petroleum licenses in the cadastre.
4. In accordance with Requirement 4.1, Malawi 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.
5. 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. Malawi 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.

6. In accordance with 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.
7. 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, Malawi is encouraged to provide an explanation.
8. In accordance with Requirement 7.4, Malawi 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.

The government and the MSG are encouraged to consider the other recommendations in the Validator's Report and the International Secretariat's initial assessment, and to document the MSG's responses to these recommendations in the next annual progress report.