

Validation of Zambia
Draft Validation Report
Adam Smith International Independent Validator
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1. EXECUTIVE SUMMARY

The Government of Zambia committed to implementing the EITI in 2008 and a multi-stakeholder group – the Zambia EITI Council (ZEC) - was established in early 2009 to oversee EITI implementation. The country was accepted as an EITI candidate in May 2009, and became compliant with the 2011 EITI Rules in September 2012.

On 2 June 2016, the Board agreed that Zambia’s Validation under the 2016 EITI Standard would commence on 1 January 2017. 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 is that requirements 2.2, 2.4, 2.6, 3.2, 4.5 and 7.3 have not been fully addressed in Zambia.

2. BACKGROUND

Zambia has a long history of mining and a large known resource base of copper, emeralds and other deposits, as well as potential for further discoveries.¹ The country is a major producer of copper and cobalt and the mining sector as a whole accounts for about 10% of GDP directly and perhaps as much as half of GDP indirectly.² The mining sector is a major contributor to foreign direct investment, and mining tax revenues contribute a significant portion of total government revenue (18% in 2015).³ The four largest mining companies account for over 85% of copper production in the country, and the mining sector contributed 78% of total exports by value in 2014.⁴ However, due to declining commodity prices, the contribution to total exports declined to 47% by value in 2015.⁵ The sector is also a significant source of formal employment, both directly and indirectly. The first oil exploration licenses under the 2008 Petroleum Act were issued in 2011, but there is still no production.⁶

There have been significant changes in the ownership of the mining sector in recent decades. After a period of nationalisation of the sector that began in the early 1970s, the industry was re-privatised in 2000 following a period of economic decline. Zambia Consolidated Copper Mines Investments Holdings (ZCCM-IH) is a publicly listed majority state-owned company which was privatised in stages during the 1990s. The government has retained minority interests in most of the major mines through ZCCM-IH, which collects dividends and other investment income from its subsidiaries. The long period of nationalisation of mining

¹ World Bank (2016). Zambia Mining Investment and Governance Review, <https://openknowledge.worldbank.org/handle/10986/24317>.

² Zambia EITI Report 2015, https://eiti.org/sites/default/files/documents/zeiti_2015_reconciliation_final_report_23_december_2016.pdf.

³ *Ibid.*

⁴ Zambia EITI Report 2014, <https://eiti.org/document/2014-zambia-eiti-report>.

⁵ Zambia EITI Report 2015.

⁶ *Ibid.*

has influenced public expectations regarding the mining industry in terms of employment and social and economic contribution, particularly in the communities that host mining projects.⁷

In response to declining commodity prices and a general perception that historically the government has not received what it should have for its resources since privatisation, the government has made several changes to the mineral fiscal regime, causing instability for investors. In 2014, the government increased mining royalty rates and temporarily removed the 30% corporate income tax for mining companies with the aim of generating an immediate stream of revenue once mining production starts. The 2015 Zambia EITI Report explains how this “royalty only” regime led to increased production costs for companies, did not boost government revenue, and made revenue collection more complex for revenue authorities (pp. 45-46). As a result, the government made new changes to the tax regime in 2015. The royalty rate was lowered to 9% and corporate income tax of 30% was reintroduced. According to the report, this system will allow for flexibility for companies investing in the mining sector and can help raise government revenues in times of declining copper prices (p. 46).

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 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 18th 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 10th August.

2. Comments on the Limitations of the Validation

The Validator carefully reviewed the Secretariat’s Initial Assessment and has one comment on the limitation of the validation process:

2.6 State Participation

The issue to discuss is whether ZCCM-IH, which only holds in a minority share in most major mining companies, can nonetheless be described as a mining sector SOE. The 2016 Standard states, “For the purpose of EITI reporting, a SOE is a wholly or majority government- owned company that is engaged in extractive activities on behalf of the government.” ZCCM-IH is not directly engaged in extractive activities: does it therefore count as an SOE?

⁷ World Bank (2016), Zambia Mining Investment and Governance Review.

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, 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 from 20-25 February 2017. All meetings took place in Lusaka. 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 EITI has helped Zambia improve transparency and accountability in the extractive industries by providing timely and reliable information to the public, including civil society, media and affected communities. ZEITI has provided valuable information along the value chain, identifying gaps and opportunities for strengthening monitoring of production, and improving the understanding of the revenues generated from oil, gas and mining activities. This work is critical to tackling corruption and addressing tax evasion.

- **Impact of EITI Implementation**

It has taken some time for ZEITI to move from the production of reconciliation reports to informing and shaping the policy dialogue in Zambia's mining sector. However, recent strategic discussions within ZEITI demonstrate the acknowledgement among stakeholders that there is a need to focus beyond the production and dissemination of EITI Reports to become a more active proponent of transparency and improved sector governance.

An example are the recent efforts by ZEITI to place beneficial ownership transparency on the government's agenda, by participating in the beneficial ownership pilot and seeking to understand how to make beneficial ownership disclosure mandatory by law.. It will be important for stakeholders to support the actual implementation of beneficial ownership disclosure, which may require legal and regulatory reforms, decisions related to reporting scope and thresholds, designing and setting up a beneficial ownership registry, and ensuring that the reported information is accurate.

The ZEITI secretariat is also playing an increasingly active role in facilitating discussions on key policy areas, and is developing experience supporting the collection of EITI Report. This can be a starting point for mainstreaming extractives transparency into government systems and ensuring more regular disclosure of data by government agencies and mining companies. Through the regular engagement with the key stakeholders providing, collecting and verifying extractives data, ZEITI has the potential to support the government in moving towards routine disclosures of the data currently provided in EITI Reports.








Zambia's EITI Validation process has so far highlighted opportunities for improvement related to disclosures of information on the extractive sector and the potential use of this data.. It is essential that stakeholders continue to use the ZEITI process to ensure that it can better contribute to address key challenges ahead for Zambia's extractive sector.

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)				■	
	Industry engagement (#1.2)				■	
	Civil society engagement (#1.3)				■	
	MSG governance (#1.4)				■	
	Workplan (#1.5)				■	
Licenses and contracts	Legal framework (#2.1)				■	
	License allocations (#2.2)		■			
	License register (#2.3)				■	
	Policy on contract disclosure (#2.4)			■		
	Beneficial ownership (#2.5)	■				
	State participation (#2.6)			■		
Monitoring production	Exploration data (#3.1)				■	
	Production data (#3.2)			■		
	Export data (#3.3)				■	
Revenue collection	Comprehensiveness (#4.1)				■	
	In-kind revenues (#4.2)	■	■	■	■	■
	Barter agreements (#4.3)	■	■	■	■	■
	Transportation revenues (#4.4)	■	■	■	■	■
	SOE transactions (#4.5)			■		
	Direct subnational payments (#4.6)				■	
	Disaggregation (#4.7)				■	
	Data timeliness (#4.8)				■	
	Data quality (#4.9)				■	
Revenue allocation	Distribution of revenues (#5.1)				■	
	Subnational transfers (#5.2)	■	■	■	■	■
	Revenue management and expenditures (#5.3)	■	■	■	■	■
Socio-economic contribution	Social expenditures (#6.1)	■	■	■	■	■
	SOE quasi-fiscal expenditures (#6.2)	■	■	■	■	■
	Economic contribution (#6.3)				■	
Outcomes and impact	Public debate (#7.1)				■	
	Data accessibility (#7.2)	■				
	Follow up on recommendations (#7.3)			■		
	Outcomes and impact of implementation (#7.4)				■	

Legend to the assessment card

	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

The Validator agrees with the findings of the Initial Assessment. Therefore there are no detailed findings on disagreements to report.

4. RECOMMENDATIONS

While the following report includes recommendations for specific improvements the MSG may wish to consider implementing, the following is a list of strategic recommendations that could help Zambia make even greater use of the EITI as an instrument to support reforms.

- In order to meet requirement 2.2 on license allocation, the ZEC should ensure that the next EITI Report includes comprehensive information on the process of license transfers, licenses transferred during the reporting year, and an explanation of the technical and financial criteria for awarding of licenses for both the mining and petroleum. The ZEC might also consider including the most recent information on the latest licensing rounds to improve the timeliness of the information on license allocations, as well ensuring that there is commentary on any deviations from the license allocation process and on the efficiency of the licensing process.
- In order to meet requirement 2.4 on contract disclosures, 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 individual licenses is publicly available, such as work programmes and environmental impact assessments, and provide links to further information where applicable.
- In order to meet requirement 2.6 on state participation in the extractive sector and requirement 4.5 on transactions related to state-owned enterprises, the ZEC should ensure that an explanation of the prevailing rules and practices regarding the financial relationship between the government and state-owned enterprises is disclosed, including a description of the rules and practices governing transfers of funds between ZCCM-IH, IDC and the state, and details on retained earnings, reinvestment and third-party financing if applicable. This could include an explanation or reference to ZCCM-IH's dividend policy and further details on transfers made by IDC to the government from its shares in ZCCM-IH. The ZEC should further ensure that the reporting process comprehensively addresses all material payments to SOEs from oil, gas and mining companies and transfers between SOEs and other government agencies.
- In order to meet requirement 3.2 on production data, the ZEC should ensure that the future EITI Reports include 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.
- With regards to assuring the quality of the data in the EITI Reports (requirement 4.9), the ZEC and

Independent Administrator should 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 Independent Administrator. The ZEC should ensure that the TORs for the next report outlines the process for collecting data and clearly describes the division of labour between the national secretariat and the Independent Administrator.

- In order to meet requirement 7.3 on lessons learned and follow-up on report recommendations, the ZEC is encouraged to consider ensuring that recommendations in ZEITI Reports to a larger extent address key challenges related to extractive sector governance. Such recommendations could take into account feedback recorded from stakeholders as part of ZEITI's dissemination activities. The ZEC should also consider a more systematic follow-up of the recommendations, for instance by developing a dedicated plan for following up on findings and recommendations from the ZEITI Reports, outlining actions to address the recommendations which can achieve the intended objective.
- Further to the government's engagement with ZEITI, the government is encouraged to ensure that public statements continue to include commitments to extractives transparency and the EITI, and that the EITI continues to contribute to addressing key governance challenges in the extractive sector. The government is further encouraged to ensure that it consistently and actively chairs the ZEC. The government could also consider making company disclosures on extractive sector payments mandated by law, either in a ZEITI Bill or as part of relevant sector reforms.
- Civil society representatives on the MSG should strengthen the collaboration between civil society representatives on the ZEC and the wider constituency and establish a feedback mechanism to ensure consistent exchange of information.
- Further to ZEITI's engagement with artisanal and small-scale miners, the ZEC may also wish to consider how to engage further with the artisanal and small-scale mining sector, as there appear to be opportunities to use the ZEITI to discuss challenges related specifically to small-scale mining, to ensure that the regulatory framework is enforced and also addresses the risks faced by small-scale miners.
- In developing future EITI work plans, it is recommended that the ZEC addresses how ZEC will address the recommendations from EITI reporting and Validation. Future work plans could also do more to ensure that the process is better linked to national strategic priorities, such as informing public debate on the fiscal regime and tax avoidance. The ZEC may wish to ensure that the description of the legal framework is up to date and reflects the latest laws or legal amendments such as the MMDA 2015.
- With regards to data on licenses (requirement 2.3), the ZEC should consider possibilities for including information on the date of application for petroleum licenses in the next EITI Report includes information on the date of application for petroleum licenses. ZEITI and stakeholders are encouraged to continue the efforts made to improve license data made available in the cadastre and to address the gaps identified in the ZEITI Reports. The next EITI Report should include a link to the license cadastre.

- Further to ZEITI’s work on beneficial ownership disclosure, the government and ZEC are encouraged to continue making progress on implementation of beneficial ownership disclosure, and to ensure that ZEITI’s efforts to disclose beneficial ownership data is linked to ongoing efforts within the government to address key challenges in the extractive sector such as tax evasion and transfer pricing.
- With regards to export data (requirement 3.3), the ZEC may wish to ensure that future reports include total export values or provides a reference to other sources of export data, including Bank of Zambia.
- With regards to the comprehensiveness of the EITI Report (requirement 4.1), ZEITI should ensure that future EITI Reports provide the total revenues received for each of the benefit streams included in the scope of the EITI Report, including payments from companies below the agreed materiality threshold. ZEC may wish to consider the feasibility of disclosing revenue information disaggregated by project in a systematic manner, as this is already being done to some extent. The ZEC is encouraged to continue its discussions on the materiality thresholds and whether to include PAYE figures as part of company payments.
- Further to ZEITI’s efforts to provide information on the auditing framework in Zambia, the ZEC may wish to engage more with the Auditor General’s Office and ensure that EITI reporting can to a further extent highlights gaps and provide recommendations related to auditing procedures and practices, such as those related to the ability of the Office of the Auditor General to audit mining companies and disclosure of companies’ annual financial statements.
- Further to ZEITI’s work on mainstreaming EITI disclosures, the ZEC is also encouraged to consider ways to mainstream EITI reporting and discuss whether a mainstreaming feasibility study or exercise could be useful to identify ways forward for embedding disclosure of extractives data in existing government and company systems.
- With regards to information on revenue management and expenditures (requirements 5.1 and 5.3), the ZEC may wish to consider including information on how local authorities spend the direct subnational payments collected from mining companies, or on expenditures from the Environmental Protection Fund.
- With regards to social expenditures (requirement 6.1), the ZEC is encouraged to discuss whether Corporate Social Responsibility payments are considered material and whether these payments could be reconciled. The ZEC may wish to continue collaborating with the Chamber of Mines for systematic reporting and verification of the figures and providing recommendations for how such payments can be overseen by the government. This can help improve the clarity on the nature, value and beneficiaries of such payments.
- With regards to information on the contribution of the extractive sector to the economy (requirement 6.3), the ZEC should ensure that the next EITI Report includes GDP contribution in absolute terms. The ZEC may further want to consider including information on the contribution of the artisanal and small-scale mining sector to the economy.

- Further to ZEITI’s discussions on local content, the ZEC might wish to consider whether to include information on local content as part of their next work plan and EITI Report, and take into account the government’s local content strategy for the mining sector.
- Further to ZEITI’s efforts to disseminate information related to the extractive sector, all stakeholders, including government, civil society and industry are encouraged to continue to disseminate extractive sector data through EITI Reports, with the aim to ensure that the EITI and the information made publicly available about the extractive industries contributes to public debate. The ZEC might want to undertake further capacity building efforts to increase awareness of the EITI process, improve understanding of information and data from the reports, and encourage use of the information by citizens, the media and others.
- The national secretariat is resource constrained and unable to carry out outreach activities as part of the Strategic Plan for 2016-2020. The ZEC could contribute to identifying domestic and external sources of funding where appropriate to ensure timely implementation of the agreed outreach activities.
- With regards to ZEITI plans related to open data, the ZEC is encouraged to make EITI Reports available in a machine-readable and open data format, in accordance with ZEITI’s open data policy.
