

# Validation of Madagascar

## Report on initial data collection and stakeholder consultation

## Abbreviations

AfDB	African Development Bank
ANOR	Agence Nationale de l'Or
APPAM	Association Professionnelle du secteur Pétrolier-Amont de Madagascar
AVG	Alliance Voahary Gasy
BCMM	Bureau du Cadastre Minier de Madagascar
BNGRC	Bureau National de Gestion des Risques et des Catastrophes
BPGRM	Base des données du Projet de Gestion des Ressources Minières
CCI	Chambre de Commerce et d'Industrie
CdC	Cour des Comptes
CMM	Chambre des Mines de Madagascar
CSOs	Civil Society Organisations
DGD	Direction Générale des Douanes
DGI	Direction Générale des Impôts
DGE	Direction des Grandes Entreprises
DGM	Direction Générale des Mines
EITI	Extractive Industries Transparency Initiative
EU	European Union
FAM	Frais d'Administration Minière
GDP	Gross Domestic Product
GFS	Government Finance Statistics
GIE	Groupement Industries Extractives
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
IMF	International Monetary Fund
INSTAT	Institut National de la Statistique
LGUs	Local Government Units
MFB	Ministry of Finance and Budget
MPMP	Ministry attached to the Presidency for Mines and Petroleum
MSG	Multi-Stakeholder Group
NGO	Non-Governmental Organisation
PEP	Politically Exposed Person
PSC	Production-Sharing Contract
PWYP	Publish What You Pay
PFNOSCM	Plateforme Nationale des Organisations de la Société civile de Madagascar
PINGOS	Plateforme des ONG Internationales de Madagascar
MTDF	Multi-Donor Trust Fund
OMNIS	Office des Mines Nationales et des Industries Stratégiques
PAGI	Programme d'Appui à la Gouvernance Institutionnelle
PGRM	Projet de Gestion des Ressources Minières
SIG	Système d'Information Géographique
ToR	Terms of Reference
USD	United States Dollar
VAT	Value Added Tax

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## Executive Summary

The Government of Madagascar announced its commitment to the EITI in 2007 and was accepted as an EITI Candidate in February 2008. Following its suspension by the EITI Board for political instability in October 2011, interrupting the country's Validation under the EITI Rules, Prime Minister Jean Omer Beriziky issued a Ministerial Order in March 2013 reactivating EITI Madagascar and establishing a permanent EITI National Committee. The EITI Board lifted Madagascar's suspension in June 2014 and the government issued Decree 2017/736 in August 2017 institutionalising the EITI under the Prime Minister's Office. The MSG is chaired by the Minister of Mines and Petroleum (currently Ying Vah Zafilahy) and consists of eight representatives each from government, industry and civil society.

On 24 October 2016, the Board agreed that Madagascar's Validation under the EITI Standard would commence on 1 September 2017. This report presents the findings and initial assessment of the International Secretariat's data gathering and stakeholder consultations. The International Secretariat has followed the Validation Procedures and applied the Validation Guide<sup>1</sup> in assessing Madagascar's progress with the EITI Standard. While the initial assessment has not yet been reviewed by the MSG or been quality assured by an independent validator, the Secretariat's preliminary assessment is that fifteen of the requirements of the EITI Standard have not been fully addressed in Madagascar. Seven of these are unmet with inadequate or no progress. The recommendations and suggested corrective actions identified through this process relate in particular to MSG oversight, data quality assurance and comprehensiveness of reporting by both government and industry as well as state-owned enterprises, including quasi-fiscal expenditures, financial relations with government and level of state ownership. Recommendations for addressing these and other issues are set out in the assessment table.

## Overall conclusions

The EITI Standard is highly relevant to the challenges Madagascar faces in managing its extractive industries. Madagascar presents a unique case of delicate biodiversity, with an expansive artisanal, small-scale and largely informal mining sector that accounts for an estimated 40% of the world's sapphire market, and handful of large mining, oil and gas projects. The complexities of its mining licensing system, fiscal decentralization and state participation in the extractives sector are particularly suited to the EITI's multi-stakeholder governance model. As highlighted in its 2017 EITI work plan, Madagascar has sought to address key challenges in license management, geophysical data and extractives revenue management through its EITI implementation. Overcoming funding and capacity challenges and uneven engagement of its different constituencies, EITI Madagascar has made a tangible impact on extractives governance, from providing statistics on production and exports to contributing to the launching of an online mining cadastre in 2017. EITI Madagascar has focused on key areas of public interest, for instance reviewing mining license management since the 2011 moratorium on new license awards, while EITI data on subnational payments, transfers and social expenditures has empowered mayors in communes and

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<sup>1</sup> EITI Validation procedures and EITI Validation Guide, accessible [here](#) and [here](#).

regions to demand their statutory share of extractives revenues.<sup>2</sup>

The EITI has been described by several stakeholders as a “safety net” for extractives governance during a turbulent period following Madagascar’s 2009 coup, even after the lifting of its EITI suspension in 2014. With limited funding, the MSG compensated for declining secretariat support by becoming more involved in the operational oversight of EITI implementation in the 2015-2017 period. Madagascar has always had strong multi-stakeholder mechanisms in its EITI implementation, yet deviations in practice and the frequency of MSG membership renewals have affected institutional memory, particularly of government and civil society. Driven by strong industry participation, the MSG’s frequent meetings saw declining engagement from the other two constituencies and were rarely quorate, reducing stakeholder buy-in to key MSG decisions. Government and civil society members of the MSG have tended not to actively represent their constituencies in the past two years. While this may have steered EITI Madagascar’s focus towards issues of greatest concern for industry, such as mining licensing, it has also ensured the EITI’s sustainability during extended funding gaps and lacklustre government engagement in 2015-2017. The government’s institutionalisation of the EITI through a Decree in August 2017 is a welcome sign of renewed government engagement, although the quality of implementation and operational government engagement will be key to ensuring the EITI’s sustainability over the longer term.

Yet EITI Madagascar’s attention to detailed reconciliation has not always been matched with consideration of the non-revenue information now required under the EITI Standard, nor with efforts to improve underlying government systems and routine disclosures. The MSG’s focus on the comprehensiveness of reconciliation has tended to detract from other issues of relevance to Madagascar’s extractives industries, such as the structure of state participation in the mining sector and budget revenue traceability. The opportunities for increasing EITI’s impact are as significant as its achievements to date, from public finance management issues involving traceability of off-budget revenues to state participation in the mining sector and the existence of transportation revenues. Key to achieving EITI objectives will be embedding EITI reporting in routine government and company systems, including for contextual information on the contribution of the sector to the economy and comprehensive data on exports from artisanal and small-scale mining of gold and precious stones. While EITI has proved sustainable by operating in a reforming silo in the past decade, linking to other ongoing reforms will be crucial to achieving the EITI’s full potential in Madagascar. Thus, clarifying SOEs like KRAOMA’s financial relations with the government will be key not only to fulfilling requirements of the EITI Standard, but also in meeting conditions of the IMF’s 2016 extended credit facility. Providing an annual diagnostic of audit and assurance practices would support the Court of Account (CdC)’s reforms and improve transparency of companies’ audited accounts. The EITI could also support the Ministry of Finance and Budget (MFB)’s efforts to streamline subnational transfers by institutionalising local governments’ oversight, supported by existing innovative tools such as the IT application launched this year to improve the transfer of mining administration fees (FAM) to local communes and regions.

## 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 Madagascar

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<sup>2</sup> Observatoire International de la Democratie Participative (May 2017), ‘Madagascar / Grâce aux taxes, les communes subsistent’, accessed [here](#) in January 2018.

make greater use of the EITI as an instrument to support reforms.

1. In accordance with Requirement 1.1, the government must be fully, actively and effectively engaged in the EITI process. The government is required to appoint a senior individual to lead the implementation of the EITI. The appointee should have the confidence of all stakeholders, the authority and freedom to coordinate action on the EITI across relevant ministries and agencies, and be able to mobilise resources for EITI implementation. To further strengthen implementation following the institutionalisation of EITI Madagascar through the 2017 Decree, the government is encouraged to further entrench EITI funding in government budgeting to ensure the sustainability of EITI implementation over the long term. In accordance with requirement 8.3.c.i, the government constituency should develop and disclose an action plan for addressing the deficiencies in government engagement documented in the initial assessment.
2. In accordance with requirement 1.3.a, the civil society constituency should demonstrate that they are able fully, actively and effectively engaged in the EITI process. Specifically, civil society should ensure that they are able to fully contribute and provide input to the EITI process and that they have adequate capacity to participate in the EITI. In accordance with requirement 8.3.c.i, the civil society constituency should develop and disclose an action plan for addressing the deficiencies in civil society engagement documented in the initial assessment.
3. In accordance with Requirement 1.4.b.vii, the MSG should ensure that there is sufficient advance notice of meetings and timely circulation of documents prior to their debate and proposed adoption. The MSG is encouraged to ensure that deviations from their ToR are recorded and transparent. Government and company constituencies are encouraged to ensure that their representatives' attendance at MSG meetings is consistent and of sufficiently high level to allow the MSG to take decisions and follow up on them. In accordance with Requirement 1.4.b.viii, the MSG must keep written records of its discussions and decisions.
4. In accordance with Requirement 2.2, a description of the process for transferring or awarding the license and the technical and financial criteria used should be publicly available. Not least given the significant debate surrounding license movements in the mining sector, EITI Madagascar is encouraged to use EITI reporting as a diagnostic tool for non-trivial deviations from the applicable legal and regulatory framework governing license transfers and awards. In cases of competitive tender for mining, oil and gas licenses, the MSG will have to disclose the list of applicants and the bid criteria for licenses awarded through a bidding process. The MSG is encouraged to consider stakeholders calls for further analysis on the efficiency and effectiveness of licensing procedures in Madagascar.
5. In accordance with Requirement 2.4, EITI Madagascar should clarify and document the government's policy on disclosure of contracts and licenses, as well as actual practice, including any reforms that are planned or underway.
6. In accordance with Requirement 2.6, the MSG should ensure that a comprehensive list of state participation in the extractive industries, including terms associated with state equity and any changes in the year under review, be publicly accessible. The MSG must also clarify the rules and practices governing financial relations between SOEs (most notably KRAOMA) and the state. The



MSG may wish to liaise with relevant government entities and development partners to assess the extent to which clarification of such issues could support progress under the IMF extended credit facility. Stakeholders are encouraged to embed reporting of such information through routine government systems, for instance in publishing extractives SOEs' statutes and audited financial statements on a regular basis.

7. In accordance with Requirement 4.1.a, the MSG should ensure that its materiality decisions related to selecting companies and revenue streams for reconciliation are clearly documented. In its approach to the materiality of revenue streams, the MSG is encouraged to strike a balance between comprehensiveness and relevance for stakeholders, to ensure that a workable approach to reconciliation is adopted and to facilitate the embedding of revenue transparency in government and company systems. In accordance with Requirement 4.1.c, the MSG should ensure that the materiality of payments from each non-reporting entity is clearly assessed to support the IA's overall assessment of the comprehensiveness of reconciliation. In accordance with Requirement 4.1.d, unless there are significant practical barriers, the government is additionally required to provide aggregate information about the amount of total revenues received from each of the benefit streams agreed in the scope of reconciliation, including revenues that fall below agreed materiality thresholds.
8. In accordance with Requirement 4.4, the MSG should assess the materiality of government revenues from the transportation of minerals, clarifying the management of port-related fees on the transportation of minerals.
9. In accordance with Requirement 4.6, the MSG should establish whether direct subnational payments, within the scope of the agreed benefit streams, are material. Where material, the MSG is required to ensure that reconciled information on company payments to subnational government entities and the receipt of these payments be publicly accessible. EITI Madagascar may wish to provide more information on the disbursement of ristournes from Ambatovy to host communes built-up since the start of production in 2012 given the materiality of such delayed payments.
10. In accordance with Requirement 4.7, the MSG is required to ensure that EITI data is presented by individual company, government entity and revenue stream. To strengthen implementation, the MSG may wish to consider the extent to which it can make progress in implementing project-level EITI reporting ahead of the deadline for all EITI Reports covering fiscal periods ending on or after 31 December 2018.
11. In accordance with Requirement 4.9.a, the EITI requires an assessment of whether the payments and revenues are subject to credible, independent audit, applying international auditing standards. In accordance with requirement 4.9.b.iii and the standard Terms of Reference for the Independent Administrator agreed by the EITI Board, the MSG and Independent Administrator should:
  - a. examine the audit and assurance procedures in companies and government entities participating in the EITI reporting process, and based on this examination, agree what information participating companies and government entities are required to provide to the Independent Administrator in order to assure the credibility of the data in accordance with Requirement 4.9. The Independent Administrator should exercise judgement and apply appropriate international professional standards in developing a procedure that provide a








sufficient basis for a comprehensive and reliable EITI Report. The Independent Administrator should employ his/her professional judgement to determine the extent to which reliance can be placed on the existing controls and audit frameworks of the companies and governments. The Independent Administrator's inception report should document the options considered and the rationale for the assurances to be provided.

- b. ensure that the Independent Administrator provides an assessment of comprehensiveness and reliability of the (financial) data presented, including an informative summary of the work performed by the Independent Administrator and the limitations of the assessment provided.
  - c. ensure that the Independent Administrator provides an assessment of whether all companies and government entities within the agreed scope of the EITI reporting process provided the requested information. 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, and an assessment of whether this is likely to have had material impact on the comprehensiveness and reliability of the report.
12. In accordance with Requirement 5.1, EITI Madagascar should publicly clarify which extractive industry revenues, whether cash or in-kind, are recorded in the national budget. Where revenues are not recorded in the national budget, the allocation of these revenues must be explained, with links provided to relevant financial reports as applicable. To strengthen implementation, EITI Madagascar may wish to use EITI reporting to monitor the migration of government finances towards a single Treasury account system, providing a platform for public information on the management of off-budget extractives revenues.
13. In accordance with Requirement 5.2, the MSG is required to ensure that material subnational transfers of extractives revenues are publicly disclosed, when such transfers are mandated by a national constitution, statute or other revenue sharing mechanism. The MSG should also disclose any discrepancies between the transfer amount calculated in accordance with the relevant revenue sharing formula and the actual amount transferred between the central government and each relevant subnational entity. The MSG is encouraged to reconcile these transfers.
14. In accordance with Requirement 6.2, the MSG should undertake a comprehensive review of all expenditures undertaken by extractives SOEs that could be considered quasi-fiscal. The MSG should develop a reporting process for quasi-fiscal expenditures with a view to achieving a level of transparency commensurate with other payments and revenue streams.
15. In accordance with Requirement 7.4, the annual progress report should be the product of consultations with all stakeholders and include a review of the impact of EITI implementation. Civil society groups and industry involved in the EITI, particularly, but not only those serving on the MSG, should be able to provide feedback on the EITI process and have their views reflected in the APR.

Figure 1– initial assessment card

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

*Legend to the assessment card*

	<b>No progress.</b> The country has made no progress in addressing the requirement. The broader objective of the requirement is in no way fulfilled.
	<b>Inadequate progress.</b> 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.
	<b>Meaningful progress.</b> 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.
	<b>Satisfactory progress.</b> The country is compliant with the EITI requirement.
	<b>Beyond.</b> 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.

## Introduction

### Brief recap of the sign-up phase

The initial statement of commitment to implement the EITI in Madagascar was made in 2007 by Former President Marc Ravalomanana.<sup>3</sup> Madagascar was admitted as an EITI candidate in February 2008. The MSG, the EITI Madagascar National Committee, was originally established on 8 July 2010 at the first General Assembly of EITI Madagascar, under the High Transitional Authority (HAT).<sup>4</sup> The EITI Board suspended Madagascar on 25 October 2011 due to political instability,<sup>5</sup> which delayed the country's Validation under the EITI Rules. Following the appointment of a new EITI Champion, Minister of Mines and Petroleum Daniella Rajo Randriafeno in 2012, Prime Minister Jean Omer Beriziky issued Arrêté 5615/2013 on 15 March 2013 reactivating EITI Madagascar and establishing a permanent EITI National Committee<sup>6</sup>, appointed in April 2013. On 6 June 2014, the EITI Board lifted Madagascar's suspension following the formation of President Hery Rajaonarimampianina's government.<sup>7</sup> Madagascar submitted its first Validation report in September 2011, although following suspension the EITI Board agreed that Madagascar's Validation deadlines would be aligned with the transition to the 2013 EITI Standard.

### Objectives for implementation and overall progress in implementing the work plan

The MSG has regularly approved and published annual work plans since 2011. The 2017 work plan was approved at the 15 June 2017 MSG meeting. The objectives of Madagascar's EITI implementation are aligned with national priorities<sup>8</sup> and the product of consultations with key stakeholders. The objectives concern EITI reporting, implementing the beneficial ownership roadmap, improving access to open data, following-up on recommendations from studies on the management of mining licenses and geo-scientific information, improving transparency of the distribution of extractive revenues, capacity building, outreach and dissemination, the Validation process, the institutionalisation of the EITI, and the functioning of the Secretariat. The main activities not yet completed in 2017 include the drafting of a detailed open data policy and regional workshops. Activities planned based on the revision of the Mining and Oil Code and on the publication of the 2015 EITI Report were removed from the work plan.

### History of EITI Reporting

Madagascar has produced six EITI Reports covering eight fiscal years (2007-2014). It published its first EITI Report, covering 2007-2009, in June 2011 and published EITI Reports covering 2010 in September 2012, 2011 in August 2013, 2012 and 2013 in January 2015 and 2014 in December 2016.<sup>9</sup> Madagascar continued publishing EITI Reports (covering 2010 and 2011) during its suspension by the EITI Board due to political instability from October 2011 to June 2014. While the MSG approved the ToR for Madagascar's

<sup>3</sup> 1.1 Forest Social Development Consulting (September 2011), 'EITI Madagascar Validation Report', p.17, accessed [here](#) in November 2017, p.17.

<sup>4</sup> Ibid.

<sup>5</sup> EITI Board (October 2011), 'Minutes of the 18<sup>th</sup> EITI Board meeting in Jakarta/Pangkalpinang Indonesia 25-26 October 2011', accessed [here](#) on 11 November 2017.

<sup>6</sup> Ministerial order no. 5615/2013 portant création définitive et réactivation du Comité National de l'Initiative pour la Transparence des Industries Extractives (EITI), accessed [here](#) in November 2017.

<sup>7</sup> EITI International (June 2014), 'EITI Board lifts suspension of Madagascar', accessed [here](#) in November 2017.

<sup>8</sup> See: Ministry of Economy and Planification (April 2015), 'Plan National de Développement 2015-2019', accessed [here](#) in November 2017.

<sup>9</sup> See: EITI Madagascar website, Reports section, accessed [here](#) in November 2017.

2015 EITI Report in June 2016, procurement delays hindered the production of the report prior to the start of Madagascar's Validation under the EITI Standard on 1 September 2017. Additional details on the Madagascar's EITI Reports are provided in Annex C.

## Summary of engagement by government, civil society and industry

Permanent members of the MSG were selected in July 2010 at the first General Assembly of EITI Madagascar. Following appointment of a new EITI Champion, Minister of Mines and Petroleum Daniella Rajo Randriafeno, in July 2012, Prime Minister Jean Omer Beriziky issued Ministerial Order no.5615/2013 on 15 March 2013 reactivating EITI Madagascar and establishing a permanent EITI National Committee<sup>10</sup>, which was formally appointed in April 2013. The Ministerial Order set the composition of the MSG at 21 members, equally split between the three constituencies, as well as the MSG Chair, then-EITI Champion and Minister of Mines and Petroleum Randriafeno.<sup>11</sup> Following EY's review of EITI Madagascar's governance in early 2017, the MSG agreed at its 26 April 2017 meeting to increase the number of MSG members to 24<sup>12</sup>, equally split between the three constituencies.<sup>13</sup> This change became effective with the MSG renewal in early October 2017, after the start of Validation (1 September 2017).<sup>14</sup> The 2017 governance review noted that quorum was rarely attained in general, calling into question the legitimacy of MSG decisions. It confirmed that industry was generally seen by all stakeholders as the constituency with the most active engagement. The 2016 annual progress report (APR) attributes the weak attendance at MSG meetings to four reasons: funding constraints hindering implementation of the work plan, the high frequency of MSG meetings not consistently called with sufficient notice, narrowly focused activities as well as the distance between the MSG and extractives regions.<sup>15</sup> Additional details on MSG members' meeting attendance are provided in Annex B.

## Key features of the extractive industry

With a USD 391 per-capita GDP in 2016, Madagascar's population of 24m is amongst the world's ten poorest.<sup>16</sup> Yet Madagascar holds extensive deposits of minerals:<sup>17</sup> it accounts for roughly 4% of global ilmenite production, 2% of cobalt and 1% each of global mined nickel, rutile and zirconium.<sup>18</sup> Madagascar also has a tradition of artisanal mining of gold, sapphires, rubies, aquamarines, tourmaline, topaz, amethysts and emeralds, largely exported to Sri Lanka and Thailand for processing,<sup>19</sup> despite a ban on precious stone exports since 2008. The large informal economy of over half a million artisanal miners operates often in unsafe working conditions.<sup>20</sup> With some 5% of the world's fauna and flora species, 80%

<sup>10</sup> Ministerial order no. 5615/2013, op. cit.

<sup>11</sup> EY (May 2017), 'EITI Madagascar: Etude sur le renforcement de la gouvernance', pp.13-14, not accessible online, provided by the EITI Madagascar Secretariat in October 2017.

<sup>12</sup> This was a lower increase than suggested by EY, who had recommended increasing government seats on the MSG to 11 and seats for the other two constituencies to nine each, thereby increasing the MSG size to 29 seats.

<sup>13</sup> EY (May 2017), op. cit., pp.45-46.

<sup>14</sup> EITI Madagascar (June 2017), '2016 Annual progress report', p.39, accessed [here](#) in November 2017.

<sup>15</sup> Ibid., p.38.

<sup>16</sup> Direction Générale du Trésor de France (2017), 'Profile Madagascar', accessed [here](#) in November 2017.

<sup>17</sup> US Geological Survey (February 2016), '2013 Minerals Yearbook: Madagascar', accessed [here](#) in November 2017.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> World Bank (May 2017), op.cit., p.15.

of which are endemic to the island-state,<sup>21</sup> environmental concerns are paramount to CSOs' priorities.

From the late 1950s onwards, the French-owned SOTRASSUM<sup>22</sup> mined monazite, ilmenite and zircon in south-eastern Madagascar in partnership with the state. The mine was nationalised as KRAOMITA Malagasy in 1975 and eventually depleted in 2008.<sup>23</sup> The French company COMINA has mined chromite from the west coastal region of Andriamena since 1968 and was nationalised as KRAOMA in 1975, among the largest mining projects in Madagascar to date.<sup>24</sup> During the isolation following the 2009 Coup d'état,<sup>25</sup> the HAT focused on promoting Asian investment, most visibly when China's third-largest steel-maker WISCO acquired the rights to the Soalala iron deposit with a USD 100m signature bonus in 2011.<sup>26</sup> A series of large mining projects have provided the impetus for a rebound in economic growth since the end of the political crisis in 2013.<sup>27</sup> Rio Tinto's USD 931m QIT Madagascar Minerals (QMM) ilmenite and zircon project in the southeast Anosy region, in which the state holds a 20% stake, began production in 2009.<sup>28</sup> The second project, one of the world's largest nickel and cobalt mine at Ambatovy developed by Sherritt International, Sumitomo Corp. and Korea Resources Corp., represents a USD 7bn investment that started producing in 2012.<sup>29</sup> While extractives contributed a modest 4.18% of GDP in 2014, the Ministry of Mines and Petroleum (MPMP) expects the sector to grow to 6%-8% by 2020.<sup>30</sup> Although the value of exports covered by Madagascar's 2014 EITI Report accounted for only 6.3% of total exports<sup>31</sup>, the IMF classifies Madagascar as a resource-rich country given that the value of total mining exports, including informal exports of gold and precious stones, accounting for over a quarter of total exports.<sup>32</sup> However, the decline in commodity prices has meant that new large-scale mining projects have yet been confirmed.<sup>33</sup>

While oil exploration has a long history in Madagascar, a succession of foreign companies including ELF, Chevron, Agip and Amoco never found commercially-viable deposits that warranted the relatively high cost of production.<sup>34</sup> However, Madagascar is considered to be a new frontier for oil and gas prospecting<sup>35</sup>, with ten international oil companies holding a total of 17 oil and gas blocks.<sup>36</sup> The government has been working with data providers (TGS, BGP, Spectrum, CGG) to promote investment in 229 available blocks.<sup>37</sup> Exploration work to date has identified five active oil systems, including both

<sup>21</sup> Friends of the Earth Europe (October 2012), 'Madagascar: The New Eldorado for Mining and Oil Companies', p.4, accessed [here](#) in November 2017, p.4.

<sup>22</sup> Société de traitement des sables du sud de Madagascar, a subsidiary of Groupe Pechiney Ugine Kuhlman.

<sup>23</sup> Institute of Developing Economies, Japan External Trade Organization, Kraomita Malagasy (Kraoma Sa) company profile, accessed [here](#) in November 2017.

<sup>24</sup> Friends of the Earth Europe, op. cit., pp.4-5.

<sup>25</sup> The Guardian (March 2009), 'The African Union suspends Madagascar over 'coup'', accessed [here](#) in November 2017; Reuters (March 2009), 'Southern African summit suspends Madagascar', accessed [here](#) in November 2018; Razafindrakoto, Mireille et al., 'Élites, pouvoir et regulation à Madagascar', *Afrique contemporaine* 2014/3 (no.251), pp.25-50, accessed [here](#) in November 2017.

<sup>26</sup> Chatham House (January 2013), op.cit., p.8, and Monkey Forest Social Development Consulting (September 2011), op.cit., p.39.

<sup>27</sup> IMF (January 2015), 'Republic of Madagascar 2014 Article IV Consultation – Staff report; press release', p.6, accessed [here](#) in November 2017.

<sup>28</sup> Minister of Mines and Petroleum (September 2017), 'Madagascar's Extractive Sector: current status and perspectives', accessed [here](#) in November 2017. Chatham House (January 2013), 'Madagascar: Time to Make a Fresh Start', p.8, accessed [here](#) in November 2017, p.8.

<sup>29</sup> Ibid., p.9.

<sup>30</sup> Minister of Mines and Petroleum (September 2017), op. cit.

<sup>31</sup> EITI Madagascar, 2014 EITI Report, p.90, accessed [here](#) in November 2017.

<sup>32</sup> IMF (August 2016), 'Republic of Madagascar: Request for an arrangement under the extended credit facility, first review, press release', accessed [here](#) in November 2017, p.42.

<sup>33</sup> World Bank (May 2017), 'Country partnership framework for Madagascar', accessed [here](#) in November 2017, p.15.

<sup>34</sup> Friends of the Earth Europe (October 2012), op.cit., pp.4-5.

<sup>35</sup> Ibid., p.10.

<sup>36</sup> EITI Madagascar, 2014 EITI Report, op. cit., p.17.

<sup>37</sup> Minister of Mines and Petroleum (September 2017), op.cit.

conventional light oil as well as heavy crude and tar sands, although onshore exploration is at a more advanced stage than offshore.<sup>38</sup> The London Alternative Investments Market-listed Madagascar Oil was granted production rights for two unconventional oil blocks in April 2004. With potential reserves of up to 1.2bn barrels and 1.7bn barrels of crude oil respectively, Madagascar Oil struck a farm-out agreement with Total in 2008, selling a 60% stake in Bemolanga for USD 100m. While the 2008-2011 search for tar-sand oil at Bemolanga was unsuccessful, Total has continued its exploration for conventional types of oil since.<sup>39</sup> Meanwhile, pilot heavy oil production commenced at Tsimiroro in 2015.<sup>40</sup>

## Explanation of the Validation process

Validation is an essential feature of the EITI implementation process. It is intended to provide all stakeholders with an impartial assessment of whether EITI implementation in a country is consistent with the provisions of the EITI Standard. It also addresses the impact of the EITI, the implementation of activities encouraged by the EITI Standard, lessons learnt in EITI implementation, as well as any concerns stakeholders have expressed and recommendations for future implementation of the EITI.

The Validation process is outlined in chapter 4 of the EITI Standard.<sup>41</sup> It has four phases:

1. Preparation for Validation by the multi-stakeholder group (MSG)
2. Initial data collection and stakeholder consultation undertaken by the EITI International Secretariat.
3. Independent quality assurance by an independent Validator who reports directly the EITI Board
4. Board review.

The Validation Guide provides detailed guidance on assessing EITI Requirements, and more detailed Validation procedures, including a standardised procedure for data collection and stakeholder consultation by the EITI International Secretariat and standardised terms of reference for the Validator.

The Validation Guide includes a provision that: “Where the MSG wishes that validation pays particular attention to assessing certain objectives or activities in accordance with the MSG work plan, these should be outlined upon the request of the MSG”. The EITI Madagascar MSG did not request any issues for particular consideration.

In accordance with the Validation procedures, the International Secretariat’s work on the initial data collection and stakeholder consultation was conducted in three phases:

### 1. Desk Review

Prior to visiting the country, the Secretariat conducted a detailed 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;

<sup>38</sup> Minister of Mines and Petroleum (September 2017), op. cit.

<sup>39</sup> Friends of the Earth Europe (October 2012), op.cit., pp.14-15.

<sup>40</sup> Madagascar Oil website, accessed [here](#) in November 2017.

<sup>41</sup> See: EITI International, Validation, accessible [here](#).



- 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.

In accordance with the Validation procedures, the Secretariat has not taken into account actions undertaken after the commencement of Validation.

## 2. Country visit

A country visit took place on 20-25 November 2017. All meetings took place in Antananarivo. The secretariat met with the MSG, the Independent Administrator and other key stakeholders, including stakeholder groups that are represented on, but not directly participating in, the MSG. In addition to meeting with the MSG as a group, the Secretariat met with its constituent parts (government, companies and civil society) either individually or in constituency groups, with appropriate protocols to ensure that stakeholders are able to freely express their views and that requests for confidentiality are respected. The list of stakeholders consulted is outlined in Annex G.

## 3. Reporting on progress against requirements

This report provides the International Secretariat initial assessment of progress against requirements in accordance with the Validation Guide. It does not include an overall assessment of compliance.

The International Secretariat's team comprised: Indra Thévoz, Alex Gordy, Bady Baldé, Marie Gay Alessandra Ordenes and Sam Bartlett. Indra Thévoz and Alex Gordy conducted stakeholder consultation and prepared the draft initial assessment. Bady Baldé, Marie Gay Alessandra Ordenes and Sam Bartlett provided quality assurance.

## Part I – MSG Oversight

### 1. Oversight of the EITI process

#### 1.1 Overview

This section relates to stakeholder engagement and the environment for implementation of EITI in country, the governance and functioning of the MSG, and the EITI work plan.

#### 1.2 Assessment

### Government engagement in the EITI process (#1.1)

#### Documentation of progress

*Public statement:* The Government of Madagascar’s initial commitment to implement the EITI in Madagascar was made in 2007 by Former President Marc Ravalomanana. Madagascar was declared “candidate country” in February 2008 by the EITI Board.<sup>42</sup> The EITI Madagascar MSG and Regional Committees were created in July 2010 under the HAT, which issued a press statement on 14 September 2011 confirming the government’s commitment to EITI.<sup>43</sup> Although Madagascar had been suspended since October 2011, former Prime Minister Jean Omer Beriziky signed the Ministerial Order No. 5615/2013 in June 2013 reactivating the EITI National Committee. In October 2013, former EITI Champion and Minister of Mines Rajo Daniella Randriafeno noted that the publication of the 2011 EITI Report despite five years of political instability was a sign of the government’s commitment to strengthening governance in the extractive sector.<sup>44</sup>

Following the lifting of Madagascar’s suspension on 6 June 2014, President Hery Rajaonarimampianina opened the first International Fair on Mines, Hydrocarbons and Equipment in Madagascar on 19 June 2014 by reaffirming the government’s commitment to implementing the EITI.<sup>45</sup> On 21 and 22 April 2015, former EITI Chair Clare Short was welcomed by Prime Minister Jean Ravelonarivo and other high-level officials.<sup>46</sup> The promulgation of the 2017 Decree on 30 August 2017 is the most recent sign of the

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<sup>42</sup> Letter from Former Chairman of the EITI Peter Eigen to Former President of Madagascar Marc Ravalomanana (February 2008).

<sup>43</sup> Monkey Forest (September 2011), op. cit. , pp.17-18.

<sup>44</sup> Daniella Rajo Randriafeno (October 2013), Speech on the publication of the EITI Report in 2013, provided by the EITI Madagascar Secretariat.

<sup>45</sup> EITI Madagascar (June 2014), ‘Discours de SEM Hery Rajaonarimampianina, Inauguration’, accessed [here](#) in November 2017; see also: Foreign Affairs (October 2014), p.12, ‘Madagascar: a new era’, accessed [here](#) in November 2017.

<sup>46</sup> Letter from former Minister of Mines Joéli Valérien Lalaharisaina to the President and Prime Minister of Madagascar (April 2015), ‘Visite officielle à Madagascar de Mme Clare Short, Présidente de l’EITI International’, provided by the EITI Madagascar Secretariat; EITI Madagascar (April 2015), ‘Visite officielle à Madagascar de Mme Clare Short, Présidente de l’EITI International’, accessed [here](#) in November 2017.

government's public engagement by institutionalizing EITI Madagascar.

*Senior lead:* Consecutive governments have appointed senior individuals to lead on EITI implementation, including during Madagascar's suspension: General Secretary of the Madagascar Action Plan Andry Ralijoana (2008-2009), General Secretary of the Ministry of Mines and Hydrocarbons Jaona Randrianarisoa (2010-2011), Minister of Mines Daniella Rajo Randriafeno (2012-2014),<sup>47</sup> and Minister of Mines and Petroleum Joéli Valérien Laharisaina (2014-2016).<sup>48</sup> The current EITI Champion is Minister of Mines and Petroleum Ying Vah Zafilahy, appointed in 2016. The self-assessment exercise ahead of Validation conducted by the MSG in 2016 found that Minister Zafilahy did not have the trust from all stakeholders, albeit without providing reasons.<sup>49</sup> However, there is evidence that he regularly discusses the EITI at the level of the Council of Ministers, bringing the attention of the highest level of government to the implementation of the EITI.<sup>50</sup>

*Active engagement:* The 2013 Ministerial Order on the reactivation of the EITI Committee sets the number of MSG representatives at nine, although the three representatives of the Ministry of Finance and Budget (MFB) count as one vote. Analysis of MSG meeting attendance and minutes (*see Annex B*) shows that government engagement remains limited, with notable exceptions from the Ministry of Mines and Petroleum (MPMP). Overall participation has consistently declined between 2013 and 2017. Since 2014, the EITI Champion has been mostly absent from meetings.<sup>51</sup> Outside the MSG, there is nonetheless evidence of government use of EITI data to support reforms in mining license allocation and investment promotion<sup>52</sup>, with several government websites dedicating sections to the EITI.<sup>53</sup>

Since the lifting of Madagascar's suspension, the government has not regularly contributed to funding EITI implementation. The EITI Secretariat drafted dozens of letters to request government funding, especially in 2013 and 2014. At its 20 October 2015 meeting, the MSG deplored that government had yet to honour its commitment to provide funding for EITI implementation.<sup>54</sup> The government has stated that the EITI's lack of clear legal status prevented the government from providing regular funding, although there is evidence of ad hoc government funding of USD 60k in 2013, USD 100k in 2015 and USD 150k in 2017.<sup>55</sup>

There have however been significant signs of commitment in the regulatory and legal framework. The

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<sup>47</sup> Ministerial decision no. 13834-2012 of 10 July 2012 on the nomination of the EITI Madagascar Champion, provided by the EITI Madagascar Secretariat.

<sup>48</sup> Decree no. 2014-805 of 25 July 2014 on the nomination of the EITI Madagascar Champion, provided by the EITI Madagascar Secretariat.

<sup>49</sup> EITI Madagascar (June 2016), 'Autoévaluation sur les exigences de la Norme EITI 2016', provided by the EITI Madagascar Secretariat.

<sup>50</sup> For instance, at the 23 June 2016 Council of Ministers, EITI Champion and Minister of Mines and Petroleum Ying Vah Zafilahy asked the government to publicly renew its engagement to the EITI, including through the nomination of representatives of the government on the MSG, and the government's commitment to financial support the implementation of the EITI. Republic of Madagascar (June 2016), 'Billet du Conseil des Ministres du 22 juin 2016', accessed [here](#) in October 2017; Ying Vah Zafilahy (June 2016) 'Communication verbale: Réaffirmation de l'engagement du Gouvernement à la mise en œuvre de l'ITIE', not accessible online provided by the EITI Madagascar Secretariat.

<sup>51</sup> The 2017 Decree on the institutionalisation of the EITI Committee sets the number of government representatives at eight, with all them having at least director general status. All new government representatives were nominated between September and November 2017.

<sup>52</sup> BCCM (November 2016), 'Tableau de bord de suivi du diagnostic sur la gestion des titres miniers', not accessible online, provided by the EITI Madagascar Secretariat; Minister of Mines and Petroleum (September 2017), op.cit.

<sup>53</sup> BCMM website, accessed [here](#) in November 2017; KRAOMA website, accessed [here](#) in November 2017.

<sup>54</sup> This breached an agreement with the World Bank and the African Development Bank. EITI Madagascar, Minutes of MSG meeting on 20 October 2015, provided by the EITI Madagascar Secretariat.

<sup>55</sup> Ying Vah Zafilahy (June 2016), op. cit.; EITI Madagascar, Minutes of MSG meeting on 27 April 2017, provided by EITI Madagascar Secretariat.

Framework Document on the National Mining Policy adopted in 2014 highlights the government's commitment to EITI implementation.<sup>56</sup> The government has also passed Ministerial Orders requiring material companies to participate in the 2011, 2012, 2013 and 2014 EITI Reports.<sup>57</sup> Most recently, Article 3 of the 2017 Decree on the institutionalisation of the EITI states that the EITI is attached to the Prime Minister's Office, and Article 7 names representatives from the Presidency and Prime Minister's Office as part of the eight government representatives.<sup>58</sup>

### Stakeholder views

There was consensus amongst MSG members that government participation within the MSG had been limited since 2014, but that the EITI Champion's engagement had significantly increased in 2017 with the approach of Validation – a trend they hoped would continue. A senior government official confirmed that the highest levels of government were closely following EITI implementation, reflected in recent high-level appointments to the MSG. Several stakeholders, including government representatives and partners, noted the importance of the EITI in achieving government priorities in improving good governance, fighting against corruption, attracting foreign investment and strengthening transparency in the sector.<sup>59</sup> Partners further emphasised that the government had never withdrawn its support from the EITI, even during the political crisis and the suspension of Madagascar. Several MSG members also highlighted that the EITI was part of consultations led by the government in drafting revision of the Mining and Petroleum Codes. Stakeholders noted that provisions related to EITI reporting had been included earlier drafts of the two Codes, but that the status of the drafts was unclear. Industry and CSO representatives still expressed concerns about the long-term commitment of the government and the consequences for the institutionalisation of the EITI, citing the overall lack of concrete engagement and recurrent funding issues in the 2014-2017 (*see Requirement 1.5*).

### Initial assessment

The International Secretariat's initial assessment is that Madagascar has made meaningful progress in meeting this requirement. The International Secretariat understands that the government has not been fully, actively and effectively engaged in the EITI process between 2014 and 2017 and notes concerns from various stakeholders that the more recent engagement might not be sustained in the long-term. However, the commitment reflected in the months leading to Validation, coupled with the institutionalisation of EITI Madagascar through the August 2017 Decree, prospects of more sustainable funding and mechanisms to ensure more consistent government participation in EITI activities, are strong signs that the government has renewed its commitment to the EITI. The extent to which the government sustains this commitment to use the EITI as an instrument to drive reforms will be key to the prospects of EITI implementation.

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<sup>56</sup> Ministry of Mines (September 2014), 'Document cadre de la politique minière nationale', provided by the EITI Madagascar Secretariat.

<sup>57</sup> Ministerial order no.15911/2013 of 14 August 2013 on the participation of mining and oil-companies to the EITI Report covering fiscal year 2011, Ministerial order no.28237/2014 of 15 September 2014, and Ministerial order no. 22727/2016 of 25 October 2016. Sanctions include the withdrawal of licenses, but stakeholders were not aware of that threat being executed in practice. At the local level, Order 003/13/MINDEC/RSO of 6 February 2013 established the right to access information related to the governance of the extractive sector, public participation in the extractives sector decision-making process and a grievance mechanism for citizens of the Atsimo Andrefana mining region. Order no.003/13/MINDEC/RSO of 6 February 2013 on the organisation and collaboration between different actors within the Atsimo Andrefana region in the framework of the governance of the extractive sector.

<sup>58</sup> Decree no.2017/736, op. cit.

<sup>59</sup> See also: MPMP (April 2015), 'La politique Nationale du Ministère chargé des Mines et du Pétrole', accessed [here](#) in November 2017.

In accordance with Requirement 1.1, the government must be fully, actively and effectively engaged in the EITI process. The government is required to appoint a senior individual to lead the implementation of the EITI. The appointee should have the confidence of all stakeholders, the authority and freedom to coordinate action on the EITI across relevant ministries and agencies, and be able to mobilise resources for EITI implementation. To further strengthen implementation following the institutionalisation of EITI Madagascar through the 2017 Decree, the government is encouraged to further entrench EITI funding in government budgeting to ensure the sustainability of EITI implementation over the long term. In accordance with requirement 8.3.c.i, the government constituency should develop and disclose an action plan for addressing the deficiencies in government engagement documented in the initial assessment.

## Industry engagement in the EITI process (#1.2)

### Documentation of progress

**Active engagement:** The 2013 Decree sets the number of industry representatives at six, including four mining companies which are members of the Chamber of Mines, two upstream mining companies members of APPAM and one upstream oil company non-member of APPAM, all of them elected by their peers.<sup>60</sup> The Chamber of Mines comprises 27 companies, including Ambatovy and QMM, while APPAM has eight members. The 2017 Decree on the institutionalisation of the EITI Committee sets the number of industry representatives at eight, adding one representative of mining companies not member of the Chamber of Mines.

There have been frequent statements of companies' commitment to EITI following the reactivation of the MSG in 2013.<sup>61</sup> Analysis of MSG meeting attendance and minutes (*see Annex B*) confirms that industry engagement is the strongest amongst MSG constituencies, with industry representatives actively taking part in discussions and consistently participating in meetings. The International Council of Mining and Metals (ICMM) highlighted mining companies' key role in keeping the EITI process "*alive (...) during periods of government disengagement*".<sup>62</sup> Additionally, Chamber of Mines and APPAM internal meeting minutes provide ample evidence that their members regularly discuss the implementation of the EITI.<sup>63</sup> The Chamber's successive annual strategic plans in 2016-2017 have placed a central focus on EITI as a tool to drive reforms<sup>64</sup>, its meetings regularly discusses EITI work plan implementation<sup>65</sup> and it publishes

<sup>60</sup> See: Chamber of mines website, accessible [here](#) and APPAM website, accessible [here](#).

<sup>61</sup> Sherritt International Corp. (October 2013), 'Sustainability at Sherritt', p. 17, accessed [here](#) in November 2017; Sherritt International (2015), 2014 Sustainability Report', p.46,52, accessed [here](#) in November 2017; ICMM (May 2013), 'Good practice: The Newsletter of the International Council on Mining and Metals Vol 11 Issue 1 May 2013', p.9, accessed [here](#) in November 2017.

<sup>62</sup> ICMM (August 2015), 'Mining and the Extractive Industries Transparency Initiative: A review of international and in-country experiences of the EITI from the perspective of supporting mining companies', p.11, 48, accessed [here](#) in November 2017.

<sup>63</sup> For instance, APPAM discusses EITI matters at various meetings of its Management Committee, such as key figures from EITI Reports and confidentiality clauses in PSCs. See Minutes of APPAM meetings, 28 February 2017, 1 December 2015, 12 September 2014, provided by the EITI Madagascar Secretariat.

<sup>64</sup> For instance, the Chamber's 2017 strategy includes strengthening its representation within the EITI. Its plan for global transformation of the mining sector, laid out in 2016, highlights the need to commit to international best practices such as the EITI, alongside efforts to fight against corruption, deliver mining licenses transparently, and manage extractives revenues in a fair and transparent way.

<sup>65</sup> Chamber of Mines (2017), 'Orientations Stratégiques 2017'; Chamber of Mines (November 2016), 'Plan de transformation globale'; Chamber of Mines (June 2017; September 2016; June 2016; May 2016, February 2016; September 2015; June 2015), 'Rapports d'activité', provided by the EITI Madagascar Secretariat.

quarterly newsletters since 2015, with frequent use of EITI data.<sup>66</sup> Several companies also include EITI information on their websites.<sup>67</sup>

*Enabling environment:* The 2013 Decree on the reactivation of the EITI Committee and the 2017 Decree on its institutionalisation provide an enabling legal environment for industry participation in the EITI. The 2011 Validation Report noted that the Ministry of Mining and Ministry of Decentralisation issued waivers to the Tax Code's confidentiality provisions for the Independent Administrator's (IA) work in preparing the 2007-2010 EITI Reports, which were covered all future EITI reporting.<sup>68</sup> The government has also enacted Ministerial Orders requiring all material companies to participate in the 2011, 2012 and 2013 EITI Reports (*see Requirement 1.1*).<sup>69</sup>

### Stakeholder views

Stakeholders agreed that industry engagement on the MSG was strong and consistent, especially from larger international companies, and that this engagement had ensured that the EITI remained active during the political crisis and when other constituencies' engagement declined. Industry representatives emphasised the importance of EITI in demonstrating that companies complied with their legal and contractual obligations and in ensuring accountability in the government's management of extractives revenues. Furthermore, EITI implementation provided reassurance to company shareholders about efforts to curb corruption. A government representative explained that the EITI was also a tool for companies to help stabilise the fiscal and regulatory framework, although an industry representative considered this more relevant for mining companies than for oil and gas (*see Requirement 2.2*). Finally, a partner noted that smaller mining companies, including Asian-invested operators, and artisanal miners had shown little interest in participating in EITI.

### Initial assessment

The International Secretariat's initial assessment is that Madagascar has made satisfactory progress in meeting this requirement. Companies are fully, actively and effectively engaged in the EITI process, as providers of information and in the design, implementation, monitoring and evaluation of the EITI process. The government has ensured that there is an enabling environment for company participation. Despite constraints imposed by confidentiality provisions of the tax code, the waiver system designed by the MFB has provided a means of facilitating company reporting. In the International Secretariat's view, the industry constituency has made efforts to go beyond the minimum requirement in the quality, consistency and pro-active nature of its engagement in all aspects of EITI implementation. Amidst weakening engagement from the other constituencies, such engagement has been key to ensuring the sustainability of EITI implementation.

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<sup>66</sup> Chamber of Mines (2015, 2016, 2017), Newsletters, provided by the EITI Madagascar Secretariat. 2015 Newsletters can be downloaded on: Chamber of Mines website, 'Téléchargements', accessible [here](#).

<sup>67</sup> Ambatovy website, 'Transparence', accessed [here](#) in November 2017; APPAM website, 'Les acteurs du pétrole à Madagascar', accessed [here](#) in November 2017. The Chamber of Mines has also published a key monography of the mining sector, partly based on EITI data: Chamber of Mines (December 2014), 'Monographie du secteur minier', accessed [here](#) in November 2017.

<sup>68</sup> Monkey Forest (September 2011), Validation report, accessed [here](#) in November 2017, p.33.

<sup>69</sup> Ministerial decisions no.15911/2013, no.28237/2014 and no. 22727/2016 of 25 October 2016, op. cit.

To strengthen implementation, the government is encouraged to include EITI-related provisions in sector legislation to ensure a more sustainable legal environment for EITI implementation in the long term.

## Civil society engagement in the EITI process (#1.3)<sup>70</sup>

### Documentation of progress

There is no agreed single definition of civil society in Madagascar and the legislation related to non-profit organisations is fragmented.<sup>71</sup> CSOs established the first NGO platform<sup>72</sup> dedicated to democratic socio-economic and cultural development in 2005.<sup>73</sup> There are broadly two types of CSOs engaging in EITI implementation: environmental-focused NGOs, not exclusively affiliated to international NGOs, and other NGOs focused on extractives governance, human rights and other issues. International civil society, primarily focused on environmental issues<sup>74</sup>, originally structured its engagement in EITI through the Madagascar Extractive Industries Group (GIE<sup>75</sup>) created in February 2012 as an umbrella organisation for CSOs working on extractives issues<sup>76</sup>, with ToR approved in March 2012<sup>77</sup> by the six core members.<sup>78</sup> The Alliance Voahary Gasy (AVG), a platform of 28 Malagasy CSOs<sup>79</sup> focused on environmental governance, has been an active member of GIE.<sup>80</sup> The GIE's primary focus is on the environmental impacts of mining, oil and gas activities, including through EITI<sup>81</sup> and it coordinates civil society engagement in EITI.<sup>82</sup> The GIE was restructured as the 13-member Civil Society Organisation on Extractive Industries (OSCIE<sup>83</sup>) in 2016. The other key CSO coalition involved in EITI implementation is Publish What You Pay (PWYP) Madagascar, a coalition of 15 CSOs focused on extractives transparency and accountability.<sup>84</sup> There were seven CSOs represented on the MSG at the start of Validation, including two from GIE, three from PWYP, a regional CSO and a specialised CSO, although the August 2017 Decree restructuring MSG membership requires to expand to eight CSO members (*see Requirement 1.4*).

<sup>70</sup> The first Validation under the EITI Standard (Azerbaijan 2016) established precedent for the Validation of requirement 1.3. The CSO protocol "operationalises" requirement 1.3. Each part of the CSO protocol speaks to specific parts of Requirement 1.3:

2.1 of the CSO protocol is intended to assess provisions 1.3(d), 1.3(e)(i), 1.3(e)(iv).

2.2 of the CSO protocol is intended to assess provisions 1.3(b) and 1.3(c).

2.3 of the CSO protocol is intended to assess provision 1.3(e)(iii).

2.4 of the CSO protocol is intended to assess provisions 1.3(a) and 1.3(e)(ii).

2.5 of the CSO protocol is intended to assess provision 1.3(d).

<sup>71</sup> Ndranto Razakamanarina (February 2015), 'Mapping des organisations de la société civile', not accessible online, provided by EITI Madagascar Secretariat in October 2017, p.vii.

<sup>72</sup> The National Platform of Malagasy Civil Society Organisations (PFNOSCM).

<sup>73</sup> Plateforme Nationale des Organisations de la Société Civile Malagasy.

<sup>74</sup> Including World Wild Fund for Nature, Missouri Botanical Garden, Durrell Wildlife Conservation Trust, Conservation International, Blue Ventures.

<sup>75</sup> Groupe Thématique Industries Extractives du CCPTF-E (Cercle de Concertation des Partenaires Techniques et Financiers de l'Environnement).

<sup>76</sup> Groupe Industries Extractives à Madagascar (March 2012), 'Termes de référence', not accessible online, provided by EITI Madagascar Secretariat in October 2017.

<sup>77</sup> Groupe Industries Extractives à Madagascar, 'Projet D'Acte sous-signé privé de création de la plateforme « GROUPE DES INDUSTRIES EXTRACTIVES », not accessible online, provided by the EITI Madagascar Secretariat in October 2017.

<sup>78</sup> WWF, AVG, CEM PROJET TARATRA, TRANSPARENCY INTERNATIONAL INITIATIVE MADAGASCAR, SAF FJKM and CDE.

<sup>79</sup> Including PFNOSCM, SEFAFI, RTRSM and MSIS-Tatao.

<sup>80</sup> Alliance Voahary Gasy Facebook page [here](#) and Twitter account [here](#).

<sup>81</sup> Groupe Industries Extractives à Madagascar (March 2012), 'Roles et activités spécifiques', not accessible online, provided by EITI Madagascar Secretariat in October 2017.

<sup>82</sup> GIE (July 2014), 'EITI Madagascar, relations avec le GIE', accessed [here](#) in November 2017.

<sup>83</sup> Organisation de la société civile sur les industries extractives (OSCIE).

<sup>84</sup> PWYP webpage on Madagascar coalition, accessed [here](#) in November 2017.

**Expression:** While there are concerns from certain international CSOs related to ad hoc constraints on CSOs' ability to freely express their views on certain mining issues, such as the temporary incarceration of journalist Fernand Cello in 2015 on charges of defamation linked to his reporting on illegal sapphire mining<sup>85</sup>, there appear to be no barriers in practice hindering civil society's ability to engage in free debate in relation to EITI implementation. Freedom House ranked Madagascar as "partly free" in 2016 and 2017, noting improvements in press freedom since the end of the transitional government in 2014<sup>86</sup> with remaining intimidation related to political issues, not EITI-related topics.<sup>87</sup> Although the 2010 Constitution provides for freedoms of expression and the press, these are "limited by the respect for the freedoms and rights of others, and by the imperative of safeguarding the public order, the national dignity and the security of the State" according to the Constitution.<sup>88</sup> More broadly, two recent legal reforms have caused concern. In 2014, Parliament approved a new Cybercrime Law introducing prison sentences of up to five years for online insult or defamation of state officials.<sup>89</sup> In 2016, it approved a new Communications Code that brought in new restrictions on press freedoms by increasing possible fines for defamation and sanctions including closure of offending press outlets.<sup>90</sup> There is no evidence these legal provisions have been used to curb civil society's freedom of expression on extractives issues to date.

In 2015-2017, international NGOs highlighted reports of threats and harassment for public statements on environmental issues, including trafficking in rosewood and endangered species and illegal sapphire mining.<sup>91</sup> There is however ample evidence of public expression critical of the government's oversight of the mining, oil and gas sectors, including public criticisms of the draft Mining and Petroleum Code in May

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<sup>85</sup> In 2015, Armand Marozafy was jailed for six months and fined MGA 12m (USD 3,600) for defamation in 2015 when he sent a confidential report on illegal rosewood logging to NGO partners, which was subsequently posted on Facebook. See US Department of State (June 2016), op.cit., p.10. While the mining license was suspended by the Ministry of Mines and Petroleum following Fernand Cello's report, the journalist's media, Radio Jupiter, was raided by military forces who confiscated its transmitter and suffered interruptions in its public utilities. Fernand Cello was charged with seven counts including defamation, threatening state security and inciting hatred, although he was eventually convicted for theft and forgery (which he contests) while most other charges were dropped. Amnesty International (May 2017), 'Urgent action: detained journalist needs proper medical care', accessed here in November 2017. And Mongabay (October 2017), 'Another Madagascar environmental activist imprisoned', accessed here in November 2017.

<sup>86</sup> Freedom House (2016), Freedom in the World 2016: Madagascar', accessed [here](#) in November 2017, and Freedom House (2017), 'Freedom in the World 2017: Madagascar', accessed [here](#) in November 2017.

<sup>87</sup> Freedom House (2016), op.cit.. The US Department of State's 2016 human rights report and independent analysis has highlighted restrictions on freedoms of speech, press and assembly, albeit primarily related to political activism. US Department of State (June 2016), 'Madagascar 2016 human rights report', accessed [here](#) in November 2017 and Bertelsmann Stiftung BTI (2016), 'Madagascar Country Report', accessed [here](#) in November 2017, p.9.

<sup>88</sup> Madagascar's Constitution of 2010, accessed [here](#) in November 2017.

<sup>89</sup> Freedom House (2016), op.cit., and Bertelsmann Stiftung BTI (2016), op.cit., p.9.

<sup>90</sup> Freedom House (2017), op.cit..

<sup>91</sup> Amnesty International, 'Madagascar 2016/2017', accessed [here](#) in November 2017.

Maroantsetra Lampogno Coalition coordinator Clovis Razafimalala was imprisoned and awaited trial from September 2016 to July 2017, allegedly in relation to his activism about illegal trafficking of rosewood and other timber trade. The charges against him included rebellion, destruction of public documents and goods, and arson, but were eventually dropped. See Amnesty International (March 2017), 'Madagascar: Free environmental activist detained for political reasons', accessed [here](#) in November 2017. In 2015, Armand Marozafy was jailed for six months and fined MGA 12m (USD 3,600) for defamation in 2015 when he sent a confidential report on illegal rosewood logging to NGO partners, which was subsequently posted on Facebook. See US Department of State (June 2016), op.cit., p.10.

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2017<sup>92</sup> and public calls for extractive industry governance improvements.<sup>93</sup> MSG meeting minutes shows civil society freely expressing their views on EITI. Civil society has used EITI data in their advocacy, particularly on issues related to subnational transfers, the economic contribution of artisanal mining, license allocation and reform of sector legislation. There is also evidence of local media use of EITI data, including in articles critical of the government (*see Requirement 7.1*).<sup>94</sup>

**Operation:** There is no evidence of any government-imposed legal, regulatory or administrative obstacles affecting the ability of civil society representatives to participate in the EITI process. However, Many CSOs have highlighted the fragmented nature of the legal and regulatory framework (*see an overview of the framework in Annex E*)<sup>95</sup>, A 2015 mapping of CSOs by the NGO CARE found that a majority registered as associations rather than NGOs.<sup>96</sup> The NGO CIVICUS has highlighted the government's inconsistent and selective application of the 1997 Law on NGOs, reporting that a third of NGOs considered regulations for civil society to be either "highly restrictive" or "quite limiting", although the number of CSOs reporting direct illegitimate restrictions from government was a much lower 7%. Financial and capacity constraints have also caused NGOs' agendas to be relatively volatile and influenced by different donors' agendas according to a 2013 CIVICUS report.<sup>97</sup> The high degree of CSOs' dependence on leaders' political connections has also led to concerns of their lack of representativeness and accountability to their constituencies.<sup>98</sup> Notwithstanding these broader challenges, there is evidence that CSOs are able to effectively operate in relation to EITI implementation in Madagascar. All CSOs engaging in EITI, both as MSG members and as members of their constituent coalitions, appear to be duly registered. Civil society has been able to access both domestic and international funds, including from GiZ, USAID, the European Union and World Bank and international NGOs like WWF and CARE. In 2016, four donors established a multi-donor fund to support civil society in Madagascar<sup>99</sup>, to which the EU and GiZ contributed a total of EUR 9.5m in September 2017.<sup>100</sup>

**Association:** There is no evidence to suggest that there are restrictions or limitations on NGOs in terms of their ability to associate, communicate and cooperate with other national or international NGOs in relation to EITI implementation. Concerns over broader constraints on freedom of assembly appear to be focused on political activism rather than extractives issues.<sup>101</sup> In terms of extractives-related public

<sup>92</sup> Agence Ecofin (May 2017), 'Madagascar : le projet relatif au nouveau code minier et pétrolier ne fait pas l'unanimité', accessed [here](#) in November 2017.

<sup>93</sup> Groupe Industries Extractives a Madagascar (2014), 'Appel de la société civile pour une bonne gouvernance effective des ressources minières et pétrolières bénéficiant durablement à la population Malagasy', accessed [here](#) in October 2017.

<sup>94</sup> Online media writing using EITI data include la Gazette, Madagascar Tribune, Newsmada, Midi Madagasikara, l'Express de Madagascar, MadaNews, and Madagate.

<sup>95</sup> Ndranto Razakamanarina (February 2015), *op.cit.*, p.7.

<sup>96</sup> The two main texts governing non-profits are Law 96.030 of 14 August 1997 on NGOs and Ordonnance 60-133 of 3 October 1960 on the general regime for associations modified by Ordonnance 75-017 of 13 August 1975.associations. Ambassade de France à Madagascar, 'Le cadre juridique des associations et ONG à Madagascar', accessed [here](#) in November 2017.

<sup>97</sup> CIVICUS (2013), *op.cit.*.

<sup>98</sup> CIVICUS (2013), *op.cit.*.

<sup>99</sup> Principauté de Monaco (November 2016), 'Gestion du Fonds Commun d'appui à la société civile de Madagascar', accessed [here](#) in November 2017, and Ambassade de France à Madagascar (April 2017), 'Le fonds commun d'appui à la société civile', accessed [here](#) in November 2017.

<sup>100</sup> European Union (September 2017), 'Signature d'une convention de financement pour un montant de 33 milliards d'ariary (9,5 millions d'euros) entre le ministère des Finances et du budget et l'Union européenne au bénéfice de la société civile malgache', accessed [here](#) in November 2017.

<sup>101</sup> While restrictions on freedom of assembly imposed after the 2009 Coup d'Etat have gradually been eased, international NGOs like Freedom House have highlighted the restrictions on assembly and occasional violence of security forces in relation to political demonstrations, but not on extractives issues. Freedom House (2016), *op.cit.*.

assembly, the US Department of State noted in 2016 the arrests of opposition leaders calling for nationwide protests about foreign mining operations and land expropriation.<sup>102</sup> The UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment highlighted social protests related to mining projects in recent years.<sup>103</sup> However, these studies describe isolated arrests rather than a systematic government policy of restricting civil society assembly.

Freedom of association appears to be generally well respected, with hundreds of NGOs active on issues including human rights and extractives governance and workers able to join unions<sup>104</sup>, engage in collective bargaining and strike,<sup>105</sup> and an overall high degree of civic engagement.<sup>106</sup> Estimates of the number of active non-profits are around 3000.<sup>107</sup> Several CSO mapping exercises have been conducted, including a capacity needs assessment related to EITI by GiZ in 2011<sup>108</sup> and a broader mapping by CARE in 2015.<sup>109</sup> Civil society in Madagascar is diverse and includes different organisation types (*see a list of largest NGOs by thematic focus in Annex F*).<sup>110</sup> However, roughly 78% of CSOs were clustered in the capital region in 2010, adding to the sentiment of CSOs' proximity to the state rather than local populations,<sup>111</sup> with many showcasing a compartmentalised and hierarchical nature. There is evidence that CSOs, both involved in EITI and other initiatives, have freely attended MSG meetings and attended domestic and international capacity-building seminars.<sup>112</sup> **Engagement:** Many NGOs have noted that a stronger institutionalised civil society has not emerged to influence decision-making in a meaningful manner, despite frequent popular protests and a growing civic space at the local level.<sup>113</sup> Madagascar's 2011 Validation report considered that, while CSOs were considered to have the capacities to engage in EITI, the financial, equipment and educational constraints they faced in fully engaging in EITI formed a key focus of early EITI work plans.<sup>114</sup> The NGO CIVICUS has highlighted more concerted efforts to organise nationally since the 2009 Coup

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<sup>102</sup> US Department of State (June 2016), op.cit., pp.10,14.

<sup>103</sup> In July 2016, security forces restricted the movement of local residents of the Soamahamanina commune after a protest against Jiuxing Mines' operations and forced all households to remove protest banners, using tear gas and shots in the air to disperse villagers who sought to retrieve their banners from the town hall. The government arrested five activists at two protests in September 2016, charging them with breaches to internal state security, unauthorised demonstrations and destruction of public property, handing them one-year suspended sentences and releasing them in November 2016. Finally in December 2016, security forces charged Augustin Andriamanano, vice-president of a political party, with threatening state security and participating in unauthorised demonstrations against Jiuxing Mines, releasing him in late December on a three-month suspended sentence. US Department of State (June 2016), op.cit., pp.9,14, and UN Human Rights Council (March 2017), 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, on his visit to Madagascar', accessed [here](#) in November 2017, p.15.

<sup>104</sup> With over 80% of workers engaged in subsistence agriculture, fishing, and forestry, few Malagasy workers have access to unions.

<sup>105</sup> Freedom House (2016), op.cit..

<sup>106</sup> 44% of respondents in a 2013 CIVICUS survey reported membership of a socially-focused CSO and 84% expressed high trust in CSOs. CIVICUS (2013), 'Civil society profile: Madagascar', accessed [here](#) in November 2017.

<sup>107</sup> Friedrich Ebert Stiftung and KMF-CNOE (October 2009), 'Qu'est ce que la société civile?', accessed [here](#) in November 2017, p.23.

<sup>108</sup> Monkey Forest Social Development Consulting (September 2011), op.cit., p.22.

<sup>109</sup> Ndranto Razakamanarina (February 2015), op.cit..

<sup>110</sup> Ranging from NGOs dedicated to economic and political governance, environment and natural resources, economic and rural development, unions, professional groupings, foundations as well as orders and observatories.

<sup>111</sup> World Bank (December 2010), 'Madagascar Governance and Development Effectiveness Review: A Political Economy Analysis of Governance in Madagascar', accessed [here](#) in November 2017, p.xii. CIVICUS (2013), 'Civil society profile: Madagascar', op. cit.

<sup>112</sup> Seven CSOs from Madagascar attended a three-day capacity-building workshop in Zanzibar together with participants from Mozambique and the Comoros on 24-26 November 2016, supported by WWF, NCS and Birdlife NGOs. WWF (December 2016), 'CSOs capacity building workshop report, 24 to 26 November 2016, Double Tree Hotel, Stone Town, Zanzibar', not accessible online, provided by EITI Madagascar Secretariat in October 2017. On 6-7 December 2016, EITI Madagascar hosted a two-day CSO capacity building workshop on EITI in Antananarivo. EITI Madagascar (June 2017), 'Rapport annuel d'avancement EITI 2016', p. 38, accessed [here](#) in November 2017, p.10.

<sup>113</sup> CIVICUS (2013), op.cit. and Ndranto Razakamanarina (February 2015), op.cit.

<sup>114</sup> Monkey Forest Social Development Consulting (September 2011), op.cit., p.11.

d'état.<sup>115</sup> There is evidence of active civil society involvement in the design, implementation, monitoring and evaluation of the EITI through participation in MSG meetings, outreach and dissemination events in the 2013-2015 period, including in robust debate over draft EITI work plans (particularly for 2014), the support for the National Secretariat's coordinating role and provision of modest funding for EITI implementation in 2014-2015 by CSOs such as WWF Madagascar, and proactive dissemination of EITI information beyond the capital.<sup>116</sup>

However, civil society's engagement appears to have become less active following renewal of CSO members of the MSG in 2015, as evidenced CSOs' less consistent engagement in EITI activities including MSG meetings, outreach and dissemination activities. Civil society engagement in EITI appears to have ebbed and flowed in line with support from international NGOs operating in Madagascar. While the EITI Regional Committees provided a structure for facilitating engagement from the broader civil society constituency until 2013, the GIE and PWYP's coordinating role thereafter tended to focus engagement on CSOs based in the capital Antananarivo. Logistical, financial and technical capacity constraints notwithstanding, there is evidence of clearly declining CSO engagement in the 2015-2017 period. CSO attendance at MSG meetings dropped significantly from 2015 onwards (*see Requirement 1.4*), while civil society's participation in outreach and dissemination events declined in line with EITI Madagascar's (*see Requirement 7.1*).

Access to public decision-making: There have been a number of recent reforms to strengthen civil society input to decision-making, such as regular meetings of the multi-stakeholder Strategic Dialogue Group or partnerships within the Ministry of Population and Women in 2014.<sup>117</sup> There have also been innovations in civil society engagement in decision-making at the local level, through participatory budgeting pilots in over 159 municipalities by 2011, initially supported by the World Bank, Swiss Cooperation and the local NGO SAHA. There is evidence of CSO engagement on broader reforms, through input to draft revisions to the Mining and Petroleum Codes<sup>118</sup> and civil society appears to have regular access to public officials like the Minister of Mines and Petroleum.<sup>119</sup>

## Stakeholder views

Expression: There was consensus amongst all stakeholders consulted over the absence of any regulatory or operational constraints on civil society's ability to freely express views in relation to EITI issues. While some CSOs and partners noted isolated arrests related to protests over mining in rural areas, they did not consider this to have the mandate of national authorities. Though one CSO considered that civil society faced the risk of more government interference in future, there was no suggestion of any government-imposed barriers to free expression at present. While certain CSOs deplored the lack of consistent press coverage of their activities and the tendency for media to be politicised, they considered themselves able to speak critically on any issue. Several CSOs considered that technical capacity constraints partially

<sup>115</sup> CIVICUS (2013), op.cit..

<sup>116</sup> See EITI Madagascar (2014), '2013 annual activity report', op.cit., and EITI Madagascar (2015), '2014 annual activity report', op.cit.

<sup>117</sup> Ndranto Razakamanarina (February 2015), 'Mapping des organisations de la société civile', not accessible online, provided by EITI Madagascar Secretariat in October 2017, p.

<sup>118</sup> MidiMagasikara (January 2017), 'Code minier et code pétrolier : de nombreux amendements apportés par le ministère de Mines', accessed [here](#) in November 2017 ; OSCIE (January 2017), 'Principales remarques relatives aux projets d'amélioration du Code minier et du Code pétrolier', provided by the EITI Madagascar Secretariat.

<sup>119</sup> Groupe Industries Extractives à Madagascar (April 2016), 'Lettre à SE le Ministre auprès de la Présidence en charge de Mines et du Pétrole Monsieur Ying Vah ZAFILAHY, Objet : Demande d'audience. préoccupations et recommandations du Groupe Industrie Extractive (GIE) par rapport à la révision du Code Minier et du Code Pétrolier', not accessible online, provided by the EITI Madagascar Secretariat in October 2017.

hindered their ability to optimise their use of the space for free expression in relation to EITI. Several stakeholders highlighted the culturally less confrontational approach of Malagasy civil society, but still considered that CSOs were able to freely express critical views.

*Operations:* None of the CSOs consulted raised concerns over the process for establishing a non-profit organisation, although they highlighted the fragmented nature of regulations and time-consuming nature of the process. Several CSOs emphasised the bureaucratic procedures of donor-funded grant requirements. Most stakeholders highlighted the fragmented nature of CSOs, with many CSOs rather seen as purpose-built vehicles for individuals. Several CSOs considered that funding priorities dictated the focus of their work and explained their inability to participate in all EITI activities. An IA noted that none of the CSOs engaged in EITI focused on extractives or public finance issues, constraining their ability to engage in EITI. Several government, industry and partner representatives highlighted the establishment of the multi-donor fund for CSOs in 2017.

*Association:* None of the stakeholders consulted expressed concerns over CSO's ability to freely assemble in relation to EITI implementation. While several CSOs deplored the loss of EITI Regional Committees to facilitate coordination with local CSOs, they considered that their ability to freely associate was ensured by law and in practice.

*Engagement:* There was consensus over the absence of regulatory or practical barriers to civil society's ability to fully engage in all aspects of EITI implementation. There was also consensus on the fact that civil society engagement in EITI implementation had ebbed and flowed, and generally declined since 2015. Stakeholders highlighted the important contribution of CSOs focused on environmental issues in the 2012-2015 period. Stakeholders, including civil society, explained the decline in engagement by the high frequency of MSG meetings from 2015 onwards, given the need for the MSG to oversee operational aspects once the national secretariat staff decreased from three to one. There was consensus over the difficulties of following technical discussions for MSG members that missed meetings. Several stakeholders also considered that civil society's participation in EITI implementation had declined in line with the government's, with CSOs disillusioned by weak government engagement. One industry representative considered that international NGOs had taken a step back since 2015 to provide more space for national CSOs, but that these tended to be politicised NGOs whose interest in EITI was rather for the exposure.

One CSO noted that civil society was less interested in financial issues related to extractives and was disappointed over the limited coverage of environmental and social issues in EITI reporting. Several CSOs considered that the establishment of the OSCIE in 2016 and renewal of MSG membership in late 2017 were effectively rebooting civil society's participation in EITI and would lead to more consistent engagement. Several CSOs highlighted GIE/OSCIE and PWYP meetings, which sometimes covered EITI. However, other CSOs considered that there was no mechanism for coordination within the coalitions, which was the key reason for weak EITI engagement. Several rural-based CSOs not directly involved in EITI explained that they were not able to contact Antananarivo-based CSO representatives to participate in events in the regions, such as consultations with companies in mining areas. Several CSOs noted the need to pool different CSOs' capacities to ensure more effective engagement in EITI. A partner considered that, while CSOs had not used the EITI to its full potential to influence public debate and policy-making, this had not interfered with broader EITI implementation.

*Access to decision-making:* Several representatives from all constituencies highlighted the importance of participatory budgeting as a forum for provincial civil society to provide input to resource allocation. Several CSOs confirmed that they had regular access to senior decision-makers. While highlighting the government's openness to consultations drafting legislation, CSOs noted that their inputs were not always taken into account. Several partners considered that there was little evidence of civil society's use of EITI data to drive reforms.

### Initial assessment

The International Secretariat's initial assessment is that Madagascar has made meaningful progress in meeting this requirement. There is no evidence of any legal, regulatory or practical barriers to civil society's ability to engage in EITI nor to their ability to freely operate, communicate and cooperate with the broader constituency. Minutes of MSG meetings and stakeholder consultations showed no constraints on civil society's rights or ability to be actively engaged in the EITI. However, despite the dynamism of early years, civil society's engagement in EITI implementation has declined markedly since 2015 and several civil society stakeholders engaged in extractives issues but not represented on the MSG expressed frustration at the lack of adequate constituency coordination and representation in EITI implementation. While technical and financial capacity constraints and the fragmented nature of Malagasy civil society help explain this declining engagement, lack of coordination between CSOs directly involved in EITI and their constituents has meant that key EITI documents such as the annual work plan and ToR of the IA do not appear to reflect the priorities of the broader civil society constituency (see *Requirements 1.5 and 4.9*).

In accordance with requirement 1.3.a, the civil society constituency should demonstrate that they are able fully, actively and effectively engaged in the EITI process. Specifically, civil society should ensure that they are able to fully contribute and provide input to the EITI process and that they have adequate capacity to participate in the EITI. In accordance with requirement 8.3.c.i, the civil society constituency should develop and disclose an action plan for addressing the deficiencies in civil society engagement documented in the initial assessment.

## MSG governance and functioning (#1.4)

### Documentation of progress

*MSG composition* (see list of MSG members for 2013-2017 in Annex A): The MSG was established on 8 July 2010.<sup>120</sup> The original governance infrastructure was ambitious, with an annual General Assembly with hundreds of representatives, five EITI Regional Committees meeting monthly, a select committee of the General Assembly meeting weekly and a National Committee that convened for important decisions.<sup>121</sup> Constrained by the lack of funds, the MSG became inactive in July 2011<sup>122</sup> and the EITI Board suspended

<sup>120</sup> Monkey Forest Social Development Consulting (September 2011), op.cit..

<sup>121</sup> Ibid, p.26.

<sup>122</sup> EITI Madagascar (2012), '2011 annual activity report', accessed [here](#) in November 2017, p.5.

Madagascar in October 2011.<sup>123</sup> Prime Minister Jean Omer Beriziky issued Ministerial Order no.5615/2013 on 15 March 2013 reactivating EITI Madagascar and establishing the EITI National Committee.<sup>124</sup> There are no provisions under the 2013 Arrêté for MSG member alternates. While EITI Regional Committees were established in the five main mining zones<sup>125</sup> in 2009, they only operated sporadically in 2009-2010 and 2012-2013.<sup>126</sup> The 2013 Ministerial Order only recognises these committees in the context of selecting the CSO MSG members<sup>127</sup> and the 2017 governance review recommended clarifying the Regional Committees' roles and responsibilities.<sup>128</sup>

The new Prime Ministerial Decree 2017/736 was issued on 30 August 2017, and introduced alternates, extended term limits to four years and removed limits on term renewals.<sup>129</sup> While the 2013 Ministerial Order set two-year term limits renewable once, the EY governance review raised concerns over the impact of frequent renewals on institutional memory. In April 2017, the MSG agreed to add one MSG seat for each constituency, bringing the number of members to 24.<sup>130</sup> Articles 4-6 of 2013 Ministerial Order define the composition of the MSG.<sup>131</sup> Article 2.d confirms the right of each constituency to appoint their own MSG representatives. Article 2.e requires industry and civil society MSG members to be independent operationally and politically, and free from coercion, while Articles 5-6 provide for the self-appointment of industry and civil society MSG members. Article 2.h.iv requires the government to ensure that there is a rotation process for MSG members, free from coercion or outside influence. There are provisions for each constituency to consider pluralism and diversity in their MSG membership and for civil society to reserve one seat for regional civil society representation, although there are no provisions for gender diversity. There is evidence that calls for nominations to the MSG were open and transparent in 2010-11<sup>132</sup>, 2013 and 2015.<sup>133</sup>

*Civil society representation:* Article 6 of the 2013 Ministerial Order sets clear criteria for CSO MSG membership split between three bodies.<sup>134</sup> GIE and PWYP followed their internal statutes in selecting MSG representatives.<sup>135</sup> There do not appear to be codified selection procedures for CSOs from Regional Committees or independents. The 2017 Decree slightly restructured civil society's membership, by

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<sup>123</sup> EITI Board (October 2011), 'Minutes of the 18<sup>th</sup> EITI Board meeting in Jakarta/Pangkalpinang Indonesia 25-26 October 2011', accessed [here](#) in November 2017.

<sup>124</sup> Arrêté N. 5615/2013 portant creation définitive et réactivation du Comité National de l'Initiative pour la Transparence des Industries Extractives (EITI), accessed [here](#) in November 2017.

<sup>125</sup> Fort Dauphin, Tamatave, Moramanga, Maevatanana and Maintirano.

<sup>126</sup> The Secretariat organized a meeting at Fort Dauphin on 13 September 2013, where the new EITI Rules were presented and fourteen new members of the Regional Committee were nominated. EITI Madagascar (September 2013), 'Procès verbal de la reunion pour la relance du Comité Régional EITI à Fort Dauphin du 13 septembre 2013', provided by the EITI Madagascar Secretariat. Monkey Forest Social Development Consulting (September 2011), op.cit., pp.31,59.

<sup>127</sup> EY (May 2017), op.cit., pp.12,15.

<sup>128</sup> EY (May 2017), op.cit., p.15.

<sup>129</sup> Décret 2017/736 portant institutionalization de l'EITI Madagascar et fixant ses attributions, son organization et son fonctionnement', not accessible online, provided by the EITI Madagascar Secretariat in October 2017.

<sup>130</sup> EY (May 2017), op. cit. , pp.45-46.

<sup>131</sup> Ministerial Order no.5615/2013, op.cit.

<sup>132</sup> Monkey Forest Social Development Consulting (September 2011), op.cit., p.24.

<sup>133</sup> Copies of emails documenting the nomination process for each constituencies from 2013, 2014 and 2015 were provided by the EITI Madagascar Secretariat.

<sup>134</sup> Arrêté N. 5615/2013 op.cit.

<sup>135</sup> See minutes of GIE and PWYP meetings on EITI matters, not accessible online, provided by EITI Madagascar Secretariat in October 2017. And Martin Nicoll of WWF and Léon Rajaobelina of CI. See: Email from lalanirina RASOANANDRIANINA (10 April 2013), 'flash Info sur la réunion GIE groupe Industries Extractives du 09 avril 2013', not accessible online, provided by the EITI Madagascar Secretariat in October 2017.

reducing PWYP's seats from three to two and adding one each for the Orders of Journalists and of Engineers.<sup>136</sup>

**Industry representation:** Article 5 of the 2013 Ministerial Order sets industry constituency composition at four for company members of the Chamber of Mines, two for company members of APPAM and one non-APPAM oil and gas company.<sup>137</sup> MSG members are selected by their peers in the Chamber of Mines and APPAM<sup>138</sup>. There does not appear to be codified procedures for selecting the non-APPAM oil and gas MSG member. The 2017 governance review highlighted the lack of representation for ASM miners and suggested the Groupement des Opérateurs en Pierres Précieuses de Madagascar as a potential candidate.<sup>139</sup> The 2017 Decree slightly revised the industry's MSG composition, by reducing APPAM's allocation to one seat and creating two seats for representatives of the small-scale mining professional association.<sup>140</sup>

**Government representation:** Article 4 of the 2013 Ministerial Order sets government membership of the MSG as including one representative each from the Ministries of Mines, of Hydrocarbons, of Decentralisation, of Interior, of Finances and Budget, of Environment and of Economy. It also notes that the Ministry of Finances and Budget should be represented by three of its departments (Treasury, Tax and Customs), although it is only allowed one voting seat. Rotation appears to have followed changes in responsibility within each Ministry, with letters of appointment communicated by the hierarchy.<sup>141</sup> The 2017 Decree revised government MSG membership slightly in light of changes in government structure since 2013, including permanent representatives from the same Ministries as in the 2013 Ministerial Order, but explicitly including BCMM and OMNIS as the two relevant regulatory agencies and adding representatives from the Presidency and Prime Minister's Office.<sup>142</sup>

**Terms of reference:** The MSG's ToR set out in the 2013 Ministerial Order and were updated through the 2017 Decree. While the 2013 Ministerial Order did not establish a legal basis for EITI Madagascar, Article 3 of the 2017 Decree gave it legal status, attached to, but with administrative and financial autonomy from, the Prime Minister's Office. Article 7 of the Ministerial Order and Article 5 of the Decree outline the MSG's responsibilities for approving all key EITI documents<sup>143</sup> and supporting Validation. There are no provisions in either text for periodic review of the MSG's governance documents, nor requiring or encouraging stakeholder groups or the MSG to establish a code of conduct. Article 7 of the Ministerial Order and Article 12 of the Decree require the MSG to establish Internal Rules covering MSG member selection and internal governance. The MSG had yet to publish its Rules in November 2017.

**Representation:** While Article 7 of the Ministerial Order and Article 5 of the Decree provide for the principle of accountability to peers, there are no provisions requiring outreach to constituencies. The

<sup>136</sup> Decree no.2017/736 op.cit.

<sup>137</sup> Ministerial Order no.5615/2013 op.cit..

<sup>138</sup> The 2017 governance review confirmed that the Chamber of Mines and APPAM selected their MSG members in a participatory manner. EY (May 2017), op.cit..

<sup>139</sup> EY (May 2017), op.cit., p.29.

<sup>140</sup> Décret 2017/736 op.cit..

<sup>141</sup>The 2017 governance review confirmed that this principle was respected. EY (May 2017), op.cit.

<sup>142</sup> This was a key recommendation of the 2017 governance review. EY (May 2017), op.cit., p.28.

<sup>143</sup> Annual work plans, the ToR and appointment of the IA, EITI Reports, annual progress reports, etc.

2017 governance review highlighted weaknesses in civil society MSG members' representation of their broader constituencies, which was confirmed by CSOs attending an EITI capacity building workshop in December 2016. In contrast, EY highlighted industry and government mechanisms that ensure constituency consultations.<sup>144</sup>

***Internal governance:*** Article 8 of the 2013 Ministerial Order outlines basic rules for MSG meetings, including quorum rules. The 2017 Decree's Article 10 requires the MSG to meet at least once in the first two quarters and on a needs basis thereafter, with meetings called by the EITI Champion or by decision of at least two of the three constituencies. In practice, the MSG appears to have met: at least seven times in 2013, 20 times in 2014, 13 times in 2015<sup>145</sup>, 27 times in 2016<sup>146</sup> and ten times in the first nine months of 2017.<sup>147</sup>

While the Ministerial Order does not refer to the setting of meeting agendas, the 2017 Decree confirms the EITI Champion's responsibility for setting the agenda on recommendations from the MSG and Executive Secretariat. Analysis of MSG meeting minutes shows that members from all three constituencies have added items to the agenda in the 2013-2017 period. Article 8 of the 2013 Ministerial Order requires a minimum of seven days' advance notice for MSG meetings. In practice, the 2016 APR notes that MSG meetings are not consistently called with sufficient advance notice, thereby weakening attendance.<sup>148</sup> The 2017 governance review raised concerns over the lack of clarity on the chairing of MSG meetings, with the Executive Secretary chairing meetings in practice while the EITI Champion was considered an honorary rather than executive MSG Chair and did not attend meetings.<sup>149</sup>

***Decision-making:*** Article 8 of the Minister Order sets decision-making by qualified-majority voting system, where the three constituencies must reach consensus, with each constituency reaching a common position via internal majority voting. The EITI Champion does not take part in deliberations. Article 11 of the 2017 Decree confirms that consensus remains the preferred way of taking decisions, but provides for votes where each constituency has one vote. While this could have the potential for over-ruling one constituency, MSG meeting minutes suggest that MSG decisions have consistently been taken by consensus in practice.

***Record-keeping:*** Article 7 of the Ministerial Order requires MSG members to take decisions being accountable to their peers, implying written records of meetings, while Article 17 of the Decree requires the Executive Secretariat to ensure the management, updating and archiving of documents related to EITI Madagascar. There are no provisions governing the treatment of confidential information, nor clarifying procedures for approving MSG meeting minutes. In practice, MSG meeting minutes were available on the EITI Madagascar website until 2015, although they had yet to be published on the new website.<sup>150</sup> The

<sup>144</sup> EY (May 2017), op.cit.

<sup>145</sup>

<sup>146</sup> Ibid., pp.17-18. The EITI Madagascar Secretariat noted that the MSG meeting minutes it provided were not exhaustive, noting the past loss of the EITI Madagascar archive. EITI Madagascar (2016), '2015 annual activity report', op.cit., pp.33-34.

<sup>147</sup> EITI Madagascar (2017), '2016 annual activity report', op.cit., p.40. The EITI Madagascar Secretariat provided a folder of MSG meeting minutes to the International Secretariat and noted plans to publish these on the EITI Madagascar on its meeting minutes section, accessible [here](#).

<sup>148</sup> EITI Madagascar (June 2017), 'Rapport annuel d'avancement EITI 2016', op.cit., p. 38.

<sup>149</sup> EY (May 2017), op.cit., pp.18,19,27.

<sup>150</sup> EITI Madagascar website, 2016 MSG meeting minutes, accessed [here](#) in November 2017.



International Secretariat was provided copies of all available 2013-2017 MSG meeting minutes.

*MSG capacity:* Article 8 of the Decree requires MSG members to have the capacity to participate in EITI discussions and activities, filling a gap in the Ministerial Order. The 2017 governance review highlighted capacity constraints in the civil society constituency.<sup>151</sup> The absence of provisions in the Ministerial Decree related to the funding of EITI Madagascar has caused concerns given repeated financing gaps (see *Requirement 1.1 and 1.5*).<sup>152</sup> Article 20 of the 2017 Decree defines the sources of funding for EITI Madagascar as grants from the Prime Minister's budget, shares of mining and petroleum administration fees, development partners and any third-party grant or subsidy that does not affect the independence and credibility of EITI Madagascar, conditional on MSG approval.

*Per diems:* Article 8 of the Ministerial Order states that MSG members are purely volunteers, while Article 12 of the Decree only refers to the MSG's Internal Rules that are meant to clarify "remuneration of members". In practice, the MSG does not appear to have followed a practice of per diems. The 2017 governance review highlighted the absence of per diems as a key reason cited by stakeholders to explain their poor attendance.<sup>153</sup>

*Attendance:* There are no provisions in the 2013 Ministerial Order covering the attendance of observers at MSG meetings, although the 2017 Decree explicitly refers to future MSG Internal Rules to define observers' roles and quorum rules. Article 8 of the Ministerial Order defines quorum as the presence of two thirds of MSG members, with all three constituencies represented. In practice however, MSG meeting minutes and APRs highlight that quorum was only rarely reached in 2014-2017, mainly due to weak participation from government and civil society.<sup>154</sup> The 2017 governance review therefore called into question the legitimacy of MSG decisions.<sup>155</sup>

*National secretariat:* Article 7 of the 2013 Ministerial Order refers to the MSG's responsibilities for staffing the Executive Secretariat and the Executive Secretary's role in convening MSG meetings. The Executive Secretary is recruited by the MSG and has clear ToRs, including ensuring timely implementation of the work plan, driving implementation and strategy of EITI Madagascar, executing resolutions of the MSG, and covering technical and administrative tasks required by the MSG.<sup>156</sup> The Executive Secretariat's staff declined from three staff in 2014<sup>157</sup> to two in 2015-July 2016<sup>158</sup> and only the Executive Secretary thereafter following the end of AfDB grant support in March 2016.<sup>159</sup> The 2017 governance review recommended expanding secretariat staff to a minimum of five<sup>160</sup>, based on MSG consensus that the secretariat's capacity constraints caused MSG dysfunctions.<sup>161</sup>

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<sup>151</sup> EY (May 2017), op.cit., p.18.

<sup>152</sup> The 2017 governance review highlighted this as a key factor in EITI Madagascar's funding challenges. Ibid., p.12.

<sup>153</sup> Ibid.

<sup>154</sup> EITI Madagascar (June 2017), 'Rapport annuel d'avancement EITI 2016', op.cit., p.37.

<sup>155</sup> EY (May 2017), op.cit., p.17.

<sup>156</sup> EY (May 2017), op.cit.

<sup>157</sup> See: EITI Madagascar (2015), '2014 annual activity report', accessed [here](#) in November 2017.

<sup>158</sup> See: EITI Madagascar (2017), 'Rapport annuel d'avancement EITI 2016', op.cit., and EITI Madagascar (2016), '2015 annual activity report', accessed [here](#) in November 2017.

<sup>159</sup> EITI Madagascar (June 2017), 'Rapport annuel d'avancement EITI 2016', op.cit., p.37

<sup>160</sup> Executive Secretary, accountant, administrative assistant, communications and outreach officer and a webmaster.

<sup>161</sup> EY (May 2017), op.cit., p.18.

## Stakeholder views

Stakeholders from all constituencies explained that the original structure of EITI Madagascar in 2010 had proved too ambitious. Yet several noted that the inactivity of regional committees was a loss for civil society's coordination at the local level.

***MSG membership:*** There was consensus among all stakeholders consulted that the rules for appointing and replacing most MSG members were clear. Most MSG members hailed the frequent renewal of members as an institutional strength, but considered that it also imperilled institutional memory. All MSG members emphasised the new Internal Rules agreed in November 2017. There was consensus that all MSG nominations had been undertaken by the respective constituencies, free from any external interference.

The industry constituency was broadly recognized as the most structured, with clear nominations procedures for Chamber of Mines and APPAM representatives despite the lack of representation of smaller mining companies at the Chamber of Mines. Stakeholders explained that there were no clear nominations procedures for the non-APPAM MSG seat, although they did not consider this a problem given the low number of oil and gas companies not members of APPAM.

Civil society representatives explained that nominations of their MSG representatives were typically through elections, coordinated by the Executive Secretariat. There was no clarity on the process for selecting the regional CSO member however, with CSOs explaining that the Executive Secretary had asked them to establish selection guidelines for the MSG members independent of OSCIE and PWYP. Stakeholders from all constituencies welcomed the introduction of MSG members from the press and engineer corps in the 2017 Decree. It was noted that the CSO constituency had not yet filled all of its eight positions on the MSG in November 2017. One CSO noted that civil society nominations requirement may be too strict, given the bar on CSOs conducting other work with mining companies, which could restrict MSG membership from relevant CSOs serving on biodiversity commissions of QMM and Ambatovy.

Government officials explained that their nominations procedures were in line with other external appointments, where the EITI Champion wrote to the relevant department heads, who appointed a delegate. There was consensus that government MSG appointments rotated in line with the government role. Several officials emphasized that the appointment of representatives from the Prime Minister's Office and Presidency would help overcome challenges such as funding (*see Requirement 1.1*).

***MSG capacity:*** Stakeholders from all constituencies highlighted the challenging nature of the technical aspects of EITI implementation. While noting the steep learning curve, many stakeholders highlighted the challenges for MSG members to follow proceedings without attending all meetings. Several CSOs noted that the primary focus of CSOs involved in EITI was not extractives or public finance issues. Several stakeholders highlighted capacity differences between international NGOs and domestic CSOs. While there was consensus on the need for more technical trainings, one industry representative deplored the lack of restitutions about such trainings by MSG members involved. While industry noted the constituency's mechanisms for sharing work-loads and canvassing opinion through APPAM and the Chamber, there was no such coordination within the government and civil society constituencies.

***Institutionalisation:*** All stakeholders highlighted funding constraints as key challenges for EITI

implementation (*see Requirements 1.1 and 1.5*). There was however consensus that the institutionalization of EITI Madagascar in the 2017 Decree would ensure the sustainability of its funding. A government official highlighted EITI Madagascar's mandate to manage its own budget under the Decree, streamlining approval procedures. All MSG members highlighted the MSG's new Internal Rules agreed in November 2017, although some CSOs expressed concern over the potential for any government to change the Decree.

***Internal governance:*** There was consensus that the MSG had always followed its statutory procedures for decision-making and stakeholders expressed pride at the two-step decision-making process that resulted in consensus. All stakeholders considered that there had been no instances of the MSG over-ruling anyone's opinion. Several industry representatives highlighted the higher cohesion of the MSG than in other countries. However, several MSG members considered that MSG decisions taken at meetings they did not attend did not always reflect their wishes. An industry MSG member explained that MSG decisions were circulated with draft meeting minutes for approval within a week of the meeting. There was consensus that the database of MSG meeting minutes reconstituted for Validation was not comprehensive. There was consensus that the MSG did not have a practice of *per diems* for members, which was criticised by some CSOs for hindering the ability of regional-based CSO MSG members to participate in meetings.

***Attendance:*** All MSG members recognised that the MSG met frequently and that advance notice was usually shorter than the statutory seven days. It was noted that documents were circulated with insufficient advance notice due to the lack of secretariat capacity. Several companies also highlighted the value of frequent MSG meetings to sustain momentum prior to EITI Madagascar's institutionalisation in the 2017 Decree. It was noted that MSG meetings usually involved six core members during 2014-2017, usually including only one member each from government and civil society. A government official explained that the MPMP and MFB were the most consistent attendees from government, given they were directly concerned. Industry members highlighted the risk of EITI Madagascar being seen as "instrumentalised" by industry given it had largely driven implementation in recent years. All MSG members recognised that most meetings were held without quorum. Industry and government members explained that the MSG decided that it could not continue to reschedule meetings due to lack of quorum in 2015 and decided to proceed with meetings, keeping all members informed of developments by email, although this decision was not codified. It was also explained that an attending MSG member could represent several absent members at once, which did not affect each constituency's role in decision-making. MSG members expected that the new Internal Rules and plans to expand the Executive Secretariat's capacity in 2018 would ensure more consistent attendance, noting better participation in 2017 with the approach of Validation.

***National Secretariat:*** All MSG members praised the work of the Executive Secretary despite significant financial constraints. The Secretary's perseverance was highlighted in spite of several months without pay in 2016-2017 and she was considered to serve all constituencies' interests equally, despite some members' concern over her perceived proximity to government. MSG members confirmed plans to expand staffing in 2018.

## Initial assessment

The International Secretariat's initial assessment is that Madagascar has made meaningful progress towards meeting this requirement. The MSG includes appropriate representation of each constituency

and the process by which each stakeholder group nominated their representatives is clear. All civil society representatives on the MSG are independent, operationally and in policy terms, from government. The MSG's ToR outlines the roles and responsibilities of MSG members in line with Requirement 1.4.b.iv-v and meeting records show that MSG members who attend meetings carry out their duties and responsibilities. However, there have been significant deviations from the MSG's ToR in practice in the 2015-2017 period, including inadequate planning and execution of MSG meetings, inconsistent MSG attendance by government and civil society and frequently inquorate MSG meetings. While the MSG has always respected its clear statutory decision-making rules in practice, the lack of quorum at most MSG meetings has weakened MSG members' buy-in to key decisions related to designing, implementing, monitoring and evaluation of EITI implementation. This is particularly reflected in decisions related to the scope of EITI reporting (*see Requirement 4.1*), quality assurance (*see Requirement 4.9*) and annual progress reporting (*see Requirement 7.4*). The MSG does not have a practice of per diems. While MSG members generally have the capacity to carry out their duties, funding constraints have had a strong impact on the MSG's capacity, given constrained secretarial support. However, the institutionalisation of EITI Madagascar through the August 2017 Decree and the renewal of MSG members in late 2017 are encouraging trends.

In accordance with Requirement 1.4.b.vii, the MSG should ensure that there is sufficient advance notice of meetings and timely circulation of documents prior to their debate and proposed adoption. The MSG is encouraged to ensure that deviations from their ToR are recorded and transparent. Government and company constituencies are encouraged to ensure that their representatives' attendance at MSG meetings is consistent and of sufficiently high level to allow the MSG to take decisions and follow up on them. In accordance with Requirement 1.4.b.viii, the MSG must keep written records of its discussions and decisions.

## Work plan (#1.5)

### Documentation of progress

The 2017 work plan is available on the EITI Madagascar website<sup>162</sup> alongside a simplified version.<sup>163</sup> It sets 13 objectives<sup>164</sup> linked to EITI Principles and national priorities, reflecting the MSG's key thematic priorities for implementation, strengthening dissemination activities and institutionalising the EITI. The work plan includes activities aimed at extending the scope of EITI reporting, addressing technical aspects of the EITI Standard, following-up on EITI recommendations and addressing capacity constraints. The activities are time-bound and measurable, with costs for each activity, and there is evidence that the MSG

<sup>162</sup> EITI Madagascar (June 2017), 'Plan de travail 2017', accessed [here](#) in October 2017.

<sup>163</sup> EITI Madagascar (2017), 'Plan de travail national de l'EITI Madagascar, a copy was provided by the EITI Madagascar Secretariat.

<sup>164</sup> Achieve financial reconciliation for the 2015 and 2016 fiscal years through EITI Reports; conduct activities as planned in the roadmap on beneficial ownership; pursue activities aimed at strengthening transparency in licensing and management of mining titles; ensure the public has access to data on the extractive industry; strengthen access to geo-scientific data; increase stakeholders' knowledge of the new mining and petroleum fiscal regimes and transparency in the redistribution of fiscal revenues generated by the extractive sector; strengthen civil society and government agents' capacity to debate EITI Reports and strengthen MSG and Secretariat capacity to better lead activities in the EITI process; increase the public's and stakeholders' knowledge of the EITI process and Reports and ensure the MSG's ownership of the EITI process; maximise the dissemination and comprehension of EITI Reports, at the central and regional levels, collect a maximum of exchanges through the organisation of debates on EITI Reports and promote awareness of recommendations from reconciliation; promote the EITI as a platform for debate on EITI Reports and key issues in the extractive sector and mobilise stakeholders in the implementation of concrete recommendations from EITI Reports; institutionalise the EITI; ensure that the EITI Secretariat is operational and that financial contributions meet the needs to ensure implementation; and strengthen the operationalisation of the National Secretariat.

updates the work plan annually. For each objective, the work plan lists regulatory, legal or institutional challenges. It mentions activities related to beneficial ownership, including the creation of a committee to oversee the implementation of the BO roadmap until 2020, and to open data, such as improving access to information on the mining and oil sectors through the BCMM and OMNIS websites. It also highlights activities to follow-up on recommendations from the studies on the transparency of the management of mining titles and the transparency of geo-scientific information.

The total estimated budget amounts to USD 784,470, funded 40% by the PAGI, 37% by the MDTF and 19% by the basket fund, with outstanding unfunded activities of USD 33,846. The basket fund is financed exclusively by the government, and was allocated USD 60,000 in 2013, USD 100,000 in 2015 and USD 150,000 in 2017 (see *Requirement 1.1*). In its annual review of EITI activities, the Chamber of Mines noted difficulties in financing functioning costs for the Secretariat and the reactivation of the EITI Madagascar website.<sup>165</sup>

### Stakeholder views

MSG members noted that the work plan was the result of consensus and consultation with stakeholders. They highlighted that the document was presented at every EITI event and disseminated amongst stakeholders. While many considered that further EITI reporting could cover more topics not directly mandated by the EITI Standard, some noted that funding and capacity constraints led the MSG to focus on priority areas, such as mining licensing and subnational transfers. Several CSOs called for EITI implementation to more prominently reflect their focus on environmental, social and cultural issues, but welcomed information on social spending and subnational transfers in EITI Reports.

A government representative indicated that progress against work plan objectives was reviewed at meetings with donors and that the document was regularly updated based on context. The official noted that activities related to revisions to the Mining and Petroleum Codes were not carried out. Several MSG members and partners indicated that funding constraints led to delays of some activities to subsequent years, with a notable slow-down in 2015-2016 due to lack of funding and staff, coupled with demanding donor funding procedures. Some MSG members expressed concerns over the independence of the EITI Madagascar with regards to government entities given the 2017 Decree's Article 20 that allocated BCMM and OMNIS funding to EITI, while others considered this stable funding crucial to EITI Madagascar's institutionalisation and sustainability (see *Requirement 1.4*).

### Initial assessment

The International Secretariat's initial assessment is that Madagascar has made satisfactory progress towards meeting this requirement. The work plan reflects MSG priorities for EITI implementation, is updated annually and is the product of consultations with key stakeholders. It includes time-bound, measurable and costed activities, taking into consideration funding and capacity constraints. The work plan includes specific activities to follow up on recommendations from EITI reporting. Delays in work plan implementation appear reasonable given funding constraints.

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<sup>165</sup> Chambre de Mines (September 2016 and June 2017), 'Rapport d'activités ITIE', not accessible online, provided by the EITI Madagascar Secretariat in October 2017.

To further strengthen implementation following the institutionalisation of EITI Madagascar through the 2017 Decree, the government is encouraged to further entrench EITI funding in government budgeting to ensure the sustainability of EITI implementation over the long term. The MSG is encouraged to consider stakeholders' priorities in broadening the scope of EITI implementation beyond the areas strictly covered by the EITI Standard, striking a balance between stakeholders' ambitions and the need to ensure robust multi-stakeholder oversight of technical aspects of the EITI Standard.

**Table 1 – Summary initial assessment table: MSG oversight**

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Government engagement (#1.1)	<p>The International Secretariat understands that the government has not been fully, actively and effectively engaged in the EITI process between 2014 and 2017 and notes concerns from various stakeholders that the more recent engagement might not be sustained in the long-term. However, the commitment reflected in the months leading to Validation, coupled with the institutionalisation of EITI Madagascar through the August 2017 Decree, more sustainable funding and mechanisms to ensure more consistent government participation in EITI activities, are strong signs that the government has renewed its commitment to the EITI. The extent to which the government sustains this commitment to use the EITI as an instrument to drive reforms will be key to the prospects of EITI implementation.</p>	Meaningful Progress
Company engagement (#1.2)	<p>Companies are fully, actively and effectively engaged in the EITI process, both as providers of information and in the design, implementation, monitoring and evaluation of the EITI process. The government has ensured that there is an enabling environment for company participation. Despite constraints imposed by confidentiality provisions of the tax code, the waiver system designed by the MFB has provided a means of facilitating company reporting. In the International Secretariat's view, the industry constituency has made efforts to go beyond the minimum requirement in the quality, consistency and proactive nature of its engagement in all aspects of EITI implementation. Amidst weakening engagement from the other two constituencies, such engagement has been key to ensuring the sustainability of EITI implementation.</p>	Satisfactory Progress (Beyond)
Civil society engagement (#1.3)	<p>There is no evidence of any legal, regulatory or practical barriers to civil society's ability to engage in EITI nor to their ability to freely operate, communicate and cooperate with the broader constituency. Minutes of MSG meetings and stakeholder consultations showed no constraints on civil society's rights or ability to be actively engaged in the EITI. However, civil society's engagement in EITI implementation has declined markedly since 2015 and several civil society stakeholders engaged in extractives issues but not represented on the MSG expressed frustration at the lack of adequate constituency coordination and representation in EITI implementation. While technical and financial capacity constraints and the fragmented nature of Malagasy civil society help explain this declining engagement, lack of coordination between CSOs directly involved in EITI and their</p>	Meaningful Progress

	constituents has meant that key EITI documents such as the annual work plan and ToR of the IA do not appear to reflect the priorities of the broader civil society constituency (see Requirements 1.5 and 4.9).	
MSG governance and functioning (#1.4)	The MSG includes appropriate representation of each constituency and the process by which each stakeholder group nominated their representatives is clear. All civil society representatives on the MSG are independent, operationally and in policy terms, from government. The MSG's ToR outlines the roles and responsibilities of MSG members in line with Requirement 1.4.b.iv-v and meeting records show that MSG members who attend meetings carry out their duties and responsibilities. However, there have been significant deviations from the MSG's ToR in practice in the 2015-2017 period, including inadequate planning and execution of MSG meetings, inconsistent MSG attendance by government and civil society and frequently inquorate MSG meetings. While the MSG has always respected its clear statutory decision-making rules in practice, the lack of quorum at most MSG meetings has weakened MSG members' buy-in to key decisions related to designing, implementing, monitoring and evaluation of EITI implementation. This is particularly reflected in decisions related to the scope of EITI reporting (see Requirement 4.1), quality assurance (see Requirement 4.9) and annual progress reporting (see Requirement 7.4). The MSG does not have a practice of per diems. While MSG members generally have the capacity to carry out their duties, funding constraints have had a strong impact on the MSG's capacity, given constrained secretarial support. However, the institutionalisation of EITI Madagascar through the August 2017 Decree and the renewal of MSG members in late 2017 are encouraging trends.	Meaningful Progress
Work plan (#1.5)	The work plan reflects MSG priorities for EITI implementation, is updated annually and is the product of consultations with key stakeholders. It includes time-bound, measurable and costed activities, taking into consideration funding and capacity constraints. The work plan includes specific activities to follow up on recommendations from EITI reporting. Delays in work plan implementation appear reasonable given funding constraints.	Satisfactory Progress
<p>Secretariat's recommendations:</p> <ol style="list-style-type: none"> <li>1. In accordance with Requirement 1.1, the government must be fully, actively and effectively engaged in the EITI process. The government is required to appoint a senior individual to lead the implementation of the EITI. The appointee should have the confidence of all stakeholders, the authority and freedom to coordinate action on the EITI across relevant ministries and agencies, and be able to mobilise resources for EITI implementation. To further strengthen implementation following the institutionalisation of EITI Madagascar through the 2017 Decree, the government is encouraged to further entrench EITI funding in government budgeting to ensure the sustainability of EITI implementation over the long term. In accordance with requirement 8.3.c.i,</li> </ol>		



- the government constituency should develop and disclose an action plan for addressing the deficiencies in government engagement documented in the initial assessment.
2. To strengthen implementation, the government is encouraged to include EITI-related provisions in sector legislation to ensure a more sustainable legal environment for EITI implementation in the long term.
  3. In accordance with requirement 1.3.a, the civil society constituency should demonstrate that they are able fully, actively and effectively engaged in the EITI process. Specifically, civil society should ensure that they are able to fully contribute and provide input to the EITI process and that they have adequate capacity to participate in the EITI. In accordance with requirement 8.3.c.i, the civil society constituency should develop and disclose an action plan for addressing the deficiencies in civil society engagement documented in the initial assessment.
  4. In accordance with Requirement 1.4.b.vii, the MSG should ensure that there is sufficient advance notice of meetings and timely circulation of documents prior to their debate and proposed adoption. The MSG is encouraged to ensure that deviations from their ToR are recorded and transparent. Government and company constituencies are encouraged to ensure that their representatives' attendance at MSG meetings is consistent and of sufficiently high level to allow the MSG to take decisions and follow up on them. In accordance with Requirement 1.4.b.viii, the MSG must keep written records of its discussions and decisions.
  5. The MSG is encouraged to consider stakeholders' priorities in broadening the scope of EITI implementation beyond the areas strictly covered by the EITI Standard, striking a balance between stakeholders' ambitions and the need to ensure robust multi-stakeholder oversight of technical aspects of the EITI Standard.

## Part II – EITI Disclosures

### 2. Award of contracts and licenses

#### 2.1 Overview

This section provides details on the implementation of the EITI requirements related to the legal framework for the extractive sector, licensing activities, contracts, beneficial ownership and state participation.

#### 2.2 Assessment

##### Legal framework (#2.1)

###### Documentation of progress

**Legal framework:** For oil and gas, the 2014 EITI Report notes that the legal framework is set in the Petroleum Code and its 1997 implementing Decree, as well as in contracts concluded between OMNIS and companies (p.60). For mining, the report provides a clear description of the legal environment, including its fragmentation (pp.17,47,55-57).<sup>166</sup> The report extensively describes informal, artisanal and small-scale mining, including relevant regulations on sapphire, rubies and gold extraction (pp.53-55). It highlights the moratorium on mining license allocations since 6 April 2011<sup>167</sup> and explains the ban was tacitly prolonged in 2014 without further legal basis (pp.15-17, *see Requirement 2.2*).

**Government agencies' roles:** The report lists the government agencies with jurisdiction over the mining sector<sup>168</sup>, providing brief descriptions of BCMM and the ASM-focused Gold Agency's roles (pp.52-53) though not others. The EITI Madagascar provides links to relevant government entities' websites<sup>169</sup> The role of government agencies in oil and gas is also described in the report. (pp.58-59).<sup>170</sup>

**Fiscal regime:** The report provides an overview of the three main fiscal regimes governing the mining and oil sectors: taxes arising from common law, the LGIM (Law on Large Investments) and the *Convention d'Etablissement* for QMM (pp. 57-58, *see Requirement 2.4*), alongside a comprehensive list of applicable

<sup>166</sup> Decree No.2015/996 of 23 June 2015 on the adoption of the State general policy on mining; Law No.99/022 of 19 August 1999 on the Mining Code and modified by Law No.2005-021 of 17 October 2005 and implementing texts; Law No.2001/031 30 July 2001 on the special regime for large investments in the Malagasy mining sector (Loi sur les Grands Investissements Miniers, LGIM), modified by Law No.2005/22 and its implementing decree; Decree No.99/954 of 15 December 1999 on environmental impacts of investments (MECIE); Inter-Ministerial Decree No.12032/2000 of 6 November 2000 on environmental protection related to mining; Law No.09/033 of 21 December 1990 and amending texts on the Charter on the environment; Law No.2015/005 on conservation areas; three Inter-Ministerial Decrees covering royalties, including Interministerial order No.21985/2007 of 20 December 2007.

<sup>167</sup> based on Council of Government note No.34/2011-PM/SGG/SC.

<sup>168</sup> Including the Ministry of Mines and Petroleum, the BCMM, the Gold Agency, and the Mining Police.

<sup>169</sup> EITI Madagascar website, webpage on government entities, accessed [here](#) in November 2017.

<sup>170</sup> The Ministry of Hydrocarbons (under the supervision of the Ministry of Mines and Petroleum), OMNIS and the Malagasy Hydrocarbons Office (OMH).

taxes and levies (pp.48-49).<sup>171</sup> The report provides references to applicable legal provisions (pp.50-52) and clarifies the collecting agencies (pp.95-97). For the oil sector, the report notes that the model PSC and Petroleum Code do not provide for stabilisation clauses, although stability is encouraged by Article 6 of Law No.2007-036 on investments. In practice, the IA notes that PSCs are typically negotiated directly and “very often” include stabilisation clauses (p.60).

*Degree of fiscal devolution:* The report describes the level of fiscal devolution of extractives revenues, including 23 direct subnational payments (pp.39,48,95-97,99) and subnational transfers of two forms of extractives revenues (pp.93-94,96-100,121-122), alongside a commentary on the efficiency of subnational transfers (pp.121-122,131; see *Requirements 4.6 and 5.2*).

*Reforms:* The report highlights the adoption of the National Mining Policy in 2015 (p.17,47). It refers to World Bank support for the formalisation of the gold and small-scale mining sector (p.55) and describes potential amendments to the Mining and Petroleum Codes (p.60,63-64). The report recommends reforms to the audit and assurance practices by companies and SOEs (pp.63-64, see *Requirement 4.9*).

### Stakeholder views

Several government and industry representatives highlighted the fragmentation of the regulatory framework, especially in the mining sector. The LGIM and *Convention d’Établissement* created special fiscal regimes for AMBATOVOY and QMM, even though the LGIM was not meant to apply exclusively to one company.<sup>172</sup> On reforms, several industry and CSO representatives noted that the revision of the Mining Code had been delayed and then suspended, and that the revision of the Petroleum Code would likely follow the same process. Partners considered that broad reforms were unlikely before the presidential elections scheduled in 2019. Several stakeholders however appreciated the inclusive and participatory consultations led by the government on these revisions. Development partners have highlighted the use of preferential tax arrangements by certain companies, such as those operating out of free zones.<sup>173</sup>

### Initial assessment

The International Secretariat’s initial assessment is that Madagascar has made satisfactory progress in meeting this requirement. Madagascar has disclosed the required information related to the legal framework and fiscal regimes governing the extractive industries, including a comprehensive description of the three co-existing mining legal frameworks and the degree of fiscal devolution. While the 2014 EITI Report only includes information on the roles and responsibilities of some of the relevant government agencies, information on the roles and responsibilities of all relevant government entities is accessible through the EITI Madagascar website. The report also briefly describes ongoing reforms.

To further strengthen implementation, the MSG may wish to consider embedding publicly-available information on the mining, oil and gas legal framework and fiscal regime in government public reporting

<sup>171</sup> Table 15 provides a comprehensive list of applicable taxes and levies, including 21 national taxes, 16 local taxes, 23 taxes and levies applicable in the mining, oil and gas sector, as well as 12 “other payments”, four withheld taxes, two types of mandatory contributions, two types of in-kind oil and gas revenues, three bonuses, three mandatory social expenditures and one types of transportation payment.

<sup>172</sup> The LGIM will apply fully to eight other companies once they reach the production phase.

<sup>173</sup> IMF (July 2017), ‘Madagascar: Selected issues’, pp.20-21, accessed [here](#) in November 2017.

systems websites or the EITI Madagascar website.

## License allocations (#2.2)

### Documentation of progress

#### Mining sector

***Awards/transfers:*** The report states that the moratorium on new mining licenses introduced in 2011 was tacitly carried on in 2014 (pp.15,52,71; annex/pp. 82-85),<sup>174</sup> but notes that license applications filed before 10 June 2010 could be legally awarded (pp.15-16). It specifies that only Mpumalanga Mining Resources SAU received confirmation of its license award in 2014, initially granted in May 2011 for five years (pp.15,71). Following the transition period and the moratorium on mining licenses, in 2015 the MSG commissioned a study on the management of mining licenses and BCMM's role<sup>175</sup>, which found that no license had been awarded since 2011.<sup>176</sup>

The report describes 1,683 requests for “*movements*” approved by the MPMP in 2014, divided in 19 different categories, that did not all involve the transfer of license rights (pp.70-71). The absence of definitions for these categories prevents the reader from assessing which movement represent actual transfers. Table 21 provides a list of licenses, with names of former and new license-holders, minerals covered and date of deposit of transfer notification (pp.72-73). Annex 4 provides the transfers of mining production and exploration licenses for which 2014 mining administration fees were paid (annex/pp.54,78-79), including names of former and new license-holders, minerals covered, dates of application and award, and the nature of the movement. The report highlights that a total of 717 mining licenses were relinquished in 2014 (p.23; annex/pp.165-167) and there is evidence of seven licenses marked as awarded in 2014 in the list of licenses in Annex 9 (annex/pp.95-111).<sup>177</sup>

***Award/transfer process:*** The report notes that mining licenses are awarded through direct application, not through competitive bidding (pp.73-74). The report describes the relevant statutory procedures, including the role of the BCMM (p.52), the three main types of mining licenses (small-scale, exploration and production), their characteristics, the general application procedure and award process for each, including documents that need to be submitted with the application (pp.73-74). The BCMM tariffs for key procedures, including license applications, are provided in Annex 28 (annex/pp.188-189). The procedures for transferring a mining license are not described in the report.

***Technical and financial criteria:*** The report does not refer to any technical and financial criteria.

***License awardee information:*** The report provides the names of the company having received

<sup>174</sup> The report also describes provisions of Minister of Mines Instruction 207-2013 issued on 13 December 2013 requiring the review and “sanitising” of the management of mining licenses (p.16). The 10<sup>th</sup> point of the 2013 Instruction requires the award of mining licenses requested before 10 June 2010, but notes that authorities must await the lifting of moratorium before converting AERPs into mining licenses (p.16).

<sup>175</sup> Enrique Ortega (March 2015), ‘Diagnostic préliminaire de la gestion des titres miniers’, p. 8, not accessible online as of 1 September 2017, provided by the EITI Madagascar Secretariat.

<sup>176</sup> Enrique Ortega (March 2015), op. cit. , p.10, 22.

<sup>177</sup> One each for DYNATEC Madagascar and Ambatovy Minerals, and five for Madagascar Consolidated Mining.

confirmation of its license allocations in 2014 (pp.15,71) and the three companies holding licenses awarded in 2014 according to Annex 9 (annex/pp.95-111). The report also provides the names of the former and new license-holders of licenses transferred in 2014 (pp.70-73, annex/pp.54,78-79).

*Non-trivial deviations:* The report comments on the award confirmation of the Mpumalanga Mining Resources SAU exploration license and refers to the relevant legal texts (pp.15,71). However, the report does not comment on the seven licenses awarded in 2014 listed in Annex 9 (annex/pp.95-111).

*ASM:* The report describes the process for awarding ASM licenses, including the role of the government agency, the general process and applicable fees (p.54). It does not comment on technical and financial criteria assessed in applications, or specify the number of ASM licenses awarded in 2014.

## Oil and gas sector

The report notes that no new PSC was awarded in 2014 but notes the expiry of three PSCs held by Madagascar Oil (pp.17-18).<sup>178</sup> Annex 12 mentions three changes in participations in PSC consortiums in 2014, without details on transaction terms aside from the partners names (annex/pp.119-120). The report states that oil and gas licenses, known as “hydrocarbons mining licenses”, are meant to be awarded by OMNIS through competitive tender (p.59), but that PSCs are usually concluded through direct negotiations (p.60). The report provides a general description of the process for awarding oil and gas licenses (p.74), but not for transferring them, and does not detail any technical and financial criteria.

*Commentary on efficiency:* The report notes that the moratorium on new mining licenses caused a “certain inefficiency” in the allocation system in 2014 (p.17). The 2015 study commissioned by the MSG marks a key contribution on this issue, concluding that the political crisis and temporary inactivity of the mining cadastre had deterred formal mining exploration and contributed to the opacity of BCMM revenues.<sup>179</sup> It recommends delaying new BCMM statutes pending debate on its role, evaluating discrepancies on BCMM revenues between EITI and BCMM data, publishing clear rules for auditing the cadastre, preparing the cadastre’s reopening through stakeholder consultations, drawing on international best practice in reforming the Mining Code, ensuring real-time updates through the BCMM website and strengthening BCMM decentralised offices.<sup>180</sup> There is evidence that the BCMM has partly implemented these recommendations (see *Requirements 7.1, 7.3 and 7.4*)<sup>181</sup> and the MSG undertook an update of the study in 2017.<sup>182</sup>

## Stakeholder views

*Awards and transfers:* There was no clear consensus amongst MSG members and within constituencies on the definition of the terms “award” and “transfer” and on both statutory and practical procedures for awarding and transferring mining licenses. A government representative noted that the all-encompassing

<sup>178</sup> On blocks Ouest Manambolo 3105, Morondava 3106 and Manandaza 3107.

<sup>179</sup> Enrique Ortega (March 2015), op cit., p.3-4, 12.

<sup>180</sup> The findings of the study were sent by the MSG to the President and the Head of the of the BCMM Board in September 2015 (a copy of the letters were provided by the EITI Madagascar Secretariat).

<sup>181</sup> BCMM (November 2016), op. cit.

<sup>182</sup> Enrique Ortega (March 2017), ‘Diagnostic préliminaire de la gestion des titres miniers, Mise à jour’, not accessible online as of 1st September 2017, provided by the EITI Madagascar Secretariat.

term “movement” of license was more commonly used, rather than “award” or “transfer”. Government and industry representatives explained that “award” could refer to the confirmation of an award granted previously, but that this did not necessarily represent a new license allocation.

*Award and transfer procedures:* A government representative explained that the first-come first-serve principle was usually applied, but that technical and financial criteria existed in competitive tender, without specifying in which cases the latter took place. Government representatives considered that procedures for awarding and transferring licenses were clearly explained in the Mining Code and its implementing Decree,<sup>183</sup> and therefore publicly available, even though the 2014 EITI Report did not explicitly describe them. Despite consensus on the broad procedures for awarding and transferring mining licenses, there were categorically different views over the existence of technical and financial criteria, even within the same constituencies. Several industry representatives considered that technical and financial capacities had to be included in the application to BCMM, but added that they were unaware of how these criteria were assessed. Several government representatives stated that the regulations did not require any specific technical and financial capacities, which had made access to and speculation on mining licenses had been too easy in the past. However, they noted that the BCMM had started taking account of technical and financial capacities, although this was yet to be codified.

*Non-trivial deviations:* Industry representatives agreed that the allocation of licenses was a far more contentious issue in the mining than in the oil and gas sector. While there was disagreement over the extent of non-trivial deviations from statutory award and transfer procedures, there was consensus that the statutory rules were not respected in practice. Representatives from all constituencies confirmed that the moratorium on new licenses had been tacitly carried out after the transition period, with no allegations of any new awards. A government representative explained that the moratorium applied to small-scale mining permits equally. Industry representatives highlighted significant deviations in practice such as delays of up to eight months in concluding contracts that required Presidential Decrees, such as large mining conventions and PSCs, and a general lack of transparency in license allocations. A senior official confirmed that there were deviations from the statutory award procedures, if only because the government did not respect the statutory 35 days for BCMM to process applications, with over 1500 applications currently pending approval. Industry representatives noted that the seven license awards mentioned in Annex 9 were confirmations of “transformations” of previous licenses, from exploration to production license for instance. Several CSO and industry representatives alleged unreported, yet unspecified, deviations in practice involving discretionary decisions.<sup>184</sup> One CSO emphasised that the statutory requirement to undertake community consultations in allocating new mining licenses was not respected in practice.

*Efficiency:* All stakeholders consulted highlighted the need to improve the efficiency of mining license allocations given the opacity since the end of the transition period. All stakeholders recognised the key contribution made to this debate by EITI Madagascar’s 2015 study on the allocation of licenses (see

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<sup>183</sup> The 2014 EITI Report does not refer to Art. 141-147 of the Decree No.2006/910 of 19 Decembre 2006 on the implementation of the Mining Code, which describe the procedure for transferring mining licenses. Accessed [here](#) in November 2017.

<sup>184</sup> In October 2016, the UN Special Rapporteur on human rights and the environment visited Madagascar. The government acknowledged that it was too easy to obtain and transfer research and mining permits. Many interlocutors claimed corruption was a significant issue, including with regards to mining concessions, which the government denied. UN Human Rights Council (March 2017), ‘Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, on his visit to Madagascar’, p.15, accessed [here](#) in November 2017.

*Requirement 7.1, 7.3 and 7.4*). MSG members however noted the initial resistance at senior government level in agreeing to its publication, but highlighted the MSG's commissioning of an update to the study in 2017 as evidence of the EITI's relevance in this debate.

### Initial assessment

The International Secretariat's initial assessment is that Madagascar has made meaningful progress towards meeting this requirement. EITI Madagascar has ensured disclosure of the process for awarding licenses and contracts pertaining to companies in the scope of the 2014 EITI Report. The 2014 EITI Report comments on general non-trivial deviations from the 2011 moratorium and the efficiency of licensing procedures. However, the 2014 EITI Report does not clarify the nature of different license movements, leaving the process for transfer of license rights unclear, lacks clarity on the existence of technical and financial criteria and does not comment on the award of seven licenses in 2014. These gaps in information are significant, given the importance of the issue for all stakeholders. While there is a case for considering that the objective of transparency in license allocation and transfer is far from met, the prevailing lack of clarity related to the enforcement of the licensing freeze helps highlight the important impact of EITI reporting and the EITI-mandated studies as genuine diagnostic tools supporting debate over regulatory reform.

In accordance with Requirement 2.2, a description of the process for transferring or awarding the license and the technical and financial criteria used should be publicly available. Not least given the significant debate surrounding license movements in the mining sector, EITI Madagascar is encouraged to use EITI reporting as a diagnostic tool for non-trivial deviations from the applicable legal and regulatory framework governing license transfers and awards. In cases of competitive tender for mining, oil and gas licenses, the MSG will have to disclose the list of applicants and the bid criteria for licenses awarded through a bidding process. The MSG is encouraged to consider stakeholders calls for further analysis on the efficiency and effectiveness of licensing procedures in Madagascar.

## License registers (#2.3)

### Documentation of progress

*Licenses held by material and non-material companies:* The report refers to 1751 companies holding mining licenses and paying Mining Administration Fees (FAM) in 2014 (p.17,75, annex/pp.27-53). It confirms that license-holder names are available upon request from BCMM (pp.52,75) and provides them in Annex 4 (annex/pp.27-53), although it notes that the BCMM's register of legal owners is outdated (p.131, *see Requirements 2.5 and 5.2*). The report also states that dates of application, award and expiry, and license coordinates are available upon request from BCMM (p.52). Annex 4 does not provide dates of application, with dates of award missing for 113 (mostly quarrying-related) mining licenses (annex/pp.27-53). The report notes that the BCMM register provides information on minerals covered (pp.52,75). Table 37 and Annex 4 provide lists of licenses with corresponding minerals (pp.91-92, annex/pp.27-53).

The report lists ten companies holding oil licenses as of 13 December 2014, 17 awarded oil and gas blocs and 229 free blocs (225 offshore and four onshore; p.17). There is no evidence any new oil and gas license was awarded between the 13-31 December 2014 period. The report provides PSC partner names, dates of application, award and expiry for all 17 licenses (pp.18,19,76). Annex 8 provides license-holder name,

license coordinates, dates of application, award and expiry, and commodities covered (annex/pp.88-94).

*Public cadastre/register:* The report notes the existence of a mining license register maintained by BCMM (pp.52,75) and the absence of an oil and gas license register at OMNIS (p.59). It indicates that the OMNIS website provides a map of awarded and free blocks, with names of contractual parties (p.59; annex/p.120), with the map (last updated March 2017) downloadable in pdf.<sup>185</sup> For the BCMM register, the report comments on the availability of information mandated under Requirement 2.3, its accessibility upon request and delays in updating the register based on movements (pp.52,75), although the BCMM website was not operational during the IA's work (p.75). Yet the BCMM launched an online mining cadastre in the first quarter of 2017, with map user-interface (1:100.000 scale) covering all active mining licenses, with information on license-holder name, license type, dates of award and expiry, coordinates, and mineral type. The cadastre integrates conservation areas.<sup>186</sup> The cadastre also includes a searchable online database of licences, which provides license-holder name, license or mineral types, and date of expiry.<sup>187</sup>

### Stakeholder views

MSG members confirmed that there were 1751 active licenses in 2014, rather than 1751 license-holding companies as the 2014 EITI Report indicated. There was consensus that all information listed in Requirement 2.3 was available upon request from BCMM and OMNIS, at a modest fee. Most stakeholders consulted appeared unaware of the existence of BCMM's online mining cadastre since 2017, although they considered that all information was freely accessible upon request from BCMM. Upon extensive consultations, government representatives explained that the data point related to mining licenses (date of application) not accessible online through the mining cadastre could be obtained upon request from BCMM, at a modest fee (available on the BCMM website) to cover printing costs. The data was also free to access if users did not request print-outs. Officials explained that the cadastre was updated roughly every two days, drawing on daily email reporting from all BCMM regional offices. Stakeholders from government confirmed that recommendations from the 2015 study on license allocation had significantly contributed to improving management of the mining cadastre.

### Initial assessment

The International Secretariat's initial assessment is that Madagascar has made satisfactory progress in meeting this requirement. Madagascar disclosed the mandated information under Requirement 2.3 for oil and gas licenses in 2014 and commented on the existence of publicly available registers at the end of 2016. Gaps in information on mining licenses in the 2014 EITI Report were offset by the BCMM's new online cadastre or accessibility upon request from BCMM.

To strengthen implementation, the MSG is encouraged to use annual EITI reporting as a diagnostic tool to assess the comprehensiveness, reliability and timeliness of data in BCMM and OMNIS' license cadastres. OMNIS is encouraged to maintain a publicly-available register or cadastre for oil and gas license with information mandated under Requirement 2.3.

<sup>185</sup> OMNIS, 'Madagascar Petroleum Blocks', accessed [here](#) in November 2017.

<sup>186</sup> BCMM, 'Cartographie', accessed [here](#) in November 2017.

<sup>187</sup> BCMM, 'Requêtes sur les permis miniers', accessed [here](#) in November 2017.



## Contract disclosures (#2.4)

### Documentation of progress

*Government policy:* The report does not clarify government policy on contract disclosure other than stating that there are no legal or contractual provisions requiring the publication of mining contracts or PSCs in Madagascar (p.75) and that oil and gas PSCs contain confidentiality provisions (p.76). The Mining Code's Articles 220-221 require the award of licenses, including coordinates and dates of application, to be publicly-accessible from the BCMM upon request (pp.52,75).

*Actual practice:* The report notes that details of mining licenses, including their coordinates, were made available by BCMM upon request (p.75), and that Decrees awarding individual PSCs are publicly accessible in the Official Gazette (p.76), albeit without guidance on accessing the Gazette. It notes that the model PSC is available on the OMNIS website (p.76) and provides copies of the first 5 pages in Annex 11 (annex/pp.112-118). The report notes that while the current PSC has no provisions for its public disclosure, the draft new PSC discussed in February 2015 included provisions for the publication of a summary of key PSC terms within 30 days of a request for information (p.64). The report does not comment on the 1998 concession agreement with QIT-Fer and Titane Inc. for the Fort Dauphin mineral deposits, approved as law by the National Assembly on 19 February 1998 and thus publicly-accessible.<sup>188</sup>

### Stakeholder views

MSG representatives confirmed that contract transparency had been the subject of MSG discussions, especially in 2015 and following the promulgation of the 2016 EITI Standard. They explained that the government had no clear and official policy on contract disclosure and confirmed that the QMM contract was publicly-available given its status as law. They indicated that they had decided to publish an extract of the model PSC in the report to compensate for the lack of official government position. A government representative however specified that there were significant differences between the standard PSC and contracts signed following direct negotiations.

Government representatives noted that confidentiality clauses, covering all aspects of PSCs, last as long as the company is active, and that companies insist on these clauses, as reflected in minutes of the 12 September 2014 APPAM meeting.<sup>189</sup> A government official explained that confidentiality provisions for the geological data in annex to the PSCs expired after seven years, with the data then resold by OMNIS to prospective oil and gas companies. A CSO representative explained that CSOs were pushing for the publication of contracts, as a way of building trust between civil society and companies and enabling citizen control of company compliance with fiscal, environmental and social aspects of the contracts. This request was included in the comments submitted by CSOs to the government in consultations over revision to the Mining and Petroleum Codes.

### Initial assessment

The International Secretariat's initial assessment is that Madagascar has made meaningful progress

<sup>188</sup> It is also publicly available here: Resource contracts Portal, 'QIT-Fer et Titane Inc., Concession, 1998', accessed [here](#) in November 2017.

<sup>189</sup> APPAM (September 2014), Minutes of the APPAM Management Committee meeting on 12 September 2014, not accessible online, provided by the EITI Madagascar Secretariat in October 2017.

towards meeting this requirement. While the 2014 EITI Report comments on the practice of contract disclosure, it does not clarify government policy beyond the existence of legal confidentiality provisions, and the government's policy remains unclear to stakeholders consulted.

In accordance with Requirement 2.4, EITI Madagascar should clarify and document the government's policy on disclosure of contracts and licenses, as well as actual practice, including any reforms that are planned or underway.

## Beneficial ownership disclosure (#2.5)

### Documentation of progress

***Government policy:*** The report states that Madagascar does not have a beneficial ownership register for companies bidding for, holding or investing in extractives licenses (p.62-63). The report notes weak engagement of companies in beneficial ownership disclosure, the lack of a clear government policy and the MSG's ongoing assessment of options for disclosing beneficial ownership in line with Requirement 2.5 (p.79). However, the report reviews legislation<sup>190</sup> relevant to beneficial ownership and describing the notion of "control" (pp.62-63). There is thus already a relevant legal framework enabling the government to identify beneficial owners of license-holding companies (p.63).

***Beneficial ownership roadmap:*** Madagascar published its beneficial ownership roadmap in December 2016.<sup>191</sup> It places beneficial ownership disclosure in the context of national reforms, including curbing corruption and money-laundering,<sup>192</sup> ensuring the integrity of public and elected officials and creating favourable economic conditions for Madagascar's development by sanitizing private-sector practices.<sup>193</sup> The roadmap plans for a "beneficial owner" definition to be agreed in 2017. While the roadmap does not identify a host for the beneficial ownership registry, the MSG is set to discuss how BCMM and OMNIS would collect and disclose data. Despite the lack of estimated implementation costs and detailed descriptions of some activities, the roadmap addresses all aspects of Requirement 2.5.b.ii.

***Legal owners of material companies:*** The report presents 25 companies' reporting of their legal shareholding and one company that did not disclose shareholding information (pp.76-79). Table 27 includes four companies that were wholly-owned subsidiaries of publicly-listed companies, one company that is fully-owned by two SOEs, and two companies for which full beneficial ownership information is provided (pp.76-79). The report lists six companies that count a publicly-listed company as a first-level shareholder and confirms the stock exchange on which the company is listed and a link to company

<sup>190</sup> The relevant legislation related to beneficial ownership reviewed in the 2014 EITI Report include the Petroleum Code's requirement to notify the regulator of any change of control of the license holder or its mother company within 30 days; the model PSC's requirement to notify OMNIS of any change in ownership of the PSC contractor and the notion of "affiliated entity"; Art. 70 of the 2006 Decree related to the Mining Code covering the notion of control and requiring license holders to notify the BCMM of all changes in control implying a modification of the articles of association of the company; and the Commercial Company Law's reference to the notion of control in its definition of groups of companies.

<sup>191</sup> EITI Madagascar (December 2016), 'Feuille de route sur la propriété réelle', accessed [here](#) in November 2017.

<sup>192</sup> See also: "The government is committed to taking all necessary actions to stem money laundering and the financing of terrorism." IMF (August 2016), op. cit. , p.61.

<sup>193</sup> See also: Primature (January 2013), 'Politique Générale de l'Etat', accessed [here](#) in November 2017.

disclosures (pp.80-81). The IA also notes that the BCMM's register of legal owners of licenses is outdated, causing challenges for EITI data collection (p.131). Legal owners are listed for 141 extractive companies under the Registry for Trade and Companies (RCS), although only registered members have access to extracts of the registry for a fee.<sup>194</sup>

### Stakeholder views

Several MSG members considered that the three-year roadmap was an important step in clarifying the government's policy on beneficial ownership transparency in the extractives sector. A government representative noted the legal requirement for companies to disclose changes in their ownership, but explained that this was usually applied in changes of direct legal ownership only, rather than in ultimate beneficial ownership. Several CSOs confirmed that Madagascar did not yet apply legal provisions related to changes in beneficial ownership detailed in the 2014 EITI Report. Several stakeholders from all constituencies highlighted the challenges in identifying certain mining companies given the absence of physical office for many smaller companies holding licenses. An industry representative believed that beneficial ownership requirements could support due diligence efforts related to new licenses applicants. Government officials considered that the beneficial ownership roadmap should be reviewed, given that it planned on revisions of the Mining and Petroleum Codes to be enacted, when that currently seemed less likely in the short term. They noted however talks with donors and consultants on implementing the first roadmap activities and about OMNIS and BCMM's potential roles as entities hosting the registry. A CSO representative stated that the timeframe for implementing a public registry by 2020 was too long-term and criticised the lack of progress evaluation since the beneficial ownership roadmap's approval in 2016.

### Initial assessment

Implementing countries are not yet required to address beneficial ownership and progress with this requirement does not yet have any implications for a country's EITI status. The 2014 EITI Report does not clarify the government's policy on beneficial ownership disclosure in the extractives sector. While it provides information on the legal owners of roughly half of the material companies, the identity of shareholders of companies incorporated in Madagascar are available from the Registry for Trade and Companies (RCS) website, albeit only for registered members at a fee.

To strengthen implementation, the MSG may wish to consider piloting beneficial ownership reporting in upcoming EITI reporting in order to increase awareness of beneficial ownership transparency and pilot beneficial ownership definitions and thresholds. The MSG is encouraged to consider stakeholder calls to update the three-year beneficial ownership roadmap regularly to take account of progress and delays. The MSG is also encouraged to liaise with RCS to explore opportunities of mainstreaming reporting of legal owners of extractives companies. EITI Madagascar may also wish to conduct broader outreach to extractives companies and the Registry for Trade and Companies (RCS) on the objectives of beneficial ownership transparency, as well as hold conversations with government agencies on how to make such disclosures mandatory.

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<sup>194</sup> See: Registre du Commerce et des Sociétés (RCS) de Madagascar, accessed [here](#) – registered members only.

## State participation (#2.6)

### Documentation of progress

***Materiality:*** The 2014 EITI Report confirms that the state participates in the mining sector through a 100% interest in KRAOMA, OMNIS's 20% interest in QIT Madagascar SA and state-owned NASSCO's 20% interest in Madagascar Consolidated Mining SA (p.81). While it is unclear from the 2014 EITI Report whether KRAOMA is the only SOE in line with the EITI Standard's definition in Requirement 2.6.a<sup>195</sup>, the 2013 EITI Report explicitly stated that KRAOMA was the only SOE for EITI reporting purposes.<sup>196</sup> While the report provides a succinct description of NASSCO<sup>197</sup>, which it describes as a wholly-owned government entity incorporated as a commercial company (p.81), it does not specify whether NASSCO's primary activities are in the extractive industries or others. It is unclear whether NASSCO is a government-owned asset management company. The report does not define the legal status of OMNIS and only describes its responsibilities for managing the country's oil and gas resources (p.20). However, the report implies that OMNIS has a status of SOE when it states that there were no financial transactions between SOEs and the state in 2014 as confirmed by OMNIS, KRAOMA and reporting entities (pp.81,82).

***Financial relationship with government:*** The 2014 EITI Report lists the relevant laws and regulations related to SOEs<sup>198</sup> (p.82), without describing legal and regulatory provisions relevant to the SOE's financial relations with the state. The report does not clarify the statutory financial relations between KRAOMA and the government, even if it confirms the absence of transfers from SOEs to government in practice in 2014 (pp.81-82). With regards to NASSCO, the report only states that it is registered as a private company (*société anonyme*) with its own board of directors (p.81), which would imply that it has the right to retain earnings for reinvestment and contract third-party financing, although this is not explicitly stated in the report. The 2013 EITI Report clarified that KRAOMA was subject to the same rights and obligations of private companies, independently from its state ownership.<sup>199</sup>

In terms of SOE auditing, the report states that SOEs are regulated under Commercial Company Law<sup>200</sup> and legislation governing commercial companies with state participation<sup>201</sup>, and confirms that SOEs are overseen by the Financial Court (*Tribunal Financier*), which controls budget execution for all government entities and companies with more than 50% government interest (p.61).

***Government ownership:*** The report provides a list of three government interests in mining companies,

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<sup>195</sup> Requirement 2.6.a 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. Based on this, the MSGs is encouraged to discuss and document its definition of SOEs taking into account national laws and government structures."

<sup>196</sup> EITI Madagascar (January 2015), 'Madagascar 2013 EITI Report', op.cit., p.60.

<sup>197</sup> National Supply and Services Company (NASSCO).

<sup>198</sup> The report lists (p.82) the Law 2014-014 on commercial companies with state participation; the Decree 2015-849 implementing the 2014 law; the Law on commercial companies 2003-036; the Law 2001-025 on the Administrative and Financial Courts, which confirms the Financial Court's jurisdiction for controlling accounts of companies with more than 50% state participation; the Cour des Comptes has jurisdiction over controlling revenues received by SOEs; and the draft budget execution report for 2014, which was only scheduled to be submitted to parliament in May 2017.

<sup>199</sup> EITI Madagascar (January 2015), 'Madagascar 2013 EITI Report', op.cit., p.60.

<sup>200</sup> Law 2003-036.

<sup>201</sup> Law 2014-014 and Decree 2015-849.

detailed in the ‘materiality’ section above<sup>202</sup>, although it highlights that information on state participation was provided through company reporting rather than from the government (p.81). The report does not provide further information on the terms associated with state equity in the three mining companies. In addition, information on the Treasury website appears to partly contradict the report. In both 2014 and 2016, the Treasury listed KRAOMA as 97.17% owned directly by the state and 2.83% held by the staff mutual fund ZARASOA<sup>203</sup>, rather than 100% owned by the state directly as indicated in the 2014 EITI Report. The 2013 EITI Report correctly identified KRAOMA as 97% owned by the government.<sup>204</sup>

In addition, the 2014 EITI Report highlights the lack of clarity around the legal ownership of NASSCO, noting that the IA only received a list of company administrators rather than NASSCO’s legal shareholding (p.81). The IA emphasises that, as a private company, NASSCO is required to have at least four shareholders (p.81), implying that NASSCO’s shareholding is likely split between different government entities or investors.

**Ownership changes:** The report does not refer to any changes in state participation in the mining, oil and gas sectors in 2014.

**Loans and guarantees:** The report states that there were no loans or loan guarantees granted by the state or an SOE to any company operating in the extractives sector (p.81).

## Stakeholder views

**Government ownership:** There was considerable debate, and uncertainty, over the number of state-owned entities that could be considered SOEs in line with the EITI Standard’s definition in Requirement 2.6.a. While there was consensus on the MSG that EITI Madagascar had only ever considered KRAOMA as the sole extractives SOE for EITI reporting purposes, stakeholders conceded that the MSG had never explicitly discussed its definition of SOEs. There was consensus amongst stakeholders consulted that the Treasury was the government entity that held interests in SOEs, which is confirmed in the Treasury’s own publications.<sup>205</sup> While the Treasury’s 2014 list of state interests<sup>206</sup> provided several state participations in downstream oil and gas companies<sup>207</sup>, an industry representative explained that the MSG had never considered state participation in the downstream extractive industries as within the scope of EITI reporting. Stakeholders did not express any views on the state’s 1.12% interest in Société Marbre et

<sup>202</sup> 100% stake in KRAOMA, OMNIS’s 20% interest in QIT Madagascar SA and state-owned NASSCO’s 20% interest in Madagascar Consolidated Mining SA.

<sup>203</sup> Direction Générale du Trésor, Ministère des Finances et du Budget (2015), ‘Liste des sociétés à participation de l’Etat 2014’, accessed [here](#) in November 2017; Direction Générale du Trésor, Ministère des Finances et du Budget (2017), ‘Liste des sociétés à participation de l’Etat 2016’, accessed [here](#) in November 2017.

<sup>204</sup> EITI Madagascar (January 2015), ‘Madagascar 2013 EITI Report’, op.cit., p.6.

<sup>205</sup> Direction Générale du Trésor (June 2014), ‘Tahiry: Bulletin mensuel d’information et de liaison de la Direction Générale du Trésor’, accessed [here](#) in November 2017, p.13; and Direction Générale du Trésor (July 2014), ‘Tahiry: Bulletin mensuel d’information et de liaison de la Direction Générale du Trésor’, accessed [here](#) in November 2017, p.12.

<sup>206</sup> Direction Générale du Trésor, Ministère des Finances et du Budget (2015), ‘Liste des sociétés à participation de l’Etat 2014’, op.cit.; Direction Générale du Trésor, Ministère des Finances et du Budget (2017), ‘Liste des sociétés à participation de l’Etat 2016’, op.cit..

<sup>207</sup> The 2014 Treasury list includes a 1.12% state interest in Société Marbre et Granit de Madagascar (MAGRAMA), a 10.07% interest in Galana Distribution Pétrolière (GDP), a 10% interest in Galana Raffinerie Terminal (GRT), a 6.12% interest in Jovenna, a 31% interest in Logistique Pétrolière (LP), a 5% interest in Madagascar Oil Company (MOCO), a 20% interest in Société Malgache des Pétroles Vivo Energy (SMPVE), and a 20.56% interest in Total Madagasikara.

Granit de Madagascar (MAGRAMA), a quarrying company, mentioned in the 2014 Treasury list.<sup>208</sup>

Several government, industry, civil society and development partner stakeholders consulted considered that OMNIS could conceivably be considered a SOE, although there was considerable uncertainty over its legal status. Several stakeholders referred to OMNIS as a “black hole”. The 2014 report by the CdC categorises OMNIS as a Public Administrative Establishment (*Etablissement Public à caractère Administratif*).<sup>209</sup> Stakeholders from all constituencies conceded that OMNIS shared characteristics with SOEs insofar as it had a Board of Directors, was able to retain earnings from the Treasury and held interests in several commercial companies, including QMM and NASSCO. Several government and industry representatives as well as the IA explained that the government intended on creating a separate national oil company in order to clearly delineate OMNIS’ commercial activities from its regulatory functions, although this had not yet been achieved given delays in agreeing a new Petroleum Code. While several industry and government stakeholders confirmed that OMNIS held interests in NASSCO, none of the stakeholders consulted (including the company in which NASSCO holds an interest) could explain the company’s shareholding, its precise relationship to OMNIS, nor its scope of activities. Indeed, there was even disagreement over when NASSCO had been created. The IA explained that they had only learned of the existence of NASSCO during data collection, when MCM had reported the company as one of its shareholders. The IA noted that it had been unable to clarify the company’s shareholding despite requests for information to the Financial Tribunal.

With regards to KRAOMA, all stakeholders confirmed that the state held a 97.17% interest in KRAOMA. Several government, industry and development partner representatives as well as the IA confirmed that the SOE did not have any subsidiaries.

None of the stakeholders consulted expressed any particular views on the terms associated with state equity in extractives companies. However, there is evidence of differing terms associated with various state extractives interests. For instance, Rio Tinto’s group 2014 annual report notes that while the group holds an 80% economic interest and 80% of total voting rights in QMM, it holds an additional 5% economic interest through non-voting investment certificates, which provide Rio Tinto with an economic interest of 85% in QMM. The 2014 annual report confirms that the non-controlling interest (i.e. the government, through OMNIS) holds a 15% economic interest and 20% of total voting rights in QMM.<sup>210</sup>

SOEs’ financial relations: Several industry, civil society and development partner representatives as well as the IA noted controversies in the financial management of KRAOMA. Indeed, press articles in March 2016 alleged embezzlement of MGA 2.4bn (USD 800k) by company management prior to 2015.<sup>211</sup> Two of the Treasury’s own monthly bulletins in 2014 confirm mismanagement at the KRAOMA.<sup>212</sup> KRAOMA finally established a Board of Directors in July 2014 following calls from the Treasury since 2009.<sup>213</sup>

While stakeholders from all constituencies agreed that KRAOMA was entitled to retain earnings for

<sup>208</sup> Direction Générale du Trésor, Ministère des Finances et du Budget (2015), Liste des sociétés à participation de l’Etat 2014’, op.cit.; Direction Générale du Trésor, Ministère des Finances et du Budget (2017), Liste des sociétés à participation de l’Etat 2016’, op.cit..

<sup>209</sup> Cour des Comptes (October 2015), ‘Rapport Public 2014’, accessed [here](#) in November 2017.

<sup>210</sup> Rio Tinto (March 2015), ‘Rio Tinto Annual Report 2014’, accessed [here](#) in November 2017, p.158.

<sup>211</sup> Sobika (March 2016), ‘KRAOMA: Détournement de 2,4 milliards Ariary’, accessed [here](#) in November 2017.

<sup>212</sup> Direction Générale du Trésor (June 2014), op.cit., p.13; and Direction Générale du Trésor (July 2014), op.cit., p.12.

<sup>213</sup> Direction Générale du Trésor (June 2014), op.cit., p.13.

reinvestment, several CSOs expressed concern that the SOE had not paid dividends to the Treasury for several years, including in 2014. Stakeholders from all constituencies considered that KRAOMA was a profitable company and did not rely on government subsidies, although it tended to retain all of its earnings (aside from a MGA 1bn (USD 313k) dividend payment in 2015). A government official explained that the government had allowed KRAOMA to retain earnings and not pay dividends in 2014 in order to increase its capital base. This was part of the government's strategy of transforming KRAOMA into a full-fledged national mining SOE, although this had yet to be enacted pending reform of the Mining Code according to the official. Press articles appear to indicate that KRAOMA does not have the right to seek equity finance from third parties other than the government under the current legal framework.<sup>214</sup>

The IA confirmed that, while the KRAOMA statutes had been examined in preparation of the 2014 EITI Report, it had not gained access to the SOE's financial statements (even un-audited). Several CSOs stated that the Financial Tribunal did not have access to the KRAOMA's financial statements. Development partners highlighted conditions of the 2016 IMF extended credit facility, which include provisions for KRAOMA to submit audited financial statements for 2015 and 2016 to the CdC by the end of 2017. The MFB also intends to include in annex to the 2017 budget execution report a summary of key information on all SOEs including identity of all shareholders, government equity and budgeted transfers and subsidies. The Ministry also intends to strengthen its Department of Financial Operations to improve reporting of SOEs, monitoring and determining of fiscal risks, starting with 2017 annual public reports.<sup>215</sup> A development partner expressed some frustration at the lack of description of the financial relations between KRAOMA and the state in Madagascar's EITI Reports, considering that the EITI could support public debate over the strengths and weaknesses of having such a SOE.

*Loans and guarantees:* Members of the MSG did not express any particular view about whether the state had extended any loan guarantees to KRAOMA, although there was consensus that KRAOMA did not extend loans or guarantees to any extractives company. There was also consensus that the state did not provide any loans to KRAOMA, given that the SOE could self-finance through its retained earnings. One development partner noted that the sovereign guarantee to KRAOMA was implicit and that the SOE did not benefit from a letter of comfort from the MFB, meaning that any KRAOMA debt was not considered as part of calculations of Madagascar's sovereign debt. The IMF has hailed the government's plans to encourage SOEs to move toward borrowing independently from government support, on the strength of their own balance sheets rather than backed by sovereign guarantees.<sup>216</sup>

## Initial assessment

The International Secretariat's initial assessment is that Madagascar has made inadequate progress in meeting this requirement. The 2014 EITI Report provides a list of state interests in the mining sector, although there is a significant lack of clarity amongst stakeholders over whether the comprehensiveness of the list provided. The 2014 EITI Report does not describe the terms associated with state equity in extractives companies, nor any changes in state participation in the extractives sector in 2014. While the report provides a succinct description of financial relations between SOEs in practice in 2014, it does not

<sup>214</sup> Club Développement et Ethique (September 2016), 'Madagascar CDE. Pour une politique de financement extérieur durable et responsable', accessed [here](#) in November 2017.

<sup>215</sup> IMF (August 2016), 'Republic of Madagascar: Request for an arrangement under the extended credit facility, first review, press release', accessed [here](#) in November 2017, p.60.

<sup>216</sup> IMF (August 2016), 'Request for an arrangement under the extended credit facility, first review, press release', op.cit., p.54.

describe the statutory financial relations between SOEs (such as KRAOMA) and the government. The lack of details on the financial relations between KRAOMA and the state is particularly concerning given public controversy over the company's financial management in 2014. Nonetheless, the report does confirm that there were no loans or guarantees provided to extractives companies in 2014.

In accordance with Requirement 2.6, the MSG should ensure that a comprehensive list of state participation in the extractive industries, including terms associated with state equity and any changes in the year under review, be publicly accessible. The MSG must also clarify the rules and practices governing financial relations between SOEs (most notably KRAOMA) and the state. The MSG may wish to liaise with relevant government entities and development partners to assess the extent to which clarification of such issues could support progress under the IMF extended credit facility. Stakeholders are encouraged to embed reporting of such information through routine government systems, for instance in publishing extractives SOEs' statutes and audited financial statements on a regular basis.



**Table 2- Summary initial assessment table: Award of contracts and licenses**

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Legal framework (#2.1)	Madagascar has disclosed the required information related to the legal framework and fiscal regimes governing the extractive industries, including a comprehensive description of the three co-existing mining legal frameworks and the degree of fiscal devolution. While the 2014 EITI Report only includes information on the roles and responsibilities of some of the relevant government agencies, information on the roles and responsibilities of all relevant government entities is accessible through the EITI Madagascar website. The report also briefly describes ongoing reforms.	Satisfactory Progress
License allocations (#2.2)	EITI Madagascar has ensured disclosure of the process for awarding licenses and contracts pertaining to companies in the scope of the 2014 EITI Report. The 2014 EITI Report comments on general non-trivial deviations from the 2011 moratorium and the efficiency of licensing procedures. However, the 2014 EITI Report does not clarify the nature of different license movements, leaving the process for transfer of license rights unclear, lacks clarity on the existence of technical and financial criteria and does not comment on the award of seven licenses in 2014. These gaps in information are significant, given the importance of the issue for all stakeholders. While there is a case for considering that the objective of transparency in license allocation and transfer is far from met, the prevailing lack of clarity related to the enforcement of the licensing freeze helps highlight the important impact of EITI reporting and the EITI-mandated studies as genuine diagnostic tools supporting debate over regulatory reform.	Meaningful Progress
License registers (#2.3)	Madagascar disclosed the mandated information under Requirement 2.3 for oil and gas licenses in 2014 and commented on the existence of publicly available registers at the end of 2016. Gaps in information on mining licenses in the 2014 EITI Report were offset by the BCMM's new online cadastre or accessibility upon request from BCMM.	Satisfactory Progress
Contract disclosures (#2.4)	While the 2014 EITI Report comments on the practice of contract disclosure, it does not clarify government policy, which remains unclear to stakeholders consulted.	Meaningful progress
Beneficial ownership disclosure	The 2014 EITI Report does not clarify the government's policy on beneficial ownership disclosure in the extractives sector. While it provides information on the legal owners of roughly half of the	

#2.5)	material companies, the identity of shareholders of companies incorporated in Madagascar are available from the Registry for Trade and Companies (RCS) website, albeit only for registered members at a fee.	
State-participation (#2.6)	The 2014 EITI Report provides a list of state interests in the mining sector, although there is a significant lack of clarity amongst stakeholders over whether the comprehensiveness of the list provided. The 2014 EITI Report does not describe the terms associated with state equity in extractives companies, nor any changes in state participation in the extractives sector in 2014. While the report provides a succinct description of financial relations between SOEs in practice in 2014, it does not describe the statutory financial relations between SOEs (such as KRAOMA) and the government. Nonetheless, the report does confirm that there were no loans or guarantees provided to extractives companies in 2014.	Inadequate progress
<p>International Secretariat's recommendations:</p> <ol style="list-style-type: none"> <li>6. To further strengthen implementation, the MSG may wish to consider embedding publicly-available information on the mining, oil and gas legal framework and fiscal regime in government public reporting systems or the EITI Madagascar website.</li> <li>7. In accordance with Requirement 2.2, a description of the process for transferring or awarding the license and the technical and financial criteria used should be publicly available. Not least given the significant debate surrounding license movements in the mining sector, EITI Madagascar is encouraged to use EITI reporting as a diagnostic tool for non-trivial deviations from the applicable legal and regulatory framework governing license transfers and awards. In cases of competitive tender for mining, oil and gas licenses, the MSG will have to disclose the list of applicants and the bid criteria for licenses awarded through a bidding process. The MSG is encouraged to consider stakeholders calls for further analysis on the efficiency and effectiveness of licensing procedures in Madagascar.</li> <li>8. To strengthen implementation, the MSG is encouraged to use annual EITI reporting as a diagnostic tool to assess the comprehensiveness, reliability and timeliness of data in BCMM and OMNIS' license cadastres. OMNIS is encouraged to maintain a publicly-available register or cadastre for oil and gas license with information mandated under Requirement 2.3.</li> <li>9. In accordance with Requirement 2.4, EITI Madagascar should clarify and document the government's policy on disclosure of contracts and licenses, as well as actual practice, including any reforms that are planned or underway.</li> <li>10. To strengthen implementation, the MSG may wish to consider piloting beneficial ownership reporting in upcoming EITI reporting in order to increase awareness of beneficial ownership transparency and pilot beneficial ownership definitions and thresholds. The MSG is encouraged to consider stakeholder calls to update the three-year beneficial ownership roadmap regularly to take account of progress and delays. The MSG is also encouraged to liaise with RCS to explore opportunities of mainstreaming reporting of legal owners of extractives companies. EITI Madagascar may also wish to conduct broader outreach to extractives companies and the Registry for Trade and Companies (RCS) on the objectives of beneficial ownership transparency, as well as hold conversations with government agencies on how to make such disclosures mandatory.</li> </ol>		

11. In accordance with Requirement 2.6, the MSG should ensure that a comprehensive list of state participation in the extractive industries, including terms associated with state equity and any changes in the year under review, be publicly accessible. The MSG must also clarify the rules and practices governing financial relations between SOEs (most notably KRAOMA) and the state. The MSG may wish to liaise with relevant government entities and development partners to assess the extent to which clarification of such issues could support progress under the IMF extended credit facility. Stakeholders are encouraged to embed reporting of such information through routine government systems, for instance in publishing extractives SOEs' statutes and audited financial statements on a regular basis.

## 3. Monitoring and production

### 3.1 Overview

This section provides details on the implementation of the EITI requirements related to exploration, production and exports.

### 3.2 Assessment

#### Overview of the extractive sector, including exploration activities (#3.1)

##### Documentation of progress

The 2014 EITI Report provides an overview of the mining, oil and gas sectors, including a recent history of developments, a description of the key locations of exploration key deposits (p.65) and information on inward FDI in the extractive industries for 2007-2014 (p.88). The report provides a map of oil and gas exploration blocks (p.19), a description of geophysical work through speculative studies (pp.20-21) and refers to a 2016 World Bank study on the economic impact of industrial mining (p.21, *see Requirement 6.3*).<sup>217</sup> The report provides lists of mineral reserves (p.20), a map of mining resource deposits (annex/pp.86-87), and a list of minerals covered by exploration and production licenses (pp.91-92). The MSG commissioned an independent study on geo-scientific data in 2015, with concrete recommendations on technical, regulatory, institutional and financial aspects of geological data management (*see Requirement 7.1, 7.3 and 7.4*).<sup>218</sup> The report describes the ASM sector for precious stones and gold extensively, including the ASM value chain, the licensing process, the various moratoria on new ASM licenses for precious stones<sup>219</sup> and the subsequent growth in informal mining (pp. 66-69, pp.53-55). The report also describes two case studies of gold mining in Antanimbary and small mines of Brieville (p.70). Madagascar's efforts through EITI to provide information on ASM have been hailed as pioneering given the lack of official census of small-scale miners in Madagascar.<sup>220</sup>

##### Stakeholder views

None of the stakeholders consulted expressed any particular views on the pertinence of the 2014 EITI Report's overview of the extractive industries, or exploration activities. There was however significant interest in the topic of artisanal and small-scale mining, with several CSOs highlighting the need for more EITI information on ASM. There was consensus amongst stakeholders that the formalisation of the ASM sector represented a priority for the government. Several stakeholders stressed the need to distinguish between legal and illegal artisanal miners and highlighted EITI links to other donor-funded programmes related to formalising artisanal mining, such as GIZ's project on ASM. Several government and industry officials only noted that inward FDI had dropped significantly since the construction phase of large mining projects like QMM and Ambatovy, which were now producing. Several industry representatives expressed

<sup>217</sup> See: World Bank (2015), 'Retombées économiques de l'exploitation minière industrielle à Madagascar', accessed [here](#) in November 2017.

<sup>218</sup> Enrique Ortega (May 2015), 'Diagnostic de la gestion de l'information géoscientifique', not accessible online as of 1st September 2017, provided by the EITI Madagascar Secretariat.

<sup>219</sup> The government imposed a moratorium on new ASM licenses for sapphires in 1999, for rubies in 2004 and imposed a general export ban on precious stones in 2008.

<sup>220</sup> Monkey Forest Social Development Consulting (September 2011), *op.cit.*, p.62.

hope that some of the five or six mining projects currently at advanced exploration phases would move to production, which would attract foreign investment to develop the projects.

### Initial assessment

The International Secretariat's initial assessment is that Madagascar has made satisfactory progress in meeting this requirement. The 2014 EITI Report provides an overview of the extractive sector, including exploration activities. In the International Secretariat's view, Madagascar has also gone beyond the minimum requirements by providing additional information on ASM including on the value chain, license award and two detailed cases studies, as encouraged by the Standard and of high value to stakeholders. EITI Madagascar also produced a study on geo-scientific data in 2015.

To further strengthen implementation, the MSG may wish to assess ways of publishing information on the extractive industries in open data format on the EITI Madagascar (or other government) website.

## Production data (#3.2)

### Documentation of progress

The report states that six material companies reported production figures to the IA (pp.92-93).<sup>221</sup> It provides their production volumes and values by commodity produced (pp.89-90), and by company, extraction site, and commodity produced (annex/pp.121-122). The value of production is missing for chromite production of KRAOMA and dolomite, calcite and kaolin production of PROCHIMAD MINES AND CARRIERES "PMC" SA. On the oil and gas sector, the report states that all blocks were still in exploration phase despite some having been awarded since 2004, and that there was no production in 2014 (p.18). The IA notes that it was given access to each company's methodology for calculating production and export data (p.90).

### Stakeholder views

There was consensus amongst MSG members that Madagascar Oil had not yet commenced commercial production of heavy oil at Tsimiroro in 2014. While the company had started pilot production in 2015, pumping roughly 1.6m barrels by 2017, it had been unable to commence commercial production to date. On mining, government representatives noted that production data was available at the DGM. One IA however noted that the government did not have independent capacity to verify the purity of mineral production reported by companies. On ASM, there was consensus amongst MSG members that their long-term ambition was to include production data for gold and precious stones in EITI reporting, but that the complexity of the sector and practical obstacles to data collecting had made it challenging thus far (*see Requirement 3.3*).

### Initial assessment

The International Secretariat's initial assessment is that Madagascar has made satisfactory progress towards meeting this requirement. The 2014 EITI Report provides data on production volumes and values

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<sup>221</sup> QMM, KRAOMA, HOLCIM, AMSA, DMSA and PROCHIMAD.

for most minerals, disaggregated by commodity and producing region. Missing figures for Kraoma's chromite production can be calculated based on export data, given that all production was exported (see *Requirement 3.3*). Although data is incomplete for dolomite, calcite and kaolin production, the latter is not considered material in the International Secretariat's view. Indeed, these minerals are destined for quarrying activities, which have been assessed as outside of the scope of the EITI in other instances by the EITI Board. The report confirms the lack of commercial oil production in 2014.

To strengthen EITI implementation, EITI Madagascar is encouraged to develop a regular mechanism for disclosing production volumes and values for all minerals produced in Madagascar, on its own website or a government agency's like BCMM. The MSG is also encouraged to consider stakeholder calls for expanded coverage of gold and precious stones production in EITI reporting.

### Export data (#3.3)

#### Documentation of progress

The report provides five material mining companies' disclosures of export volumes and values, by commodity produced (pp.89-90, see *Requirement 3.2*) and by commodity and project (annex/pp.123-124), with only the value of PROCHIMAD MINES & CARRIERES "P.M.C." SA's quartzite exports missing. The report notes the illicit nature of much of the country's exports of gold and precious stones from ASM, including the growth of gold smuggling since 2012 (pp.67-68).<sup>222</sup> An overview of 2014 export destinations for precious stones is provided (pp.67-68). The report highlights differences between export estimates for 15 precious stones in 2014 by the MPMP's Guichet Unique (pp.66-67) and figures from UNCTAD (p.68). Table 19 provides a summary of gold and precious stone export estimates according to various sources (p.69). Based on UNCTAD estimates, the value of Madagascar's exports of gold in 2014 was USD 45.77m, which would have provided the state with royalties of USD 915,400 (2% of export value) (p.69).

#### Stakeholder views

There was consensus amongst stakeholders over the lack of comprehensive official statistics on exports of minerals and precious stones. There was consensus, even from senior government officials, over the widespread smuggling of precious stones and gold. Several highlighted the difficulty in identifying the site of extraction of exported gold and precious stones, since the latter was usually different than the site of export. This in turn had implications for the calculation of royalties, which were often not paid to the commune near the extraction site. Many stakeholders from industry, civil society and partners considered that EITI data had become a reference point for mining export data on Madagascar. Yet CSOs deplored their perception of EITI data as outdated, with data often three years old, and called for more timely information. Several government officials considered the figures on ASM exports in the EITI Report to be an underestimation, and called for closer collaboration with ANOR in future EITI reporting.

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<sup>222</sup> The report explains that there were no formal exports of gold from Madagascar until the first half of 2012, although the Council of Ministers ceased formal gold exports after a short period in 2012 (p.68). It notes that despite the ban, the UNCTAD figure of USD 45.77m excludes exports of gold ores and concentrates and explains that UNCTAD estimated gold of exports of USD 18m in 2012, which would have translated to 600kg of gold and could have provided MGA 790m in royalties (p.68).

## Initial assessment

The International Secretariat's initial assessment is that Madagascar has made satisfactory progress in meeting this requirement. The 2014 EITI Report provides export volumes and values for each commodity exported and producing region. While the export value of one company's quartzite export is missing, the latter is a quarrying material and therefore not considered substantial in the International Secretariat's view (see *Requirement 3.2*). Furthermore, this minor gap is offset by the extensive information provided on the country's illicit exports of gold and precious stones. Given the complexity of the sector, EITI Madagascar has made remarkable efforts to document the current situation, compare existing data and highlight the loss in fiscal revenues for the country.

To strengthen EITI implementation, EITI Madagascar is encouraged to develop a regular mechanism for disclosing exports volumes and the value of exports for all minerals produced in Madagascar, on its own website or a government agency's like BCMM.

**Table 3- Summary initial assessment table: Monitoring and production**

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Overview of the extractive sector, including exploration activities (#3.1)	The 2014 EITI Report provides an overview of the extractive sector, including exploration activities. In the International Secretariat's view, Madagascar has also gone beyond the minimum requirements by providing additional information on ASM including on the value chain, license award and two detailed cases studies, as encouraged by the Standard and of high value to stakeholders. EITI Madagascar has also produced a study on geo-scientific data in 2015.	Satisfactory Progress (Beyond)
Production data (#3.2)	The 2014 EITI Report provides data on production volumes and values for most minerals, disaggregated by commodity and producing region. Missing figures for Kraoma's chromite production can be calculated based on export data, given that all production was exported ( <i>see Requirement 3.3</i> ). Although data is incomplete for dolomite, calcite and kaolin production, the latter is not material in the International Secretariat's view. Indeed, these minerals are destined for quarrying activities, which have been assessed as outside of the scope of the EITI in other instances by the EITI Board. The report confirms the lack of commercial oil production in 2014.	Satisfactory Progress
Export data (#3.3)	The 2014 EITI Report provides export volumes and values for each commodity exported and producing region. While the export value of one company's quartzite export is missing, the latter is a quarrying material and therefore not considered substantial in the International Secretariat's view ( <i>see Requirement 3.2</i> ). Furthermore, this minor gap is offset by the extensive information provided on the country's illicit exports of gold and precious stones. Given the complexity of the sector, EITI Madagascar has made remarkable efforts to document the current situation, compare existing data and highlight the loss in fiscal revenues for the country.	Satisfactory Progress
<p>International Secretariat's recommendations:</p> <ol style="list-style-type: none"> <li>1. To strengthen EITI implementation, the MSG may wish to assess ways of publishing information on the extractive industries in open data format on the EITI Madagascar (or other government) website.</li> <li>2. To strengthen EITI implementation, EITI Madagascar is encouraged to develop a regular mechanism for disclosing production volumes and values for all minerals produced in Madagascar, on its own website or a government agency's like BCMM. The MSG is also encouraged to consider stakeholder calls for expanded coverage of gold and precious stones production in EITI reporting.</li> </ol>		



3. To strengthen EITI implementation, EITI Madagascar is encouraged to develop a regular mechanism for disclosing exports volumes and the value of exports for all minerals produced in Madagascar, on its own website or a government agency's like BCMM.

## 4. Revenue collection

### 4.1 Overview

This section provides details on the implementation of the EITI requirements related to revenue transparency, including the comprehensiveness, quality and level of detail disclosed. It also considers compliance with the EITI Requirements related to procedures for producing EITI Reports.

### 4.2 Assessment

#### Materiality (#4.1)

##### Documentation of progress

**Materiality threshold for revenue streams:** As highlighted in Madagascar's 2011 Validation report<sup>223</sup>, EITI Madagascar has always set a materiality threshold of zero for selecting revenue streams for reconciliation and the 2014 EITI Report confirms this that all revenue streams in sector legislation were included (p.43). While the IA's ToR define the threshold for "significant payment" as USD 5000 (pp.40-41,43), this threshold was the basis for selecting material companies, not revenue streams. The report highlights the exclusion of two types of government VAT payments to companies<sup>224</sup> from reconciliation, in contrast to the 2013 EITI Report (p.22). The report also describes the government's inability to disaggregate extractives shares of common taxes, which are levied at a company level (p.124).

**Descriptions of material revenue streams:** The 2014 EITI Report provides a general list of material revenue stream types (p.44) and a comprehensive list of 91 revenues included in reconciliation (pp.48-52,95-97). The report provides a list of references to relevant laws and regulations for each material revenue stream (pp.49-52), while the reporting templates in Annex 2 include succinct definitions of each material stream (annex/pp.2-19).

**Materiality threshold for companies:** Based on initial reporting from five government entities<sup>225</sup>, the IA identified a total of 141 companies holding active licenses on 31 December 2014 that had made payments to government in 2014 (pp.35,37). Referring to provisions of the IA's ToR defining the threshold for "significant payments", the report confirms a materiality threshold of USD 5000 in aggregate payments to government (defined as payments to BCMM and OMNIS) for selecting companies (pp.40-41,43). However, the report recommends the future inclusion of companies not holding extractives licenses but making significant payments to government (DGM or ANOR) in future EITI Reports (p.123).

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<sup>223</sup> General Taxation Code, the Mining Code, the Establishing Agreement and the LGIM. Monkey Forest Social Development Consulting (September 2011), op.cit., pp.35-36.

<sup>224</sup> VAT payments by extractives companies to their suppliers and non-reimbursed company requests for VAT refunds.

<sup>225</sup> OMNIS, BCMM, tax department, customs and ONE.

		Group A	Group B	Group C	Total
		<i>Company and Government data reconciled</i>	<i>Unilateral government reporting</i>	<i>Reporting of aggregate figure</i>	
Initial Materiality Decisions	Number of companies	65	6	70	141
	Number of reporting companies	40	0	0	
	Coverage of reporting	92.96%	98.93%	100%	
Final Materiality Decisions	Number of companies	44	6	91	141
	Number of reporting companies	30	0	0	
	Coverage of reporting	92.53%	98.07%	100%	

Source: 2014 EITI Report, pp.34-35.

**Material companies:** The number of material companies (Group A) was revised downward from 65 to 44 during the course of data collection and reconciliation, as the IA found errors in initial government reporting. The report provides the reconciliation coverage of government extractives revenues according to both the original and revised materiality calculations (97.5% and 97.56% respectively), as well as the final reconciliation coverage (92.53%) given that only 30 of the 44 material companies in the final Group A reported (pp.34-35). The report lists the full names of the initial 65 companies (annex/pp.20-22) and the revised list of 44 material companies in the final Group A (pp.102-103, annex/pp.138-140).

**Material company reporting:** The report confirms that 40 of the initial 65 material companies and 30 of the final 44 material companies submitted reporting templates (pp.34-35,38,44-45). The names and general reasons for non-participation of the 14 non-reporting companies are provided (pp.17, 36,44-45, annex/pp.141-143, annex/pp.144-148).<sup>226</sup> The report also describes Ministerial Circulars requiring the named material companies to participate in EITI reporting<sup>227</sup> (p.36, annex/pp.23-26). The report also notes challenges in data collection from Chinese-owned companies (p.125) and provides the termination letter for one of the material companies, Nan Tin Polychrome SA (annex/pp.80-81). There are inconsistencies in the report's estimation of the materiality of payments from non-reporting companies. The report assesses the materiality of revenues from the 25 non-reporting companies in the initial Group A as a range of 5.04% (p.36), 5.62% (p.44) and 5.65% (pp.34,44-45), although the materiality of omissions from the group of 14 non-reporting companies in the final Group A (of 44) is provided as 5.03% (p.35). However, the report only estimates the materiality of omissions in aggregate, not disaggregated by non-reporting company, and the government's unilateral disclosure is not sufficiently disaggregated to estimate the share of each non-reporting company's payments to government (*see Requirement 4.7*).

**Material government entities:** The report lists all material government entities in the scope of reporting (p.37). The report explains that 12 communes in five regions were selected for subnational reporting (*see Requirement 4.6*) (p.42). However, the 2014 EITI Report does not list them, whereas the 2013 EITI Report listed 11 communes<sup>228</sup>, four regions<sup>229</sup> and two provinces<sup>230</sup> included in the scope of reporting.<sup>231</sup>

<sup>226</sup> Including four companies that explicitly refused to participate and ten companies that could not be identified or contacted.

<sup>227</sup> Arrêté 22727/2016 makes participation in EITI reporting mandatory for all companies.

<sup>228</sup> The 11 communes included in the scope of reporting for the 2013 EITI Report were: Ampasimadinika Tamatave; Sahamatevina Tamatave; Anjahamana Tamatave; Ibity; Tritriva; Rurale d'Andranomanelatra; Brieville; Andriamena; Ampasy Nahampoana; Mandromodromotra; Fort Dauphin.

<sup>229</sup> The four regions included in the scope of reporting for the 2013 EITI Report were: Tamatave; Vakinankaratra; Betsiboka; Anosy.

<sup>230</sup> The two provinces included in the scope of reporting for the 2013 EITI Report were: Province Tamatave and Province Autonome Mahajanga.

<sup>231</sup> EITI Madagascar (January 2015), 'Madagascar 2013 EITI Report', op.cit., pp.99-100.

**Government reporting:** The report confirms that all material government entities reported (p.38) and government entities was fully cooperative, in contrast to previous reports (p.126).

**Discrepancies:** The report presents a confusing explanation of two materiality thresholds for discrepancies (p.44). “Overall materiality”, set at 1% a company’s total payments, is used for assessing the overall reliability of the report. “Performance materiality”, set at 50% of overall materiality’s 1%, is described as the threshold “on which reconciliation work is based”, implying a discrepancies materiality threshold of 0.5% of a company’s payments. The report does not present the results of reconciliation disaggregated by company and revenue stream, hindering the ability to identify discrepancies in specific company payments. The netting out of discrepancies across companies and revenue streams under-values the value of gross discrepancies. The report presents the results of reconciliation in aggregate for mining and oil and gas, with 0.10% (USD 58.47m) net aggregate unreconciled discrepancies for the two sectors combined (pp.27,101-103). The report presents adjustments during reconciliation, albeit only disaggregated by company and receiving government entity, alongside the general reasons for discrepancies (pp.104-110). The report considers the final net aggregate unreconciled discrepancy below the materiality threshold of 1% for investigating discrepancies (p.27).

**Full government disclosure:** The report provides full unilateral government disclosure for 71 of the 141 extractives companies, disaggregated by receiving government entity rather than individual revenue stream (pp.26,95-97,110-112). This is problematic as every revenue-collecting entity receives at least two revenue streams. The report presents a segmentation of the 141 extractives companies in three groups, including a Group A of material companies (65, revised down to 44), Group B of companies for which government provided unilateral disclosures (6, not revised), and Group C of companies for which the government only reported an aggregate revenue figure (70, revised to 91) (pp.37,46,110-112, annex/pp. 149-156). The coverage of Groups A and B declined from 98.93% of government extractives revenues to 98.07% as a result of reconciliation. While the different groups were restructured during data collection, it appears that the government provided reporting disaggregated by revenue stream for the original 71 companies in Groups A and B, even if the report does not present this information disaggregated by revenue stream. There is no evidence of government reporting revenues from the other 70 non-material companies, which admittedly only account for less than 2% of sector revenue.

## Stakeholder views

**Materiality:** Stakeholders explained that the MSG had only considered a materiality threshold for selecting companies and for investigating discrepancies, not for selecting revenue flows. No stakeholder was aware of the option of setting a threshold for selecting key revenue streams. Yet MSG members explained that all revenue streams had been included since the start to gain a comprehensive view of all payments by extractives companies, even though exploration-phase extractives companies are exempt from most fiscal payments.<sup>232</sup> The International Secretariat’s calculations based on the detailed reporting results provided by the IA show that the 17 largest revenue streams accounted for 94% of government extractives revenues in 2014 and that there were no revenues reported for 33 revenue streams included

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<sup>232</sup> The 2011 Validation report noted that three mining companies (Rio Tinto QMM, Ambatovy and Kraoma) accounted for between 96% and 99% of all extractives tax revenues between 2007 and 2011. Monkey Forest Social Development Consulting (September 2011), op.cit., pp.35-36.

in the scope of reconciliation. Several CSOs called for companies' provisioning for environmental rehabilitation to be included in future reconciliations. An industry representative called for an explanation of the government's treatment of bank guarantees left by ExxonMobil, Total and Tullow when they relinquish oil blocks in 2015. Several industry representatives hailed the 2012-2013 EITI Reports' coverage of non-reimbursed VAT refunds given the high value<sup>233</sup> of such government liabilities, although the MSG agreed such government liabilities were not company payments to government.

Several officials explained that a Ministerial Circular in 2013 had provided a permanent waiver of the Tax Code's confidentiality provisions for EITI purposes. All stakeholders confirmed that the MSG based its materiality decisions on the initial government disclosures by revenue-collecting entities. Yet several IAs emphasised that initial government reporting was always subject to revisions during reconciliation, given weak government record-keeping like inconsistent tax ID numbers. Several officials noted the relevance of the Tax Department's Large Companies Directorate (DGE<sup>234</sup>) as a natural vehicle for mainstreaming EITI implementation given that it collects tax from the 18 largest mining companies and one oil and gas company.<sup>235</sup> The International Secretariat's calculations based on the detailed reporting results provided by the IA show that the 17 material companies making the largest payments to government accounted for over 91% of reconciled revenues in 2014. Stakeholders noted that three of the 31 government entities included in the scope of reporting (DGE, BCMM and OMNIS) collected the lion's share of extractives revenues. Several IAs and MSG members confirmed that the local government entities included in the reconciliation were selected on the basis of the location of the five largest mining company taxpayers, albeit without setting a materiality threshold as a share of total payments to subnational governments (*see Requirements 4.6 and 5.2*).

**Reporting omissions:** Several IAs noted that the improvement in government engagement over recent EITI reporting rounds. The IA confirmed that all government entities provided all requested financial information, despite challenges in government record-keeping such as inconsistencies in tax ID numbers used by the MFB and the MPMP. Several MSG members and the IA confirmed that 14 of the 44 material companies in the 2014 EITI Report had not reported - four outright refusing and ten deemed 'unreachable'. Several IAs noted that the BCMM's database of license-holders was not updated regularly in light of frequent license movements (*see Requirement 2.3*). All constituencies highlighted the tendency for certain companies to hold mining licenses in search of investors without work, although views on the extent to which this occurred differed. The IA and industry representatives explained that two companies that had refused to report for 2014 had ceased operations by 2016. Yet Gallois Etablissement, one of the companies refusing to report, was the fourth-largest taxpayer in 2014 according to industry representatives, who explained this as a simple misunderstanding. There was consensus that statutory sanctions in the Ministerial Circulars on EITI reporting were not enforced in practice to date.

The IA clarified that the materiality threshold for investigating discrepancies was set as 0.5% of a company's total payments to government, netted out across all payment streams from the company. The "overall materiality" was considered in the final assessment of the reliability of a company's payments post-reconciliation. Several MSG members expressed surprise at the lack of sufficient disaggregation of reconciled revenues, although the IA noted that, while this information had been prepared, it had not

<sup>233</sup> valued at around USD 180m for Ambatovy in 2014.

<sup>234</sup> Direction des Grandes Entreprises.

<sup>235</sup> Large taxpayers defined as companies with turnover of more than MGA 4bn (USD 1.26m).

been transmitted to the MSG. The IA provided spreadsheets of reconciled data during stakeholder consultations in November 2017 (see Requirement 4.7). The IA noted that it had sufficient data to estimate the materiality of payments from non-reporting companies, although it had only included aggregates in the 2014 EITI Report, and promised to provide this information to the MSG.

Government unilateral disclosure: The IA confirmed that the government had provided unilateral disclosure for 71 of the 140 companies holding extractives licenses in 2014, but that it had not considered it possible for the government to report revenues for the other 70 companies (in Group C) disaggregated by company. There was a lack of clarity among stakeholders on Requirement 4.1.d's mandate to present total government extractives revenues for every material revenue stream, disaggregated only by flow but not by company.

### Initial assessment

The International Secretariat's assessment is that Madagascar has made inadequate progress towards meeting this requirement. The 2014 EITI Report includes the MSG's rationale and definition of materiality thresholds for companies to be included in reconciliation based on payments to government. There is no evidence of the MSG having considered the materiality of revenue streams included in the scope of reconciliation, although the MSG appears to have consistently adopted a de-facto materiality threshold of zero for selecting material revenue streams. Nonetheless all revenues listed in Requirement 4.1.b are de facto included. In addition, the 2014 EITI Report's description of the approach to materiality for selecting companies is not sufficiently clear to ensure its accessibility to the average reader. The companies that did not report are named and the value of their payments to government is provided relative to government-reported revenues in aggregate, although not by non-reporting company. The share of non-reporting companies (roughly 5% of sector revenue) is deemed insignificant by the IA. While material government entities appear to have reported all revenues from 71 of the largest extractives companies, the lack of data on the remaining 70 companies and the lack of any data disaggregated by revenue stream is a concern. Nonetheless, the report includes commentary from the IA on the comprehensiveness of the EITI Report.

In accordance with Requirement 4.1.a, the MSG should ensure that its materiality decisions related to selecting companies and revenue streams for reconciliation are clearly documented. In its approach to the materiality of revenue streams, the MSG is encouraged to strike a balance between comprehensiveness and relevance for stakeholders, to ensure that a workable approach to reconciliation is adopted and to facilitate the embedding of revenue transparency in government and company systems. In accordance with Requirement 4.1.c, the MSG should ensure that the materiality of payments from each non-reporting entity is clearly assessed to support the IA's overall assessment of the comprehensiveness of reconciliation. In accordance with Requirement 4.1.d, unless there are significant practical barriers, the government is additionally required to provide aggregate information about the amount of total revenues received from each of the benefit streams agreed in the scope of reconciliation, including revenues that fall below agreed materiality thresholds.

## In-kind revenues (#4.2)

### Documentation of progress

The 2014 EITI Report states that the government does not receive any revenues in-kind, as confirmed by BCM and OMNIS (p.82).

### Stakeholder views

All stakeholders consulted confirmed that there were no government revenues transferred in-kind in 2014. While oil and gas PSCs provided for the in-kind payment of Profit Oil, stakeholders confirmed there was no commercial production of oil and gas in 2014 (*see Requirement 3.2*). An industry representative also noted that the government (through OMNIS) did not yet have the capacity to take physical delivery of any in-kind oil and gas revenues.

### Initial assessment

The International Secretariat's initial assessment is that this requirement is not applicable to Madagascar in the year under review. The 2014 EITI Report clearly states that the government did not collect any revenues in-kind in 2014.

To further strengthen implementation, the MSG may wish to publicly clarify that provisions in oil and gas PSCs for the government to collect certain revenues in-kind are not yet implemented given the lack of commercial oil and gas production and the government's lack of capacity to take physical delivery of any in-kind revenues.

## Barter and infrastructure transactions (#4.3)

### Documentation of progress

The 2014 EITI Report states that material companies were specifically asked whether they were involved in any barter, including through infrastructure grants provided under separate agreements with communes (pp.128-130). None of the companies reported barter involving these infrastructure provisions (annex/pp.129-130).

### Stakeholder views

All stakeholders consulted confirmed that there were no barter or infrastructure provisions in full or partial exchange for oil, gas or mining exploration or production concessions or physical delivery of such commodities. Several industry representatives confirmed that none of the infrastructure grants were contractual obligations, but rather were negotiated between the company and the host commune(s).

In November 2010, the government established Singapore-domiciled Madagascar Development Corp., in which it held a 15% stake alongside China Infrastructure Fund. The company's focus was to develop infrastructure projects part-funded by signature bonuses for mineral rights, although it is unclear whether such infrastructure projects were intended to be formally exchanged for mineral rights or simply funded

by the proceeds of mineral rights.<sup>236</sup> The project does not appear to have been successful and the MDC appears as deregistered on Singapore's corporate registry.<sup>237</sup>

### Initial assessment

The International Secretariat's initial assessment is that this requirement is not applicable to Madagascar in the year under review. The 2014 EITI Report demonstrates that there were no barter or infrastructure provisions in force in 2014.

## Transport revenues (#4.4)

### Documentation of progress

The 2014 EITI Report does not refer to any transportation revenues. It lists three entities managing port infrastructure in Madagascar as reporting government entities: the Autonomous Toamasina Port Management Company (SPAT<sup>238</sup>), the Conventional Goods Handling Company (SMMC<sup>239</sup>) and Madagascar International Container Terminal Services Ltd. (MICTSL) (p.37). The report includes five revenue streams collected by "the port" in the scope of reconciliation, including fees for inspection, imports and exports of goods, use of infrastructure and royalties on maritime flows (p.48). This implies that the MSG has considered these five revenue streams as material. According to the government's unilateral disclosure of revenues (provided by the IA during Validation), the five revenue flows accounted for around 3.5% of total revenues combined, with one revenue stream<sup>240</sup> accounting for more than 1% of government extractives revenues. However, there is insufficient information in the report to determine whether these revenue streams represent payment for the use of government-owned transportation infrastructure. In addition, the report does not clarify which of the three port-related entities are covered by the term "the port". There is no evidence of the disclosure nor reconciliation of such revenues, although the detailed reconciled data provided to the International Secretariat shows that companies reported payments under all five revenue streams. There is no clarity on whether any such transportation revenues are transferred to the Treasury. In addition to the five revenue streams collected by "the port", the reporting templates provided in Annex 1 also show that companies were explicitly asked to report any payments to government for the transportation of minerals under payment stream 91 (annex/p.12), although there is no evidence of any company reporting such payments in the 2014 EITI Report. While the report refers to transfers from the Port of Toamasina MICTSL to local governments (p.129), it does not explain the nature of these port-collected revenues transferred to local governments.

### Stakeholder views

Stakeholders provided different opinions over the status of the Port of Toamasina MICTSL, with some considering that it was a private company operating the port on a concession from government while

<sup>236</sup> The Africa Center for Strategic Studies (May 2015), 'The Anatomy of the Resource Curse: Predatory Investment in Africa's Extractive Industries', accessed [here](#) in November 2017, p.66.

<sup>237</sup> Open Corporates, Webpage on Madagascar Development Corp. PTE, accessed [here](#) in November 2017.

<sup>238</sup> Société du Port à gestion Autonome de Toamasina (SPAT).

<sup>239</sup> Société de Manutention de Marchandises Conventionnelles.

<sup>240</sup> Fees for the use of infrastructure accounted for around 1.35% of government extractives revenues in 2014.



others considered that it was a joint-stock company in which the government held an interest. Several government representatives and the IA explained that mining companies paid a fee to the port operator for use of the transport facilities. However, none of the stakeholders consulted knew whether the port operator paid a fixed concession fee to the government, or whether the revenues collected from mining companies were transferred to the Treasury. A 2013 report by the International Finance Corp. (IFC) noted that the concession fee was calculated as EUR 36.8 per tonne equivalent unit (TEU).<sup>241</sup> However, such concession fee payments by the Port of Toamasina operator to the government are made based on TEUs handled regardless of the nature of goods transported, i.e. not specific to minerals. Spreadsheets of reconciled data provided to the International Secretariat by the IA show that companies such as Holcim reported payments under the five revenue streams collected by the “port” included in the scope of reporting.

### Initial assessment

The International Secretariat’s initial assessment is that Madagascar has made inadequate progress towards meeting this requirement. There is insufficient (and apparently contradictory) information in the 2014 EITI Report to assess whether the government collects any revenues from the transportation of minerals. Despite the lack of evidence of MSG discussions of the materiality of transportation revenues, the MSG appears to have considered all five revenue flows to be material given their inclusion in the scope of reconciliation. While two port management companies were included in the scope of reporting as government entities, there is no explanation of their legal status nor the management of port-related fees they collect. Finally, there is no evidence in the 2014 EITI Report of reporting of the five revenue streams included in the scope of reconciliation. While all but one of the five revenue streams appear to account for less than 1% of total government extractives revenues (based on additional data received during Validation – see *Requirement 4.7*), the lack of MSG discussion of the materiality of transportation revenues and the lack of evidence of reporting in the 2014 EITI Report support the International Secretariat’s assessment. According to the Validation Guide, “Disclosure of material transportation revenues is expected, but not required for compliance with the EITI provisions. Where transportation revenues are material but not disclosed, Validation is expected to evaluate whether the MSG has documented and explained the barriers to provision of this information and any government plans to overcome these barriers”.

In accordance with Requirement 4.4, the MSG should assess the materiality of government revenues from the transportation of minerals, clarifying the management of port-related fees on the transportation of minerals.

## Transactions between SOEs and government (#4.5)

### Documentation of progress

The 2014 EITI Report confirms that there are no financial transactions between extractives SOEs and the state in 2014, as reported by OMNIS, KRAOMA and reporting entities (p.82). There is no evidence in the

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<sup>241</sup> International Finance Corp. (August 2013), ‘Public-Private Partnership Impact Stories - Madagascar: Port of Toamasina’, accessed [here](#) in November 2017, p.2.

report of any payments from QMM to OMNIS or from MCM to NASSCO.

### Stakeholder views

With regards to SOE transactions with government, all stakeholders consulted confirmed that KRAOMA did not pay any dividends to the state in 2014, even if there was considerable disagreement over the statutory financial relations between KRAOMA and the state (*see Requirement 2.6*). The Treasury's publication on dividends from SOEs in 2014 highlights that KRAOMA's Board of Directors agreed at its 22 December 2014 meeting a MGA 1bn (USD 313k) dividend to the government related to its performance in 2013, presumably paid in 2015.<sup>242</sup> Several CSO representatives expressed significant concern at the lack of KRAOMA dividends to government in 2014 and highlighted public allegations of financial mismanagement at the SOE. Several government officials explained that the lack of KRAOMA dividend in 2014 was due to the government's plans to retain these earnings to increase the SOE's capital base (*see Requirement 2.6*). Several industry stakeholders confirmed that MCM did not yet pay any dividends to NASSCO, given that it was still in the exploration phase. Stakeholders did not express any particular views on whether QMM paid any dividends to OMNIS in 2014. December 2015 press articles covering Rio Tinto's USD 44m increase in QMM's equity indicate that the mining company had yet to pay any dividends to government and that the government's share of the capital increase would be deducted from future dividend payments.<sup>243</sup>

### Initial assessment

The International Secretariat's initial assessment is that this requirement was not applicable to Madagascar in the year under review. The 2014 EITI Report states that there were no financial transactions between extractives SOEs and the state in 2014 and there is no evidence in the report of any dividend payments from QMM to OMNIS and from MCM to NASSCO, which was confirmed by stakeholders consulted.

To strengthen implementation ahead of future dividend payments from extractives companies to the government, the MSG is encouraged to ensure that a comprehensive assessment of financial transactions between extractives companies and government entities and between KRAOMA and the government is publicly available.

## Subnational direct payments (#4.6)

### Documentation of progress

***Materiality:*** The 2014 EITI Report states that regions and communes levy direct subnational taxes and fees (p.39) and lists 23 payment flows from extractives companies to the two tiers of subnational

<sup>242</sup> Direction Générale du Trésor, Ministère des Finances et du Budget (2016), 'Dividendes de l'Etat exercice 2011 à 2014', accessed [here](#) in November 2017.

<sup>243</sup> Midi Madagascar (December 2015), 'Recapitalisation de QMM SA : Aucun décaissement de l'Etat malgache', accessed [here](#) in November 2017; and Midi Madagascar (December 2015), 'Madagascar: Mines - La recapitalisation pour sauver QMM de la faillite', accessed [here](#) in November 2017.

government, communes and regions (pp.95-96). The only payment stream in this list that appears specific to extractives companies is quarrying royalty (*Redevances carrière*). There is no evidence that the MSG set a materiality threshold for selecting direct subnational payments for reporting.

There are contradictions in the 2014 EITI Report over whether mining ristournes, required under Article 294 of the Mining Code's implementing Decree (p.94), represent direct subnational payments or subnational transfers. While Table 57 and Figure 12 of the 2014 EITI as well as the 2013 EITI Report<sup>244</sup> indicate that ristournes are paid directly to LGUs (pp.100,119-120), Table 39 of the 2014 EITI Report describes ristournes as subnational transfers, first collected by DGM and subsequently transferred to regions and communes (p.96). There is a similar lack of clarity on whether ristournes levied on artisanal-mined gold for the benefit of subnational governments are direct payments or subnational transfers (p.54). The report provides the general formula for calculating splits in ristournes between Autonomous Province (20%), Region (30%) and Commune (60%) (p.94). While the report clarifies that communes are not statutorily entitled to a share of royalties paid by most extractives companies (p.94), it also notes that decentralised government entities are entitled to 1.4% of the 2% royalties levied on artisanal-mined gold (p.54) and 100% of quarrying royalties (p.48,95,99).

Although the report alludes to direct subnational payments of unspecified "royalties" by non-state entities like the Port of Toamasina MICTSL to local governments and notes constraints in disaggregating these "royalties" by company (p.129), the report does not include the value of subnational direct payments by the Port de Toamasina MICTSL to local governments, even in aggregate. The Port of Toamasina MICTSL is a private company operating the port on concession from the government (*see Requirement 4.4*).

For oil and gas specifically, Article 45 of the Petroleum Code requires oil and gas companies to pay 1/2500<sup>th</sup> of the overall minimum work programme expenditures over the whole period of license validity to communes affected by the exploration license, payable in one sum at the start of exploration work. Article 45 states that the modalities of payment "will be" set by implementing regulation (p.94), although the 2014 EITI Report does not clarify whether this legal provision has yet been enforced. There is no evidence of companies reporting such payments in the report.

**Reporting:** The report provides reporting companies' unilateral disclosure of the aggregate value of all 23 payments to regions and communes as USD 7,111,851.52, or 11.7% of government extractives revenues in 2014 (pp.95-96), although the information is not disaggregated by local government or revenue stream. There is no evidence in report that these revenue streams were reconciled, despite the inclusion of 12 communes (in five regions) in the scope of reporting, selected on the basis of the location of operations of the five largest extractives taxpayers in Madagascar (Ambatovy, Dynatec, QMM, Kraoma, Holcim; p.42). The IA highlighted logistical challenges to extending reporting to subnational governments in order to reconcile subnational transfers (p.93). The report suggests capacity building for the treasurers of communes and regions (pp.128-129).

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<sup>244</sup> EITI Madagascar (2015), 2013 EITI Report, op. cit., p.100.

In terms of quarrying royalties, the report reconciles only AMSA's payments to the Commune of Ambohibary (p.120). It provides the results of reconciliation of Holcim and QMM's reporting of ristournes with ten communes' receipts (pp.119-120). Small discrepancies in transfers to two communes<sup>245</sup> are explained. However, the report does not disclose the value of total ristournes payments reported by companies and government entities, aside from the total value of mining ristournes, royalties and conformity fees combined (p.96). It is thus unclear from data in the 2014 EITI Report whether the two companies' reporting of ristournes is comprehensive of all ristournes paid for 2014. There is no evidence of disclosure of the 1.4% royalty on artisanal-mined gold, either in aggregate nor disaggregated by receiving subnational government.

### Stakeholder views

There was consensus among MSG members and the IA that a materiality threshold of zero had been applied for selecting direct subnational payments in the scope of reconciliation. All oil and gas industry representatives and several government officials confirmed that provisions for direct subnational transfers under Article 45 of the Petroleum Code had yet to be applied given that implementing regulations had not yet been issued.

While stakeholders agreed that all companies holding production licenses had to pay ristournes, there was considerable confusion among stakeholders consulted, including within the same Ministry, over the direct beneficiaries of ristournes, i.e. whether ristournes were paid directly to subnational governments (communes and regions) or whether they were paid to the national government (Geology and Mines Department) and subsequently transferred to subnational governments. Several government and industry representatives noted that, while ristournes were all paid directly to subnational governments following the decentralisation policy since 2005, this had not been fully implemented. While representatives of individual companies could identify the government entity to which their company paid ristournes, they could only comment on the situation for their particular company and highlighted the existence of different ristournes payment structures for different companies.

However, there was consensus amongst stakeholders consulted that QMM paid ristournes directly to the region, which then transferred each commune's share, given that QMM had received a dedicated Decree regulating the payment of its ristournes. Several stakeholders from all constituencies confirmed that Ambatovy had not yet started paying ristournes to subnational governments given the absence of a decree defining the beneficiaries, although the company had already provisioned around USD 12m for such payments. They explained that while the company's extraction only impacted three communes, company management was working with local authorities to ensure an equitable sharing of ristournes between the 22 communes affected by the company's refining and transportation infrastructure. None of the stakeholders consulted, including the IA, could clarify whether Holcim paid ristournes directly to subnational governments, despite the 2014 EITI Report's reconciliation of Holcim ristournes payments with subnational government receipts. However, several MSG members confirmed that the reconciliation of ristournes payments for only two companies was not comprehensive, based on consensus amongst stakeholders that they applied to all companies holding production licenses. Stakeholders from all constituencies highlighted the importance of EITI Madagascar's dedicated study on subnational payments

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<sup>245</sup> Communes of Ampasy Nahampoana and of Mandromodromotra.

and transfers, due for publication in February 2018 by EY, in order to clarify the situation.

### Initial assessment

The International Secretariat's initial assessment is that Madagascar has made inadequate progress towards meeting this requirement. The 2014 EITI Report describes direct subnational payments, with only one revenue stream specific to extractives activities. While the de facto materiality threshold of zero for selecting direct subnational payment streams implies that the 2014 EITI Report should have reconciled material companies' payments of 23 types of payments, it appears that only certain ristournes and quarrying royalties were reconciled. The lack of clarity around the beneficiaries of ristournes payments means that there is insufficient information in the report to assess the comprehensiveness of the reconciliation. The lack of description of the unpaid Ambatovy ristournes in the 2014 EITI Report is also a concern given the value of these arrears and their importance for relevant subnational governments. There was consensus amongst stakeholders consulted that the reconciliation of direct subnational payments in the 2014 EITI Report is not comprehensive.

In accordance with Requirement 4.6, the MSG should establish whether direct subnational payments, within the scope of the agreed benefit streams, are material. Where material, the MSG is required to ensure that reconciled information on company payments to subnational government entities and the receipt of these payments be publicly accessible. EITI Madagascar may wish to provide more information on the disbursement of ristournes from Ambatovy to host communes built-up since the start of production in 2012 given the materiality of such delayed payments.

### Level of disaggregation (#4.7)

#### Documentation of progress

The 2014 EITI Report (Annex 23) presents reconciled financial data disaggregated by company, government entity but not by revenue stream (annex/pp.157-159). The report only presents the final set of reconciled data, which does not highlight discrepancies between government and company reporting at a disaggregated level. Reconciled financial information in the 2012 and 2013 EITI Reports was presented disaggregated by company, government entity and revenue stream. The lack of disaggregated reconciled financial data appears to have been an oversight and detailed spreadsheets of financial data were provided to the International Secretariat in November 2017. While production and export data is presented by project, reconciled payment information is presented consolidated by government entity, not by revenue stream or project. The report also describes the government's inability to disaggregate extractives shares of common taxes, which are levied at a company level (p.124).

#### Stakeholder views

Several MSG members and previous IAs expressed surprise at the lack of disaggregation of reconciled financial data in the 2014 EITI Report, in contrast to previous EITI Reports. Upon discussion with the IA, a spreadsheet detailing the results of initial data collection and reconciliation was provided to the International Secretariat. Several MSG members from all constituencies highlighted the short timeframe for the MSG's finalisation of the 2014 EITI Report in late December 2016 as a reason for such oversights in the report. None of the stakeholders consulted expressed particular views on the opportunities and challenges of moving towards project-level EITI reporting. Several industry and government

representatives noted that many mining companies only operated one project in Madagascar and thus already de facto reported on a project basis.

### Initial assessment

The International Secretariat's initial assessment is that Madagascar has made meaningful progress in meeting this requirement. Reconciled financial data in the 2014 EITI Report is presented disaggregated only by company and government entity, not by individual revenue stream. While this appears to have been an oversight in publishing the 2014 EITI Report, given that detailed reconciled financial data disaggregated by revenue stream was provided to the International Secretariat in November 2017 (but not made publicly available), the lack of sufficiently disaggregated reconciled data has a material impact on assessments of the comprehensiveness of reporting (*see Requirement 4.1*).

In accordance with Requirement 4.7, the MSG is required to ensure that EITI data is presented by individual company, government entity and revenue stream. To strengthen implementation, the MSG may wish to consider the extent to which it can make progress in implementing project-level EITI reporting ahead of the deadline for all EITI Reports covering fiscal periods ending on or after 31 December 2018.

### Data timeliness (#4.8)

#### Documentation of progress

While EITI Reports covering 2007-2009, 2010 and 2011 were published in June 2011, September 2012 and August 2013 respectively, Madagascar subsequently faced challenges in the timeliness of its EITI reporting due to funding constraints, which delayed publication of the 2012 and 2013 EITI Reports to January 2015. The 2014 EITI Report was published on 20 December 2016. The 2014 EITI Report confirms the period under review as 1 January – 31 December 2014 (p.12).

#### Stakeholder views

Several industry and civil society representatives called for timelier publication of EITI data, which would improve the value and relevance of EITI information for key stakeholders. Several industry stakeholders considered that EITI data collection would be facilitated if it were timelier, given that mining companies normally submitted their audited financial statements to the government within six months of a financial year's close. They also noted that timelier data collection would address some of the challenges encountered in contacting companies that had ceased operations since the year(s) under review. Several civil society representatives noted the consistent feedback from dissemination events that EITI data was outdated by the time of its publication.

### Initial assessment

The International Secretariat's initial assessment is that Madagascar has made satisfactory progress towards meeting this requirement. The 2014 EITI Report was published within two years of the end of the fiscal period under review, in December 2016, and the MSG agreed the reporting period.

To strengthen implementation, the MSG may wish to liaise with key revenue collecting agencies and

sector regulators to explore means of embedding disclosures of EITI-required information in routine government systems to ensure timelier EITI reporting.

## Data quality (#4.9)

### Documentation of progress

*Terms of Reference for the Independent Administrator:* For the 2014 EITI Report, the MSG initially discussed the draft IA's ToR at its 23 February 2015 meeting<sup>246</sup> before approving them on 27 February 2015.<sup>247</sup> The MSG finalised the ToR for the 2015 EITI Report's IA on 20 June 2016.<sup>248</sup> The ToR for the 2014 EITI Report, publicly-accessible on the EITI Madagascar website<sup>249</sup>, are broadly in line with the standard ToR agreed by the EITI Board as of late 2014. In the ToR, the MSG confirms the materiality threshold for selecting companies as company payments of administration fees of more than USD 5000 identifies the types of revenues to be included in the scope of reconciliation (Sections 4 and 4.1.3), subject to agreement between the MSG and IA on materiality thresholds.

*Appointment of the Independent Administrator (IA):* Funded by the African Development Bank (AfDB) through its Institutional Governance Support Project (PAGI<sup>250</sup>), procurement of the IA for the 2014 EITI Report followed AfDB procurement guidelines for competitive bidding, with the PAGI acting as the procurement entity for the IA contract.<sup>251</sup> The MSG undertakes procurement of the IA on a Quality- and Cost-Based Selection, including bid evaluations and selection of the winning bidder<sup>252</sup>, with all MSG members involved required to sign a "integrity sermon" to avoid any conflict of interest.<sup>253</sup> The IA's ToR, evaluation of bids and selection of the winning bid are consistently submitted to the AfDB for "no-objection" for every round of IA procurement.<sup>254</sup> EY Madagascar was the winning bidder for the 2007-2013 EITI Reports, while PwC Madagascar was selected for the 2014 EITI Report. Administrative and funding bottlenecks delayed procurement of the IA for the 2014 EITI Report however. The MSG received the AfDB's "non-objection" on its approved ToR for the IA in April and the call for expressions of interest was launched in May 2015. A short-list of six bidders<sup>255</sup> was finalised and sent for the AfDB's "no-objection" on 11 June, with the "no-objection" delivered on 16 July, a short-list of six bidders on 18 September, technical and financial bids in October 2015. Delays in the AfDB's "no-objection" on the draft IA contract delayed signature to March<sup>256</sup> and data collection to July 2016.<sup>257</sup> Despite the MSG's earlier

<sup>246</sup> EITI Madagascar (February 2015), 'PV de la reunion du Comité national du 23 Fevrier 2015', not accessible online, provided by EITI Madagascar Secretariat in October 2017.

<sup>247</sup> EITI Madagascar (June 2017), '2016 Annual progress report', accessed [here](#) in November 2017, p.3.

<sup>248</sup> EITI Madagascar (June 2016), 'Mail de convocation du Comité National: Atelier de finalization auto-evaluation 21-22 Juin 2016', not accessible online, provided by EITI Madagascar Secretariat in October 2017.

<sup>249</sup> EITI Madagascar (June 2016), 'Termes de Référence du réconciliateur EITI pour la réalisation du rapport de réconciliation 2015', accessed [here](#) in November 2017.

<sup>250</sup> Projet d'appui à la Gouvernance institutionnelle (PAGI).

<sup>251</sup> EITI Madagascar (June 2016), '2015 annual activity report', op.cit., p.3.

<sup>252</sup> EITI Madagascar (June 2017), '2016 annual progress report', op.cit., p.20.

<sup>253</sup> EITI Madagascar (July 2013), 'PV de la reunion du Comité national du 1 Juillet 2013', not accessible online, provided by the EITI Madagascar Secretariat in October 2017.

<sup>254</sup> EITI Madagascar (June 2016), '2015 annual activity report', op.cit., pp.3-4.

<sup>255</sup> Fair Links, KPMG, PwC, EY, Delta Audit & Associates and Moore Stephens.

<sup>256</sup> EITI Madagascar (June 2016), '2015 annual activity report', op.cit., pp.3-4.

<sup>257</sup> EITI Madagascar (June 2017), '2016 annual progress report', op.cit., p.2.

launch of the procurement process in an attempt to publish another EITI Report before the commencement of Validation in September 2017, procurement of the IA for the 2015 EITI Report suffered similar delays.<sup>258</sup>

*Agreement on the reporting templates:* The first templates for the 2007-2009 EITI Report were approved at the MSG's 19 April 2011 meeting. They included all taxes, fees and levies paid by extractives companies without prior discussion of materiality.<sup>259</sup> The MSG approved reporting templates for the 2012-2013 EITI Reports on 30 July 2014<sup>260</sup> and for the 2014 EITI Report on 10 June 2016.<sup>261</sup> These reporting templates are available on the EITI Madagascar website.<sup>262</sup>

*Review of audit practices:* The 2014 EITI Report provides a brief description of the statutory audit and assurance procedures for private companies<sup>263</sup> and confirms that "most of" the license-holding companies were either limited liability companies (SARLs) or limited liability one-person companies, required to conduct external audits above certain thresholds (p.61). In terms of SOE auditing, the report also describes the Financial Court (Tribunal Financier)'s statutory audit procedures for SOEs<sup>264</sup> (p.61). The report also describes statutory audit and assurance procedures for government entities, including local governments, who operate on cash-based accounting. It confirms that the Financial Court (Tribunal Financier), which controls budget execution for all government entities (pp.61,98). The report explains that the Court of Accounts (CdC<sup>265</sup>) assesses the accounts of government agencies, SOEs, local governments, and other government entities, providing opinions for the budget execution report submitted to Parliament (pp.62,98). The report notes the absence of planned reforms to audit procedures. It recommends that all mining companies be required to have their financial statements audited regardless of their legal status and the adoption of international public accounting standards (IPSAS), to improve government entities' financial information (p.64).

The report describes actual audit and assurance practice for government entities, but not for material companies. The report states that CdC does not fully fulfil its statutory role given delays in submitting government accounts to the CdC, with the 2014 budget execution report only submitted to parliament in May 2017 (pp.38,62,98). While the IA requested copies of audited financial statements, it highlights "a certain reticence" from reporting companies to provide these (p.38), without further clarification. The report states that while audited financial statements are meant to be submitted to the Commercial Court, the law does not provide sanctions for companies that do not submit their documents (p.61).

<sup>258</sup> Following approval of the ToR for the IA on 21 June, the AfDB provided its "non-objection" and the procurement process was launched in August 2016. The MSG met to evaluate bids for the 2015 EITI Report IA tender on 9 May 2017, but noted significant procurement delays at its 28 July 2017 meeting.

<sup>259</sup> Monkey Forest Social Development Consulting (September 2011), op.cit., pp.35-36.

<sup>260</sup> EITI Madagascar (July 2014), 'PV de la reunion du Comité national du 30 Juillet 2014', not accessible online, provided by EITI Madagascar Secretariat in October 2017.

<sup>261</sup> EITI Madagascar (June 2016), 'PV de la reunion du Comité national du 10 June 2016', not accessible online, provided by EITI Madagascar Secretariat in October 2017.

<sup>262</sup> See EITI Madagascar, 'Données' section, accessed [here](#) in November 2017.

<sup>263</sup> With external audits required for all corporations (sociétés anonymes) and limited-liability companies (sociétés à responsabilités limitées - SARL) above the following thresholds: turnover of more than MGA 100m; equity capital of more than MGA 20m; or staff of over 50 employees. However, individual or single-person companies are not required to hold financial statements nor have their accounts audited.

<sup>264</sup> The report states that SOEs are regulated under Commercial Company Law (2003-036) and legislation governing commercial companies with state participation (Law 2014-014 and Decree 2015-849), and confirms that SOEs are overseen by the Financial Court (Tribunal Financier), which controls budget execution for all government entities and companies with more than 50% government interest.

<sup>265</sup> Cour des Comptes.



**Assurance methodology:** The report provides a summary of the IA's work, conducted according to ISRS 4400, the Code of Ethics of IFAC and the IA's ToR approved by the MSG (pp.33-34,40-42). The report clearly describes quality assurance to be provided by both reporting companies and government entities (pp.38,42-43), with the IA applying its professional judgement and international standards in developing procedures to ensure the comprehensiveness and reliability of the reconciled data (p.43). For government entities, the assurances required include disaggregation by payment, a "confirmation" letter from a senior official and meetings with government entity representatives on a needs basis (pp.38,42). For reporting companies, the assurances include disaggregation by payment, a legal representative's confirmation of the reliability and comprehensiveness of reported data in line with audited financial statements, and copies of audited financial statements or template certification from an external auditor, although the report states there was a "certain reticence" from reporting companies to provide such documents (pp.38,42-43).

While it is not stated whether reporting was on a cash or accrual basis, the report states that reporting entities were requested to fill out their templates receipt by receipt and by date of payment "as written in their audited financial statements for 2014" (p.42), implying some companies may have filled out their templates on an accrual-basis. In addition, the data on subnational transfers of Mining Administration Fees in the report (p.120) is presented on an accrual basis, given the two-year delay in transfers (in 2016).

**Confidentiality:** The report does not explicitly refer to any measures adopted to preserve the confidentiality of financial information pre-reconciliation, although it does describe the IA's work as being in line with ISRS 4400, IFAC's Code of Ethics and the MSG-approved ToR for the IA (pp.33,40-42). Section 4.1.9 of the 2014 EITI Report requires the IA to advise the MSG on provisions to ensure the protection of confidential information.<sup>266</sup>

**Reconciliation coverage:** Table 11 provides the reconciliation coverage of government revenues based on materiality decisions and (lower) actual reporting (p.34). The report notes that the final reconciliation coverage was 92.96% of extractives revenues given that only 40 of the material companies reported (*see Requirement 4.1*) (p.36).

**Assurance omissions:** The report does not clearly assess the materiality of quality assurance omissions by reporting companies and government entities. In its review of past EITI recommendations, the IA notes that "very few" companies provided the required letter of certification from their external auditors (p.126). The report also notes that "few" companies participated the reporting guidance workshop for reporting entities (p.125). Table 61 also highlights that revenue-collecting agencies did not always correctly log the dates of receipt of payments (p.132). The IA provided the International Secretariat the detail of quality assurances provided by reporting entities in the 2014 EITI Report (*see Annex D*).

**Data reliability assessment:** The report states that, in light of 40 of the 65 material companies and all government entities reporting, the IA "can reasonably conclude that the 2014 EITI Report covers extractives revenues in a satisfactory manner" (p.38). The report states that the IA's reconciliation work did not give rise to any significant discrepancies that could affect the reliability of data in the report (p.39). It further states that the quality assurance required from reporting entities ensured the reliability

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<sup>266</sup> EITI Madagascar (June 2016), 'Termes de Référence du réconciliateur EITI pour la réalisation du rapport de réconciliation 2015', op.cit., p.6.

of data disclosed by companies and government entities (p.43). However, the report also sets clear limits to the IA's work, noting that it did not constitute an audit or limited assurance and that, "*in fact, no assurance is provided in the report.*" The IA's work was not aimed at unveiling illegal acts nor to verify the information provided by government entities. Nonetheless, the report states that the reconciled data was either audited or certified by reporting entities (p.33).

Sourcing of information: The report clearly sources all contextual data, including the used exchange rate<sup>267</sup> (pp.34,46). It does not refer to comments from other stakeholders than the IA.

Summary tables: There is no publicly-available evidence that the IA prepared summary data tables of EITI data for its EITI Reports under the Standard, in spite of provisions in the IA's ToR for preparing such tables.<sup>268</sup> The EITI Madagascar does not provide access to EITI data in open data format and the latest data available on the Madagascar country page of the global EITI website dates from 2011.<sup>269</sup> However, EITI Madagascar submitted summary data tables for its 2014 EITI Report to the International Secretariat at the start of Validation on 1 September 2017.

Recommendations: The report presents 21 recommendations from the previous (2013) report and comments on progress in following up, confirming that 20 of the previous recommendations are maintained (pp.123-133) (pp.27-31). A majority of recommendations are linked to broader reforms (see *Requirement 7.3*).

## Stakeholder views

IA procurement: All MSG members consulted expressed satisfaction at the ToR for the 2014 EITI Report IA. The MSG was involved at every step of procurement, not least due to limited national secretariat capacity (see *Requirement 1.4*). All stakeholders, including the IA, emphasised the length of procurement, which was considered to have lengthened from World Bank to AfDB funding when the signatory on the contract changed from the Executive Secretary to the PAGI. Several MSG members were frustrated over their inability to publish the 2015 EITI Report by September 2017 despite starting procurement in 2016, which was due to PAGI's administrative delays according to stakeholders. Several IAs considered that the 2014 EITI Report had been rushed due to late procurement and lack of secretariat support.<sup>270</sup> Several MSG members expressed concern that the IA did not fulfil its ToR, in not providing disaggregated reconciled data for instance. Reporting entities were generally content with EITI reporting templates.

Audit and assurances review: The IA confirmed that it only requested audited financials from companies during data collection. The results of quality assurance for the 2014 EITI Report in Annex D of this initial assessment indicate that only five of the 44 material companies confirmed that their 2014 financial statements had been audited. Several reporting companies confirmed that larger mining companies were required to file audited financial statements to the Tax Department and Financial Tribunal within six months of the year's close, but also tended to hold internal IFRS financial statements for their corporate group's records. It was noted that the Tax Department would be able to confirm the list of companies that

<sup>267</sup> USD 1: MGA 2596.73.

<sup>268</sup> EITI Madagascar (June 2016), 'Termes de Référence du réconciliateur EITI pour la réalisation du rapport de réconciliation 2015', op.cit., p.8.

<sup>269</sup> See Madagascar country page, EITI website, accessed [here](#) in November 2017.

<sup>270</sup> The late 2016 period saw an interruption of the Executive Secretariat's operations given the national coordinator's absence for personal reasons.

submitted audited financial statements annually. An IA confirmed that Malagasy audit standards, the PCG 2005 modelled on GAAP 2005, deviated from current international standards. An official noted that larger mining companies were expected to publish their audited financial statements in national newspapers.

Development partners and IAs confirmed that the CdC does not conduct financial audits of revenues. Madagascar's latest PEFA assessment (2014) noted that the CdC had migrated to ISSAI 400, 4000 et 4100 in 2011.<sup>271</sup> Government officials described the CdC's participation in the Canada-funded five-country PASIE project to strengthen audit and assurance controls of extractives revenues.<sup>272</sup> Several stakeholders criticised the consistent delays in the CdC's auditing of government accounts. The CdC's audit of the DGE for 2001-2006 was only published in 2009<sup>273</sup>, the 2007 and 2008 accounts in September 2012 and November 2013 respectively<sup>274</sup> although a government official noted that CdC's 2014 public report was published in October 2015.<sup>275</sup> Several government officials and IAs noted that the MFB's SIGTAS system required evidence of bank transfers to record revenues and was generally accurate, describing the MFB's system of internal controls.<sup>276</sup> Officials explained that taxpayers filing online could check the status of their payments. Government officials confirmed that independent agencies like BCMM, OMNIS and ONE were audited externally annually (with the 2016 audit ongoing) but that such reports were not publicly-available (*see Requirement 5.1*). The CdC was entitled to conduct performance audits, as it was currently doing for BCMM over 2012-2014. Members of the MSG confirmed that the IA had not requested copies of audited 2014 financial statements from government entities like BCMM or OMNIS. Government officials noted the agreement with the IMF for the 2015 and 2016 accounts of two large SOEs (including KRAOMA) to be submitted to the CdC by end of 2017.<sup>277</sup>

***Assurance methodology:*** All MSG members consulted expressed satisfaction over the assurance methodology adopted for EITI Reports, although none could explain why the industry constituency had approved procedures it did not follow. The IA confirmed that reporting templates included sections for sign-off by external auditors, with the detail of transactions. The IA confirmed EITI reporting was on cash (not accrual) accounting standard, despite confusion amongst MSG members over the issue. Reporting entities confirmed that the IA examined supporting documents during reconciliation. An IA noted past EITI recommendations for companies to include certification of reporting templates in their annual audits, considered to add roughly 15% to annual audit costs. Government officials consulted found current quality assurances (management sign-off and the detail of receipts) provided sufficient quality assurance for government reporting. Officials explained that EITI Madagascar had conducted outreach to the CdC in February 2017 to reach agreement on CdC certification of government EITI reporting, as recommended by the 2011 Validation report, although these had remained exploratory talks to date.<sup>278</sup>

***Assurance omissions:*** Despite extensive exchanges with government entities like BCMM over consistency

<sup>271</sup> République de Madagascar PGDI (August 2014), 'Auto-évaluation de la gestion des finances publiques de Madagascar', accessed [here](#) in November 2017, p.104.

<sup>272</sup> CONSUPE Cameroun (January 2017), 'Cereemonie de lancement du PASIE', accessed [here](#) in November 2017.

<sup>273</sup> Monkey Forest Social Development Consulting (September 2011), op.cit., pp.42-43.

<sup>274</sup> République de Madagascar PGDI (August 2014), op.cit., p.50.

<sup>275</sup> Cour des Comptes (October 2015), 'Rapport public 2014', accessed [here](#) in November 2017.

<sup>276</sup> Despite the lack of external revenue audits, the 2011 Validation report and several government officials highlighted internal controls by the DGE's internal audit, the Ministry of Finance's General Directorate for Internal Auditing and its General Directorate for Financial Control, which can alert the General State Inspectorate in case of serious errors. See Monkey Forest Social Development Consulting (September 2011), op.cit., pp.42-43.

<sup>277</sup> IMF (August 2016), op.cit., p.60.

<sup>278</sup> Monkey Forest Social Development Consulting (September 2011), op.cit., p.43.

of reported data, the IA confirmed that all government entities had comprehensively reported all requested information. While the IA considered that all large companies had complied with the agreed quality assurance procedures, the results of quality assurance for the 2014 EITI Report in Annex D of this initial assessment show that only three of the 44 material companies provided certification from their external auditors, although all 30 reporting material companies provided management sign-off. Industry representatives noted that many mining companies faced liquidity problems and could not afford the extra cost of an external auditor's certification of their reporting templates. Nonetheless, the IA did not express any concerns over the overall comprehensiveness and reliability of data in the 2014 EITI Report, nor did any stakeholders, including civil society, consulted. However, stakeholders expressed disappointment at the lack of detailed data on company compliance with quality assurance procedures in the 2014 EITI Report.

***Recommendations:*** All stakeholders consulted considered recommendations in Madagascar's EITI Reports to be pertinent and of value to key stakeholders, although opinions on the level and consistency of follow-up on recommendations differed (see *Requirement 7.3*).

### Initial assessment

The International Secretariat's initial assessment is that Madagascar has made inadequate progress towards meeting this requirement. The MSG has approved the selection of the IA for the 2014 EITI Report, including a ToR consistent with the Board-approved template and reporting templates. The IA appears to have reviewed material entities' statutory audit procedures prior to agreeing quality assurance procedures for ensuring the reliability of reconciled data in the 2014 EITI Report, and actual audit practices over the course of reporting. While the report lists quality assurances requested from reporting entities, it is unclear why industry MSG members approved quality assurance procedures that few companies followed in practice. The 2014 EITI Report does not assess the materiality of payments from entities that did not comply with the agreed quality assurance procedures, although the IA's assurances regarding the comprehensiveness and reliability of reconciled data are welcome. The IA has prepared summary tables of data in Madagascar's 2014 EITI Report, albeit yet to be published at the start of Validation, and added suggestions to its assessment of follow-up on past EITI recommendations.

In accordance with Requirement 4.9.a, the EITI requires an assessment of whether the payments and revenues are subject to credible, independent audit, applying international auditing standards. In accordance with requirement 4.9.b.iii and the standard Terms of Reference for the Independent Administrator agreed by the EITI Board, the MSG and Independent Administrator should:

- a. examine the audit and assurance procedures in companies and government entities participating in the EITI reporting process, and based on this examination, agree what information participating companies and government entities are required to provide to the Independent Administrator in order to assure the credibility of the data in accordance with Requirement 4.9. The Independent Administrator should exercise judgement and apply appropriate international professional standards in developing a procedure that provide a sufficient basis for a comprehensive and reliable EITI Report. The Independent Administrator should employ his/her professional judgement to determine the extent to which reliance can be placed on the existing controls and audit frameworks of the companies and governments. The Independent Administrator's inception report should document the options considered and the rationale for the assurances to be provided.

- b. ensure that the Independent Administrator provides an assessment of comprehensiveness and reliability of the (financial) data presented, including an informative summary of the work performed by the Independent Administrator and the limitations of the assessment provided.
- c. ensure that the Independent Administrator provides an assessment of whether all companies and government entities within the agreed scope of the EITI reporting process provided the requested information. 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, and an assessment of whether this is likely to have had material impact on the comprehensiveness and reliability of the report.

**Table 4- Summary initial assessment table: Revenue collection**

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Comprehensiveness (#4.1)	<p>The 2014 EITI Report includes the MSG's rationale and definition of materiality thresholds for companies to be included in reconciliation based on payments to government. There is no evidence of the MSG having considered the materiality of revenue streams included in the scope of reconciliation, although the MSG appears to have consistently adopted a de-facto materiality threshold of zero for selecting material revenue streams. Nonetheless all revenues listed in Requirement 4.1.b are de facto included. In addition, the 2014 EITI Report's description of the approach to materiality for selecting companies is not sufficiently clear to ensure its accessibility to the average reader. The companies that did not report are named and the value of their payments to government is provided relative to government-reported revenues in aggregate, although not by non-reporting company. The share of non-reporting companies (roughly 5% of sector revenue) is deemed insignificant by the IA. While material government entities appear to have reported all revenues from 71 of the largest extractives companies, the lack of data on the remaining 70 companies and the lack of any data disaggregated by revenue stream is a concern. The report includes commentary from the IA on the comprehensiveness of the EITI Report.</p>	Inadequate Progress
In-kind revenues (#4.2)	The 2014 EITI Report clearly states that the government did not collect any revenues in-kind in 2014.	Not Applicable
Barter and infrastructure transactions (#4.3)	The 2014 EITI Report demonstrates that there were no barter or infrastructure provisions in force in 2014.	Not Applicable
Transport revenues (#4.4)	There is insufficient (and apparently contradictory) information in the 2014 EITI Report to assess whether the government collects any revenues from the transportation of minerals. There is no evidence of MSG discussion of the materiality of transportation revenues. While two port management companies were included in the scope of reporting as government entities, there is no explanation of their legal status nor the management of port-related fees they collect.	Inadequate Progress

Transactions between SOEs and government (#4.5)	The 2014 EITI Report states that there were no financial transactions between extractives SOEs and the state in 2014 and there is no evidence in the report of any dividend payments from QMM to OMNIS and from MCM to NASSCO. Stakeholder consultations and third-party sources confirmed the lack of payments from extractives companies to government entities and from KRAOMA to the government.	Not Applicable
Subnational direct payments (#4.6)	The 2014 EITI Report describes direct subnational payments, with only one revenue stream specific to extractives activities. While the de facto materiality threshold of zero for selecting direct subnational payment streams implies that the 2014 EITI Report should have reconciled material companies' payments of 23 types of payments, it appears that only certain ristournes and quarrying royalties were reconciled. The lack of clarity around the beneficiaries of ristournes payments means that there is insufficient information in the report to assess the comprehensiveness of the reconciliation. The lack of description of the unpaid Ambatovy ristournes in the 2014 EITI Report is also a concern given the value of these arrears and their importance for relevant subnational governments. There was consensus amongst stakeholders consulted that the reconciliation of direct subnational payments in the 2014 EITI Report is not comprehensive.	Inadequate Progress
Level of disaggregation (#4.7)	Reconciled financial data in the 2014 EITI Report is presented disaggregated only by company and government entity, not by individual revenue stream. While this appears to have been an oversight in publishing the 2014 EITI Report, given that detailed reconciled financial data disaggregated by revenue stream was provided to the International Secretariat in November 2017 (but not published), the lack of sufficiently disaggregated reconciled data has a material impact on assessments of the comprehensiveness of reporting (see Requirement 4.1).	Meaningful Progress
Data timeliness (#4.8)	The 2014 EITI Report was published within two years of the end of the fiscal period under review, in December 2016, and the MSG agreed the reporting period.	Satisfactory Progress
Data quality (#4.9)	The MSG has approved the selection of the IA for the 2014 EITI Report, including a ToR consistent with the Board-approved template and reporting templates. The IA appears to have reviewed material entities' statutory audit procedures prior to agreeing quality assurance procedures for ensuring the reliability of reconciled data in the 2014 EITI Report, and actual audit practices over the course of reporting. While the report lists quality assurances	Inadequate Progress

	<p>requested from reporting entities, it is unclear why industry MSG members approved quality assurance procedures that few companies followed in practice. The 2014 EITI Report does not assess the materiality of payments from entities that did not comply with the agreed quality assurance procedures, although the IA's assurances regarding the comprehensiveness and reliability of reconciled data are welcome. The IA has prepared summary tables of data in Madagascar's 2014 EITI Report, albeit yet to be published at the start of Validation, and added suggestions to its assessment of follow-up on past EITI recommendations.</p>	
<p>International Secretariat's recommendations:</p> <ol style="list-style-type: none"> <li>1. In accordance with Requirement 4.1.a, the MSG should ensure that its materiality decisions related to selecting companies and revenue streams for reconciliation are clearly documented. In its approach to the materiality of revenue streams, the MSG is encouraged to strike a balance between comprehensiveness and relevance for stakeholders, to ensure that a workable approach to reconciliation is adopted and to facilitate the embedding of revenue transparency in government and company systems. In accordance with Requirement 4.1.c, the MSG should ensure that the materiality of payments from each non-reporting entity is clearly assessed to support the IA's overall assessment of the comprehensiveness of reconciliation. In accordance with Requirement 4.1.d, unless there are significant practical barriers, the government is additionally required to provide aggregate information about the amount of total revenues received from each of the benefit streams agreed in the scope of reconciliation, including revenues that fall below agreed materiality thresholds.</li> <li>2. To further strengthen implementation, the MSG may wish to publicly clarify that provisions in oil and gas PSCs for the government to collect certain revenues in-kind are not yet implemented given the lack of commercial oil and gas production and the government's lack of capacity to take physical delivery of any in-kind revenues.</li> <li>3. In accordance with Requirement 4.4, the MSG should assess the materiality of government revenues from the transportation of minerals, clarifying the management of port-related fees on the transportation of minerals.</li> <li>4. To strengthen implementation ahead of future dividend payments from extractives companies to the government, the MSG is encouraged to ensure that a comprehensive assessment of financial transactions between extractives companies and government entities and between KRAOMA and the government is publicly available.</li> <li>5. In accordance with Requirement 4.6, the MSG should establish whether direct subnational payments, within the scope of the agreed benefit streams, are material. Where material, the MSG is required to ensure that reconciled information on company payments to subnational government entities and the receipt of these payments be publicly accessible. EITI Madagascar may wish to provide more information on the disbursement of ristournes from Ambatovy to host communes built-up since the start of production in 2012 given the materiality of such delayed payments.</li> <li>6. In accordance with Requirement 4.7, the MSG is required to ensure that EITI data is presented by individual company, government entity and revenue stream. To strengthen implementation, the MSG may wish to consider the extent to which it can make progress in implementing</li> </ol>		



project-level EITI reporting ahead of the deadline for all EITI Reports covering fiscal periods ending on or after 31 December 2018.

7. To strengthen implementation, the MSG may wish to liaise with key revenue collecting agencies and sector regulators to explore means of embedding disclosures of EITI-required information in routine government systems to ensure timelier EITI reporting.
8. In accordance with Requirement 4.9.a, the EITI requires an assessment of whether the payments and revenues are subject to credible, independent audit, applying international auditing standards. In accordance with requirement 4.9.b.iii and the standard Terms of Reference for the Independent Administrator agreed by the EITI Board, the MSG and Independent Administrator should:
  - a. examine the audit and assurance procedures in companies and government entities participating in the EITI reporting process, and based on this examination, agree what information participating companies and government entities are required to provide to the Independent Administrator in order to assure the credibility of the data in accordance with Requirement 4.9. The Independent Administrator should exercise judgement and apply appropriate international professional standards in developing a procedure that provide a sufficient basis for a comprehensive and reliable EITI Report. The Independent Administrator should employ his/her professional judgement to determine the extent to which reliance can be placed on the existing controls and audit frameworks of the companies and governments. The Independent Administrator's inception report should document the options considered and the rationale for the assurances to be provided.
  - b. ensure that the Independent Administrator provides an assessment of comprehensiveness and reliability of the (financial) data presented, including an informative summary of the work performed by the Independent Administrator and the limitations of the assessment provided.
  - c. ensure that the Independent Administrator provides an assessment of whether all companies and government entities within the agreed scope of the EITI reporting process provided the requested information. 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, and an assessment of whether this is likely to have had material impact on the comprehensiveness and reliability of the report.

## 5. Revenue management and distribution

### 5.1 Overview

This section provides details on the implementation of the EITI requirements related to revenue management and distribution.

### 5.2 Assessment

#### Distribution of revenues (#5.1)

##### Documentation of progress

The 2014 EITI Report states that extractives taxes and fees are collected by government agencies, transferred to the single Treasury account and allocated according to the Budget Law voted in 2014 (p.93-95,97-98). The report lists ten central government entities as well as subnational governments as the 11 types of entities collecting extractives revenues (p.93).<sup>279</sup> The status of the port, named as a government entity in the EITI Report, is unclear and seems to include the private companies MICTSL (*see Requirement 4.4*). The report states that the current fiscal nomenclature does not identify the taxpayer's activities nor allowed for disaggregation of extractives revenues' use (p.98).

The report states that the extractives revenues classification system does not follow international standards suggested by the IMF (p.98). In August 2014, the World Bank funded PGDI programme undertook a public finance management review, which concluded that revenues classifications were consistent with the IMF Classification of the Functions of Government (COFOG) and international IAS/IFRS norms.<sup>280</sup> The report maintains the previous recommendation on introducing a single Tax ID number (p.130). The report's third recommendation on subnational transfers in Table 61 relates to the block transfers of revenues by the non-state entities like the Port de Toamasina MICTSL to the region and commune, which does not allow the disaggregation of payments by company (p.129). While the 2014 budget execution report is available online, the information revenues provided is insufficiently disaggregated to identify individual revenue streams and government entities including BCMM and OMNIS are not listed in the report.<sup>281</sup>

##### Stakeholder views

Unlike information provided in the 2014 EITI Report, several stakeholders stated that Madagascar did not yet operate a unified single Treasury account system, although this was planned over the medium term. There was no consensus on whether government entities collecting extractives revenues, such as BCMM, OMNIS and ONE, transferred all of their revenues to the national budget or whether they were able to retain funds off-budget. A majority of stakeholders considered that entities like BCMM and OMNIS were independent public administrative establishments whose budgets were entirely autonomous, retaining

<sup>279</sup> ANDEA, ARTEC, the CTDs, BCMM, OMNIS, OSTIE, ONE, CNAPS, the ports (SPAT, SMMC), ORE and ADEMA.

<sup>280</sup> République de Madagascar PGDI (August 2014), 'Auto-évaluation de la gestion des finances publiques de Madagascar', pp.36-37, accessed [here](#) in November 2017.

<sup>281</sup> Loi 2016-047 portant Loi de Règlement 2014, accessed [here](#) in November 2017.

earnings to fund operating costs. Several officials stated that most or all revenues collected by BCMM were transferred to the Treasury, while officials of the agencies concerned explained that they operated their own accounts at the Treasury independently of the national budget, including for subnational transfers (see *Requirement 5.2*). Many stakeholders raised significant concerns over the perceived opacity in the management of revenues by OMNIS and KRAOMA (see *Requirement 2.6 and 6.2*). Overall, there was a significant lack of clarity among stakeholders consulted over the legal status and financial autonomy of the Public Administrative Companies, both statutory and in practice, of entities like BCMM and OMNIS. The financial statements, audited or otherwise, of the relevant entities are not publicly available and do not seem to have been requested by the IA.

### Initial assessment

The International Secretariat's initial assessment is that Madagascar has made inadequate progress towards meeting this requirement. There were fundamentally contradictory views between information provided by the 2014 EITI Report and stakeholder views. The 2014 EITI Report states that Madagascar operates a single Treasury account where all extractives revenues are recorded, but there was consensus amongst stakeholders consulted that this was not the case. The lack of clarity on whether or not revenues collected by government entities such as BCMM, OMNIS, and ONE, are recorded in the national budget is a particular concern given public controversy over the role and status of Public Administrative Companies and the lack of publicly-available information on these entities' finances. There are no publicly-available reports covering the revenue management of the 11 revenue-collecting government entities aside from the general budget execution report, which is not sufficiently disaggregated to identify extractives revenues that are recorded.

In accordance with Requirement 5.1, EITI Madagascar should publicly clarify which extractive industry revenues, whether cash or in-kind, are recorded in the national budget. Where revenues are not recorded in the national budget, the allocation of these revenues must be explained, with links provided to relevant financial reports as applicable. To strengthen implementation, EITI Madagascar may wish to use EITI reporting to monitor the migration of government finances towards a single Treasury account system, providing a platform for public information on the management of off-budget extractives revenues.

## Sub-national transfers (#5.2)

### Documentation of progress

***Materiality:*** The 2014 EITI Report clarifies that subnational transfers of extractives revenues exist and lists the extractives revenues received by each of the three tiers of local government units (LGUs), including both subnational transfers and direct payments (pp.98-99):

- Autonomous Provinces receive 5% of Mining Administration Fees (FAM) collected by BCMM and 10% of mining ristournes;
- Regions receive 7% of FAM collected by BCMM; 30% of mining ristournes;
- Communes receive 12% of FAM collected by BCMM, 60% of mining ristournes, 100% of local taxes and 100% of quarrying royalties.

The report clearly states that FAM represents subnational transfers, in line with Article 53 of the Mining

Code and Article 90 of its implementing Decree (pp.94,121-122). It also clarifies that local taxes and quarrying royalties are direct subnational payments to communes. However, there is contradictory information in the EITI Report about whether ristournes represent direct subnational payments or subnational transfers (see *Requirement 4.6*).

*Formulas:* The report provides the general formula for calculating subnational transfers of FAM, including 5% to the relevant autonomous province; 7% to the region; and 12% to the commune (pp.94,95). However, the report does not provide the value of transfers that should have been transferred to each LGU according to the formula and information in the 2014 EITI only allows for the calculations of the general value of budgeted transfers of FAM to each of the three tiers of LGUs, rather than individual LGUs themselves. Annex 25 provides the list FAM payments by companies to BCMM, which might have allowed for the calculation of FAM transfers to specific communes and regions if the location of each company's activities was provided (annex/pp.162-164).

The report describes the system for transfers to subnational governments, including the requirement to make transfers to subnational governments' accounts at the Treasury, or at a commercial bank in cases where the entity does not have a Treasury account (p.97).

*Subnational transfer execution:* Given the lack of clarity on the value of subnational transfers that should have been transferred according to the formula, it is not possible to identify discrepancies in executed transfers based on information in the 2014 EITI Report. The report provides the value of executed 2014 FAM transfers in aggregate to autonomous provinces, regions and communes that had a valid bank account in aggregate (p.95) and disaggregated by each of the 662 communes with accounts at the Treasury or a primary bank (annex/pp.168-187). The report presents the aggregate value of delayed transfers of 2014 FAM to communes, which were executed on 5 April and 19 September 2016 to 368 and 243 communes respectively (p.120). Table 60 provides a flow diagram of the process for calculating and transferring FAM, at the level of the license holders, the BCMM, the Treasury and the communes, highlighting common bottlenecks (pp.121-122). Information on FAM transfers was however much more detailed in the 2013 EITI Report, including disaggregation by company and subnational government, of particular value for local governments' monitoring efforts.<sup>282</sup>

The report explains that only 12 communes in five regions were selected for reporting, on the basis of the location of operations of the five largest extractives taxpayers in Madagascar (p.42). The report highlights administrative challenges that hindered collection of data on the value of transfers received by individual subnational governments and highlights logistical challenges hindering the IA's ability to reconcile subnational transfers with LGUs' receipts (p.93).

*Efficiency:* The report maintains past EITI recommendations to improve the efficiency of subnational FAM transfers, noting that the BCMM's IT system logs individual FAM payments from companies and automatically calculates subnational shares and executes transfers to the relevant LGU accounts in the Treasury but that built up arrears in subnational transfers, which could not be transferred to LGUs without registered bank accounts, are accumulated in a BCMM account. The report recommends that BCMM send written alerts to LGUs ahead of each transfer and ensure all LGUs establish at a minimum an

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<sup>282</sup> EITI Madagascar (2015), 2013 EITI Report, op. cit., pp.13-14,102-103.

official bank account at a commercial bank (p.131).

## Stakeholder views

***Materiality:*** All stakeholders confirmed the importance of transparency in subnational transfers for communities hosting mining activities. While there was consensus that the EITI had a material impact on identifying inefficiencies in the transfer of subnational transfers of FAM, there was considerable confusion over whether ristournes were paid directly to LGUs or transferred to subnational governments by the DGM (see *Requirement 4.6*). Stakeholders noted that the implementation of legal provisions remained unclear, and welcomed EITI Madagascar's independent study on subnational payments and transfers, planned for 2018.

***Formula:*** A government representative explained that the BCMM sent notifications once a year to companies liable to FAM payments, with payments made to the BCMM's account at the Treasury. The BCMM then applied the revenue sharing formula and calculated each LGU's share, with the Treasury charged with executing the transfer to LGUs' accounts at the Treasury or commercial bank.

***Subnational transfer execution:*** MSG members noted that the 2014 EITI Report did not provide the value of FAM that had not been transferred to the host communes and regions that did not have a registered account at the Treasury or commercial bank. Representatives from all three constituencies however highlighted practical challenges in the execution of subnational transfers. For instance, CSOs noted that while companies complied with their obligations in a timely manner, transfers were always delayed at the Treasury's level. Some government officials noted that some mayors favoured establishing local taxation power on mining as a result of delays in transferring FAM. An IA also explained that many communities were unaware of the share of extractives revenues they were entitled to and usually received transfers in lump sum without details on the company concerned. A government representative noted that inefficiencies in the payment of FAM revealed by EITI Reports had prompted the Treasury to create an IT application for BCMM to share its calculations of disaggregated subnational FAM transfers, for the Treasury to track its execution of transfers (within 72 hours) and for communes to log their receipts of transfers in their individual accounts. Officials noted that FAM subnational transfers for 2015-2016 had already been executed (as of November 2017), and that information on transfers by commune and region was available on the BCMM website.<sup>283</sup>

## Initial assessment

The International Secretariat's initial assessment is that Madagascar has made meaningful progress towards meeting this requirement. EITI Madagascar has included all transfers in the scope of its EITI reporting from the start, as for all revenues (see *Requirement 4.1*). The 2014 EITI Report describes the general revenue sharing formula for FAM, but there is insufficient information in the 2014 EITI Report to identify discrepancies between budgeted and executed subnational transfers, disaggregated by LGU. Madagascar has disclosed the transfers of 2014 FAM executed in 2016. EITI Reports have been transparent about practical and administrative challenges in subnational transfers, proving an effective diagnostic mechanism for delays in FAM transfers. The government's reforms to streamline calculation and payment of FAM transfers and EITI Madagascar's commissioning of a dedicated study on subnational

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<sup>283</sup> BCMM, 'Répartition FA des communes et Répartition FA des régions 2015-2016', accessed [here](#) and [here](#) in November 2017.

transfers and payments are particularly welcome.

In accordance with Requirement 5.2, the MSG is required to ensure that material subnational transfers of extractives revenues are publicly disclosed, when such transfers are mandated by a national constitution, statute or other revenue sharing mechanism. The MSG should also disclose any discrepancies between the transfer amount calculated in accordance with the relevant revenue sharing formula and the actual amount transferred between the central government and each relevant subnational entity. The MSG is encouraged to reconcile these transfers.

## Additional information on revenue management and expenditures (#5.3)

### Documentation of progress

The report provides a description of the budget-making process, including preparation, approval and execution (pp.60-61, 97-98). It states that the current fiscal nomenclature does not identify the taxpayer's sector of activity and it is not possible to track the use of extractives funds (p.98). The report also describes the statutory audit and assurance procedures for government entities, including local governments (pp.61-62, 98). It comments on the impact of lower commodity prices and waning interest from oil and gas companies about budget revenue (pp.14-15, 23-24). Unlike the 2013 EITI Report,<sup>284</sup> the report does not comment on participatory budgeting of revenues from extractives companies in thirteen communities.

### Stakeholder views

There was surprise among MSG members consulted that the 2014 EITI Report did not include information about participatory budgeting, in contrast to previous editions, highlighting the relevance of the local-level processes to ensuring effective oversight of subnational revenues. Several CSOs called for the inclusion of more such information in future EITI reporting.

### Initial assessment

Reporting on revenue management and expenditures is encouraged but not required by the EITI Standard. It is encouraging that Madagascar provided additional information on revenue management and expenditures.

To strengthen implementation, the MSG is encouraged to include more information on the management of extractives revenues, including through participatory budgeting, in future EITI reporting.

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<sup>284</sup> EITI Madagascar, 2013 EITI Report, op. cit. , pp.14-15, 104-107.

**Table 5 - Summary initial assessment table: Revenue management and distribution**

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Distribution of revenues (#5.1)	<p>There were fundamentally contradictory views between information provided by the 2014 EITI Report and stakeholder views. The 2014 EITI Report states that Madagascar operates a single Treasury account where all extractives revenues are recorded, but there was consensus amongst stakeholders consulted that this was not the case. The lack of clarity on whether or not revenues collected by government entities such as BCMM, OMNIS, and ONE, are recorded in the national budget is a particular concern given public controversy over the role and status of Public Administrative Companies and the lack of publicly-available information on these entities' finances. There are no publicly-available reports covering the revenue management of the 11 revenue-collecting government entities aside from the general budget execution report, which is not sufficiently disaggregated to identify extractives revenues that are recorded.</p>	Inadequate progress
Sub-national transfers (#5.2)	<p>EITI Madagascar has included all transfers in the scope of its EITI reporting from the start, as for all revenues (see Requirement 4.1). The 2014 EITI Report describes the general revenue sharing formula for FAM, but there is insufficient information in the 2014 EITI Report to identify discrepancies between budgeted and executed subnational transfers, disaggregated by LGU. Madagascar has disclosed the transfers of 2014 FAM executed in 2016. EITI Reports have been transparent about practical and administrative challenges in subnational transfers, proving an effective diagnostic mechanism for delays in FAM transfers. The government's reforms to streamline calculation and payment of FAM transfers and EITI Madagascar's commissioning of a dedicated study on subnational transfers and payments are particularly welcome.</p>	Meaningful progress
Information on revenue management and expenditures (#5.3)	<p>It is encouraging that Madagascar provided additional information on revenue management and expenditures.</p>	
<p>International Secretariat's recommendations:</p> <ol style="list-style-type: none"> <li>1. In accordance with Requirement 5.1, EITI Madagascar should publicly clarify which extractive</li> </ol>		

industry revenues, whether cash or in-kind, are recorded in the national budget. Where revenues are not recorded in the national budget, the allocation of these revenues must be explained, with links provided to relevant financial reports as applicable. To strengthen implementation, EITI Madagascar may wish to use EITI reporting to monitor the migration of government finances towards a single Treasury account system, providing a platform for public information on the management of off-budget extractives revenues.

2. In accordance with Requirement 5.2, the MSG is required to ensure that material subnational transfers of extractives revenues are publicly disclosed, when such transfers are mandated by a national constitution, statute or other revenue sharing mechanism. The MSG should also disclose any discrepancies between the transfer amount calculated in accordance with the relevant revenue sharing formula and the actual amount transferred between the central government and each relevant subnational entity. The MSG is encouraged to reconcile these transfers.
3. To strengthen EITI implementation, the MSG is encouraged to include more information on the management of extractives revenues, including through participatory budgeting, in future EITI reporting.



## 6. Social and economic spending

### 6.1 Overview

This section provides details on the implementation of the EITI requirements related to social and economic spending (SOE quasi-fiscal expenditures, social expenditures and contribution of the extractive sector to the economy).

### 6.2 Assessment

#### Social expenditures (#6.1)

##### Documentation of progress

**Materiality:** The 2014 EITI Report defines mandatory social expenditure as being required by law or contractual obligation and “donations” as a purely voluntary gift provided either to a local community or a subnational government, explicitly excluding gifts to clients, suppliers or partners (p.112). While the report does not describe workforce training fees paid by oil and gas companies to OMNIS, these appear to be statutorily required payments of at least USD 100,000 a year per oil and gas license-holder to OMNIS.

**Reporting:** The report provides seven companies’ reporting of their mandatory social expenditures (pp.117-119) and 15 companies’ reporting of their voluntary social expenditures (pp.112-113). Information is disaggregated by project and beneficiary identity, but not between cash and in-kind expenditures. The report discloses the reconciled oil and gas companies’ payments of 2014 workforce training fees to OMNIS in aggregate (p.96), but not disaggregated by company.

Annex 16 provides company reporting of their voluntary infrastructure grants, with the aggregate value of infrastructure and the nature of works undertaken (annex/pp.128-130). Annex 17 provides eight companies’ reporting of their CSR policies (pp.131-133). Annex 18 also provides 10 companies’ reporting of their submission of their environmental and social impact reporting to the ONE and comments on compliance (annex/pp.134-137).

##### Stakeholder views

All MSG members consulted expressed satisfaction at the 2014 EITI Report’s coverage of social expenditures and highlighted the value of both voluntary and mandatory social expenditures to stakeholders at the local level. Several civil society representatives considered that this was the most valuable information for local communities, alongside data on subnational transfers. None of the stakeholders consulted had considered the need to clearly disaggregate cash from in-kind social expenditures. All stakeholders confirmed that oil and gas companies’ workforce training payments to OMNIS were in cash. The IA stated that all other mandatory social expenditures were provided in-kind to communes and regions, with companies paying contractors and suppliers directly.

##### Initial assessment

The International Secretariat’s initial assessment is that Madagascar has made satisfactory progress

towards meeting this requirement. The 2014 EITI Report presents information on companies' mandatory social expenditures disaggregated by project and beneficiary. While the results are not presented disaggregated between cash and in-kind, the IA confirmed that all mandatory social expenditures are paid in-kind. Madagascar has also made efforts to go beyond the minimum requirements by providing additional information on discretionary social expenditures as encouraged by the EITI Standard. Thus, the International Secretariat considers that, despite minor weaknesses in the EITI Report itself, the broader objective of transparency in social payments has been achieved.

To further strengthen implementation, the MSG is encouraged to ensure that information on mandatory social expenditures clearly disaggregate cash from in-kind is publicly accessible.

## SOE quasi fiscal expenditures (#6.2)

### Documentation of progress

While the 2014 EITI Report refers to the need to report quasi-fiscal expenditures in line with requirements of the EITI Standard (pp.31-32), there is no evidence of the MSG or IA discussing the existence of such expenditures in preparing the report nor in the reporting templates provided in Annex 1 (annex/pp.2-19). The report does not comment on the MSG's assessment of the existence of quasi-fiscal expenditures linked to extractives revenues in 2014.

### Stakeholder views

There was considerable disagreement among stakeholders consulted over the number of entities that could be considered SOEs for EITI reporting purposes (*see Requirement 2.6*) and over the level of earnings retained by entities like OMNIS (*see Requirement 5.1*). Several CSO and industry representatives highlighted concerns over the opacity in the finances of KRAOMA, OMNIS and NASSCO and considered that it was conceivable that these entities undertook quasi-fiscal expenditures. Development partners did not express any particular views on the existence of such expenditures. Members of the MSG confirmed that the MSG had yet to discuss the issue of quasi-fiscal expenditures in preparing EITI Reports. While there is no clear evidence of KRAOMA undertaking quasi-fiscal expenditures, the SOE's website describes expenditures categorised as "corporate social responsibility" that include the building of public infrastructure including police stations, schools and health clinics.<sup>285</sup>

### Initial assessment

The International Secretariat's initial assessment is that Madagascar has made no progress towards meeting this requirement. While the 2014 EITI Report refers to the need to clarify the existence of quasi-fiscal expenditures linked to extractives revenues, there is no evidence that the MSG has undertaken efforts to clarify the existence of such expenditures in the year under review (2014). There is no evidence that the IA or MSG discussed this issue with relevant government entities and there is insufficient information in the public domain regarding this issue.

In accordance with Requirement 6.2, the MSG should undertake a comprehensive review of all

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<sup>285</sup> KRAOMA website, 'RSE' webpage, accessed [here](#) in November 2017.

expenditures undertaken by extractives SOEs that could be considered quasi-fiscal. The MSG should develop a reporting process for quasi-fiscal expenditures with a view to achieving a level of transparency commensurate with other payments and revenue streams.

## Contribution of the extractive sector to the economy (#6.3)

### Documentation of progress

**Share of GDP:** The 2014 EITI Report provides the contribution of the extractive industries to GDP in nominal and constant 1984 prices in both absolute and relative terms, sourced from INSTAT (p.24,85). The report quotes figures from other sources<sup>286</sup> that estimate the value of extractive industries at a lower figure (2.12% of GDP) (p.24). Information on the annual growth rate and value added of extractives GDP is also provided (pp.21,86-87). The report's final recommendation calls for INSTAT and the Ministry of Economy to conduct an annual study of the effective contribution of the mining and petroleum sector to the economy (p.133). A description of informal mining activity, including rough estimates of artisanal-mined production, is included (pp.53-54).

**Government revenues:** The 2014 EITI Report provides the contribution of extractives to total government revenues in absolute and relative terms, based on material companies' EITI reporting (p.21,25,84,88).

**Exports:** The 2014 EITI Report provides mineral export values in absolute terms based on EITI reporting (pp.89-90), as well as estimates of informal precious stone and gold export values from government and third-party sources (pp.66-67,69; *see Requirement 3.3*). While the value of extractives exports is not provided as a share of total exports, it is possible to calculate the extractives share of total exports based on figures for total exports provided in Table 17 (p.67). While the report provides the value of precious stone exports in relative terms, as 0.72% of total 2014 exports (p.67), it is possible to calculate the relative value of exports reported by material companies as 6.25% (p.90).

**Employment:** The 2014 EITI Report provides the extractive industries' contribution to total employment in absolute terms and relative to the number of employees registered with the public pension scheme (which excludes informal artisanal miners) in 2013 and 2014, sourced from government statistics (p.89). A breakdown by gender and foreign/local is provided (p.89). Annex 15 provides the staffing of reporting companies by gender and region (annex/pp.125-127). The report also describes informal ASM activities, with recent estimates of between 0.1m-0.5m people currently employed in ASM (p.25) and 2012 INSTAT estimates that 8% of the 2.2m "Individual Production Units" (99% informal) were involved in mining activity (p.26).

**Location:** The 2014 EITI Report provides an overview of the location of the main oil, gas and mining activities, including artisanal and small-scale mining (pp.65-70). Annex 7 provides a map of mining resource deposits and geological potentials (p.87).

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<sup>286</sup> Two studies in 2016, including from the World Bank.

## Stakeholder views

Several stakeholders from all three constituencies and development partners highlighted the impact of EITI in providing reliable figures on the contribution of the formalised extractive industries on the economy, including in terms of contribution to government revenues, exports and employment. While several government officials noted the impossibility to disaggregate the extractives component of taxes common to all companies, they considered that EITI data on extractives revenues was comprehensive and reflected their actual contribution to the national budget. Several stakeholders including senior government officials highlighted the lack of reliable official information on total mineral exports given the prevalence of smuggling activities along Madagascar's 5000km of coast (*see Requirement 3.3*). A CSO representative noted estimates of artisanal precious stone miners ranging from 400,000 to 700,000.

## Initial assessment

The International Secretariat's initial assessment is that Madagascar has made satisfactory progress towards meeting this requirement. The 2014 EITI Report provides data, in absolute and relative terms, on the extractive industries' contribution to GDP, government revenues and employment. While it only provides official estimates of exports in absolute terms, it is possible to calculate the relative share of total exports based on data provided. The report also provides an overview of the location of extractives activities.

**Table 6- Summary initial assessment table: Social and economic spending**

EITI provisions	Summary of main findings	International Secretariat's initial assessment of progress with the EITI provisions
Social expenditures (#6.1)	The 2014 EITI Report presents information on companies' mandatory social expenditures disaggregated by project and beneficiary. While the results are not presented disaggregated between cash and in-kind, the IA confirmed that all mandatory social expenditures are paid in-kind. Madagascar has also made efforts to go beyond the minimum requirements by providing additional information on discretionary social expenditures as encouraged by the EITI Standard.	Satisfactory Progress
SOE quasi fiscal expenditures (#6.2)	While the 2014 EITI Report refers to the need to clarify the existence of quasi-fiscal expenditures linked to extractives revenues, there is no evidence that the MSG has undertaken efforts to clarify the existence of such expenditures in the year under review (2014). There is no evidence that the IA or MSG discussed this issue with relevant government entities and there is insufficient information in the public domain regarding this issue.	No Progress
Contribution of the extractive sector to the economy (#6.3)	The 2014 EITI Report provides data, in absolute and relative terms, on the extractive industries' contribution to GDP, government revenues and employment as well as an overview of the location of extractives activities. While it only provides official estimates of exports in absolute terms, it is possible to calculate the relative share of total exports based on data provided.	Satisfactory Progress
<p>Secretariat's recommendations:</p> <ol style="list-style-type: none"> <li>1. To further strengthen implementation, the MSG is encouraged to ensure that information on mandatory social expenditures clearly disaggregate cash from in-kind is publicly accessible.</li> <li>2. In accordance with Requirement 6.2, the MSG should undertake a comprehensive review of all expenditures undertaken by extractives SOEs that could be considered quasi-fiscal. The MSG should develop a reporting process for quasi-fiscal expenditures with a view to achieving a level of transparency commensurate with other payments and revenue streams.</li> </ol>		

## Part III – Outcomes and Impact

### 7. Outcomes and Impact

#### 7.1 Overview

This section assesses implementation of the EITI Requirements related to the outcomes and impact of the EITI process.

#### 7.2 Assessment

##### Public debate (#7.1)

###### Documentation of progress

**Public accessibility:** The 2012, 2013 and 2014 EITI Reports are available on the EITI Madagascar website in French, alongside summaries in English and Malagasy.<sup>287</sup> The website also provides the scoping study, the IA's ToR and annexes for each EITI Report.

EITI Madagascar has agreed an initial policy on the access, release and re-use of EITI data. From 2017 onwards, the MSG will draft a complete open data policy, improve access to the online BCMM cadastre and liaise with OMNIS to develop a similar online oil and gas license registry. For the 2014 EITI Report, summary data tables are available in .xls format, including payments by company, revenues by government entity and the list of license owners based on BCMM and OMNIS data (*see Requirements 4.9 and 7.2*).<sup>288</sup>

**Comprehensibility:** Summaries of the EITI Reports were published in both national languages and in English. Summaries and infographics highlighting key findings of these reports were published in French and in Malagasy,<sup>289</sup> while two TV shows were aired on a national channel, describing not only findings from the 2014 EITI Report, but explaining the EITI process in general.<sup>290</sup> Similar material was produced for earlier EITI Reports, although detailed flyers on the 2011 EITI Report and the EITI process could not be reissued for later EITI reports due to capacity constraints.

**Promotion:** EITI Madagascar has drafted ambitious plans for disseminating EITI Reports and promoting the

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<sup>287</sup> E.g.: EITI Madagascar, 'Rapport de reconciliation 2012', accessed [here](#) in November 2017.

<sup>288</sup> The summary data tables were submitted to the International Secretariat but were yet to be published online at the start of Validation, in September 2017.

<sup>289</sup> EITI Madagascar (November 2014), 'Communiqué de presse: l'État a encaissé près de 255 milliards d'Ariary de recettes auprès du secteur extractif en 2012-2013', provided by the EITI Madagascar Secretariat; EITI Madagascar (2017), 'Contributions 2014 du secteur extractif malgache', provided by the EITI Madagascar Secretariat.

<sup>290</sup> See [here](#) and [here](#).

implementation of the EITI, including through capacity building at the national and regional level.<sup>291</sup> However, the 2016 APR states that communication activities have been limited due to financial restrictions.<sup>292</sup> The 2015 APR notes that workshops with parliamentarians and stakeholders from three mining regions were postponed due to scheduling conflicts and Secretariat staff communications capacity constraints since 2015.<sup>293</sup> In spite of these difficulties, there is evidence that the EITI Madagascar has actively promoted EITI implementation through a variety of communications channels in the 2014-2017 period, including: radio and television shows in French and Malagasy, including on national channels and at a regular frequency;<sup>294</sup> publications in newspapers;<sup>295</sup> posters,<sup>296</sup> and links on government entities and companies websites.<sup>297</sup> Press conferences are systematically organised for the publication of EITI Reports and independent studies on key issues are regularly commissioned by the EITI Madagascar.<sup>298</sup> However, promotion efforts have remained in the capital rather than mining regions since 2015.

In December 2016, EITI Madagascar conducted a two-day capacity-building workshop for around 40 CSOs to discuss environmental governance, including weaknesses in enforcing public consultation in license administration.<sup>299</sup> The EITI held a two-day workshop for journalists on the implementation of the EITI, including on extracting stories from EITI Reports in November 2015. There have regular capacity-building activities for MSG members, and regular calls for more<sup>300</sup>, on technical aspects of EITI implementation, the 2016 EITI Standard and the Validation process in 2013-2016.<sup>301</sup> EITI Madagascar has also regularly contributed to many events related to extractives governance organised by development partners such as GIZ targeting local communities, civil society organisations, media representatives, government agencies, investors and partners.<sup>302</sup>

**Contribution to public debate:** There is evidence that EITI Madagascar has contributed to public debate in the use of EITI data by local communities, CSOs, the media, development partners and think tanks.<sup>303</sup>

<sup>291</sup> See Objectives 7, 8 and 9 of the 2017 work plan: EITI Madagascar (2017), 'Plan d'action 2017', op. cit.

<sup>292</sup> EITI Madagascar (2017), 'Rapport annuel d'activité 2016', op. cit., p.37.

<sup>293</sup> EITI Madagascar (2016), 'Rapport annuel d'activité 2015', op. cit., p. 11,30.

<sup>294</sup> Including: a 1h44 debate on the 2012 and 2013 Report on Kolo TVfm, a private TV channel: Kolo TVFM (March 2015), 'MI-KOLO HEVITRA MOMBAN'NY KITAPOM-BOLAM-PANJAKANA', accessed [here](#) in November 2017; and weekly TV spots on the EITI in French and Malagasy on the national television, such as this example (August 2013), accessed [here](#) in November 2017. See also: Radio PAIKA (September 2013), 'Les enjeux de l'EITI à Madagascar', Tokotany Iraisana, 'Emission no. 113/114', scripts provided by the EITI Madagascar Secretariat, and a radio advertisement in Malagasy encouraging people to request the EITI Report, accessed [here](#) in November 2017.

<sup>295</sup> E.g: Magazine Expansion (February 2017), 'Une année décisive pour Madagascar', pp.26-27, provided by the EITI Madagascar Secretariat.

<sup>296</sup> Pictures of posters in Antananarivo and six regional cities, provided by the EITI Madagascar Secretariat.

<sup>297</sup> Links on government and industry websites include: BCMM website, accessed here in November 2017; Ambatovy website, 'Transparence', accessed [here](#) in November 2017; APPAM website, 'Les acteurs du pétrole à Madagascar', accessed [here](#) in November 2017. The Chamber of Mines has also published a key monography of the mining sector, partly based on EITI data: Chamber of Mines (December 2014), 'Monographie du secteur minier', accessed [here](#) in November 2017.

<sup>298</sup> L'ExpressMada (February 2017), 'Secteur minier – Plus de transparence pour les opérateurs' accessed [here](#) in November 2017; EITI Madagascar (April 2015), 'Présentation de l'étude sur la transparence de la gestion des titres miniers', provided by the EITI Madagascar.

<sup>299</sup> EITI Madagascar (December 2016), 'Rapport sur l'atelier sur la gouvernance environnementale : éviter, prévenir et gérer les conflits et l'épuisement de ressources naturelles', provided by the EITI Madagascar Secretariat.

<sup>300</sup> Presentations and minutes from the workshop (November 2015), provided by the EITI Madagascar Secretariat.

<sup>301</sup> See: EITI Madagascar (July 2016), 'Norme ITIE 2016: Principales modifications' and 'Norme ITIE 2016: Procédures de Validation'; EITI Madagascar (February 2015), 'La mise en oeuvre de l'ITIE pour la bonne gouvernance du secteur extractif'; and EITI Madagascar (July 2013), 'Présentation des Règles de l'ITIE – PV', copies were provided by the EITI Madagascar Secretariat.

<sup>302</sup> Recent examples include: OSCIE/AVG (July 2017), 'Quelques réflexions de la société civile, Croissance inclusive, durable et RSE', minutes provided by the EITI Madagascar Secretariat; Australia Alumni Association of Madagascar (August 2017), 'Workshop on mining governance : 19-21 April 2017 in the South West Region of Madagascar', accessed [here](#) in November 2017.

<sup>303</sup> The list of examples provide here is not exhaustive. CSOs affiliated to the EITI Madagascar have published open letters on the transparency of the sector, for instance: AVG et al. (September 2015), 'Appel de la société civile pour une bonne gouvernance effective des ressources minières et pétrolières bénéficiant durablement à la population malagasy', accessed [here](#) in November 2017. Online media writing using EITI

There appears to be frequent citation of the other independent studies commissioned by the MSG alongside EITI Reports, particularly by companies and development partners (*see Requirement 7.3, 7.4*). Industry and development partner stakeholders generally recognise EITI Madagascar's contribution to extractives transparency.<sup>304</sup> Public use of EITI data has focused particularly on four areas of subnational payments and transfers, the economic contribution of ASM, license allocation and reform of the Mining and Petroleum Codes. Subnational governments representatives and civil society have used EITI data to monitor payments of mining administration fees and as a tool for participatory budgeting (*see Requirements 4.6, 5.2 and 7.3*).<sup>305</sup> On ASM, EITI Reports have highlighted discrepancies in estimates of gold export values (and loss of revenues) in spite of the export ban.<sup>306</sup> On mining license management, EITI reporting has provided an annual diagnostic of reforms of BCMM oversight and gaps in the management of license movements.<sup>307</sup> EITI Madagascar has also provided input to reforms of sector legislation such as the Mining and Petroleum Codes, providing a platform for CSOs to provide comments.<sup>308</sup>

### Stakeholder views

MSG members highlighted financial and logistical challenges to dissemination and outreach efforts set out in annual work plans. They explained that funding constraints had led to the departure of staff in charge of communication and forced the MSG to focus primarily on EITI reporting. Several CSO representatives considered that EITI Reports were not comprehensible and difficult of access, with poor Internet connections to many of the country's regions and low coverage of the EITI in local and national media. There was disagreement between different MSG members consulted over the different constituencies' responsibilities with regards to outreach and dissemination.

Several MSG representatives however highlighted communications efforts made, difficult circumstances notwithstanding. Hard and digital copies of the 2014 EITI Report and summaries were circulated through channels including mailing lists, CDs and USBs to stakeholders including senior government officials, local CSOs and media representatives, although not communities in mining regions. They further mentioned a ten-minute TV show on the 2014 EITI Report that was aired on national TV in March 2017 and large

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data include la Gazette, Madagascar Tribune, Newsmada, Midi Madagasikara, l'Express de Madagascar, MadaNews, and Madagate. Partners and think tanks using EITI data include the World Bank, GIZ and ECDDPM.

<sup>304</sup> See: "EITI has gained a strong public profile in Madagascar, thanks to increased coverage in the media as well as effective outreach by the EITI National Committee and Secretariat.", ICMM (May 2013), *op. cit.*, p.9; "EITI reduces the opportunity for corruption by obliging companies and governments to disclose revenue flows, rather than going after corruption retroactively. Given this stabilizing function, EITI has sometimes been the only remaining platform for cooperation in a country during conflict. This has been the case in Madagascar, where EITI is regarded as a bastion of multi-stakeholder cooperation and transparency in a time of opacity following the 2009 coup. For example, a US\$100 million bonus paid by a Chinese company (Wisco) to the government for an iron ore mining research permit had been the center of much speculation since the beginning of the crisis, and was disclosed without discrepancy in the latest report.", World Bank (June 2013), *op. cit.*, p.30.

<sup>305</sup> Order no. 003-13/MINDEC/RSO on the organisation and collaboration between different actors in the Atsimo Andrefana region in the good governance of the extractive industries, Section I and II.; World Bank (2013), 'Madagascar, la Banque en action', p.50-51, accessed [here](#) in November 2017. See also: EITI Madagascar (May 2015), 'Présentation à la Chambre de commerce américaine à Madagascar', provided by the EITI Madagascar Secretariat. Conférence des Evêques de Madagascar (August 2015), 'Etat et perspective du secteur extractif à Madagascar', accessed [here](#) in November 2017; Newsmada (October 2016), 'Petits exploitants miniers : le processus de formalisation se profile', accessed [here](#) in November 2017; GIZ (September 2015), 'Rapport de l'atelier sur la gouvernance minière artisanale à Madagascar', provided by EITI Madagascar Secretariat.

<sup>306</sup> Publish What You Pay (February 2016), 'PWYP activities report 2012-2015: proud past, bright future', accessed [here](#), p.24. Transparency International (March 2017), 'Analyse de la corruption dans le secteur minier artisanal à Madagascar, filière or et saphir', accessed [here](#); MATV (December 2016), 'Ressources minières : une tonne d'or de production annuelle', accessed [here](#) in November 2017.

<sup>307</sup> The BCMM has undertaken a number of measures following recommendations from the study. See: BCMM (November 2016), 'Tableau de bord de suivi du diagnostic sur la gestion des titres miniers', provided by the EITI Madagascar Secretariat.

<sup>308</sup> MidiMagasikara (January 2017), 'Code minier et code pétrolier : de nombreux amendements apportés par le ministère de Mines', accessed [here](#) in November 2017; OSCIE (January 2017), 'Principales remarques relatives aux projets d'amélioration du Code minier et du Code pétrolier', provided by the EITI Madagascar Secretariat.



billboards in several cities with key 2014 EITI Report figures. A government official stated that events on the publication of EITI Reports or independent thematic studies had been regularly well attended in recent years, with stakeholders welcoming EITI Madagascar's role in identifying areas for reform and gaps in information systems. MSG members noted that several regional outreach events were scheduled for late 2017 – early 2018 and that recruitment of a national secretariat communications officer was ongoing.

### Initial assessment

The International Secretariat's initial assessment is that Madagascar has made satisfactory progress in meeting this requirement. Despite limited resources, Madagascar has ensured that the EITI Report is comprehensible, actively promoted, publicly accessible and contributes to public debate. While there is little evidence of outreach and dissemination to communities in mining regions in the 2015-2017 period, the assessment of Requirement 7.1 must be taken in the context of broader funding challenges (*see Requirement 1.5*) and uneven engagement across different constituencies (*see Requirement 1.4*).

To strengthen implementation and in line with stakeholder views, EITI Madagascar is encouraged to enhance its efforts to make EITI data accessible to as broad a range of stakeholders as possible and expand its outreach and dissemination to communities hosting extractives extractive activities.

## Data Accessibility (#7.2)

### Documentation of progress

The EITI Madagascar website does not provide access to EITI data in open data format and the latest data available on the Madagascar country page of the global EITI website dates from 2011.<sup>309</sup> However, the MSG submitted summary data tables for its 2014 EITI Report to the International Secretariat prior to the start of Validation on 1 September 2017.<sup>310</sup> The MSG has also published its 2012-2014 EITI Reports in French, with summary reports available in Malagasy and English.<sup>311</sup> There is evidence of recent efforts by EITI Madagascar to promote the use of EITI data through two-day capacity-building workshops for journalists in 2015 and 2017 and for civil society in December 2016 (*see Requirement 7.1*).

### Stakeholder views

A government representative described the long process for finalising the summary data tables for 2014, which had involved meetings with development partners like the IMF to ensure consistency in the revenue classification nomenclature. Upon discussing open data efforts, stakeholders from all three constituencies raised concerns related to low Internet penetration and digital literacy rates in Madagascar, considering that efforts should be focused on disseminating hard-copy information. However, MSG members also highlighted their efforts to drive greater use of EITI data through capacity-building workshops for journalists and civil society. .

<sup>309</sup> See Madagascar country page, EITI website, accessed [here](#) in November 2017.

<sup>310</sup> EITI Madagascar (June 2016), 'Termes de Référence du réconciliateur EITI pour la réalisation du rapport de réconciliation 2015', op.cit., p.8.

<sup>311</sup> See EITI Madagascar website, communications page [here](#) and reports page [here](#), accessed in November 2017.

## Initial assessment

Requirement 7.2 encourages the MSGs to make EITI reports accessible to public in open data formats. Such efforts are encouraged but not required and are not assessed in determining compliance with the EITI Standard. Madagascar's EITI data was not publicly-available in machine readable format at the start of Validation, although EITI Madagascar had prepared draft summary data tables in line with Board guidance prior to September 2017. EITI Madagascar has published summaries of EITI Reports and made EITI information available in local languages (French, Malagasy and English).

To strengthen implementation, EITI Madagascar is encouraged to make EITI Reports machine readable, and to code or tag EITI Reports and data files so that the information can be compared with other publicly available data by adopting Board-approved EITI data standards.

## Lessons Learned and follow-up on recommendations (#7.3)

### Documentation of progress

**Recommendations and follow-up:** Madagascar's EITI Reports have consistently included recommendations on EITI reporting and broader reforms. There is evidence of the MSG providing substantial input to draft recommendations ahead of the publication of EITI Reports.<sup>312</sup> Successive EITI Reports have tracked progress in addressing past recommendations (*see table below*). The 2015 and 2016 APRs highlight the lack of systematic follow-up on recommendations by the MSG,<sup>313</sup> with the latter prioritising key areas of public interest, including BCMM's mining licensing and the management of geo-scientific data.<sup>314</sup> Yet in its 2016 pre-Validation self-assessment, the MSG considered that there had been adequate follow-up on individual recommendations with relevant entities.<sup>315</sup> The follow-up on several recommendations of the 2014 EITI Report since its publication is also of note, not least on institutionalizing the EITI, an online mining cadastre or the dissemination of the EITI Report.

EITI Report year	Number of recommendations	Number of past recommendations	Number of recommendations followed up	Number of recommendations not followed up
2007-2009	6	N/A	N/A	N/A
2010	8	6	4	2
2011	16	4	0	4
2012	21	16	0	16
2013	21	16	0	16
2014	20	21	6	15

Source: Madagascar EITI Reports, 2007-2014.

**Discrepancies:** There is evidence that the MSG regularly discusses discrepancies before approving EITI Reports<sup>316</sup> and that APRs usually mention the general reasons for discrepancies, mainly due to companies not reporting and the short timeframe for data collection. The MSG ensured that Ministerial Circulars

<sup>312</sup> EITI Madagascar, Minutes of MSG meetings on 8 January 2015, 20 December 2016, 17 March and 26 April 2017, not accessible online, provided by EITI Madagascar Secretariat.

<sup>313</sup> EITI Madagascar (2016), 2015 annual activity report, op.cit., p.22 and EITI Madagascar (June 2017), '2016 APR', op.cit., p.31.

<sup>314</sup> EITI Madagascar (2015), EITI Madagascar 2014 annual activity report, op.cit., p.13.

<sup>315</sup> EITI Madagascar (2016), 'Pre-Validation self-assessment: requirement 7', unpublished, provided by EITI Madagascar Secretariat.

<sup>316</sup> EITI Madagascar, MSG meeting minutes of 20 December 2016, provided by the EITI Madagascar Secretariat.

were issued to make it mandatory for material companies to report (*see Requirements 1.1 and 1.2*).

Broader reforms: There is evidence the EITI has had a tangible impact in at least four ways:

- It has strengthened public oversight of the complex legal environment and fiscal regime for mining, feeding into legal reforms of the Mining and Petroleum Codes. EITI Madagascar has provided input in numerous workshops on reforms to the Mining, Petroleum and Land Codes, as well as on ASM, local content and corporate social responsibility (*see Requirement 7.1*). The early EITI Reports were also key in identifying taxes and fees (such as VAT and customs duties) paid by large projects like Ambatovy despite their special fiscal status exempting them from such taxes.<sup>317</sup>
- The comparison of informal gold export estimates in the 2012-2014 EITI Reports, and computations of corresponding loss in government revenues, have prompted the government to implement a new strategy for the gold sector.
- EITI reporting has also strengthened the system of subnational transfers of mining revenues, by uncovering significant inefficiencies in subnational transfers and empowering mayors to monitor their communes' share of FAM (*see Requirement 5.2*). The Ministry of Decentralisation also undertook roadshows to seven communes in January-March 2013, establishing a network of mayors to streamline disbursement of subnational FAM transfers.<sup>318</sup> The 2012-2013 EITI Reports also described companies' social contributions and participatory budgeting of communal revenues.
- Finally, EITI reporting has strengthened government information gathering and management systems. Following EITI Reports' highlighting of inconsistencies between the Customs Department's single taxpayer identification numbers and the Tax Department's matriculation number, the Ministry of Finance initiated the sanitising of both departments' company databases in 2013.<sup>319</sup> Data on FAM transfers by region in 2015-2016 is also available on the BCMM website.

## Stakeholder views

Two industry representatives noted that EITI recommendations were pertinent, but that follow-up had been inconsistent due to limited resources and sometimes unresponsive government entities. Several CSO and government representatives highlighted that recommendations were systematically discussed by the MSG before approving each EITI Report, and that they were sent to the relevant entities following the publication of the latter. However, there was consensus that there was no mechanism beyond MSG follow-up that institutionalised follow-up on EITI recommendations. A government representative stated that the independent studies commissioned by the MSG aimed at addressing several of these recommendations and mentioned that the BCMM itself had drafted reports on the follow-up on recommendations from the 2015 study on license allocation. While stakeholders described recent reforms such as the launch of the online mining cadastre or the MFB's new IT application meant to streamline subnational transfers of FAM, they did not link these developments to follow-up on EITI recommendations, even if they recognised the relevance of EITI in identifying bottlenecks addressed by these reforms.

<sup>317</sup> EITI Madagascar (2014), '2013 annual activity report', op.cit., p.12.

<sup>318</sup> EITI Madagascar (2014), '2013 annual activity report', accessed [here](#) in November 2017, p.12.

<sup>319</sup> EITI Madagascar (2014), '2013 annual activity report', op.cit., p.12.

## Initial assessment

The International Secretariat's initial assessment is that Madagascar has made satisfactory progress in meeting this requirement. Despite limited resources, there is evidence that the MSG has taken steps to act upon lessons learnt, including on causes of discrepancies, and consider recommendations resulting from EITI reporting. Despite the lack of institutionalised framework for follow-up on EITI recommendations, a number of tangible government reforms have clearly been enacted linked to EITI recommendations.

To strengthen implementation, the MSG is encouraged to consider more formalised and systematic mechanisms to follow up on recommendations from EITI Reports and Validation.

## Outcomes and impact of implementation (#7.4)

### Documentation of progress

The 2016 annual progress report was approved by the MSG on 19 June 2017 and is available on the EITI Madagascar website.

*Summary of activities:* It highlights the publication of the 2014 EITI Report, the follow-up on recommendations drawn from the studies on the management of mining titles and geo-scientific information and a workshop for CSOs in December 2016 on the EITI process (pp. 2-10). It presents findings from the 2014 EITI Report and the updated versions of both aforementioned studies.<sup>320</sup>

*Progress against meeting EITI Requirements:* The report comments on progress against meeting certain requirements, namely 1.1, 1.5, 3, some aspects of 4 and 5, and 7.1-4. (p.18-21). The APR also uses the Validation scorecard to summarize progress, with "inadequate progress" only on requirement 7 (p.22-23). Recommendations from the 2016 self-assessment exercise include strengthening the institutionalisation of the EITI and dissemination activities, and progressing on beneficial ownership (pp. 24-30).

*Progress made in addressing reconciliation recommendations and achieving work plan objectives:* All recommendations from reconciliation are listed (pp.31-36). The report states that the MSG could not address these recommendations or put in place a mechanism to follow their implementation, except through studies on the management of mining titles and of geo-scientific information (p.31; see *Requirement 7.3*). The report also notes that funding challenges have hampered the implementation of work plan activities. All 2016 work plan objectives are listed, with most activities ongoing and a number of deliverables expected in 2017 (pp.11-17). The report does not comment in detail on the impact and outcome of these objectives.

*Narrative account of efforts to strengthen implementation:* Strengths highlighted in the report include available funding from PAGI and MDTF, MSG commitment despite a difficult context and the organisation

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<sup>320</sup> All in-text citations in this section on Requirement 7.4 refer to the 2016 APR: EITI Madagascar (June 2017), op. cit.

of a workshop for CSOs in December 2016, which drew attention from local media. Weaknesses cited include irregular MSG meeting attendance, an often-absent EITI Champion, the general lack of interest and knowledge about the EITI due to the previous suspension of Madagascar, and the lack of funding which has undermined the functioning of the National Secretariat and communication activities (p.37).<sup>321</sup> While the APR does not comment on the impact of the EITI implementation, the report notes the MSG's awareness of the need to effectively implement work plan activities, systematize MSG meetings, agree on priorities for implementation and decentralize the EITI process (p.38).

*Evaluation of the implementation of the beneficial ownership roadmap:* Madagascar published its beneficial ownership roadmap in December 2016. It will therefore be covered by the 2017 APR.

### Stakeholder views

Several MSG members noted that the 2016 annual progress report had been drafted by only a handful of MSG members, due to the short timeframe, raising concerns that the report did not adequately reflect broader constituency views. MSG members did not appear to consider the annual progress report as a communications channel for domestic stakeholders.

### Initial assessment

The International Secretariat's initial assessment is that Madagascar has made meaningful progress in meeting this requirement. The 2016 annual progress report reflects efforts to strengthen EITI implementation and provides information on progress in implementing EITI Requirements and work plan objectives. However, the report does not provide an assessment of the impact of the implementation of these objectives. There are also concerns that the annual progress report does not reflect the views of most stakeholders.

In accordance with Requirement 7.4, the annual progress report should be the product of consultations with all stakeholders and include a review of the impact of EITI implementation. Civil society groups and industry involved in the EITI, particularly, but not only those serving on the MSG, should be able to provide feedback on the EITI process and have their views reflected in the APR.

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<sup>321</sup> The APR notes that the budget for 2016 was set as follows: PAGI (AfDB) USD 200,500; MDTF (WB) USD 235,154; and basket fund (to be funded by government) USD 100,000; for a total of USD 536,654 (p.2).

**Table 7 - Summary initial assessment table: Outcomes and impact**

EITI provisions	Summary of main findings	Validator's recommendation on compliance with the EITI provisions
Public debate (#7.1)	Despite limited resources, Madagascar has ensured that the EITI Report is comprehensible, actively promoted, publicly accessible and contributes to public debate. While there is little evidence of outreach and dissemination to communities in mining regions in the 2015-2017 period, the assessment of Requirement 7.1 must be taken in the context of broader funding challenges ( <i>see Requirement 1.5</i> ) and uneven engagement across different constituencies ( <i>see Requirement 1.4</i> ).	Satisfactory progress
Data accessibility (#7.2)	Madagascar's EITI data was not publicly-available in machine readable format at the start of Validation, although EITI Madagascar had prepared draft summary data tables in line with Board guidance prior to September 2017. EITI Madagascar has published summaries of EITI Reports and made EITI information available in local languages (French, Malagasy and English).	
Lessons learned and follow up on recommendations (7.3)	Despite limited resources, there is evidence that the MSG has taken steps to act upon lessons learnt, including on causes of discrepancies, and consider recommendations resulting from EITI reporting. Despite the lack of institutionalised framework for follow-up on EITI recommendations, a number of tangible government reforms have clearly been enacted linked to EITI recommendations.	Satisfactory progress
Outcomes and impact of implementation (#7.4)	The 2016 annual progress report reflects efforts to strengthen EITI implementation and provides information on progress in implementing EITI Requirements and work plan objectives. However, the report does not provide an assessment of the impact of the implementation of these objectives. There are also concerns that the annual progress report does not reflect the views of most stakeholders.	Meaningful progress
<p>International Secretariat's recommendations:</p> <ol style="list-style-type: none"> <li>1. To strengthen EITI implementation and in line with stakeholder views, EITI Madagascar is encouraged to enhance its efforts to make EITI data accessible to as broad a range of stakeholders as possible and expand its outreach and dissemination to communities hosting extractives extractive activities.</li> <li>2. To strengthen EITI implementation, EITI Madagascar is encouraged to make EITI Reports machine readable, and to code or tag EITI Reports and data files so that the information can be compared with other publicly available data by adopting Board-approved EITI data</li> </ol>		

standards.

3. To strengthen EITI implementation, the MSG is encouraged to consider more formalised and systematic mechanisms to follow up on recommendations from EITI Reports and Validation.
4. In accordance with Requirement 7.4, the annual progress report should be the product of consultations with all stakeholders and include a review of the impact of EITI implementation. Civil society groups and industry involved in the EITI, particularly, but not only those serving on the MSG, should be able to provide feedback on the EITI process and have their views reflected in the APR.

## 8. Impact analysis (not to be considered in assessing compliance with the EITI provisions)

### Impact

Over the course of the past four years, the objectives of EITI Madagascar's implementation have focused primarily on key areas of public interest, such as the management of mining licenses and access to geoscientific data. Recent assessments of priorities have shed light on the need for EITI Madagascar to strengthen EITI reporting on subnational payments and transfers, to gradually increase the scope of EITI reporting to reflect all stakeholder's priorities, and to decentralise and institutionalise the EITI process. While progress in achieving successive EITI work plan objectives has been inconsistent, stakeholder views and publicly-available information point to a variety of tangible impacts of EITI implementation on several aspects of extractives governance.

***Constructive engagement:*** The EITI has provided a space for constructive dialogue. Described as a "safety net" by many stakeholders during the period of Madagascar's international isolation following the 2009 coup, the MSG sustained implementation even during Madagascar's suspension by the EITI Board in October 2011-June 2014. While industry has capitalised on the EITI as a mechanism for addressing broader extractives issues, lacklustre engagement from government and civil society in the 2015-2017 period weakened the MSG as a forum for robust multi-stakeholder debate. Nonetheless, stakeholders have used the EITI as a forum for constructive tripartite consultations on mining license management, artisanal and small-scale mining, subnational payments and transfers, social expenditures and broader legislative reform. This role is being recognised by companies such as Ambatovy, which has included the EITI in the multi-stakeholder committee in charge of devising a solution for the payments of the company's ristournes, which benefits local communities.

***Public understanding:*** Given the low starting point in terms of accessibility to data on mining, oil and gas prior to Madagascar's implementation of the EITI, the impact of EITI reporting has been significant. Many stakeholders explained that EITI data had become a reference for production and export figures. There is significant use of EITI data by government, industry and development partners, although evidence of civil society's use of EITI data in their engagements with local communities hosting extractives activities is sparser. Despite the lack of systematic mechanisms for disseminating EITI data to local governments, partly due to capacity and funding constraints, there is evidence of awareness on the part of local officials about their statutory entitlements to shares of extractives revenues, such as FAM. Many industry stakeholders make active use of EITI data on the mining sector's direct and indirect economic contributions in their discussions with government and local communities. There is however less evidence of the EITI's impact on broader public understanding of the extractive industries and the EITI's impact on poverty reduction and sustainable development, considered key by most stakeholders. Planned outreach activities in regions hosting extractives activities represent the opportunity for EITI Madagascar to address these gaps.

***Strengthening government systems:*** The implementation of the EITI has had a significant impact in strengthening government systems. Primary examples include the diagnostic tools provided by independent studies commissioned by the MSG. Stakeholders have indeed highlighted direct links between recommendations from the 2015 and 2017 study on the management of mining licenses and the



launch of the BCMM online cadastre, with evidence that the BCMM has consistently followed-up on these recommendations. EITI Reports have contributed to the harmonisation of single tax ID numbers within the MFB, even though they are still not consistent with those used by OMNIS and BCMM. The most innovative example to date is probably the introduction of the MFB's new IT application to streamline subnational transfers from holders of mining licenses to subnational governments, which was partly based on the EITI Reports' annual diagnostic of the efficiency of subnational FAM transfers. Moreover, EITI Madagascar has been consulted as a key actor in the draft revisions of the Mining and Petroleum Codes, even though the outcome of the latter is currently uncertain. Yet there is consensus among stakeholders that the impact of EITI implementation on government systems would have been greater with more consistent and proactive engagement from key government agencies. While EITI Madagascar has generated pertinent diagnostics, implementation of proposed reforms has been overall uneven. The impact on government and company systems has been greatest in mining, rather than in the smaller oil and gas sector. There is however clear potential for the EITI to support reforms in public financial management, including improving the traceability of extractives revenues to the national budget and the financial management of SOEs like KRAOMA. There would also be clear synergies in integrating the EITI's annual diagnostic of audit and assurance systems into the government's broader reform of the CdC.

*Recognition:* Madagascar's EITI implementation has garnered the country international recognition, particularly following a period of international isolation following the 2009 Coup d'état. There is evidence of EITI data being used by the industry representatives to reassure their shareholders, and evidence of EITI data being used by government to inform and attract investors.

## Sustainability

*Funding:* Stakeholders have consistently highlighted challenges related to the uncertainty surrounding financial resources. The MSG has deplored how time-consuming securing funding and complying with donor procedures have been, at the expense of the implementation of work plan activities. Inconsistent government financial support has regularly cast doubt over the long-term sustainability of the EITI process. Although funding provisions of the August 2017 Decree bodes well for the upcoming years, several stakeholders have expressed concerns over potential conflicts of interest derived from BCMM and OMNIS funding.

*Institutionalisation:* The August 2017 Decree on EITI has brought clarity on the government's commitment to the institutionalisation of EITI and solid ground for improving representation of all three constituencies within the MSG. However, the experience of the 2014-2017 period demonstrates the importance of effective implementation and follow-through on statutory EITI procedures. Stakeholders have also welcome the annual ministerial circulars making EITI reporting mandatory for material companies.

## Validation of Madagascar: Report on initial data collection and stakeholder consultation

## Annexes

## Annex A - List of MSG members 2013-2017

Constituency	2013	2014	2015	2016
Civil society	M. ANDRIAMANGA Andry, de l'Alliance Voahary Gasy, représentant PCQVP	ANDRIAMANGA Andry, Coordonnateur de l'Alliance Voahary Gasy, représentant le GIE	RAKOTONDRALAMBO Holly, Alliance Voahary Gasy	Mme. RAKOTONDRALAMBO Holly, Alliance Voahary Gasy, représentant du GIE
	RAJAOBELINA Léon, Vice-président de Conservation Internationale, représentant le GIE	RAJAOBELINA Léon, Vice-président de Conservation Internationale, représentant le GIE	RAJAOBELINA Léon, Vice-président de Conservation Internationale, représentant le GIE	NICOLL Martin, Senior Conservation Advisor de WWF, représentant le GIE
	NICOLL Martin, Senior Conservation Advisor de WWF, représentant le GIE	NICOLL Martin, Senior Conservation Advisor de WWF, représentant le GIE	NICOLL Martin, Senior Conservation Advisor de WWF, représentant le GIE	NICOLL Martin, Senior Conservation Advisor de WWF, représentant le GIE
	M. RAZAFINDRAIBE Ernest, de la KMF CNOE (Comité National pour l'Observation des Elections1), représentant la coalition PCQVP Madagascar	LEWIS Richard, Directeur National de Durell Wildlife Conservation Trust, représentant le GIE	LEWIS Richard, Directeur National de Durell Wildlife Conservation Trust, représentant le GIE	LEWIS Richard, Directeur National de Durell Wildlife Conservation Trust, représentant le GIE
RAZAFINDRAIBE Ernest, Secrétaire Exécutif de l'UNMDH (Union Nationale Malgache pour les Droits de l'Homme), représentant la coalition PCQVP Madagascar	RAZAFINDRAIBE Ernest Président National du KMF-CNOE (Comité National pour l'Observation des Elections), représentant la coalition PCQVP Madagascar	RAZAFINDRAIBE Ernest, représentant la coalition PCQVP Madagascar	Mme RAVELOSON Voahangy, représentant la coalition PCQVP Madagascar	
RAFOLISISOA Haingo, Secrétaire Exécutif de l'UNMDH (Union Nationale Malgache pour les Droits de l'Homme), représentant la coalition PCQVP Madagascar	RAFOLISISOA Haingo, Secrétaire Exécutif de l'UNMDH (Union Nationale Malgache pour les Droits de l'Homme), représentant la coalition PCQVP Madagascar	RAFOLISISOA Haingo, Secrétaire Exécutif de l'UNMDH (Union Nationale Malgache pour les Droits de l'Homme), représentant la coalition PCQVP Madagascar	RAFOLISISOA Haingo, Secrétaire Exécutif de l'UNMDH (Union Nationale Malgache pour les Droits de l'Homme), représentant la coalition PCQVP Madagascar	
RAJERIHARINDRANTO Harinesy, Coordonnateur Régional Zone Sud ONG ASOS (Société civile Régionale).	RAJERIHARINDRANTO Harinesy, Coordonnateur Régional Zone Sud ONG ASOS (Société civile Régionale).	RAJERIHARINDRANTO Harinesy, Coordonnateur Régional Zone Sud ONG ASOS (Société civile Régionale).	RAJERIHARINDRANTO Harinesy, Coordonnateur Régional Zone Sud ONG ASOS (Société civile Régionale).	
Constituency	2013	2014	2015	2016
Industry	Mme LALAINA Tina, du Projet Ambatovy, représentant la Chambre des Mines	FITZGERALD Winifred, Conseillère Relations Externes du Projet Ambatovy représentant la Chambre des Mines	FITZGERALD Winifred, Conseillère Relations Externes du Projet Ambatovy représentant la Chambre des Mines	FITZGERALD Winifred, Conseillère Relations Externes du Projet Ambatovy représentant la Chambre des Mines
	Mme DAVIDSON Jeanne, de KRAOMA (Kraomita Malagasy), représentant la Chambre des Mines	RANDRIAMANANAIVO John, Directeur Administratif et Financier de KRAOMA (Kraomita Malagasy), représentant la Chambre des Mines	M. MARQUETOUX Jean Luc, de la société MADA AUST, représentant la Chambre des Mines	M. MARQUETOUX Jean Luc, de la société MADA AUST, représentant la Chambre des Mines
	BOARLAZA Lydia, Directeur Général de Madagascar Consolidated Mining, représentant la Chambre des Mines	BOARLAZA Lydia, Directeur Général de Madagascar Consolidated Mining, représentant la Chambre des Mines	BOARLAZA Lydia, Directeur Général de Madagascar Consolidated Mining, représentant la Chambre des Mines	BOARLAZA Lydia, Directeur Général de Madagascar Consolidated Mining, représentant la Chambre des Mines
	RAZAFINTSALAMA Lalalison, Relations avec les Institutions, de Toliara Sands, représentant la Chambre des Mines	RAZAFINTSALAMA Lalalison, Relations avec les Institutions, de Toliara Sands, représentant la Chambre des Mines	ANDRIANARIJAONA Tiana, Toliara Sands, représentant la Chambre des Mines	Mme. ANDRIANARIJAONA Tiana, de la Toliara Sands, représentant la Chambre des Mines
	DANE Marcelle, Directeur Général de Tullow Oil Madagascar, représentant l'APPAM	DANE Marcelle, Directeur Général de Tullow Oil Madagascar, représentant l'APPAM	DANE Marcelle, Directeur Général de Tullow Oil Madagascar, représentant l'APPAM	DANE Marcelle, Directeur Général de Tullow Oil Madagascar, représentant l'APPAM
	Mme RALUJOHN Emma, de Madagascar Oil, représentant l'APPAM	RALUJOHN Emma, Directeur Général Adjoint de Madagascar Oil, représentant l'APPAM	RAHARISON Edmond, Total E&P Madagascar, représentant l'APPAM	M. RAHARISON Edmond, Total E&P Madagascar, représentant l'APPAM
Constituency	2013	2014	2015	2016
Government	M. RAKOTOTAFIKA Gérard, représentant du Ministère auprès de la Présidence chargé des Mines et du Pétrole	M. RAKOTOTAFIKA Gérard, représentant du Ministère auprès de la Présidence chargé des Mines et du Pétrole	M. RAKOTOTAFIKA Gérard, représentant du Ministère auprès de la Présidence chargé des Mines et du Pétrole	M. RAKOTOTAFIKA Gérard, représentant du Ministère auprès de la Présidence chargé des Mines et du Pétrole
	BETKOU PAUL Jean-Jacques, Directeur de l'Exploration et de l'Exploitation, Ministère des Hydrocarbures	BETKOU PAUL Jean-Jacques, Directeur de l'Exploration et de l'Exploitation, Ministère des Hydrocarbures	RATSIMANDRESY RATSARAZAKA Andrianirina, Ministère auprès de la Présidence chargé des Mines et du Pétrole	Mme HANITRA Lalaina, représentant du Ministère auprès de la Présidence chargé des Mines et du Pétrole
	RABENJA Eric, Directeur des Statistiques et de la Comptabilité Douanière, Direction Générale des Douanes, Ministère des Finances et du Budget	RABENJA Eric, Directeur des Statistiques et de la Comptabilité Douanière, Direction Générale des Douanes, Ministère des Finances et du Budget	Mme. SOAFARA Hanitrinala Marie France Direction Générale des Douanes, représentant du Ministère des Finances et du Budget	Mme. SOAFARA Hanitrinala Marie France Direction Générale des Douanes, représentant du Ministère des Finances et du Budget
	M. RASOLOMAROLAHY Gabriel, du département de l'Economie et des Industries	RAJOELISON Liva, Chef de service de la législation / Direction Générale des Impôts, Ministère des Finances et du Budget	M. RAKOTONANAHARY Herizo Direction Générale des Impôts, représentant du Ministère des Finances et du Budget	M. RAKOTONANAHARY Herizo Direction Générale des Impôts, représentant du Ministère des Finances et du Budget
	M. RANDRIANTAVISON Alain, du département de la Décentralisation	RAHARISON Mirana, Directeur Général du Développement du Secteur Privé, Ministère de l'Industrie, du Développement du Secteur Privé et PME	M. RANDRIANARISON Ndrasanamahery, représentant du Ministère de l'Economie et du Plan	M. RANDRIANARISON Ndrasanamahery, représentant du Ministère de l'Economie et du Plan
DAMA, Directeur des Évaluations Environnementales, Ministère de l'Environnement et des Forêts	DAMA, Directeur des Évaluations Environnementales, Ministère de l'Environnement et des Forêts	RABEFITIA Haga, Ministère de l'Environnement et des Forêts	M. RABEFITIA Haga, représentant du Ministère de l'Environnement et des Forêts	
	RANDRIAMAHENINA Théodore Lucien, Directeur Général de l'Administration du Territoire, Ministère de	RANDRIAMAHENINA Théodore Lucien, Directeur Général de l'Administration du Territoire, Ministère de	M. NGOLO Gilbert, représentant du Ministère de l'Intérieur et de la Décentralisation	
			Mme. RAKOTONIRINA Holy Volana, représentant du Ministère de l'Intérieur et de la Décentralisation	

(provided by EITI Madagascar Secretariat on 30 October 2017)

## Validation of Madagascar: Report on initial data collection and stakeholder consultation

## Annex B – MSG meeting attendance, 2013-2017

Nombre de membres du CNAT présent en moyenne:	2013	2014	2015	2016	2017	Moyenne sur toute la période:	
	11	10	9	6	6	8	
<b>Analyse de présence collège: Administration</b>	<b>2013/9 réunions</b>	<b>2014/14 réunions</b>	<b>2015/5 réunions</b>	<b>2016/8 réunions</b>	<b>2017/3 réunions</b>	<b>Taux de participation sur 39 réunions</b>	
Champion EITI	6	4	2	1	0	33%	
MdM/MPRS/MPMP (mines, ressources stratégiques, mines)	7	11	5	7	3	85%	
Ministère des Hydrocarbures	3	7	n/a	n/a	n/a	43%	
MFB	5	8	3	1	0	44%	
VPEI/MIDSPPME/MEP (Economie)	4	1	2	0	0	18%	
MEF/MEEF (Environnement)	3	0	0	0	0	8%	
Ministère de l'interieur et de la Decentralization	2	3	2	0	0	18%	
<b>Moyenne annuelle:</b>	<b>48%</b>	<b>35%</b>	<b>47%</b>	<b>19%</b>	<b>17%</b>	<b>36%</b>	<b>33%</b>
<b>Analyse de présence collège: Industries</b>	<b>2013/9 réunions</b>	<b>2014/14 réunions</b>	<b>2015/5 réunions</b>	<b>2016/8 réunions</b>	<b>2017/3 réunions</b>	<b>Taux de participation</b>	
Ambatovy (CMM)	4	9	3	4	1	54%	
KRAOMA (CMM)	5	9	n/a	n/a	n/a	61%	
MCM (CMM)	8	11	2	8	3	82%	
Toliara Sands (MCM)	3	2	1	2	2	26%	
Mada-Aust SARL (MCM)	n/a	n/a	n/a	7	3	91%	
Tullow Oil (APPAM)	5	10	4	4	2	64%	
Madagascar Oil (APPAM)	7	10	n/a	n/a	n/a	74%	
Exxon Mobil	n/a	9	n/a	n/a	n/a	64%	
Total EP	n/a	n/a	n/a	2	1	27%	
SAPETRO (APPAM)	n/a	n/a	n/a	0	0	0%	
OMV Offshore Morondava (APPAM)	n/a	n/a	n/a	n/a	0	0%	
<b>Moyenne annuelle:</b>	<b>59%</b>	<b>61%</b>	<b>50%</b>	<b>48%</b>	<b>50%</b>	<b>49%</b>	<b>54%</b>
<b>Analyse de présence collège: Société Civile</b>	<b>2013/9 réunions</b>	<b>2014/14 réunions</b>	<b>2015/5 réunions</b>	<b>2016/8 réunions</b>	<b>2017/3 réunions</b>	<b>Taux de participation</b>	
AVG (Alliance Vohary Gasy)	2	5	0	5	0	31%	
Conservation International (GIE/OSCIE)	4	6	n/a	n/a	n/a	43%	
WWF (GIE/OSCIE)	5	7	3	2	0	44%	
Durrell Wildlife Conservation Trust (GIE/OSCIE)	3	10	3	1	3	51%	
KMF-CNOE (PCQVP)	5	5	2	2	0	36%	
UNMDH (PCQVP)	6	7	2	1	0	41%	
ASOS Zone Sud	0	1	0	0	0	3%	
<b>Moyenne annuelle:</b>	<b>40%</b>	<b>42%</b>	<b>33%</b>	<b>23%</b>	<b>17%</b>	<b>36%</b>	<b>31%</b>

Source: EITI Madagascar Secretariat.

## Annex C – Cost of EITI Reports

Reports	Date of publication	Independent Administrator	Cost (MGA)	Cost (USD) – exchange rate as of 31.10.2017
2011 EITI Report	September 2013	Ernst&Young	N/D Cf. E&Y	-
2012 and 2013 EITI Reports	January 2015	Ernst&Young	299,821,581	Approx. 94,000
2014 EITI Report	December 2016	PriceWaterhouseCoopers	239,030,400	Approx. 75,000

*Source: EITI Madagascar Secretariat, sent on 30.10.17*

## Annex D – Data quality assurance provided in the 2014 EITI Report

## Qualité des données reçues des Entreprises

ID	DENOMINATION	Travaux	REC/ NON REC	Groupe <sup>1</sup>	Remise du canevas Signature Management Lettre confirmation Expert-comptable Remise EF auditées / ou non auditées Divulguation par paiement				
					Remise du canevas	Signature Management	Lettre confirmation	Expert-comptable	Remise EF auditées / ou non auditées
1	DYNATEC MADAGASCAR S.A	REC	REC	A'	oui	oui	non	oui	oui
2	HOLCIM Madagascar S.A.	REC	REC	A'	oui	oui	non	non	oui
3	QIT MADAGASCAR MINERALS S.A.	REC	REC	A'	oui	oui	non	oui	oui
4	AMBATOVY MINERALS S.A.	REC	REC	A'	oui	oui	non	oui	oui
5	MADAGASCAR OIL	REC	REC	A'	oui	oui	non	oui	oui
6	MAINLAND MINING LTD S.A.R.L.U	REC	REC	A'	oui	oui	oui	non	oui
7	GOLD SAND S.A.R.L.	REC	REC	A'	oui	oui	non	non	oui
9	KRAOMA S.A.	REC	REC	A'	oui	oui	non	oui	oui
10	EXXON MOBIL	UNI	NON REC	A'	non	non	non	non	non
11	TULLOW MCAR	REC	REC	A'	oui	oui	non	non	oui
12	GALLOIS Etablissement	UNI	NON REC	A'	non	non	non	non	non
13	TANETY LAVA S.A.R.L.	REC	REC	A'	oui	oui	non	non	oui
14	NIKO RESSOURCES	UNI	NON REC	A'	non	non	non	non	non
15	MADA-AUST S.A.R.L.	REC	REC	A'	oui	oui	non	non	oui
17	TOTAL EXPLORATION	REC	REC	A'	oui	oui	non	non	oui
20	NOVA RESOURCES S.A.R.L.U	REC	REC	A'	oui	oui	non	non	oui
21	MADAGASCAR PETROLEUM INTERNATIONAL LTD	UNI	NON REC	A'	non	non	non	non	non
22	MADAGASCAR ENERGY INTERNATIONAL LTD	UNI	NON REC	A'	non	non	non	non	non
23	TANTALUM RARE EARTH (MALAGASY) S.A.R.L.U	REC	REC	A'	oui	oui	non	non	oui
24	LABRADOR MADAGASCAR -	REC	REC	A'	oui	oui	non	non	oui
25	BAO MA S.A.R.L.U.	UNI	NON REC	A'	non	non	non	non	non
26	ACCESS MADAGASCAR S.A.R.L.	UNI	NON REC	A'	non	non	non	non	non
27	GRAPH-MADA S.A.R.L.	REC	REC	A'	oui	oui	non	non	oui
28	MPUMALANGA MINING RESOURCES S.A.U	REC	REC	A'	oui	oui	non	non	oui
31	MINERAL PRODUCTS INTERNATIONAL GROUP S.A.R.L.	UNI	NON REC	A'	non	non	non	non	non
32	STERLING ENERGY LTD	REC	REC	A'	oui	oui	non	non	oui
33	CALIBRA RESOURCES & ENGINEERS MADAGASCAR S.A.R.L.U	UNI	NON REC	A'	non	non	non	non	non
34	RED GRANITI MADAGASCAR S.A.R.L.	UNI	NON REC	A'	non	non	non	non	non
35	MADAGASCAR CONSOLIDATED MINING S.A.	REC	REC	A'	oui	oui	non	non	oui
36	AMICOH RESOURCES	REC	REC	A'	oui	oui	non	non	oui
38	CLASSIC REAL STONES S.A.R.L.	REC	REC	A'	oui	oui	non	non	oui
39	MADAGASCAR WISCO GUANGXIN KAM WAH RESSOURCES S.A.U.	REC	REC	A'	oui	oui	non	non	oui
40	UNIVERSAL EXPLORATION MADAGASCAR S.A.R.L.	REC	REC	A'	oui	oui	non	non	oui
41	PAM Madagascar S.A	REC	REC	A'	oui	oui	oui	non	oui
42	SAPETRO	REC	REC	A'	oui	oui	non	non	oui
43	MASINA INDUSTRY GROUP MADAGASCAR S.A.R.L.	UNI	NON REC	A'	non	non	non	non	non
44	ACCRINGTON MINERALS S.A.	UNI	NON REC	A'	non	non	non	non	non
46	TOLIARA SANDS S.A.R.L.	REC	REC	A'	oui	oui	non	non	oui
47	INDUSTRIE MINIERE SINO-AFRIQUE S.A.R.L.	REC	REC	A'	oui	oui	non	non	oui
48	PAM SAKOA COAL S.A.	REC	REC	A'	oui	oui	oui	non	oui
51	FARASANDS S.A.R.L.	UNI	NON REC	A'	non	non	non	non	non
52	PETRA OF MADAGASCAR S.A.R.L.	UNI	NON REC	A'	non	non	non	non	non
53	CAPRICORN ENTERPRISES MADAGASCAR (C.E.M) S.A.R.L.	REC	REC	A'	oui	oui	non	non	oui
62	PROCHIMAD MINES & CARRIERES "P.M.C" SA	REC	REC	A'	oui	oui	non	non	oui

## Qualité des données reçues de l'Administration

DENOMINATION	Remise du canevas Signature Management Validés par la CdC Remise EF auditées Divulguation par paiement				
	Remise du canevas	Signature Management	Validés par la CdC	Remise EF auditées	Divulguation par paiement
ANDEA	oui	oui	non	non	oui
ARTEC	oui	oui	non	non	oui
AUTRES	oui	non	non	non	oui
BCMM	oui	non	non	non	oui
CNAPS	oui	non	non	non	oui
CTD	oui	oui	non	non	oui
DGD	oui	non	non	non	oui
DGI	oui	non	non	non	oui
DGM	oui	non	non	non	oui
DOMAINE	oui	oui	non	non	oui
OMNIS	oui	oui	non	non	oui
ONE	oui	oui	non	non	oui
ORGANIS.	oui	oui	non	non	oui
PORT	oui	non	non	non	oui

## Annex E - List of stakeholders consulted

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## Annex F – Regulations and mapping of civil society in Madagascar

Figure 2– Legal provisions for different civil society organisations in Madagascar

Type of Civil Society Organisation	Relevant legal text	Relevant implementing regulation
Association (ordinary or public utility)	<ul style="list-style-type: none"> <li>- Ordonnance 60-133 of 03 October 1960 on the general regime for associations.</li> <li>- Ordonnance 60-063 of 22 July 1960 on the dissolution of certain associations.</li> </ul>	- Décret 60-383 of 05 October 1960 on the application of Ordonnance 60-133 of 03 October 1960 on the general regime for associations.
Cultural association	<ul style="list-style-type: none"> <li>- Ordonnance 62-117 of 1 October 1962 on the regime for cults.</li> <li>- Law 2003-030 of 19 August 2004 completing the dispositions of article 2 of the Ordonnance 62-117 of 1 October 1962 on the regime for cults.</li> </ul>	- Décret 62-266 of 27 December 1962 implementing Articles 25, 47 and 48 of title VI of the Ordonnance 62-117 of 1 October 1962 on the regime for cults.
Non-Governmental Organisation	- Law 96-030 of 14 August 1997 on the regime for NGOs in Madagascar.	<ul style="list-style-type: none"> <li>- Décret 98-711 of 02 September 1998 setting the application modalities of Law 96-030 of 14 August 1997 on the regime for NGOs in Madagascar.</li> <li>- Arrêté 11087/98 on the matriculation register for NGOs.</li> <li>- Arrêté 11088/98 on the presentation form for NGOs' activity reports.</li> <li>- Note circulaire 6624 of 23 September 1996 on the oversight of NGOs' interventions in civic and citizen education and training of local officials.</li> </ul>
Foundation	- Law 2004-014 of 19 August 2004 on the fiscal regime for foundations in Madagascar.	None
Cooperative	- Law 99-044 of 21 April 1999 on cooperatives.	None
Chamber of Commerce	- Law 2006-029 of 24 November 2006 on the creation of the Chambre de Commerce et d'Industrie.	None

Source: Ndranto Razakamanarina (February 2015), 'Mapping des organisations de la société civile'.

Figure 3– Mapping of civil society organisations in Madagascar (by thematic focus)

Thematic focus	Coalition/networks and constituent NGOs
Governance (elections, anti-corruption, mining governance, transparency and social accountability, conflict management, etc.)	<p><u>Coalition/networks</u>: PFNOSCM, KMF/CNOE, CNPC, CONECS Una- Civiles</p> <p><u>NGOs</u>: SEFAFI, ONG SAHA, MSIS, CCOC, LIBERTY 32, CRAAD-OI, TI-IM Transparency International Initiative Madagascar, FIANTSO, ONG Lala</p> <p>na, Justice et Paix, FTMF, CDE, OPTA, AMBIOKA, FIMPA, DEPART/ABD, MAMIMAD, ACCES Zon'Olombelona, UNACIVILE, CERES/GESCI, VASIAN'i Madagascar, TEZA</p>
Environment and natural resources	<p><u>Coalition/networks</u>: AVG</p> <p><u>NGOs</u>: ONG Fanamby, MNP, AMPERE, AGEVAREN ET DEVELOPPEMENT, AED/ACTION, SAGE, OCDI, OTITSARA, SAF/FJKM</p>
Economic and rural development	<p><u>Coalition/networks</u>: CPM, FVTM, Tranoben'ny Tantsaha, FEKRITAMA, OSCAR</p> <p><u>NGOs</u>: SAF/ FJKM, ONG EFA, FIFATA, ZETRA, ONG Services, AFO, Grain de Blé, AMPERE, AGEVAREN ET DEVELOPPEMENT, AI-DI SHALOM, MAMABIO, NY AVO DEVELOPPEMENT, SEMPIF / TOVAMA et S / FIMPIAR, MAHAZO CFPM, GMC/GMB, AFAAA, ASDI, Vary sy Rano, BIMTT, ONG EFA, HARDI, CITE, AMADEA, AFAAA, MIAROSOA, ATIVAM, FFAMFF, MAHAZO/CFPA, FIVOARANA, ACE, TSIRY, MAHATSARA, Aingan'ny Tanindrazana, FANILO, FTH, MADA Mhomby, MIARADIA</p>
Unions	<p><u>Coalition/networks</u>: TM, FI-SE-MA, SE-KRI-MA, FVS/F.M.M, USAM, CTM, FISEMARE, SEREMA, SRMM, SARTM, SYGMMA, SECES, Syndicat Autonome des Inspecteurs de Travail, Syndicat National des Administrateurs Civil, Syndicat National des Exploitants forestiers</p>
Orders and Observatories	<p><u>Coalition/networks</u>: Ordre Nationale des Sage Femmes, Ordre des Vétérinaires, Ordre des Avocats, Ordre National des Médecins de Madagascar, Ordre des Ingénieurs de Madagascar, Ordre National des Pharmaciens de Madagascar, Ordre des Experts Comptables et Financiers de Madagascar, Ordre des Architectes, Fédération Nationale des Organisations d'Ingénieurs Malagasy, ONESF Observatoire National de l'environnement et du secteur Forestier, RESEAU DES OBSERVATOIRES RURAUX, OBSERVATOIRE MAGACHE DE L'EMPLOI ET DE LA FORMATION PROFESSIONNELLE (OMEF), OBSERVATOIRE DU RIZ.</p>
Professional groupings	<p><u>Coalition/networks</u>: Association Professionnelle des BTP, Fédération Nationale Organisations des Ingénieurs de Madagascar, Groupement des Entreprises de Madagascar, Fédération Nationale des PME /BMP, Association Professionnelle de Transporteurs Routiers, Association Professionnelle de Transporteurs d'Hydrocarbures, Syndicat des Industries de Madagascar, FIVMPAMA, Fédération nationale des Chambres de Commerces, Union des Artisans de Madagascar, CONECS, Groupement des Concessionnaires Automobiles de Madagascar, Groupement Pétrolier de Madagascar, Comité des Entreprises d'Assurances de Madagascar, Association Professionnelle des Banques, Association Professionnelle des Boulangers, APEM</p>
Foundations (multi-	<p><u>NGOs</u>: Fondation Tany Meva, Fondation Airtel, Fondation BOA, Fondation TELMA, Fondation BFV, Fondation</p>

## Validation of Madagascar: Report on initial data collection and stakeholder consultation

sectoral)	Akbaraly, Fondation pour la Biodiversité de Madagascar
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*Source: Ndranto Razakamanarina (February 2015), 'Mapping des organisations de la société civile'.*

## Annex G – Miscellaneous: Materiality, Recommendations

Figure 4– Materiality decisions for companies in the 2014 EITI Report

		Group A	Group B	Group C	Total
		<i>Company and Government data reconciled</i>	<i>Unilateral government reporting</i>	<i>Reporting of aggregate figure</i>	
Initial Materiality Decisions	Number of companies	65	6	70	141
	Number of reporting companies	40	0	0	
	Coverage of reporting	92.96%	98.93%	100%	
Final Materiality Decisions	Number of companies	44	6	91	141
	Number of reporting companies	30	0	0	
	Coverage of reporting	92.53%	98.07%	100%	

Source: 2014 EITI Report, pp.34-35.

Figure 5– Follow-up on EITI recommendations in Madagascar, tracked in 2010-2014 EITI Reports

EITI Report year	Number of recommendations	Number of past recommendations	Number of recommendations followed up	Number of recommendations not followed up
2007-2009	6	N/A	N/A	N/A
2010	8	6	4	2
2011	16	4	0	4
2012	21	16	0	16
2013	21	16	0	16
2014	20	21	6	15

Source: Madagascar EITI Reports, 2007-2014.

## Annex H - List of reference documents

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