

Validation of Tanzania
Draft Validation Report
Adam Smith International Independent Validator
27 July 2017

1. EXECUTIVE SUMMARY

Tanzania committed to implementing the EITI in 2008 and was accepted as a candidate country in February 2009. A multi-stakeholder group was formed in late 2009 to oversee EITI implementation. The country became compliant with the then EITI Rules in December 2012.

This draft validation report follows on from a quality assurance review of the International Secretariat's initial assessment. The Validator agrees with the Secretariat's preliminary assessment that requirements 1.1, 1.4, 1.5, 2.2, 2.3, 2.4, 2.6, 3.2, 3.3, 4.4, 4.5, 4.7, 5.1, 6.2, 6.3 and 7.1 have not been fully addressed in Tanzania.

2. BACKGROUND

Tanzania possesses significant mineral resources of high economic value, including metallic minerals (gold, iron and silver), gemstones (diamonds and tanzanite), industrial minerals (kaolin, phosphate, and lime), and building material (stone and sand)¹. Tanzania also possesses energy minerals such as coal and uranium. Tanzania is Africa's fourth largest gold producer, after South Africa, Ghana, and Mali, and accounts for 1.3% of total global production.² There are both small and large-scale operations dominated by nine major mines: seven for gold and one each for diamonds and tanzanite.

The past few years have seen a big increase in exploration for gas and oil along the coast. Gas production is concentrated in the south in the Songo Songo and Mnazi bay fields. Production of natural gas from large proven reserves has started to ease Tanzania's chronic power shortage. The EITI Report for 2013/14 noted that MEM and TPDC had jointly signed 21 Production Sharing Agreements (PSA) with private operators.³ TPDC is the only state-owned enterprise in the oil/gas sector, operating both on own account and as agent of the government in promoting and monitoring the exploration for oil and gas; TPDC also serves as conduit of certain payment streams from companies to the government.

Tanzania's future revenues from the extractive sector are threatened by lower prices for natural gas and gold. Furthermore, there are ongoing public debates on whether the state receives a 'fair share' from its extractive deals, and how revenues are being used to the benefit of citizens.⁴

In line with the Validation Guide, the International Secretariat carried out the first phase of validation—initial data collection, stakeholder consultations, and preparation of their initial evaluation of progress against the EITI requirements (the "Initial Assessment"). Adam Smith International (ASI) was appointed as the independent Validator to evaluate whether the Secretariat's work was carried out in accordance with the Validation Guide. ASI's principal responsibilities as Validator are to review and amend the Initial

¹ Mineral Sector, Ministry of Energy and Minerals of Tanzania, <https://mem.go.tz/mineral-sector/>.

² USGS Tanzania Minerals Yearbook 2013, <http://minerals.usgs.gov/minerals/pubs/country/2013/myb3-2013-tz.pdf>.

³ TEITI 2013/14 Report, <https://eiti.org/document/20132014-tanzania-eiti-report>.

⁴ See for instance "Dar keen on transparency in mining, gas deals", Daily News (Tanzania), 8 December 2015 and "Transparency is pointless if it's just rhetorical", Oxfam Tanzania, 23 November 2015, <https://politicsofpoverty.oxfamamerica.org/2015/11/transparency-is-pointless-if-its-just-rhetorical/>.

Assessment, as needed, and to summarize its independent review in this Validation Report for submission to the Board through the Validation Committee.

1. Work Performed by the Independent Validator

The Secretariat's Initial Assessment was transmitted to ASI on 6th July, 2017. Our Validation Team undertook this phase of the Validation process through: (1) In-depth review and marking up of the EITI Assessment by each team member; (2) Detailed review and comments by the Multi-Stakeholder Specialist of Requirements 1 and the Civil Society Protocol; (3) Detailed review and comments by the Financial Specialist of Requirements 4, 5 and 6; (4) Consolidation of reviews and the production of this draft Validation Report, sent to the International Secretariat on the 27th July.

2. Comments on the Limitations of the Validation

The Validator carefully reviewed the Secretariat's Initial Assessment and at this stage has no comments on the limitation of the validation process.

3. Comments on the International Secretariat's Initial Assessment

The initial data collection, stakeholder consultations, and drafting of the Initial Assessment were generally undertaken by the International Secretariat in accordance with the 2016 Validation Guide. The data collection took place across three phases. Firstly, from 1 January-4 March 2017, a desk review of the available documentation relating to the country's compliance with the EITI Standard, including but not limited to:

- The EITI work plan and other planning documents such as budgets and communication plans;
- The multi-stakeholder group's Terms of Reference, and minutes from multi-stakeholder group meetings;
- EITI Reports, and supplementary information such as summary reports and scoping studies;
- Communication materials;
- Annual progress reports; and
- Any other information of relevance to Validation.

Secondly, a country visit, which took place on 6-10 March 2017. All meetings took place in Dar es Salaam. The secretariat met with the multi-stakeholder group and its members, the IA and other key stakeholders, including stakeholder groups that are represented on, but not directly participating in, the multi-stakeholder group.

Finally, the International Secretariat prepared a report making an initial assessment of progress against requirements in accordance with the Validation Guide. The initial assessment did not include an overall assessment of compliance. The report was submitted to the Validator, with the National Coordinator (NC) also receiving a copy.

2. GENERAL COMMENTS

• Progress in EITI Implementation

The Government of Tanzania joined the EITI as part of a wider reform effort. Opportunities to make the EITI relevant to wider public debates about the governance of the sector – of which there have been many

– do however appear to have been largely missed. Across several recent TEITI workplans, the reporting process and institution-building have dominated TEITI’s high-level objectives/outcomes, while strategic uses of TEITI to improve understanding and governance of the sector have remained in the background. Improved disclosures of revenue streams, enhanced institutional framework for EITI implementation, increased capacity for TEITI Secretariat and MSG, although important, are only loosely linked to the EITI Principles. Thus, TEITI has failed to ignite genuine interest and commitment, not least within government. Although rising up to the passage of dedicated TEITI legislation in 2015, government engagement has visibly weakened since then. As a result, the MSG is floating, lacking clear terms of reference and, of late, even a substantive chairperson. Other stakeholder groups take their cue from the government, not expecting vibrant discussions in the MSG or a national secretariat responding to the MSG rather than the line ministry.

Core EITI reporting of revenue streams and the reconciliation between payer and recipient are professionally executed after many years of experience, but, despite only a small state-owned segment of the extractive sector and clear EITI requirements, SOE transactions—especially those of TPDC—remain opaque. Many, but not all, of the more recent contextual information requirements are met.

- **Impact of EITI Implementation**








For the Tanzania EITI to be able to have its potential impact on the natural resource governance in the country, it will be important that the recommendations from this initial assessment are considered. This can help the government’s efforts to address challenges such as clarifying the processes for allocating and registering licences, contract transparency, state participation in the petroleum sector and beneficial ownership disclosure. Following up on the findings of the recent minerals audit highlighting potential tax revenue losses, there are also opportunities for TEITI to help communicate the findings and consequences of the audit to the public, monitor follow-up and engage with companies in particular, as improved trust might be needed. This will require leadership by the government and meaningful engagement by industry and civil society in the EITI process.

The Independent Validator's Assessment of Compliance

Figure 1 – Validator's assessment

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

Legend to the assessment card

	The country has made no progress in addressing the requirement. The broader objective of the requirement is in no way fulfilled.
	The country has made inadequate progress in meeting the requirement. Significant elements of the requirement are outstanding and the broader objective of the requirement is far from being fulfilled.
	The country has made progress in meeting the requirement. Significant elements of the requirement are being implemented and the broader objective of the requirement is being fulfilled.
	The country is compliant with the EITI requirement.
	The country has gone beyond the requirement.
	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.

3. DETAILED FINDINGS

This section highlights areas where the Validator disagrees with the findings of the Initial Assessment or requires further clarification.

Requirement 1.1 – Government Engagement

The Validator agrees with the International Secretariat’s assessment of ‘meaningful progress’ for Requirement 1.1, but also notes the inadequate level of government engagement in the process since the passing of the Act in 2015. The assessment of ‘meaningful progress’ is therefore due to the passing of this Act in 2015, and otherwise, progress since then appears to in fact be inadequate.

As highlighted in the Initial Assessment report, “While passage of the TEITA Act in mid-2015 was an important boost for TEITI by the then outgoing leadership, work on the much-expected regulations has not yet started. Also, there are no public statements of political support for TEITI on record from the political leadership that took office in October 2015. The TEITI homepage still highlights a supportive statement by Tanzania’s previous President.”

In light of the above, the Independent Validator adds a recommendation that the Regulations supporting the TEITA Act are developed and promulgated as soon as possible. This will not only demonstrate government commitment but also ensure clarification of the terms of engagement for government (and other key stakeholders) in the TEITI process.

Requirement 1.3 – Civil Society Engagement

The Validator agrees with the International Secretariat’s assessment of ‘satisfactory progress’ for Requirement 1.3 on civil society engagement.

However, the Independent Validator also notes the issue regarding the 5th CSO seat on the MSG with concern, especially in light of Requirement 1.3 (b) and (c). More information should be made available regarding this and what actions have been taken to resolve the issue and to fill the 5th seat (see Requirement 1.4).

Requirement 1.4 – MSG Governance and Functioning

The Independent Validator disagrees with the International Secretariat’s assessment of ‘meaningful progress’ for Requirement 1.4 on MSG governance and functioning.

As highlighted by the International Secretariat in the Initial Assessment report, “The MSG does not have clear terms of reference. For its practice, it draws from both the TEITA Act (that is still lacking regulations) and the Draft Rules (that are a bit more detailed but remain in draft form and not public). Frustrated by the top-down approach of the national secretariat, the MSG is unable to play its oversight role. The circumstances regarding the “internal civil society dispute” over the PWYP seat are unclear and the matter needs to be resolved. The reporting relationship of the National Secretary to the Minister instead of the MSG contributes to dysfunction. The inability to attract suitable candidates for MSG chair may be symptomatic. MSG meetings lack sufficient advance notice and timely distribution of documents. The attendance record of Government is particularly poor, while the quorum rule is weaker in the TEITA Act than in the Draft Rules. The rules for per diems are not transparent.”

With regard to the 5th CSO MSG seat issue, it would be helpful to have more clarity and information about this to ensure there was no coercion or government restriction of the CSO member involved (in line with Requirement 1.4 a (ii) and also CSO Protocol Article 2.1), for example, why was the fifth seat not announced, how many MSG meetings have there been since then, has this issue re the 5th CSO seat been openly discussed in the MSG (CSO Protocol Article 3) and what actions have been taken by the MSG since then to resolve the issue?

In addition to the various points raised by the International Secretariat in the IA report on Requirement 1.4, the Independent Validator further considers it worth highlighting the apparent lack of progress with respect to the 1.4 (b) provisions, including:

- The role, responsibilities and rights of the multi-stakeholder group
- Approval of work plans, EITI Reports and annual activity reports
- Internal governance rules and procedures

Requirement 1.4 (b) (vi) also clearly states that, “Where the MSG has a practice of per diems for attending EITI meetings or other payments to MSG members, this practice should be transparent and should not create conflicts of interest.” However, the IA report states that, “The International Secretariat was not able to obtain information on the actual practice regarding per diems.” It is surprising that this was not clarified, and that no information was provided to the International Secretariat during the validation mission, especially given that it is an actual requirement.

Based on the information provided in the IA report, the apparent state of dysfunction of MSG and the overall lack of government support and engagement in the MSG, it seems that the broader objective of this requirement is in fact not being fulfilled. This therefore does not constitute ‘meaningful’ progress, but instead ‘inadequate’ progress, i.e. significant elements of the requirement are outstanding and the broader objective of the requirement is not being fulfilled.⁵

Requirement 2.4 – Contract Disclosure

The Validator agrees with the International Secretariat’s assessment of ‘meaningful progress’ for Requirement 2.4. However, contract transparency is enshrined in the TEITA Act, which is already law, so 2.4b is partially satisfied. The more substantive issue is that extractives contracts are not being published, in contravention of the law. The National Secretariat should provide more details on what the issue is here.

Requirement 2.6 – State Participation

The Validator disagrees with the International Secretariat’s assessment of ‘meaningful progress’ for Requirement 2.6. The rules and practices regarding the financial relationship between TPDC and MEM have not been disclosed (as required by 2.6(a)), nor does the relevant data show up in the reconciliation tables. The Validator recommends that the provision score is downgraded to Inadequate Progress.

4. RECOMMENDATIONS

⁵ In line with definitions of categories from page 11 of IA report:

Inadequate progress. The country has made inadequate progress in meeting the requirement. Significant elements of the requirement are outstanding and the broader objective of the requirement is far from being fulfilled.

Meaningful progress. The country has made progress in meeting the requirement. Significant elements of the requirement are being implemented and the broader objective of the requirement is being fulfilled.

The initial assessment includes recommendations for specific improvements the MSG may wish to consider implementing, which aim at helping Tanzania make greater use of the EITI as an instrument to support reforms.

- High-level government engagement in the EITI process will be critical for it to have a potential impact on improved extractive sector governance in Tanzania. It is recommended that the government demonstrates commitment regarding its intention to implement EITI and to be fully, actively and effectively engaged in the EITI process. This would include ensuring that government agencies are represented on the MSG at the adequate level to allow them to take decisions and follow up on agreed matters. Government representatives on the MSG should also ensure that links are made between EITI objectives/activities and ongoing work within their respective agencies.
- To strengthen implementation of EITI in Tanzania, each constituency (in particular government) should ensure that their representatives' attendance at MSG meetings is consistent and at sufficiently high level to allow the MSG to take decisions and follow up on agreed matters.
- The MSG should develop TORs for its work, with input from all constituencies represented on the MSG, which clearly outline the role and responsibilities of the MSG in their oversight of the EITI process. Such TORs should be made publicly available.
- The dispute regarding the fifth CSO seat on the MSG needs to be resolved.
- If the MSG has a practice of per diems for attending EITI meetings or other payments to multi-stakeholder group members, this practice should be transparent and should not create conflicts of interest.
- The MSG should ensure that minutes of its meetings reflect the discussion as well as the decisions made.
- The MSG should adopt a regular cycle of operational workplans and ensure that objectives/outcomes of the work plan are clearly linked to the national priorities for the extractive sector. The MSG could also encourage stakeholder input and discussion on the work plan and its objectives, and duly record these in the appropriate minutes
- EITI Reports should disclose licensing policies and practices, including an overview of oil/gas or mining licences were awarded or transferred during the reporting period, information on the technical and financial criteria for awarding licenses, and any non-trivial deviations from the applicable legal and regulatory framework for awarding licenses. The Independent Administrator offers no commentary on the efficiency and effectiveness of licensing procedures. Should any of this information already be available, the MSG should consider providing direct references to the relevant sources. The MSG may also wish to include commentary on the efficiency and effectiveness of licensing procedures.
- The government and MSG should ensure that oil and gas license information is disclosed, including name of license holder(s), date of application, date of award and duration of the license, and the commodity being produced. The government could consider establishing a public oil and gas

license cadastre. The MSG should also ensure that license coordinates are included in the mining license cadastre, if collated. If coordinates are not collated, the government should ensure that the size and location of the license area are disclosed.

- The MSG should ensure that the EITI Report clearly states the government's policy and contract disclosure, and actual practice. This should include reference to the relevant provisions in the TEITA Act.
- The rules and practices governing TPDC's role as conduit of company payments to government should be disclosed and supported by payment figures where applicable. This should include an explanation of the rules and practices governing transfers of funds between the TPDC and the state, retained earnings, reinvestment and third-party financing. The EITI Report should also confirm whether any loans or loan guarantees have been granted from the government/SOEs to companies operating in the country during the fiscal year covered by the report.
- The description of exploration activities should be comprehensive. The MSG may also wish to include direct links to further sources of information, such as to the TPDC website's map of exploration activity.
- There are many different sources of production data in the EITI Report. The MSG should seek to improve the consistency and comprehensiveness of production and export data in volume and value terms across the extractive sector, and to ensure to include the value of gas production as well as data on export values in the EITI Report.
- The MSG should investigate and document in the EITI Reports whether the government or SOEs receive revenues from the transportation of oil, gas and minerals, and if this is the case, determine whether these are deemed material.
- The MSG should ensure that transactions related to SOEs operating in the oil, gas and mining sector, in particular TPDC, are adequately disclosed. This should include revenues that TPDC pass on to MEM after deducting its costs.
- The MSG should ensure that direct subnational payments disclosed in EITI Reports are disaggregated by recipient local authorities.
- The MSG might wish to verify that the Terms of Reference for the Independent Administrator for the next EITI Report is in accordance with the Standard Terms of Reference for Independent Administrators approved by the EITI Board.
- The MSG should seek to shed more light on the operations of TPDC, distinguishing clearly between its public functions and its operations on own account. This should include considering whether there are any material quasi-fiscal expenditures by TPDC in accordance with provision 6.2, and develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams.
- The MSG should ensure that the EITI Report adequately explains how extractive sector revenue is distributed beyond the first receiving government entity. The MSG could also consider to initiate a

discussion of extractive sector revenue in a broader budgetary context, including requesting more detailed information on the management of extractive sector revenue and related expenditures to be included in the EITI Reports. The MSG may further wish to refer to revenue classification systems in the reports.

- The MSG should expand on the contribution of the extractive sector to the economy and ensure that contribution of the extractive sector to GDP in absolute terms, and the share of total government revenue, exports and employment. This could also include providing direct links to further data on extractive sector contribution to the economy.
- TEITI should seek to raise greater public awareness of the EITI and understanding of what the figures mean and create public debate about how resource revenues can be used effectively. This could be done through more strategic engagement with the media, concerted efforts to disseminate information to affected communities, and wider outreach efforts beyond the EITI launch of the EITI Report.
- The MSG is encouraged to make EITI Reports machine readable and agree on an open data policy on the access, release and re-use of EITI data.
- The MSG could consider a more systematic follow-up by the MSG on the EITI Report recommendations and ensuring that these highlight gaps identified through the reporting process to help ensure that the EITI could serve as a tool for improved extractive sector governance.
- All stakeholders should be able to participate in reviewing the impact of EITI implementation and the production of the annual progress report, in particular civil society groups and industry involved in the EITI.
