

Validation of Zambia: Draft assessment by the EITI International Secretariat

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1. Summary

Zambia's second Validation commenced on 25 April 2019. The EITI International Secretariat has assessed the progress made in addressing the four corrective actions established by the EITI Board following Zambia's first Validation in 2017.¹ The four corrective actions relate to:

1. License allocations (Requirement 2.2),
2. Contract disclosure (Requirement 2.4),
3. Production data (Requirement 3.2),
4. Follow up on recommendations (Requirement 7.3).

In addition to the corrective actions, the Secretariat has reviewed progress in meeting Requirement 4.9 (on data quality), given concerns of back-sliding since the first Validation.

The Secretariat's assessment is that, at the commencement of Validation (25 April 2019), Zambia had fully addressed two of the four corrective actions, having made "satisfactory progress" on Production data (3.2) and Follow up on recommendations (7.3) and had made "meaningful progress" with considerable improvements in addressing the other two corrective actions. In addition, the Secretariat's assessment is that there has been back-sliding in Requirement 4.9 on data reliability.

The outstanding gaps relate to license allocations (Requirement 2.2), contract and license transparency (Requirement 2.4) and data quality (Requirement 4.9).

The draft assessment was sent to the multi-stakeholder group (MSG) on 12 July 2019. Following comments from the MSG expected on 2 August 2019, the assessment will be finalised for consideration by the EITI Board.

2. Background

Zambia joined the EITI in 2009 and became compliant with the EITI Rules in September 2012. Zambia's first Validation under the EITI Standard concluded in October 2017, in which the EITI Board found that Zambia had made 'meaningful progress' in implementing the EITI Standard.² Four corrective actions were identified by the Board, to be assessed in a second Validation commencing on 25 April 2019.

Zambia has undertaken a number of activities to address the corrective actions:

- In July 2017, Zambia EITI (ZEITI) launched a new website where information on the extractive sector is published alongside EITI Reports.³
- On 14 December 2017, Minister of Mines and Minerals Development Chris Yaluma published a press release commenting on the corrective actions, calling for a detailed action plan.
- In March 2018, Zambia EITI conducted a workshop for the multi-stakeholder group on mainstreaming EITI disclosures, focusing on the corrective actions.
- In July 2018, the Zambia EITI Council (ZEC) published their 2017 ZEITI Annual Progress Report (APR), containing the action plan called for by the Minister.

¹ EITI (2017), 'Zambia Validation: 2017'. Accessed on 18 March 2019. Available at: <https://eiti.org/zambia-2017-validation>

² EITI (2016), '2016 EITI Standard'. Accessed on 25 April 2019, available at: <https://eiti.org/document/eiti-standard-requirements-2016>

³ Zambia EITI (2019), Zambia EITI website. Accessed on 14 June 2019, available at: <http://zambiaeiti.org>

- ZEC approved the ToR for the 2016 EITI Report and the MSG appointed Moore Stephens as the Independent Administrator (IA) in June 2018.
- On 27 September 2018 the MSG approved the IA's scoping report, and the inception report in December 2018.
- The MSG approved and published the 2016 EITI Report on 31 December 2018.
- In December 2018 and early 2019, Zambia EITI coordinated a financial modelling workshop to build capacity in government agencies (Ministry of Mines and Minerals and Zambia Revenue Authority) and help inform public debate and government policy on taxation in the mining industry.

The following section addresses progress on each of the corrective actions. The assessment covers the corrective actions established by the Board and the associated requirements in the EITI Standard. The assessment follows the guidance outlined in the Validation Guide.⁴ In the course of undertaking this assessment, the International Secretariat has also considered whether there is a need to review additional requirements, i.e. those assessed as “satisfactory progress” or “beyond” in the 2016 Validation. While *all* requirements have not been comprehensively assessed, the Secretariat's view is that there has been back-sliding on Requirement 4.9 related to data quality.

3. Review of corrective actions

As set out in the Board decision on Zambia's first Validation, the EITI Board agreed four corrective actions.⁵ The Secretariat's assessment below discusses whether the corrective actions have been sufficiently addressed.

The assessments are based on the 2019-2020 ZEITI Workplan⁶, the 2016 Scoping report of September 2018⁷, the 2016 Zambia EITI Report⁸, the 2016 Zambia EITI Summary data⁹, the 2017 ZEITI APR, minutes from the ZEC meetings from 25 October 2017 to 25 April 2019, alongside various documents submitted by ZEITI to the International Secretariat, e-mail correspondence, and stakeholder consultations. To the extent possible, the International Secretariat has referenced publicly-available document, and indicate which files are not in the public domain.

3.1 Corrective action 1: License allocations (#2.2)

In accordance with Requirement 2.2, Zambia should ensure annual disclosure of which mining, oil and gas licenses were awarded and transferred during the year under review, highlighting the processes for transferring licenses, technical and financial requirements, and any non-trivial deviations from the applicable legal and regulatory framework governing license awards and transfers. This could include the most recent information on the latest licensing rounds to improve the timeliness of the information on license allocations. The Zambia EC might consider ensuring that EITI reporting includes commentary on any deviations from the license allocation process and on the efficiency of the licensing process.

⁴ EITI (2019), 'EITI Validation Guide'. Accessed on 18 March 2019, available at: <https://eiti.org/document/eiti-validation-guide>

⁵ EITI (2017), 'Zambia Validation: 2017'. Op.cit.

⁶ Zambia EITI (2019), '2019-2020 ZEITI Work Plan'. Accessed on 18 March 2019. Available at: <http://zambiaeiti.org/wp-content/uploads/2019/01/2019-2020-ZEITI-Work-Plan.pdf>

⁷ Zambia EITI (2018), 'EITI Scoping Report for the year ended 31 December 2016'. Accessed on 25 March 2019. Not published, provided by the ZEITI Secretariat.

⁸ Zambia EITI (2018), '2016 Zambia EITI Report'. Accessed on 18 March 2019. Available at: <http://zambiaeiti.org/wp-content/uploads/2018/12/Zambia-EITI-Report-2016.pdf>

⁹ Zambia EITI (2018), '2016 ZEITI Summary Data Sheet'. Accessed on 18 March 2019. Available at: <http://zambiaeiti.org/wp-content/uploads/2019/01/2016-ZEITI-Summary-Data-Sheet.xlsx>

Findings from the first Validation

The first Validation concluded that Zambia had made inadequate progress in meeting this requirement. Validation found a description of the licensing process, but uncovered gaps related to the process of license transfers, licenses transferred during the reporting year, and an explanation of the technical and financial criteria for awarding of licenses. Validation raised uncertainties over whether the EITI Report fully reflected the latest relevant legislation, i.e. the Mines and Minerals Development Act of 2015.

Progress since Validation

Shortly after its first Validation, ZEITI followed up on the assessment by launching a new website, with more contextual information.¹⁰

Regarding active legislation, the 2016 EITI Report is not comprehensive. It refers to the Mines and Minerals Development Act of 2015¹¹ throughout the report, including a recent amendment, the MMDA 2016 with minor changes to royalty rates and arm's length pricing (related to acceptable transfer pricing).¹² The MMDA 2016 was enacted with immediate effect.¹³ The Mines and Minerals Development (General) *Regulations* 2016 were gazetted^{14,15,16} on 22 January 2016, but was not mentioned in the EITI Report. The active regulations in the country are not available online, though they may be accessed in print from government offices for a fee.

Awards/transfers: It is possible to access entries for all active licenses, including those awarded and transferred in 2016, via the Mining cadastre in Zambia¹⁷ and a list published by ZEITI.¹⁸ Only mining companies were considered material in the 2016 EITI Report, and there were no new awards to material mining or petroleum companies in 2016. In addition, Zambia Consolidated Copper Mines Investment Holdings Plc (ZCCM), a state-owned enterprise (SOE) which manages the government's interests in various large-scale mining projects, and participates in five petroleum exploration licenses.¹⁹ Only one of ZCCM's petroleum licenses was active in 2016, and was not awarded during the year in question. There does not appear to be a publicly-available list summarising licenses held by the mining companies covered by the 2016 EITI Report, although the report provides a partial list (p.72) as part of its project-level reporting. Transfers of licenses are included but does not identify the previous license-holders (p.91), Annex 10 p.95).

¹⁰ Zambia EITI (2019), 'Zambia EITI website'. Accessed on 18 March 2019. Available at: <http://zambiaeiti.org/>

¹¹ Ministry of Mines and Minerals Development (2018), 'Mines and Minerals Development Act 2015'. Accessed on 18 March 2019. Available at: http://www.mmmd.gov.zm/?wpfb_dl=136

¹² Ministry of Mines and Minerals Development (2018), 'Mines and Minerals Development (Amendment) Act 2016'. Accessed on 18 March 2019. Available at: http://www.mmmd.gov.zm/?wpfb_dl=145

¹³ ZambiaLii (2016), 'Mines and Minerals Development (Amendment) Act 2016'. Accessed on 20 March 2019. Available at: <https://zambialii.org/zm/legislation/act/14-16>

¹⁴ African Mining Legislation (2019), 'The Mines and Minerals Development (General) Regulations 2016'. Accessed on 20 March 2019. Available at: <https://www.a-mla.org/images/acts/GOVERNMENT%20OF%20ZAMBIA%20Final%20regulations.docx.docx>

¹⁵ Association of Zambian Mineral Exploration Companies (AZMEC) (2019). 'The Mines and Minerals Development Act 2015, Statutory instrument No 7 of 2016: Mines and Minerals Development (General) Regulations 2016'. Accessed on 27 March 2019. Available at: <https://www.azmec.co.zm/downloads/acts/Mines%20and%20Minerals%20Development%20Act%20SI%20No%207%20of%202016.pdf>

¹⁶ ZambiaLii (2016), 'Zambia Gazette Vol. LII No. 6456 (22 January 2016)'. Accessed on 27 March 2019. Available at: <https://zambialii.org/zm/gazette/ZMGaz/2016/lii/6456/20160122>

¹⁷ Ministry of Mines and Minerals Development (2019), 'Zambia Mining Cadastre Portal'. Accessed on 25 April 2019. Available at: <http://portals.flexicadastre.com/zambia/>

¹⁸ Zambia EITI (2019), 'Zambia Mining Cadastre 2016'. Accessed on 1 April 2019. Available at: <http://zambiaeiti.org/wp-content/uploads/2019/04/Zambia-Mining-Cadastre-2016.xlsx>

¹⁹ PEL 012, 030, 031, 032 and 033

In the mining sector, the report lists 2 336 active mining licenses in 2016 (pp.42-43). The report does not clarify how many of these were awarded during the period under review. However, Zambia EITI published a list of licenses contained in the cadastre on 1 April 2019, which contains 1 145 licenses.²⁰ Based on consultations, the differences are due to different parameters for searching the database. Both numbers are therefore correct but respond to different questions. On transfers, the report clarifies that 17 licenses were transferred, involving 16 different companies and includes the name of the new licensees (p.43, Annex 7).²¹

There were ten active petroleum licenses in 2016, with two new awards resulting from the 2016 licensing rounds (pp.23,45 and Annex 1): Block number 31 to Tullow Zambia B.V. Limited (license PEL 028) and Block number 54 to Sargas Oil Limited (license PEL 029). This is confirmed by the mining cadastre²² and stakeholder consultations.

The cadastre contains relevant information outside the period under review, e.g. the mining cadastre also lists several applications by ZCCM-IH in 2016, that were not granted until 2017 or later.²³ A full list of all awarded mining licenses and rights-holders is available through the Zambia EITI website.²⁴

Award/transfer process: The 2016 EITI Report includes a description of the process and relevant laws for license awards in mining (pp.40-43) and petroleum (pp.44-45).

The process for awarding exploration and **mining** licenses is governed by the MMDA 2015 (sections 12-37) and the Mines and Minerals Development (General) Regulations 2016 in particular. However, the Mines and Minerals Development General Regulations 2016 was neither described nor referenced, alongside the precise procedures contained in these regulations.^{25,26,27} Neither were the regulations publicly available through government websites.

For the **petroleum** sector, license allocations are governed by the Petroleum Act 2008 (sections 10-13 and 31-34)^{28,29} and the Petroleum (General) Regulations 2011.^{30,31} The process for awarding licenses is described in the report (pp.44-45). ZEITI published a more user-friendly overview of the process on their website.³² According to government stakeholders there are also so-called 'government-reserved blocks' that have not been assigned to any one company, but where ZCCM-IH has assumed responsibility for locating suitable investors. These are not relevant for the period under review.

²⁰ Zambia EITI (2019), 'Zambia Mining Cadastre 2016'. Accessed on 1 April 2019. Available at: <http://zambiaeiti.org/wp-content/uploads/2019/04/Zambia-Mining-Cadastre-2016.xlsx>

²¹ Zambia EITI (2019), 'Licenses Transferred in 2016'. Accessed on 20 April 2019. Available at: <http://zambiaeiti.org/wp-content/uploads/2019/04/Licenses-Transferred-in-2016.xls>

²² Ministry of Mines and Minerals Development (2019), 'Zambia Mining Cadastre Portal'. Op.cit.

²³ An examples includes license 21597 HQ LEL.

²⁴ Zambia EITI (2019), 'Zambia Mining Cadastre 2016'. Accessed on 1 April 2019. Op.cit.

²⁵ Ministry of Mines and Minerals Development (2019), 'Mining Acts'. Accessed on 19 March 2019. Available at: http://www.mmmd.gov.zm/?page_id=5313

²⁶ Ministry of Mines and Minerals Development (2019), 'Issuance of Exploration License'. Accessed on 19 March 2019. Available at: http://www.mmmd.gov.zm/?page_id=5321

²⁷ Ministry of Mines and Minerals Development (2019), 'Issuance of Mining License'. Accessed on 19 March 2019. Available at: http://www.mmmd.gov.zm/?page_id=5323

²⁸ Zambia EITI (2019), 'Petroleum (Exploration and Production) Act 2008'. Accessed on 8 April 2019. Available at: <http://zambiaeiti.org/wp-content/uploads/2019/04/The-Petroleum-Exploration-and-Production-Act-Number-10-of-2008.pdf>

²⁹ Ministry of Mines and Minerals Development (2019), 'Petroleum (Exploration and Production) Act 2008'. Accessed on 19 April 2019. Available at: http://www.mmmd.gov.zm/?wpfb_dl=96

³⁰ Zambia EITI (2019), 'Petroleum General Regulations of 2011'. Accessed on 8 April 2019. Available at: <http://zambiaeiti.org/wp-content/uploads/2019/04/The-Petroleum-Exploration-and-Production-General-Regulations-2011.pdf>

³¹ Ministry of Mines and Minerals Development (2019), 'Petroleum General Regulations of 2011'. Accessed on 19 April 2019. Available at: http://www.mmmd.gov.zm/?wpfb_dl=97

³² Zambia EITI (2019), 'Procedures for Granting of Petroleum Exploration Licenses'. Accessed on 8 April. Available at: <http://zambiaeiti.org/wp-content/uploads/2019/04/Procedures-for-Granting-of-Petroleum-Exploration-Licences.pptx>

Technical and financial criteria: The 2016 Report improves on Zambia’s coverage of license awards procedures, including the (lack of) technical and financial criteria used. However, there are concerns that the report does not provide full clarity, since the report does not mention the relevant statutory instruments of the 2016 regulations as noted in the sections above.

For the mining sector there are no criteria, except in the event of an auction. The Minister should then set up a technical committee to evaluate bids according “pre-determined parameters” which could be considered as technical and financial criteria (p.41). These are not detailed in the report as there has been no mining bidding round held to date.

In terms of the 2016 petroleum bidding round, the report describes the set of technical and financial criteria used for assessing bids (dubbed ‘Evaluation Criteria’), including the respective weights of different criteria (pp.44-45,92-93).

Zambia does not appear to have technical or financial criteria for transferring mining or petroleum licenses. Annex 9 highlights that there are no definition or “technical nor financial criteria for any set of licenses” (p.94). Government and industry stakeholders also claimed that the sole criteria related to license awards are, in effect, that the license area is not covered by other licenses. This they claimed was the reason for a lack of formal description in the EITI Report.

License awardee information: Mining license awardee information is available through Annex 5, including those awarded in 2016, and was published on ZEITI’s website on 1 April 2019.³³ Petroleum companies, none of which were considered material, are listed in Annex 1 alongside their respective licenses.

Non-trivial deviations: No material company was awarded or transferred any license during the period under review. For non-material companies, deviations from statutory license award and transfer procedures are not explicitly mentioned in the report. The report does note that one petroleum license award, block 31, was awarded although not advertised. The report provides a full explanation of the process. Otherwise, there is no evidence that the Independent Administrator (IA) checked for non-trivial deviations in the mining sector, although in consultations they confirmed that the Cadastre Department were requested to indicate whether such deviation had taken place during the reporting period. Upon consultation, government stakeholders clarified that, as of 2018, the Office of the Auditor General has begun performance audits of the department to ensure license allocations followed the statutory procedures, although this report was not yet published during Validation.

Bidding process: The report states there were no bidding rounds in the mining sector during the period under review (p.41). The bidding process for the 2016 petroleum licensing round, including criteria for the two awards (block 31 and 54) in 2016 and the deviation noted above, is described in the report (p.45). The report does not list the two other applicants for block 54, but lists the awardee – Sargas Oil Limited (license PEL 029). This information is available to the public upon request at the Hydrocarbons Unit, and was submitted to the International Secretariat³⁴, but has not been disclosed publicly at the time of Validation.

Secretariat’s Assessment

The International Secretariat’s assessment is that the corrective action related to license allocations has been partly addressed and considers that Zambia has made meaningful progress on Requirement

³³ Zambia EITI (2019), ‘Zambia Mining Cadastre 2016’. Accessed on 1 April 2019. Op.cit.

³⁴ The unsuccessful bidding companies were Mafula Energy Limited and Rhino Resources.

2.2. The 2016 EITI Report and other public documents discloses which mining, oil and gas licenses were awarded and transferred in 2016. The report notes that none involved material companies, and include a description of the statutory rules and procedures for awards and transfers, including bidding criteria associated with the 2016 petroleum licensing round. However, the report does not provide the full list of bidders for one of the two petroleum licenses awarded; block 54. The report does not sufficiently clarify the (lack of) technical and financial criteria in the mining licensing process. This concern is compounded by the lack of availability and description of the 2016 regulations and statutory instruments. Lastly, the report does not include an assessment of any non-trivial deviations from statutory procedures for 2016 mining license awards, but covers one of the petroleum license awards whose deviation is described in full.

In accordance with Requirement 2.2, Zambia should ensure that all relevant laws and regulations governing mineral rights allocations are adequately referenced and publicly available. With this availability they should confirm the statutory procedures, as well as technical and financial requirements, for mining license awards and transfers. Future EITI reporting should clarify the existence of non-trivial deviations from statutory procedures of license transfers and awards. Lastly, Zambia should ensure that the full list of bidders for each license awarded through competitive bidding is publicly disclosed.

3.2 Corrective action 2: Policy on contract disclosure (#2.4)

In accordance with Requirement 2.4 on contract disclosure, the ZEC should make sure that the description of the government's policy regarding contract and license transparency in the next EITI Report is up to date and reflects the MMDA 2015. It should also clarify whether there are any laws or contractual provisions that affect disclosure of contracts in the petroleum sector. Further, the ZEC may wish to consider whether to include any descriptions regarding what information related to individuals' licenses is publicly available, such as work programmes and environmental impact assessments, and provide links to further information where applicable.

Findings from the first Validation

The first Validation concluded that Zambia had made meaningful progress in meeting this requirement. Documentation was available that clarified that there were no active contracts in the mining sector, although the Validation highlighted that the report referenced the outdated legislation of MMDA 2008. Furthermore, Validation did not clarify whether it is possible to enter contractual agreements with the government in the petroleum sector, nor whether there was any government policy related to contract disclosure in the petroleum sector.

Progress since Validation

ZEITI published the 2016 EITI Report on 31 December 2018.³⁵ The 2017 APR refers to a press release of Ministry of Mines and Minerals Development, confirming the lack of contracts in the mining sector. Clear statements have also been issued by other stakeholders affirming that licenses are the only legal agreements governing mining rights in Zambia.

³⁵ Zambia EITI (2018), '2016 Zambia EITI Report'. Op.Cit.

Government policy: The Zambian extractive sector is governed by a license-regime, and while the report does include a table (pp.16-19) referring to progress made on Requirement 2.4, it does not describe the most recent mining regulations of 2016³⁶, which governs and presents all the statutory instruments used for assigning and proving mining rights, including the licenses and their respective annexes. During consultations, the IA explained that they did not have access to information on the government's policy on license disclosures, i.e. the full text of licenses and that of any annex, addendum or alteration/amendment, as they claimed legislation is silent on this matter. Clear statements have been made by stakeholders confirming that there are no provisions enabling contracts outside of mining legislation and that Zambia enforces a strict license regime. This is confirmed by the MMDA 2015 section 121(3)-(5) which implies that licenses or other agreements granted under prior regimes are still valid, i.e. provisions from MMDA 2008. Nonetheless, both government and industry consultations confirmed that Development Agreements under prior legislations are void under current legislation.

The report confirms that there are no contracts in the petroleum sector, only licenses (p.17). The report clarifies that all operating companies apply the conditions attached to exploration licenses of 2010 Petroleum legislation. Although not stating so explicitly, it is assumed that the report refers to the Petroleum General Regulations of 2011³⁷ (albeit referencing the wrong year), including the model Petroleum Exploration License (Form V) and the model Petroleum Development and Production License (Form VI). In addition, section 1.4 and 2.4 of the petroleum regulations provide general provisions on confidentiality and non-disclosure. These provisions do not appear to hinder publications of full licenses (nor contracts), unless it is viewed as commercially sensitive.

The 2016 EITI Report does not document the government's policy on disclosure of the full text of licenses that govern exploration or production in mining or petroleum. There is no reference to specific legal provisions or actual disclosure practices, and neither the government nor the ZEC seem to have formulated a policy on the publication of the full text of the licenses, especially in terms of annexes, addendums or amendments of them. Although not referenced in the EITI Report, the Mines and Minerals Development (General) Regulations 2016³⁸ (sections 43-45) seem to provide for public access to licenses and any electronically filed or scanned documents and mining rights information. Upon consultation, it was clarified that all licenses, including annexes, are available for inspection at the Cadastre Department or the Hydrocarbons Unit. Inspection requires payment of a fee and a statement of reason for inspection. A current project supported by the Natural Resource Governance Institute (NRGI) aims to publish all documents associated with licenses (including work programmes and environmental impact assessments) for the licenses held by companies deemed material for EITI reporting.

Practice: The report notes that licenses for both petroleum and mining are "listed" in the online cadastre. However, the report does not comment on disclosure practices of licenses' full text,

³⁶ African Mining Legislation (2019), 'The Mines and Minerals Development (General) Regulations 2016'. Op.cit.

³⁷ Ministry of Mines and Minerals Development (2019), 'Petroleum (General) Regulations of 2011'. Op.Cit

³⁸ Association of Zambian Mineral Exploration Companies (AZMEC) (2019). 'The Mines and Minerals Development Act 2015, Statutory instrument No 7 of 2016: Mines and Minerals Development (General) Regulations 2016'. Op.cit.

associated documents, annexes nor amendments. A brief search by the International Secretariat uncovered no disclosure beyond two publicly-accessible licenses.^{39,40,41,42}

Accessibility: The third-party website ResourceContracts.org⁴³ lists six concessions, pertaining to five different mining projects. Consultations with government and industry confirmed that these were no longer applicable or effective. The EITI Report does not cover these disclosures. The name of licenses, the rights-holders (companies) as well as the relevant dates and coordinates are available through Zambia's Mining Cadastre.⁴⁴

Secretariat's Assessment

The International Secretariat's assessment is that the corrective action related to contract disclosure has been partly addressed and considers that Zambia continues to have made meaningful progress on Requirement 2.4. Zambia EITI has clarified the lack of active contracts in the mining and petroleum sectors. However, the government's policy on public disclosure of the full text of mining and petroleum licenses, including their associated annexes, addendums or amendments, remains unclear. The 2016 EITI Report does not comprehensively review the practice of license disclosure and the full text of most licenses does not appear to be publicly-available at present.

In accordance with Requirement 2.4, Zambia should ensure that a clear policy on disclosure of the full text of licenses and any amendments or annexes that govern the exploration and exploitation of oil, gas and minerals is publicly disclosed, as per Requirement 2.4.d. This should include relevant legal provisions, and any barriers to actual disclosure practices. Zambia should also document the actual disclosure practices by maintaining an overview of any contracts and licenses that are publicly available, and include a reference to the location where these are published. The ZEC may also wish to outline their plans for disclosing contracts and licenses in accordance with Requirement 2.4.b of the recently approved 2019 EITI Standard.

3.3 Corrective action 3: Production data (#3.2)

In order to meet Requirement 3.2 on production data, the government should ensure disclosure of production data for the fiscal year covered by EITI reporting, including total production volumes and the value of production by commodity. The ZEC should ensure that EITI reporting includes information on the progress made by the government in obtaining reliable production figures, and to refer to the existing information provided by the MDD, ZRA and Chamber of Mines.

³⁹ 19711-HQ-LEL and 21453-HQ-LEL.

⁴⁰ Tadin (2016), 'Large Scale Exploration License: 19711-HQ-LEL'. Accessed on 20 March 2019. Available at: <https://tadin.com/images/certificates/license.pdf>

⁴¹ Tadin (2017), 'Large Scale Exploration License: 21453-HQ-LEL'. Accessed on 25 March 2019. Available at: https://tadin.com/upload/sertificates/cert_minerals.pdf

⁴² Tadin (2017), 'Local company printout: Topfat Gold Mining Limited (reg.nr 120130112835)'. Accessed on 25 March 2019. Available at: <https://tadin.com/images/certificates/topfattad2017.pdf>

⁴³ Natural Resource Governance Institute (2019), 'Resource Contracts'. Accessed on 20 March 2019. Available at: <https://resourcecontracts.org/search?q=&country%5B%5D=zm>

⁴⁴ Ministry of Mines and Minerals Development (2019), 'Zambia Mining Cadastre Portal'. Op.cit.

Findings from the first Validation

The first Validation concluded that Zambia had made meaningful progress in meeting Requirement 3.2 on production data. Validation documented information on production *volumes* available by commodity for the period under review, and documented the government's efforts to collect reliable information on production values. Validation noted that production values would likely be available for the coming reporting cycles.

Progress since Validation

ZEITI published the 2016 EITI Report on 31 December 2018.⁴⁵ In April 2019, the Zambia EITI website published another set of production data covering 2016-2019, which is used by ZRA to estimate production values and mineral royalty payments.⁴⁶ It includes estimates that deviates from the data contained in the 2016 EITI Report, but is also regarded by industry and several government stakeholders as more accurate. It covers production volumes and values for *all* commodities, including some not mentioned in the 2016 EITI Report.⁴⁷ It also exemplifies that there are differences in production data across different government agencies, as confirmed in stakeholder consultations, although these discrepancies are not fully covered in the EITI Report.

The 2016 EITI Report states that the MMMD was unable to provide production values per commodity, with the exception for copper. Zambia has also made progress under two government-reporting initiatives: Mineral Value Chain Monitoring Project (MVCMP) and the Mineral Production Monitoring Support Project (MPMSP). The former has led to the launch of the Mineral Output Statistical Evaluation System (MOSES), which contains the key mineral production reporting and export permit issuance. This data was the basis for ZEITI's disclosures of the 2016-2019 production data in open formats in April 2019.^{48,49}

Production volumes: The report provides production data on volumes for most significant mining commodities: copper, gold, zinc, lead, coal, emerald & beryl, limestone, amethyst and dolomite (pp.31-32). The report clarifies that there was no petroleum or cobalt production in Zambia in 2016 (p.32). The report also disaggregates some production data by company for copper, cobalt, gold and pyrite. The report does not comment on the apparent contradiction on cobalt production versus exports, while stakeholder consultations confirmed these are refined cobalt from Congolese copper deposits, i.e. re-exports (imported from the Democratic Republic of Congo, refined in Zambia and exported). According to consultations with industry, the company producing this associated cobalt reported cobalt production separately through the EITI, but such figures were not part of government-provided data. According to government officials consulted, ZRA allows for reporting of cobalt and copper volumes produced and exported in aggregate, with certain conditions regarding the ore grades.

Production values: The report provides production values for some of the commodities listed above, namely copper, gold, zinc and lead, and an explanation of the methodology for calculating values.

⁴⁵ Zambia EITI (2018), '2016 Zambia EITI Report'. Op.Cit.

⁴⁶ Zambia EITI (2019), 'Mineral Production Values 2013-2018'. Op cit.

⁴⁷ The data file contains data per time period, company and commodity for: Amethyst, Aquamarine, Beryl, Clay, Coal, Cobalt, Copper, Corundum, Dolomite, Emerald, Feldspar, Ferro-Manganese, Fluorspar, Garnet, Gold, Graphite, Gravel, Iron, Ironstone, Laterite, Limestone, Magnesium, Manganese Ore, Mica, Palladium, Phosphate, Phyllite, Platinum, Ruby, Sand, Selenium, Silver, Stones, Tin, Topaz, Tourmaline, Uranium,

⁴⁸ Zambia EITI (2019), 'Mineral Production Values 2013-2018'. Accessed on 8 April 2019. Available at: <http://zambiaeiti.org/wp-content/uploads/2019/04/Mineral-Production-Values-2013-to-2018.xlsx>

⁴⁹ Zambia EITI (2019), 'Mineral Production Data 2016-2019'. Accessed on 8 April 2019. Available at: <http://zambiaeiti.org/wp-content/uploads/2019/04/Mineral-Production-Data-2016-2019.xlsx>

However, the report does not provide 2016 production values for coal, emerald and beryl, limestone, amethyst and dolomite. ZEC members highlighted this gap in their MSG meeting on 27 December 2018 ahead of approving the report.⁵⁰ The report explains that MMMD was unable to provide data on missing production values, although the relevant regulations require that companies report production values regularly to the MMMD.⁵¹

Secretariat's Assessment

The International Secretariat's assessment is that the corrective action related to production data has been addressed and considers that Zambia has made satisfactory progress on Requirement 3.2. While the 2016 EITI Report provides production volumes and values for only some of these minerals, the ZEITI website published production volumes and values for all mineral commodities produced in 2016 in April 2019, ahead of Validation.

To further strengthen implementation, Zambia is encouraged to build on their EITI reporting of production volumes and values for all commodities, and to develop a mechanism for systematic disclosure of this data by the relevant government agencies and companies. Additionally, Zambia is encouraged to ensure that a comparison of production data from different government agencies is publicly disclosed, with a view to supporting public debate on the reliability of production data and strengthening quality assurances for official mining production statistics. Zambia may wish to explore options for disaggregating data even further, e.g. by project.

3.4 Corrective action 4: Lessons learned and follow-up on recommendations (#7.3)

In accordance with Requirement 7.3, the ZEC should consider a more systematic follow-up of the recommendations, for instance by developing a dedicated plan for following up on findings and recommendations from Zambia EITI Reports, outlining actions to address the recommendations that can address the issue raised. The ZEC could further consider ensuring that recommendations from Zambia EITI reporting to a larger extent address key challenges related to extractive sector stakeholders as part of Zambia EITI's dissemination and outreach activities.

Findings from the first Validation

The first Validation concluded that Zambia had made meaningful progress in meeting Requirement 7.3 regarding follow-up on recommendations. Validation documented that ZEC had considered recommendations from EITI reporting, although follow-up on recommendations were ad-hoc. Validation found a lack of clarity regarding the role of the IA and the MSG in generating recommendations, and the role of the MSG in following up. A review of ZEITI's Strategic Plan was recommended to address these challenges.

⁵⁰ Zambia EITI (2018), 'ZEC Meeting Minutes of 27.12.2018'. Not publicly available, provided by the Zambia EITI to the International Secretariat

Progress since Validation

The ZEC continues to follow up on EITI recommendations and the causes of discrepancies, and has followed up on the recommendation to ensure that recommendations to a larger extent address key challenges related to extractive sector.

Since the previous Validation, ZEITI published their 2016 EITI Report on 31 December 2018, which includes new recommendations focussing on improving EITI implementation as well as strengthening governance in the mining sector and broader extractives governance issues.⁵² The report also comments on the follow-up on recommendations from EITI Reports (p.80) and Validation results (pp.16-19). There is no documentation of follow-up from the recommendations since the publication of the 2016 report, although the new workplan for 2019-2020 includes actions related to follow-up on recommendations from EITI implementation and Validation.⁵³ ZEITI also published the 2017 Annual Progress Report (APR)⁵⁴ in July 2018, which commented on the progress with implementing recommendations to date.

Beyond the findings from the reconciliation, ZEITI has worked closely with the government to ensure that government agencies are able to analyse EITI data, with a view to informing policy decisions and implementation. In December 2018, ZEITI undertook a financial modelling workshop, organised under DfID's Extractives Hub project, to train government officials from the MMMD and ZRA on building and using financial models for mining projects. The exercise combined use of EITI data and more granular data provided by the government, which was later published by the ZEITI on their website.⁵⁵ As a follow-up to this work, the MMMD requested that mining companies submit their financial models to the government in January 2019, in order to compare financial models.⁵⁶

MSG input and follow-up: The comments on progress in the 2017 APR provide evidence that there is a more systematic approach by the ZEC in terms of follow-up on EITI recommendations and findings from EITI reporting. Section 4 of the 2017 APR provides an overview of the ZEC's responses to recommendations from both EITI Reports and Validation, identifying stakeholders responsible for follow-up on specific recommendations (pp.12-19). The recommendations in the 2016 EITI Report indicates that there is a more concerted approach by the ZEC in terms of building on the findings from the report and developing recommendations. Several recommendations make reference to EITI Requirements, linking them to broader extractives governance issues. Examples include linking beneficial ownership data to tax evasion and transfer mispricing as well as strengthening corporate and government audit procedures. The APR also refers to the 2019-2020 work plan, which covers a limited set of bullet points on recommendations stemming from EITI implementation and Validation. There is a clear shift from traditional EITI reporting to more systematic disclosures and mainstreaming of EITI Requirements in the substance of EITI recommendations, with a limited scoping note in the 2016 EITI Report seeking to map out systematic disclosures of EITI data.⁵⁷

Secretariat's Assessment

The Secretariat is satisfied that the corrective action on lessons learned and follow up on recommendations has been addressed and considers that Zambia has made satisfactory progress on

⁵² Zambia EITI (2018), '2016 Zambia EITI Report'. Op.Cit.

⁵³ Zambia EITI (2019), '2019-2020 ZEITI Work Plan'. Op.Cit.

⁵⁴ Zambia EITI (2018), '2017 Annual ZEITI Progress Report'. Op.Cit.

⁵⁵ Zambia EITI (2019), <http://zambiaeiti.org/zeiti-publications/>, see 'Mineral Production Values 2013-2018 available at <http://zambiaeiti.org/wp-content/uploads/2019/04/Mineral-Production-Values-2013-to-2018.xlsx>

⁵⁶ EITI (31 January 2019), 'Zambia hones in on fiscal sweet spot for mining'. Accessed on 14 June 2019, available at <https://eiti.org/blog/zambia-hones-in-on-fiscal-sweet-spot-for-mining>

⁵⁷ Zambia EITI (2018), '2016 Zambia EITI Report', Annex 9. Op.Cit.

Requirement 7.3. The government and Zambia EITI is taking steps to act upon lessons learnt with a view to strengthen the impact of EITI implementation on natural resource governance. There appears to be a mechanism in place for consistent follow-up on EITI recommendations, including the work plan, EITI Report and annual progress report.

To further strengthen implementation, Zambia is encouraged to continue improving the mechanism for follow-up by the ZEC and government on EITI recommendations with a view to integrating it into broader reform efforts to strengthen oversight of the extractive industries. Zambia is further encouraged to ensure that the follow-up on EITI recommendations better supports its efforts to transition towards systematic disclosures of EITI data.

4. Requirements assessed as satisfactory in 1st Validation

In the course of undertaking this assessment, the International Secretariat has also considered whether there is a need to review additional requirements, i.e. those assessed as “satisfactory progress” in the first Validation. In particular, the Secretariat reviewed possible back-sliding in the 2016 EITI Report on requirements related to data reliability (Requirement 4.9). The Secretariat’s view is that there is evidence to suggest progress has fallen below the required standard on Requirement 4.9 and warrant consideration by the EITI Board, for a downgrade to “meaningful progress”.

4.1 Assessment of data reliability(#4.9)

Findings from the first Validation

The first Validation found that Zambia had made satisfactory progress in meeting Requirement 4.9 on data reliability. Validation found evidence of a clear account of the reporting procedures and an assessment of the reliability of the data. Validation recommended that the ZEC and IA clearly document the discussion on the options considered and the rationale for the agreed data quality assurances to be provided by reporting entities to the IA.

Reason for concern and documentation

The International Secretariat has reviewed whether Zambia continues to display satisfactory progress on data quality and adherence to the agreed upon procedures for reliable revenue data. The assessment draws on the available information from meeting minutes of the ZEC^{58,59}, the Terms of Reference (ToR) for the IA⁶⁰, the 2016 scoping report⁶¹, the 2016 inception report⁶², the 2016 EITI Report⁶³ and stakeholder consultations.

As during the first Validation, the ZEC approved the ToR in line with the Board-approved procedures, as well as followed the same procurement procedures for the IA. The ZEC also approved and used the reporting templates as according to the procedures stipulated in the ToR.

⁵⁸ Zambia EITI (2018), ‘ZEC Meeting Minutes of 27.12.2018’. Op.cit.

⁵⁹ Zambia EITI (2019), ‘ZEC Meeting Minutes of 17.01.2019’. Op.cit.

⁶⁰ Zambia EITI (2018), ‘Terms of References of Independent Administrator Services for Zambia’s 2016 and 2017 Reports’. Accessed on 20 March 2019. Not published, made available by the ZEITI Secretariat.

⁶¹ Zambia EITI (2018), ‘EITI Scoping Report for the year ended 31 December 2016’. Op.cit.

⁶² Zambia EITI (2018), ‘ZEITI Inception Report 2016’. Op.cit.

⁶³ Zambia EITI (2018), ‘2016 Zambia EITI Report’. Op.Cit.

Review of audit practices: The report summarises the prevailing audit and assurance procedures and actual practices in Zambia for companies and governments (pp.46-47). The report also identifies the three material companies⁶⁴ that did not submit audited financial statements to the IA as part of EITI reporting (p.87) and it is possible to calculate their share of extractives revenues based on data in the report.⁶⁵ The EITI Report does not refer to the OAG's annual report for 2016, but all government entities were audited. The OAG's findings are available through their annual report and parastatal audit report, with references to irregularities in licensing, revenue collection and production returns; mirroring some of the findings of the 2016 EITI Report.^{66, 67}

Assurance methodology: The methods applied to ensure the reliability of the reported data are described and were identical to those agreed for 2014 and 2015 (p.21). However, the EITI Report (p.27) and MSG meeting minutes⁶⁸ noted that the ZEC decided that it was sufficient to provide *either* a certification by senior management or sign-off by external auditors.

Reconciliation coverage: The target reconciliation coverage was 80% (pp.12,54). The report claims to reconcile 95.10% of total cash flows reported by government agencies (p.14).

However, as the International Secretariat calculated discrepancies the initial *gross* discrepancies roughly equivalent to 5.9%⁶⁹ of total government-reported revenues for reconciliation, or 4.7% of total government revenues from the sector. Reconciliation reduced this to 5.1% of total government-reported revenues.

Assurance omissions: Six government entities did not have reporting templates signed by a senior official. Three companies did not provide their audited financial statements. Combined, the report's annex 3 (p.87) provides evidence that only six local government agencies complied with all agreed upon assurances: Kalulushi Municipal Council, Zimba District Council, Kitwe City Council, Chingola Municipal Council, Mazabuka Municipal Council, and Choma Municipal Council. The local government that adhered to the agreed upon procedures accounted for revenues of only ZMW 28,424,859 or 0.3% of total government revenues.⁷⁰

This was due to the challenges faced in external auditor certification. The report also clarified that, for government entities, the report claims this lack of adherence was ignored as the annual report of the OAG covered the ministries and provinces in the scope of EITI reporting (p.13). The OAG did provide certification after the publication of the EITI Report, on 4 January 2019⁷¹, bringing adherence of government agencies to 100%.

According to MSG meeting minutes, on 27 December 2018, the ZEC clarified their position regarding data reliability procedures, i.e. sign-off by senior officials for corporate financial statements were deemed as sufficient for data assurances, meaning that all *material* companies adhered to the quality assurances. This effectively means that the ZEC lowered the bar for quality assurances *after* data collection was completed. According to stakeholders from all constituencies however, this decision

⁶⁴ Konkola Copper Mines Plc, Lumwana Mining Company Limited and Kalumbila Minerals Limited.

⁶⁵ These three companies accounted for 34% of total government extractives revenues, or 43% of reconciled revenues.

⁶⁶ Office of the Auditor General (2017), 'Report of the Auditor General on the Accounts of the Republic: For the Year Ended 31st December 2016'. Accessed on 25 March 2019. Available at: <http://www.ago.gov.zm/reports/Special/REPORTOF.pdf>

⁶⁷ Office of the Auditor General (2017), 'Report of the Auditor General on the Accounts of Parastatal Bodies and Other Statutory Institutions: For the Financial Years Ended 31st December 2013, 2014, 2015 and 2016'. accessed on 25 March 2019. Available at: http://www.ago.gov.zm/reports/Parastatal/Parastatal_Report_2016.pdf

⁶⁸ Zambia EITI (2018), 'ZEC Meeting Minutes of 27.12.2018'. Op.cit.

⁶⁹ ZMW 493,408,709 million

⁷⁰ Calculated using company-reported data from page 61. And total government data from page 68 totalling ZMW 10,434,292,687, when correcting for social payments unilaterally reported by companies.

⁷¹ Office of the Auditor General of Zambia (2019), 'Confirmation of Auditing for the Financial Year 2016'. Accessed on 3 April 2019. Not published, submitted by the ZEITI Secretariat.

was made to reflect actual assurance practices from ZEITI reporting, where either sign-off or audited financial statements have been deemed sufficient.

Data reliability assessment: Given the above, the report provides a conclusion (p.13) that the report covers all significant contributions made in 2016, i.e. that the report is *comprehensive*.

However, in terms of *reliability*, the report does not include an assessment by the IA of the reliability of reconciled financial data, aside from the note that unreconciled discrepancies were above the agreed materiality definition of 1% (p.15). Upon consultation, the IA admitted that a statement on data quality was removed due to concerns regarding the remaining discrepancies. Additionally, as noted above, the IA's inception report indicated a different methodology for data quality assurances, after data collection. This means the ZEC changed the procedures, and although no stakeholders expressed concern regarding the changes to assurances, this remains a procedural concern.

Sourcing of information: Much of the contextual information in the report is clearly sourced, including source references. However, in most cases, only general URLs are provided without direct references to precise documents, creating challenges in confirming certain data in the EITI Report.

Summary tables: Zambia has submitted the summary data template for 2016 to the International Secretariat⁷², which is also published on the ZEITI website.⁷³

Recommendations: As noted in the section on Requirement 7.3, the report presents new recommendations related to both facilitating the EITI reporting process, and to wider governance issues. The report also includes recommendations made in previous reporting cycles.

Secretariat's Assessment

The Secretariat is not satisfied that the requirement on data quality has been fully met and considers that Zambia has made meaningful progress on Requirement 4.9. A review of the 2016 EITI Report raises concerns related to data reliability, mainly resulting from a lack of clear statement by the IA on the reliability of reconciled financial data. Although there are concerns given that only 56% of reconciled company payments were accompanied by audited financial statements, the report documents this lack of auditing of company accounts sufficiently. According to documentation, the ZEC also altered their procedures for data quality assurances, after data collection was completed. The Independent Administrator (IA) documents their assessment that reconciled financial data is comprehensive but this statement does not cover the reliability of reconciled financial data, even if stakeholders' confidence in the data's reliability appears to remain strong. It is thus not possible to conclude that the overall objective of data reliability has been achieved.

In accordance with Requirement 4.9.b and the standard Terms of Reference for the Independent Administrator agreed by the EITI Board, Zambia should ensure that the Independent Administrator provides a clear assessment of whether all companies and government entities within the agreed scope of the EITI reporting process provided the requested quality assurances for their EITI reporting. Zambia should ensure that the Independent Administrator provides an assessment of comprehensiveness and reliability of the (financial) data presented. Any gaps or weaknesses in reporting to the Independent Administrator must be disclosed in the EITI Report, including naming any entities that failed to comply with the agreed procedures.

⁷² EITI (2019), '2016 Zambia Summary data'. Accessed on 25 March 2019. Available at: https://eiti.org/sites/default/files/spreadsheets/2016_zambia_summary_data_san.xlsx

⁷³ Zambia EITI (2019), '2016 ZEITI Summary data sheet'. Op.cit.

5. Conclusion

Having reviewed the steps taken by Zambia to address the four corrective actions requested by the EITI Board as of the commencement of its second Validation (25 April 2019), it can be reasonably concluded that two of the four corrective actions have been fully addressed and that Zambia has made meaningful progress in implementing the EITI Standard, with considerable improvements across several individual requirements. In addition, the Secretariat's assessment is that there has been backsliding data quality (Requirement 4.9). The outstanding gaps relate to license allocation (Requirement 2.2), policy on contract and license disclosure (Requirement 2.4) and data reliability (Requirement 4.9). Moving forward, the Government of Zambia and the ZEC is encouraged to strengthen implementation by shifting towards systematic and regular disclosures of data by government and companies and to ensure

6. Annexes

Annex A: Companies' share of total revenues

Company	Taxpayer Identification Number (TPIN)	2016 Financial statement audited?	Government revenues (incl PAYE)	% of total government revenues	% of reconciled revenues
Kansanshi Mining Plc	1001602517	Yes	2,369,948,089	22.7%	28.5%
Konkola Copper Mines Plc	1001772785	No	1,328,883,720	12.7%	16.0%
Lumwana Mining Company Ltd	1001828755	No	1,185,700,650	11.4%	14.3%
Mopani Copper Mines Plc	1001630233	Yes	1,093,049,396	10.5%	13.1%
Kalumbila Minerals Limited	1001862964	No	1,064,743,228	10.2%	12.8%
First Quantum Mining And Operations Ltd-Bm M S	1001656040	Yes	751,508,103	7.2%	9.0%
Chambishi Copper Smelter Limited	1001831030	Yes	484,810,020	4.6%	5.8%
Zambia Consolidated Copper Mines – Investment Holdings Plc (ZCCM- IH) - Tax payer	1001761145	Yes	39,281,613	0.4%	0.5%
Total government revenues	10,434,292,687	Reconciled revenues	8,317,924,820	79.7%	100.0%