



23rd Aug 2017

Re: Response to Validator’s Assessment

Thank you for sharing the draft Report - Tanzania Validation. The Tanzania EITI Multi-stakeholder Group (MSG) has reviewed the report and wishes to express the following points:

	Issue Raised	Response
1	<p>Requirement 1.1 – Government Engagement</p> <p>The Validator agrees with the International Secretariat’s assessment of ‘meaningful progress’ for Requirement 1.1, but also notes the inadequate level of government engagement in the process since the passing of the Act in 2015. The assessment of ‘meaningful progress’ is therefore due to the passing of this Act in 2015, and otherwise, progress since then appears to in fact be inadequate.</p>	<p>1. Government Engagement:</p> <p>The MSG believes that the Government committed has not changed; it has remained steady and engaged in the TEITI process in Tanzania. From the MSG’s perspective, the following are the evidences:</p> <p>(i) Development of Regulations of TEITA Act, 2015:</p> <p>The Government has taken steps towards preparations of the regulations (<i>see link: http://www.teiti.or.tz/wp-content/uploads/2017/01/Eoi-Consultancy-services-for-developing-regulations-for-implementing-TEITI-act.pdf</i>). The government is finalizing procedures of hiring an independent consultant to prepare draft regulations as this was a recommendation from the MSG members from the industry and civil society constituencies who wanted an Independent Firm to write the initial draft, as this would ensure views of the two groups are incorporated in the drafting of regulations.</p>

	<p>As highlighted in the Initial Assessment report, “While passage of the TEITA Act in mid-2015 was an important boost for TEITI by the then outgoing leadership, work on the much-expected regulations has not yet started. Also, there are no public statements of political support for TEITI on record from the political leadership that took office in October 2015. The TEITI homepage still highlights a supportive statement by Tanzania’s previous President.”</p> <p>In light of the above, the Independent Validator adds a recommendation that the Regulations supporting the TEITA Act are developed and promulgated as soon as possible. This will not only demonstrate government commitment but also ensure clarification of the terms of engagement for government (and other key stakeholders) in the TEITI process.</p>	<p>In the light of this decision, firms were invited to bid for the assignment, where 7 firms expressed interests. The University of Dar Es Salaam in associate with CBS law office was short listed and has been asked to submit technical and financial proposals. The consultant is expected to complete draft regulations before December 2017.</p> <p>(ii) Presence of Public statements of political support for TEITI from the Political Leadership which took office in October 2015.</p> <p>The fifth Government which took office in October 2015 is very committed in supporting TEITI and has demonstrated Political will to fight corruption in all sectors including Natural Resources. See Public Statements issued in May 2016 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523454/Anticorruption_summit_Remarks_by_Hon_Kassim_Majaliwa_Prime_Minister_of_Tanzania.pdf.</p> <p>In this public statement, the Government has demonstrated willingness to exceed some of the requirements of the EITI, particularly in the disclosure of beneficial ownership. During the Anti-Corruption Summit held in London May 12th 2016, the Honorable Kassim Majaliwa, Prime Minister of the United Republic of Tanzania, committed that Tanzania “will ensure Beneficial Ownership [information] is publicly available for all companies active in the Extractive Sector.” Prime Minister Majaliwa also committed to ensuring that Tanzania will establish a central register for beneficial ownership of extractive companies; that law enforcement agencies will have access to the information; and that bilateral arrangements will be established with partner countries to share information https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522735/United_Republic_of_Tanzania.pdf</p> <p>The Tanzania EITI home page is linked to these sites.</p>
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	<p>Requirement 1.3 – Civil Society Engagement</p> <p>The Validator agrees with the International Secretariat’s assessment of ‘satisfactory progress’ for Requirement 1.3 on civil society engagement.</p> <p>However, the Independent Validator also notes the issue regarding the 5th CSO seat on the MSG with concern, especially in light of Requirement 1.3 (b) and (c). More information should be made available regarding this and what actions have been taken to resolve the issue and to fill the 5th seat (see Requirement 1.4).</p>	<p>Disagreement of the nomination of 5th Civil Society Organizations seat:</p> <p>The issue at hand is disagreement in the CSO constituency on participation of PWPY in the local EITI process and the allegation that the nomination process of the CSO representative was not open and transparent (Annex No.1 letter). The Government was asked to intervene.</p> <p>Under Requirement 1.4 (a) (i), the Government is required to ensure that invitation to participate in any of the group is open and transparent. In view of this obligation, the Government took actions to investigate the matter. The investigation is at final stage and the Minister’s decision is expected any time soon.</p> <p>This matter has also been discussed in MSG meetings and members have been updated regularly on the progress (Annex No.2, 3 &4 MSG Meeting Minutes).</p>
	<p>Requirement 1.4 – MSG Governance and Functioning</p> <p>(i) “The MSG does not have clear terms of reference. For its practice, it draws from both the TEITA Act (that is still lacking regulations) and the Draft Rules (that are a bit more detailed but remain in draft form and not public).</p>	<p>MSG Governance and Functioning</p> <p>(i) MSG Terms of reference:</p> <p>The observation that MSG does not have clear terms of reference is not correct. In order to ensure sustainability and integrity of MSG, conducts and proceedings of MSG, members decided to legislate the Internal Rules / Draft Terms of Reference and incorporate them in the TEITA Act, 2015. MSG considers that by legislating the ToRs, it provides the Legal Mandate to MSG functions and conducts. In this regard, the functions under Section 10 of the Tanzania EITI Act are enforceable than the simple ToRs.</p> <p>Further, the law provides under Section 9 a Schedule which sets Procedures of the MSG / Committee in page 26 (see: http://www.teiti.or.tz/wp-content/uploads/2014/03/The-Tanzania-Extractive-Industries-Transparency-Accountability-Act-2015.pdf). For that matter, what was in the Draft Internal Rules was incorporated in this section of the Act. In this regard, all what was in the ToR / Draft Internal Rules is now part of the TEITA Law.</p>

	<p>(ii) Frustrated by the top-down approach of the national secretariat, the MSG is unable to play its oversight role. The circumstances regarding the “internal civil society dispute” over the PWYP seat are unclear and the matter needs to be resolved.</p> <p>(iii) The reporting relationship of the National Secretary to the Minister instead of the MSG contributes to dysfunction. The inability to attract suitable candidates for MSG chair may be symptomatic.</p>	<p>The Act became operational from the date it was Gazetted on 16th October, 2015 through Government Notice No. 455; this is in accordance to interpretation of Section 1 of the TEITA Act, 2015. In this regard, the Committee has been implementing the Act except for some provisions that require further elaborations through Regulations.</p> <p>(ii) Observation - “Frustration by the Top-Down approach of the national secretariat-the MSG is unable to play its oversight role”:</p> <p>The observation that National Secretariat report to the Minister instead of the MSG is not correct. If that was the case, then how was it possible for MSG to register some of the achievements? In the contrary, MSG has been conducting its core functions without hindrance and interference from external influence.</p> <p>In carrying its duties, the National Secretariat is guided by the work plan which is a tool approved by the MSG. In the course of Implementation TEITI Secretariat has to communicate the decision of MSG to the Ministry so that the action can be taken. We understand that this is a common procedure even to other EITI implementing countries.</p> <p>(iii) Observation – “The reporting relationship of the National Secretary to the Minister instead of the MSG contributes to dysfunction. The inability to attract suitable candidates for MSG chair may be symptomatic”:</p> <p>MSG disagrees with Validator’s observations. As mentioned under paragraph 2 above, the Role of the National Secretary is to implement all activities of MSG (Sect. 13 (1) of the TEITA Law); and communicate all the decisions of MSG to the Ministry for implementation.</p> <p>Other relationship that exist between the National Secretary and the Minister (Tanzania EITI Champion) is in accordance to Section 19 of TEITA Act, 2015 which are provisions for reporting implementations of activities to the National Assembly. In this regard, MSG requests the Validator to review the provisions for communications in the Act, between MSG and government. If the Validator finds gaps in this regard, TEITI requests for examples of good practice from other EITI implementing countries.</p>
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	<p>(iv) MSG meetings lack sufficient advance notice and timely distribution of documents. The attendance record of Government is particularly poor, while the quorum rule is weaker in the TEITA Act than in the Draft Rules. The rules for per diems are not transparent.</p>	<p>With regard to the position of the MSG Chairperson, the Initial Assessment, fails to account for the efforts made to recruit a suitable candidate. It also ignores challenges faced by TEITI in attracting suitable candidates due to the fact that the preferred applicants (Requirement 1.1) are senior citizens who often do not file application for job position. They expect to be requested to serve. The information that the position was advertised thrice was shared with the International EITI Secretariat. However, the assessment has ignored these facts. The lesson learnt by the MSG is that the relevant provision of the Act is over prescribed and therefore it considers to submit a proposal to the Government for amendment of the Law.</p> <p>(iv) Observation – “MSG meetings lack sufficient advance notice and timely distribution of documents”:</p> <p>MSG disagrees with the observations. TEITI has a schedule of MSG meetings which is Wednesday, 3rd week of every month. This schedule was agreed on by MSG during the initial stage of implementation due to amount of work which was ahead of TEITI. It was also agreed that TEITI Secretariat circulates documents two weeks prior to the date of the meetings. This has been the case and Secretariat has record of communications to substantiate. However, on few occasions, particularly on emergency issues, ad-hoc meetings were called on short notice.</p> <p>The observation that the Government attendance is poor is not true. In all meetings the government has been represented adequately. Where, the Principal member was not available, the Alternate Member was sent on behalf. This arrangement, was agreed by MSG and it applies to all the 3 constituencies (<i>See example Annex 5 from CSO on names of Principal and Alternates</i>).</p> <p>Further, the quorum rule in the TEITA Act, 2015 was decided by MSG having been considered several factors (i) MSG decisions are reached by consensus basis and not by voting and (ii) Membership in MSG is not on individual basis but represents constituent in which they are coming from. In this regard, members are expected to consult their constituencies before coming to the meetings. This ensures that the agreement reached in MSG meetings reflects views of respective group(s).</p>
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	<p style="text-align: center;">(v) Downgrading of Assessment on Requirement 1.4</p> <p>“Based on the information provided by the IS...the broader objective of this requirement is in fact not being fulfilled. This therefore does not constitute ‘meaningful’ progress, but instead ‘inadequate’ progress, i.e. significant elements of the requirement are outstanding and the broader objective of the requirement is not being fulfilled.</p>	<p>Therefore, the agreed quorum, of attendance at any meeting to be not less than one half, provided that each group is represented is adequate. This quorum setup saves the purpose of the MSG tripartite arrangement efficiently.</p> <p>Per Diems: Rules governing payments of per diems are open and follows Government circular. These funds, like any other government monies are subject to external auditing by the Controller Auditor General (CAG)-<i>See Government Circular Annex No. 6</i>. The information about payments of Per Diems has been frequently communicated to IS and other stakeholders. One of the example is the report by <i>MSI Integrity</i> under the subject of “Protecting the Cornerstone – Assessing the Governance of EITI MSG” – page 46 http://www.msi-integrity.org/wp-content/uploads/2015/02/MSI-Integrity-Protecting-The-Cornerstone-Report.pdf</p> <p>In every meeting, a payment list is drawn from members who are present. Each member is required to sign against the amount he / she received and the list is open for every member to view amounts paid to each individual member (<i>See Annex 7, Example of the Pay list</i>).</p> <p>(v) Response to downgrading of Assessment of requirement 1.4</p> <p>In the light of detailed clarifications provided in paragraphs (i) – (iv) above with support of some evidences, MSG requests the Validator to retain the score of ‘meaningful progress’ as provided in the initial assessment.</p>
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	<p>Requirement 2.4 – Contract Disclosure</p> <p>Contract transparency is enshrined in the TEITA Act, which is already law, so 2.4b is partially satisfied. The more substantive issue is that extractives contracts are not being published, in contravention of the law.</p>	<p>Disclosure of Contract:</p> <p>The Government has taken important steps towards disclosure of contracts. On December 15th 2016, the Permanent Secretary (PS) of the Ministry of Energy and Minerals wrote to the extractive companies with MDAs and PSAs on the obligation to comply with the contract disclosure requirements. The PS also asked the extractive companies to communicate any concern regarding the disclosure to the MSG in accordance to section 27 (2) of the Act.</p> <p>Two companies responded, noting the need for maintaining commercial confidentiality and undertaking an awareness-raising campaign for the public before the disclosure of such contracts. The latter is meant to manage expectations of the public.</p> <p>In addition, MEM is working on developing infrastructure that will support contract disclosure by integrating a dedicated portal for contract disclosure into the mining cadastre database (Online Transactional Mining Cadastre Portal-OTMCP; https://portal.mem.go.tz). This infrastructure will help users to search contracts and view summaries of the contracts in both languages Kiswahili and English. Users will also be able to download full contracts.</p>
	<p>Requirement 2.6 – State Participation</p> <p>The Validator disagrees with the International Secretariat’s assessment of ‘meaningful progress’ for Requirement 2.6. The rules and practices regarding the financial relationship between TPDC and MEM have not been disclosed (as required by 2.6(a)), nor does the relevant data show up in the reconciliation tables. The Validator recommends that the provision score is downgraded to Inadequate Progress.</p>	<p>State Participation:</p> <p>a) The financial relationship between TPDC and MEM is governed by the Public Finance Act, of 2001. This Act is a legal instrument which provides for legal base of the Government Budget. It sets rules for accountability on revenues and expenditures control amongst others. Basic fundamental principles under this Law are: (i) No money shall be spent without the authority of the National Assembly. (ii) Expenditures shall be made only for the purpose authorized by the Parliament. (iii) There shall be a single fund known as “the Consolidated Fund” for receiving and recording all the revenues and expenditures unless otherwise directed by the Parliament. All monies spend for the Consolidated Fund must be accounted for before the Parliament.</p> <p>b) Payments that TPDC received from Oil and Gas Companies with PSA in the Fiscal Year 2013/14 are disclosed in TEITI 2013/14 Report on Page 65, Section 6.2 under</p>

		<p>Sub-heading Reconciliation by Payment Type. In total, TPDC received Tzs 24,706,637,521. In this report the Government total receipts (Section 2.3.3) is Tzs 1,221,215,618,000. This amount includes receipts from the Tanzania Revenue Authority, Ministry of Energy and Minerals, National Security Social Fund, and other Government Agencies. The group of other Government Agencies contributed Tzs 51,628,533,000 namely: TPDC Tzs 24,706,637,521 (Page 65); PPF Tzs 12,631,623,289; Local Authorities Tzs 9,059,288,858; MoF Tzs 4,466,790,938; MOTNR Tzs 764,192,450 (Page 66). This explanation demonstrates that payments from Oil and Gas Companies to TPDC were disclosed and remitted to the Government Consolidated Fund.</p> <p>In regard to the Validator’s observations that data on payments to TPDC were not shown in the reconciliation table, this was as per advice from the Independent Administrator to avoid double counting. This principle likewise was used in the previous report 2012/13. As clearly mentioned by the Validator, TPDC saves as the conduit for Oil and Gas Companies payment to the Government’s Consolidated Fund. Therefore, TPDC collections must be reported under its name for accounting purposes. Also it should be noted that no cash transfer is made to MEM except only the information on what TPDC remitted to the Consolidated Fund is submitted to MEM.</p> <p>In the light of this detailed account supported by analysis, MSG requests the Validator to retain the score meaningful progress for this Requirement 2.6 as provided in the Initial Assessment.</p>
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Response on Recommendations:

The Independent Validator recommends that EITI Reports should disclose licensing policies and practices, including an overview of oil/gas or mining licences awarded or transferred during the reporting period: information on the technical and financial criteria for awarding license”.

The MSG would like to respond that the licensing policy is clear. For example, as per the new Petroleum Act. 2015, section 48(1) Competition on Public Tendering Process (in obtaining prospective contractors for the areas) is transparent. Records on how deep sea Blocks 1 (Ophir Energy), Block 2 (Statoil) and Block 5 (Petrobras) and Block 7 (Dominion) were all transparently obtained through a tendering process organized by TPDC on behalf of the Government. TPDC's fourth licensing round (2013), though no awards have been made, was transparently and competitively conducted. Furthermore, section 48(3) of the same law provides for the direct negotiations where the tendering process may have proved ineffective in securing a prospective contractor. This provision has been included specifically because Tanzania is still a virgin territory in so far as oil and gas exploration is concerned, and it is in the national interest to advance the same.

Sign off:



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Augustinah Rutaihwa
TEITI Chairperson