

VALIDATION COMMITTEE

EITI International Secretariat

11 November 2012

Secretariat Review: Tanzania

For decision

Summary

The Secretariat recommends that the Validation Committee recommends that the Board designates Tanzania as EITI Compliant.

SECRETARIAT REVIEW: TANZANIA

Recommendation

The Secretariat recommends that the Validation Committee makes the following recommendation to the Board via Board Circular:

The EITI Board designates Tanzania as EITI Compliant as of <date of Board circular + 1 week>. In accordance with the EITI Rules:

- *Tanzania must be revalidated within 5 years (i.e., by <date of Board circular + 1 week + 5 years>);*
- *Stakeholders in the process may call for a new validation at any time within that period if they think the process needs reviewing;*
- *Where valid concerns exist that a country has become EITI Compliant, but its implementation of the EITI has subsequently fallen below the standard required for Compliance, then the Board reserves the right to require the country to undergo a new validation or face delisting from the EITI; and*
- *In accordance with the 2011 edition of the EITI Rules, Tanzania is required to produce EITI reports annually. EITI Reports should cover data no older than the second to last complete accounting period (e.g. an EITI Report published in calendar/financial year 2013 should be based on data no later than calendar/financial year 2011);*
- *In accordance with requirement 21(c), Tanzania is required to publish a public report annually on the previous year's activities, detailing progress in implementing the EITI and any recommendations from the validator.*

The Board congratulates the government of Tanzania for its sustained commitment and leadership of the EITI process. The Board also congratulates the Tanzania MSG for its efforts and effective leadership in EITI implementation. The Board calls on the government and multi-stakeholder working group to ensure that the Board's recommendations are implemented in full, and tasks the EITI International Secretariat with providing regular progress reports to the EITI Board.

SECRETARIAT REVIEW: TANZANIA

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SECRETARIAT REVIEW: TANZANIA

1 Executive Summary

In August 2011, the EITI Board established five corrective actions required for Tanzania to achieve Compliance. The Board subsequently granted Tanzania a waiver from undertaking a second validation, and tasked the International Secretariat with assessing whether the remaining EITI requirements have been met. The Secretariat's assessment is attached. In the Secretariat's view, all remedial actions have been completed and the outstanding requirements have been met. The draft Secretariat review was circulated to the TEITI-MSG on 31 October 2012. The Secretariat received comments on 2 November 2012.

2 Introduction

Tanzania was admitted as an EITI Candidate Country on 16 February 2009. In February 2011, Tanzania's first EITI report was published, disclosing payments and revenues for the period 1 July 2008 – 30 June 2009. On 31 May 2012, Tanzania published, its July 2009 – June 2010 EITI Report. The third EITI Report covering July 2010-June 2011 is expected to be published in the first quarter of 2013.

The [validation report](#) from Tanzania was submitted to the EITI Board in May 2011. The Board subsequently declared that Tanzania had made "meaningful progress" in its implementation of the EITI, and, in accordance with the transition procedures, Tanzania was given until 15 February 2013 to demonstrate compliance with the 2011 edition of the EITI rules¹. The Board agreed that indicators 9, 11, 13, 14, and 15 were unmet, and agreed the following corrective actions were needed in order for Tanzania to achieve compliance:

1. The MSG should agree a clear definition of "material payments and revenues" and incorporate this definition into the reporting templates and reconciliation process for the second EITI Report (indicator 9). This should specifically address the question of the participation of small companies and payments by companies to local government authorities.
2. The second EITI Report should clearly demonstrate that all entities that make or receive material payments are participating in the reporting process (indicator 11).
3. As per the Indicator Assessment Tool for Indicator 13, the government and MSG should take steps to ensure that government disclosures to the reconciler are based on audited accounts to international standards and agree a strategy for addressing these issues in accordance with the requirements as specified in Validation IAT 13.
4. In accordance with the agreed definition of materiality (see point 1, above), the MSG should ensure that all material oil, gas and mining payments by companies to government are disclosed to the reconciler and incorporated into the second EITI Report (indicator 14).
5. In accordance with the agreed definition of materiality (see point 1, above), the MSG should ensure that all material oil, gas and mining revenues received by the government are disclosed to the reconciler and incorporated into the second EITI Report (indicator 15).

¹ Annex A - Board Circular 107, 24 July 2011.

2 Tanzania's response to the Board decision

The TEITI-MSG undertook a number of activities to address the five corrective measures agreed by the Board and comply with the unmet requirements (9, 11, 13, 14, and 15).

The TEITI-MSG has submitted evidence² that these corrective actions had been undertaken as part of the second reporting process, including:

- The TEITI-MSG conducted a scoping study to establish which revenue streams were material and consequently which companies and government entities should be covered in the EITI report. Based on the findings of the scoping study, the MSG agreed a clear definition of materiality and established a materiality threshold.
- The MSG ensured that revenues from small companies below the materiality threshold were unilaterally disclosed by the government.
- The MSG ensured that local district authorities collecting local levies from mining companies were included in the second EITI Report.
- A schedule for the publication of the 2009-2010 EITI report, and an agreed timeline for the publication of the 2010-2011 EITI report.
- The MSG ensured that that all 24 companies (including the state-owned Tanzanian Petroleum Development Corporation (TPDC)) and the 20 government entities that met the threshold reported. Two companies failed to submit data for the second EITI Report. The government took steps to ensure that these companies complied with the reporting requirements, and the data from all 24 companies were included in an addendum report published on 15 August 2012³.
- The government ensured that government reports were based on accounts audited to international standards by requesting the Controller and Auditor General (CAG), which audits all government agencies including local councils, to confirm that the data submitted for the second EITI Report was drawn from accounts audited to international standards.
- According to the addendum report, the net unresolved discrepancy amounts to TZS 727 million [just over US\$ 500 000], representing 0.20 % of the total final reported and reconciled government receipts.

Based on the above, on 1 June 2012 Judge Mark Bomani, TEITI-MSG Chair, wrote to the EITI Board to request a waiver from undertaking a second validation on behalf of the whole MSG. On 13 September 2012, the EITI Board granted Tanzania's request for a waiver⁴. The Terms of reference for the review are presented in annex C. The EITI International Secretariat conducted a desk review in September - October 2012. During the review, Tanzanian EITI stakeholders were consulted and given an opportunity to share their views.

² Supporting evidence provided by the TEITI-MSG include:

Annex B - Letter from Mark Bomani, Chair of TEITI-MSG, available from <http://www.eiti.org/internal>

Annex D - Tanzania EITI scoping study, available from <http://www.eiti.org/internal>

Tanzania EITI Report 2009-2010, available from http://www.teiti.or.tz/news_images/news4fcc799a27602.pdf

³ Addendum report available from http://www.teiti.or.tz/news_images/news502ca6b02b006.pdf.

⁴ Annex C - Board decision on Tanzania's Validation waiver request, Board Circular 132, 6 September 2012, including Terms of reference for the Secretariat Review, available from <http://eiti.org/internal>.

3 Secretariat review of remedial actions and assessment of indicators

The EITI Board agreed five remedial actions and tasked the Secretariat with reassessing compliance with Requirements 9, 11, 13, 14, and 15.

3.1 Remedial action 1

The MSG should agree a clear definition of “material payments and revenues” and incorporate this definition into the reporting templates and reconciliation process for the second EITI Report (indicator 9). This should specifically address the question of the participation of small companies and payments by companies to local government authorities.

Validator’s findings

The validator noted that there was no evidence that a definition of materiality had been agreed by the MSG. The rationale behind the MSG’s decision to select nine mining companies and three gas companies for the first reconciliation was unclear. The MSG agreed that they had not adequately addressed the materiality question. According to the Validation report, ‘company representatives suggested that there were other payments to the government, particularly local government, which should be considered material, as well as payments made by other extractive sector related companies such as exploration companies’ (Validation report, p. 17). The validator also cited the reconciler’s view that ‘they believe relevant material payments were left out of the reconciliation process’ and that there were ‘other relevant government agencies who should be required to report’ (Validation report, p.18).

Progress since Validation

The TEITI-MSG conducted a scoping study⁵ in November 2011 to establish which revenue streams were material, and consequently which companies and government entities should be covered in the EITI report. Based on the findings of the scoping study, the MSG agreed a clear definition of materiality that covered 19 revenue streams, drawn from data provided by the Ministry of Energy and Minerals (MEM), Tanzania Petroleum Development Corporation (TPDC), Tanzania Revenue Authority (TRA) and Tanzania Mineral Audit Agency (TMAA).

The MSG agreed a materiality threshold of TZS 200 million (approx. US\$ 145 000), which covered 99.4 % of total extractive industry revenue collected by TRA and MEM (Scoping study, p. 22). According to the second EITI Report, TRA and MEM collected 92% of the material revenues in the accounting period concerned. The remaining revenues were collected by the National Social Security Fund (6.5%), the Parastatal Pension Fund (1%), 13 local councils (0.6%) and the Ministry of Finance (0.01%). Any government agency, including local councils, which received payments from the material companies were required to report regardless of the size of the individual payments. There were no barter/infrastructure agreements between the government of Tanzania and companies in the accounting period concerned (EITI Report, p. 36).

With regards to payments collected at local level, all mining companies with Mineral Development Agreements (MDAs) are required to pay an annual local government levy of US\$200 000. This revenue stream was agreed to be material and was included in the second EITI Report.

⁵ Annex D - TEITI scoping study, available from <http://www.eiti.org/internal>.

Secretariat's Assessment

The Secretariat has reviewed the scoping study, the 2009-2010 EITI Report and the addendum report, and is satisfied that the definition of materiality agreed for the EITI Report captures all material payments and revenues, including payments to local authorities.

The EITI International Secretariat is satisfied that the remedial action requested by the Board has been completed.

3.2 Remedial Action 2

The second EITI Report should clearly demonstrate that all entities that make or receive material payments are participating in the reporting process (requirement 11).

Validator's findings

The validator noted that 'the MSG must review its criteria for choosing companies to undergo the reconciliation process' (Validation report, p.20). The EITI Board noted in its decision that in the absence of a clear definition of materiality it was not possible to establish whether all entities that make or receive material payments participated in the reporting process.

Progress since Validation

According to the 2009-2010 EITI Report, 24 companies, including the state-owned company TPDC which both collects non-tax payments on behalf of the government and pay taxes to the government, met the materiality threshold and were asked to report. Payments from 22 of these companies were included in the 2009-2010 EITI Report that was published on 31 May 2012. The MSG made significant efforts to ensure that the two companies - Tanzania Portland Cement Company and Mineral Extraction Technologies Ltd - that failed to report submitted their reporting templates. An addendum report published on 15 August 2012 includes the payments by all 24 companies identified as material taxpayers. The MSG is working on a draft EITI law to ensure that reporting becomes mandatory by law in the future.

In addition, the government has unilaterally disclosed the revenues from the 246 small companies that make payments below the agreed threshold. These payments amount to TZS 1 830 138 631 [approx.. US\$ 1 333 767], or 0.43 % of total government revenues from the extractive industry.

Seven government entities⁶ and 13 local government authorities collected revenues identified as material for the 2009-2010 EITI Report (EITI Report, p. 28), and submitted reporting templates.

Secretariat's Assessment

⁶ The energy and water regulator, EWURA, was not included in the scoping study. The Reconciler subsequently spotted one small transaction of levy payments going to EWURA. The MSG therefore decided to include EWURA in the list of government reporting agencies (page 28) in the reconciliation process. EWURA were sent a reporting template, but the payments they received were not material, so they do not appear on the list of government entities that received payments on page 83 of the 2nd report.

The Secretariat has reviewed the 2009-2010 EITI Report and the addendum report and is satisfied that all entities that made or received material payments participated in the reporting process.

The EITI International Secretariat is satisfied that the remedial action requested by the Board has been completed.

3.3 Remedial Action 3

As per the Indicator Assessment Tool for Indicator 13, the government and MSG should take steps to ensure that government disclosures to the reconciler are based on audited accounts to international standards and agree a strategy for addressing these issues in accordance with the requirements as specified in Validation IAT 13.

Validator's findings

The validator cited stakeholder views that 'audited reports were received from MEM, TRA, TPD and NSSF. The reconciler confirmed that these financial statements were audited in accordance with ISA's and they were audited by the Controller and Auditor General (CAG) of Tanzania (Validation report, p. 22). The validator cited stakeholder views that "audited reports were received from MEM, TRA, RPDC and NSSF". The reconciler confirmed that these financial statements were audited in accordance with IASs and that they were audited by the Controller and Auditor General (CAG) of Tanzania (Validation report, p. 22). However, in contrast the validator noted that according to the reconciler "figures provided by at least one government agency were, in their opinion 'erroneous'" (Validation report, p. 22). The validator concluded that he had 'little confidence at this stage that the actual figures are based on accounts audited to international standards. It remains to be seen, following the review of the highly significant discrepancies found in the reconciliation report by the Controller and Auditor General, to what degree the discrepancies were the result of errors in government reporting processes (Validation report, p. 22). The validator recommended that the MSG review the process by which government templates were completed. **Progress since Validation**

Tanzania adopted the International Financial Reporting Standards (IFRS) on 1 July 2004, and all government agencies are audited by the CAG according to IFRS. The government ensured that reporting templates submitted by government entities for the 2009-2010 were based on accounts audited to international standards by requesting the CAG to sign off on the figures provided. According to the EITI Report, all government entities and the 13 local councils had their templates certified by CAG.

Secretariat's Assessment

The Secretariat's assessment is that the MSG has agreed a reasonable approach for ensuring that government disclosures to the reconciler are based on accounts audited to international standards.

The EITI International Secretariat is satisfied that the remedial action requested by the Board has been completed.

3.4 Remedial Action 4

In accordance with the agreed definition of materiality (see remedial action 1, above), the MSG should ensure that all material oil, gas and mining payments by companies to government are disclosed to the reconciler and incorporated into the second EITI Report (indicator 14).

Validator's findings

The validator reported that of the companies selected for the first EITI Report, one company – El Hillal - failed to submit a final correctly completed template to the reconciler. A second company – Artumas – completed a reporting template but did not respond to the reconciler’s request for further information in light of differences with the government’s corresponding template. Furthermore, the validator noted that TPDC, the state-owned company which both collected revenues on behalf of the government and made tax payments to the government, was only treated as a tax payer in the first EITI Report.

In its decision, the Board noted that in the absence of a clear definition of materiality (indicator 9), it was not possible to establish whether all material oil, gas and mining payments by companies to government had been disclosed to the reconciler.

Progress since Validation

The second EITI Report and the addendum disclose all material payments from oil, gas and mining in 2009-2010. According to the addendum report, the unresolved discrepancies resulting from tax payments not reported by tax payer amounted to TZS 57 million and not reported by government amounted to TZS 784 million – a net difference of TZS 727 million [just over US\$ 500 000].

Figures from El Hillal and Artumas were both disclosed by the government in the third report, but they were not asked to submit reporting templates as they were both well below the threshold of TZS 200m. According to the government, Artumas Group paid TZS 2.7million and El Hillal TZS 187k (pages 105 and 109 of the report respectively).

Secretariat’s Assessment

The EITI International Secretariat is satisfied that the remedial action requested by the Board has been completed.

3.5 Remedial Action 5

In accordance with the agreed definition of materiality (see remedial action 1, above), the MSG should ensure that all material oil, gas and mining revenues received by the government are disclosed to the reconciler and incorporated into the second EITI Report (indicator 15).

Validator’s findings

The validator listed the recipient entities including the local authorities. The validator noted the difficulty of receiving reliable documentation to back-up whether all revenues were disclosed and therefore assessed that the indicator was not met. The Board agreed with that assessment.

Progress since Validation

All material government entities lodged their reporting templates. According to the addendum report, the unresolved discrepancies resulting from tax receipts not reported by government entities amount to TZS 727 million [over US\$ 500 000], or 0.20 % of total reported revenues. This is below the discrepancy threshold of TZS 5 billion (appx. US\$ 3.5 million) that the MSG agreed would be material and required to follow-up.

Secretariat’s Assessment

The EITI International Secretariat is satisfied that the remedial action requested by the Board has been completed.

4 Conclusion

The Board decision stipulated that five remedial actions should be completed in order for Tanzania to achieve Compliance. Subject to any further information from TEITI-MSG, the International Secretariat is satisfied that the remedial actions have been satisfactorily completed and that the outstanding requirements are met.

Annex A - Board decision on Tanzania, Board Circular 107, 24 July 2011

The Board concludes that Tanzania has made meaningful progress in implementing the EITI. The Board agreed that Tanzania would retain its status as a Candidate country, subject to a clearly defined and agreed work plan for achieving Compliant status, including a schedule for its next Validation.

The Board congratulates the government, companies and civil society organisations in Tanzania for the progress made in implementing the EITI. It especially notes the production of the first TEITI Report in February 2011. The Board also wishes to congratulate the validator and all stakeholders involved in the validation process on a clear and comprehensive validation report.

The validator found that Tanzania has not met a number of the validation indicators. Given the significant discrepancies identified in the first TEITI report, the validator expressed concern regarding the reconciliation process, notably the insufficient planning and consultation with reporting entities, lack of collaboration by some companies and the reliability of data reported by the government. The validator also noted that the lack of a legal basis for TEITI poses a question of sustainability.

In all decisions on Validation the Board places a priority on the need for comparable treatment between countries and the need to protect the integrity of the EITI brand. The Board reviewed the validator's report in detail. On several issues, the Board shares the validator's concerns. However, the Board also disagreed with one of the validator's assessments, taking into account supplementary information provided by the EITI International Secretariat. The Board agreed that indicators 9, 11, 13, 14, and 15 are unmet, and agreed the following corrective actions needed in order for Tanzania to achieve compliance:

- 1. The MSG should agree a clear definition of "material payments and revenues" and incorporate this definition into the reporting templates and reconciliation process for the second EITI Report (indicator 9). This should specifically address the question of the participation of small companies and payments by companies to local government authorities.*
- 2. The second EITI Report should clearly demonstrate that entities that make or receive material payments are participating in the reporting process (requirement 11).*
- 3. As per the Indicator Assessment Tool for Indicator 13, the government and MSG should take steps to ensure that government disclosures to the reconciler are based on audited accounts to international standards and agree a strategy for addressing these issues in accordance with the requirements as specified in Validation IAT 13.*
- 4. In accordance with the agreed definition of materiality (see point 1, above), the MSG should ensure that all material oil, gas and mining payments by companies to government are disclosed to the reconciler and incorporated into the second EITI Report (indicator 14);*
- 5. In accordance with the agreed definition of materiality (see point 1, above), the MSG should ensure that all material oil, gas and mining revenues received by the government are disclosed to the reconciler and incorporated into the second EITI Report (indicator 15);*

The Board also calls on MSG to ensure that the recommendations of the CAG report relating to the clarification of discrepancies are taken into account for future reconciliations.

The Board agreed that Tanzania will have its candidacy renewed for 18 months (i.e. until 15 February 2013), by the end of which it must have completed a Validation that demonstrates compliance with the 2011 edition of the EITI rules, including requirement 5(e) regarding regular and timely reporting. If Tanzania does not achieve Compliant status by this deadline it will be de-listed.

The MSG may request a waiver from the requirement to undergo a second Validation on the grounds that the remedial actions necessary for achieving compliance are not complex and can be undertaken quickly. It will be within the discretion of the Board to determine whether to grant the waiver request. If the waiver request is made in 2011 and subsequently granted, the secretariat review will be conducted in accordance with the previous edition of the EITI Rules regardless of the date of the Board decision.

Annex B – Letter from the Chair of the TEITI-MSG requesting a waiver from undertaking a second Validation, 1 June 2012

Available from <http://eiti.org/internal>

Annex C –Board decision on Tanzania’s Validation waiver request, Board Circular 132, 6 September 2012, including Terms of reference for the Secretariat Review

Available from <http://eiti.org/internal>

Annex D –Tanzania scoping study

Available from <http://eiti.org/internal>