



April 2020

Re: Response to 2nd Validation Assessment

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

1. General Comments from the Draft Assessment.

Section 3, Page 7: State that, Consultations and public sources suggest that the government is applying the tools offered by the regulatory changes principally to organizations working on sexual, reproductive and LGBTQ+ rights. Media freedom has also been constrained, and investigative journalists have been arrested on money laundering and tax evasion charges.⁷ Criticism of the government and its leading figures is poorly tolerated.⁸ However, there is no indication that any of these incidents are related to expression on EITI-related topics or criticism of the government's extractive policies. Furthermore, none of the actions appear to have affected actors engaged in the EITI.

Responses: The issues raised are neither related to EITI topics nor the country's extractive industry policies. All the issues in that section concern of the rule of law of the country. Money laundering and tax evasion are legal matters which are dealt with in the country's courts of law, for which we are of the opinion that the judicial independence of the country should be respected. The MSG is not aware of any incident whereby investigative journalists covering the extractive sector were arrested or harassed by the Government. In the light of the above observation, we do not see the justification and neither the use of having the contents in Section 3 in the Validation Assessment report given the fact that the issues being raised are not in any way related to the EITI Standard implementation and the country's extractive industry.

Section 4, Page 8: The Report State that, 'The government does not appear to have consulted the MSG when revising mining and petroleum

legislation and related regulations, nor when introducing trading centers to address illegal mining and smuggling of minerals.’

Responses: Procedures of enactment of pieces of legislations pertaining to the mining and petroleum sector requires the Government to ensure that a participatory approach is adhered. In this regard, when promulgating the Mining Act Cap 123 and Petroleum Act with its related regulations in early 2017, the Government ensured participatory approach was adopted where the views of all stakeholders were gathered and implemented. In addition, before the Mining and Petroleum Legislation Bills were tabled for debate in the Parliament, the public (MSG and all other stakeholders) were invited to the Parliament in Dodoma where an open public debate was held and all interested parties (MSG included) had the opportunity to air their views and opinions. Opinions and views were also accepted in writing for those who were not able to make it to Dodoma. In case the MSG did not comment on the bills then it’s MSG itself to blame because the opportunity to comment was availed to all Tanzanians interested in the wellbeing of the extractive sector.

The issue of establishing Mining Trading Centers in the country did not require consultation by stakeholders because it was something that had already been agreed and approved for implementation in the Mining Policy of 2009 and the Mining Act of 2010 (with its amendments in 2017) documents which had already undergone extensive consultation in their development. What the Government (through the Mining Commission) did in 2019 was to implement something that had already been discussed, agreed by stakeholders and eventually legislated. Enforcement or implementation of the provisions of the law does not require any prior consultation by stakeholders, hence this argument is completely unjustified.

Section 4, Page 8: The Report State that: A tax dispute with Acacia mining, a review of both mining and gas contracts and a new legal regime have created uncertainty among investors.

Responses: The tax dispute with Acacia mining was a legal issue and due process was followed by the Government when addressing it. That is why when Acacia felt that it was aggrieved it filed a notice to escalate the dispute to international arbitration, and the Government did not dispute that. Eventually the majority shareholder of Acacia, Barrick International Company proposed a settlement package which involved acquisition of the minority shares of Acacia. The dispute has now been amicably resolved and both parties are happy with the formation of a new joint venture company (Twiga Minerals) in which the Government has a 16% non-dilutable free carried interest. Review of both mining and gas contracts was done for the best interests of the country to ensure that the country benefits from its finite mineral resources.

This is a common practice in all countries rich in the extractive resources to constantly review previous entered into contracts with the view of negotiating for a win win situation for both the investors and the countries which are the owners of the extractive resources the investors are interested

in. Therefore, all issues related to Acacia were taken on board when Barrick International Limited acquired Acacia Mining Company and there is no evidence to back the unfounded allegations in Section 4 of your report. Barrick International Limited and other investors have not raised any concern of uncertainty thus the current legal regime is harmonious to investors. Moreover, in February 2019 the honorable Dr. John Joseph Magufuli President of the United Republic of Tanzania conducted a meeting with Small Scale Miners, Medium Scale Miners and Large Scale Miners as a key stakeholders in the sector, to discuss the practical mining policy challenges and provide directives towards resolving those challenges to enhance mining sector investors' confidence in the country.

Section 4, Page 9: The Report stated that, 'EITI implementation is institutionalized through the 2015 TEIT Act. The act gives TEITI a broad mandate to disclose data related to the extractive sector, including contracts, but it has been implemented only partly and no implementing regulations have been introduced to date'.

Responses: This statement is not correct, Tanzania Extractive Industries (Transparency and Accountability) Regulations were published on 8th February, 2019 through the Government Notice No: 141 of 2019. <http://www.teiti.go.tz/publications/legislation>, hence the allegations in Section 4 of your report on Regulations is not true.

2. MSG Comments on the Implementation of EITI requirements are shown in the matrix below:

	Issue Raised	Response
1	<p>Requirement 1.1 – Government</p> <p>Minister of Minerals Hon. Doto Mashaka Biteko (MP) confirmed that the Nomination Committee identified a candidate for the post at its 20th May 2019 meeting. According to stakeholders, the recruitment has been held back by administrative obstacles. At the commencement of Validation, no appointment had been made or announced. An Acting Executive Secretary, Mariam Mgaya, has led the TEITI national secretariat since May 2018. Government officials noted that she had full authority in her position.</p>	<p>This assertion is unfounded. The recruitment of TEITI Executive Secretary is a legal process which requires compliance to administrative procedures applied in recruitment processes. The Government took initiatives to ensure TEITI organization structure is first finalized before effecting the appointment. In this regards, the proposed TEITI organization structure has been discussed and approved by Presidential Implementation Committee (PIC) on 14th February 2020. It should be noted that absence of substantive TEITI Executive Secretary has not hindered any smooth discharge of TEITI daily activities. However, the TEITI Secretariat has not missed leadership command as the Acting Executive Secretary Ms Mariam Mgaya has full mandate to run the office.</p>
2	<p>Requirement 1.4 – MSG Governance</p> <p>a) The MSG has not developed new TORs to guide its work since the first Validation. Stakeholders consulted noted that the MSG had considered developing TORs but concluded that it was sufficient that MSG meetings and operations be based on section 10 of the TEITA Act, the schedule established by the act and unpublished Draft Rules. However, the TEITA Act or the Draft Rules do not include internal governance rules and procedures, such as provisions related to frequency of meetings, record-keeping or liaison with</p>	<p>a) Absence of MSG Terms of reference:</p> <p>The TOR are provided in, section 10 of the TEITA Act, 2015 as functions and responsibilities of the TEITI Committee. Further, the law provides under Section 9 a Schedule which sets Procedures of the MSG/Committee in page 26. Under section 9, meetings and procedure of the Committee and Minutes of the meetings are included in which minutes are required to be kept and confirmed by the committee. Furthermore, it should be noted and appreciated that since the funding of the operations of the TEITI Secretariat is wholly shouldered by the Government, TEITI operations ought to be in line with the Government’s financial management framework.</p>

	Issue Raised	Response
	<p>constituencies.</p> <p>b) There still appears to be lack of clarity on the MSG’s mandate, roles and responsibilities. Civil society representatives noted in their written feedback that there were opportunities to clarify TEITI’s institutional mandate with regards to extractive sector governance. It was proposed that the role of the MSG should cover strategy, governance and risk management matters (i.e. setting strategic direction and developing policy, supervision of the secretariat and financial sustainability of the process, compliance with the TEITA Act, etc.).</p>	<p>b) This observation is not true. Section 10 of the TEITA Act, 2015 clearly stipulates on the MSG mandates, roles and responsibility. Further the content of section 4 (2) of the Act establishes TEITA Committee as the independent Government entity for promoting transparency and enhancing accountability in the extractive sectors.</p>
3	<p>Requirement 1.5 – Work Plan</p> <p>a) It is not clear the extent to which the work plan reflects the result of consultations with key stakeholders. According to the MSG meeting minutes, the MSG “discussed the draft work plan and agreed to submit comments by 30 May 2018.”²¹ Beyond this, there appears to be limited documented discussion on the objectives of TEITI over the course of a five-year period. Stakeholder consultations suggest that MSG members did not provide further comments to the draft work plan. There is however limited evidence of consultation with key stakeholders on the long-term objectives for EITI implementation.</p>	<p>This statement is seriously unfounded due to the fact that the MSG is the one with the final authority to approve the TEITI’s five year Strategic Plan from which yearly operational plans are developed and subjected to the thorough scrutiny and approval of the MSG. The MSG has further the responsibility of approving the year end TEITI Secretariat’s Performance Report which eventually gets its way to the Parliament through the Sectorial Parliamentary Committee of Energy and Minerals Therefore the assertion that the MSG did not provide further comments to the draft work plan is completely untrue and misleading.</p>

	Issue Raised	Response
4	<p>Requirement 2.2 – License Allocations</p> <p>a) For mining, only the numbers of each type of license awarded or transferred are provided in the report. It is unclear whether it is possible to search for all licenses awarded or transferred within a certain period in a publicly-available cadastre. The online “Mining Cadastre Map” portal does not allow searches. The 2016/2017 EITI Report refers to the Mining Cadastre Transactional Portal, which however only appears to be accessible to license-holders and applicants and requires in-person registration for access.</p>	<p>a) Page 38 of the 2016/17 TEITI Report provide to the link where the information on the licences awarded or transferred can be accessed through , http://www.teiti.go.tz/storage/app/uploads/public/5e0/b34/fa8/5e0b34fa835fa138381948.pdf http://www.teiti.go.tz/storage/app/uploads/public/5e0/b34/551/5e0b34551b839840599810.pdf http://www.teiti.go.tz/storage/app/uploads/public/5e0/b4e/afc/5e0b4eafc63ca507322221.pdf</p>
	<p>b) The 2016/2017 EITI Report mentions that mining licenses can be awarded through a bidding process but does not clarify whether this occurred in the period under review. The report does not comment on any non-trivial deviations from the licensing framework but notes that the process is effective and transparent.</p>	<p>b) The mining licenses are awarded on criteria of first come first served basis. However, according to the Mining Act, (Cap.123 R.E.2019) and its Regulations of 2018, where two or more applications which are partially or wholly overlapping on the same day during the business hours such applications shall be deemed to have been received simultaneously so that the priority between them over the overlapping area shall be determined by inviting successful applicants to submit bids to the Commission. The confirmation whether mining licences were awarded through a bidding process and Non-trivial deviations from the licencing framework will be provided in the 2016/17 supplementary TEITI Report and the 2017/18 TEITI Report.</p>

	Issue Raised	Response
	<p>c) Tanzania is encouraged to ensure that the websites of the regulatory agencies Ministry of Mines and PURA include comprehensive information about the process for awarding and transferring oil, gas and mining licenses.</p>	<p>c) Currently, PURA website is under maintenance. PURA managed to develop the brochures which describe the process for awarding and transferring of oil and gas licenses which can be accessed through: http://www.teiti.go.tz/storage/app/uploads/public/5e9/010/101/5e90101016398083426558.pdf. These brochures have widely been distributed to the public (citizens) during various exhibitions including the famous Sabasaba exhibition. However, the observation are noted and will be taken in to consideration.</p> <p>In light of the above clarification, the MSG is of the view that, the assessment of this requirement should be upgraded from inadequate to satisfactory progress.</p>

	Issue Raised	Response
5	<p>Requirement 2.3 – License Register</p> <p>a) Tanzania should maintain a publicly available register of oil and gas licenses that includes all data points under Requirement 2.3.i-iv.</p>	<p>a) In the 2016/17 report, the IA declared that the Petroleum Upstream Regulatory Authority (PURA) maintains a Petroleum Registry of petroleum agreements, licenses, permit authorizations and any change in interests of an existing petroleum agreement, permit or license. The Petroleum Registry contains information on licenses, permits or petroleum agreements, including applications for grants, assignments, renewal, surrender, termination and revocation. Currently, any interested person may request access to information in the Petroleum Registry. PURA publishes information on licenses at activity Map which can be accessed through:</p> <p>https://www.pura.go.tz/sites/default/files/file_manager/Activity%20Map%2C%20September%20-%202019.pdf. The Government is in the process of establishing an online cadastre system for oil and gas as stipulated in the Petroleum Act, 2015.</p> <p>In light of the above clarification, the MSG is of the view that, the assessment of this requirement should be upgraded from inadequate to meaningful progress.</p>

	Issue Raised	Response
6	<p>Requirement 2.6 - State Participation</p> <p>a) The rules governing the financial relationship between the SOEs and the state are not comprehensively presented.</p> <p>b) A third SOE, NDC, is introduced in the EITI Report but detailed information regarding its participation or relationship with the government is not provided.</p>	<p>a) This observation is wrong. The 2016/17 report provides for information on level and terms of state participation Company, Financial relationship between SOES and the Government, Loans and guarantees from SOEs and Loans and guarantees from the State to extractive companies.</p> <p>b) Page 28 of the 2016/17 Report, the IA declares that this information will be covered in the supplementary report.</p>
7.	<p>Requirement 3.2 - Production</p> <p>(a) Only incomplete data on production appears to be publicly available for calendar years 2016 and 2017 and financial year 2016/2017. The 2016/2017 EITI Report includes the production volumes of gas and a selection of minerals but no production values. The 2015/2016 EITI Report included production volumes and values by commodity.</p>	<p>a) The observation is noted. The Production values will be included in the 2016/17 supplementary report.</p>
8.	<p>Requirement 3.3 - Export Data</p> <p>(b) No data on export volumes is available in the 2016/2017 EITI Report. The report confirms that Tanzania did not</p>	<p>a) The observation is noted. Export values will be included in the 2016/17 supplementary report and 2017/18 Report.</p>

	Issue Raised	Response
9	<p>Requirement 4.1 - Comprehensiveness</p> <p>(a) It is unclear from the report whether 19 or 37 revenue streams were considered material. Due to the short time frame for preparing the report, only 22 of the 70 material companies submitted data. Despite these gaps, reconciliation covers 77% of total extractive revenues as the largest taxpayers responded. This is still significantly below the MSG's target reconciliation coverage of 93%.</p> <p>(b) The low materiality threshold resulted in an excessively broad scope for the 2016/2017 reconciliation exercise. As a result, the comprehensiveness of the reconciliation did not reach the target set by the MSG and unresolved discrepancies raise concerns about data reliability.</p>	<p>a) The IA will clear the confusion, only 19 revenue streams made material payments as shown in the table of the 27 of the 2016/17 report.</p> <p>b) The approved materiality threshold of TZS 900 million was considered to be substantial, it should be noted that, this amount is not low as compared to previous TEITI reports, which considered 150M and 300M as materiality threshold. This materiality was also considered, due to the reasons that, MSG intended to capture the contribution of the Artisanal and Small Scale Miners in government revenue as of now their contribution to the Government revenue seems to be substantial. It was also the intention of the MSG to explore possibility of including disclosure of revenue from ASM in the TEITI reports. However, in the course of preparation of the report, the IA faced challenges of obtaining the data from ASM, because most of them lack expertise in record keeping and documentation of their operations. In addition, in the 2016/17 report, the IA declared that, due to shortage of time, the time for the investigation of discrepancies was very limited and only Geita Gold Mine Limited did submit the information that helped in the investigation of the discrepancies, the rest of the companies requested additional time to submit the information with regard to discrepancies. In view of this, the unresolved discrepancies will be cleared in the supplementary report to be issued before 30th April, 2020.</p>

	Issue Raised	Response
10	<p>Requirement 4.6 - Direct Subnational Payments</p> <p>(a) It appears that no specific materiality threshold was set for these payments. The report appears to contain incomplete data on revenues collected by subnational government entities.</p> <p>(b) The report includes a table with unilateral disclosures from six local authorities, but it remains unclear whether others collected revenues from extractive companies as well. This seems likely, as companies reported payments worth TZS 14bn (USD 6.4m), while revenue reported by the six local authorities totaled TZS 6bn (USD 2.7m).</p> <p>(c) Reconciled data is not disclosed by government agency, and it is not possible to link the company payments to a specific local authority. The company reporting template suggests that companies were not asked to specify which local government authority they made payments to.</p>	<p>a) The selection of the payments from Local Government Authorities, were determined basing from where the companies operate. Given the importance of these revenues, MSG did not set materiality thresholds and therefore these payments were included in the reconciliation scope as they are important to the areas that host mining, oil and gas operations. On the remained subnational payments, the IA confirms that, these payments will be included in the supplementary report.</p> <p>b) Given the limited time, most of the LGAS did not submit the completed reporting templates. Therefore, of the 22 reported companies, there are some LGAs which received subnational payments from those companies but did not submit the reporting template at the time of release of the 2016/17 report. In light of this, the IA confirms that, these payments will be included in the supplementary report.</p> <p>c) TEITI requested the PORALG to facilitate the process of collecting revenue data from LGAs. A total of 18 LGAs were contacted for reporting in the 2016/17 report. The MSG decided to request PORALG rather than the companies, because it is the one responsible for managing all the LGAs in the country and also it was caused by the difficulties encountered in establishing contacts of most of the companies. Therefore relying on companies would have been wastage of time. These efforts aimed to ensure that all LGAs which are covered in the reconciliation scope extensively provided the required data. However, the TEITI future reports will identify LGAs where the companies paid Service levy to easy the reconciliation exercise.</p>

	Issue Raised	Response
11	<p>Requirement 6.2 - Quasi - Fiscal Expenditures</p> <p>(a) The 2016/2017 EITI Report notes that the extractive SOEs, TPDC and STAMICO, did not report any quasi-fiscal expenditures in the year under review. However, the MSG does not appear to have agreed a definition for quasi-fiscal expenditures or discussed it with the SOEs or government entities</p>	<p>(a) The observation is well noted. The definition of quasi-fiscal expenditures will be discussed in the next MSG Meeting.</p>
12	<p>Requirement 4.9 - Data Quality</p> <p>(a) It is not clear from the report whether all reporting companies had their financial statements audited or only 19 out of 22 companies</p> <p>(b) It is also unclear whether all reporting entities adhered to the quality assurances agreed by the MSG for EITI reporting, i.e. by submitted reporting templates signed by a senior official and an auditor.</p> <p>(c) The report does not include a clear statement from the IA on the reliability and comprehensiveness of the data.</p>	<p>a) In the 2016/17 TEITI report, the IA documented that all 19 participating companies which submitted the filled-in templates had their financial statements audited by external auditors. After consultation with the IA, we have noted that this is a typing error. IA meant all 22 companies and not 19. This statement will be cleared in the supplementary report.</p> <p>b) The IA will document whether all reporting entities adhered to the agreed quality assurance in the supplementary report.</p> <p>c) Page 6 and (ix) of the 2016/17 TEITI Report document the reliability and comprehensiveness of data. However, IA will provide more details on the reliability and comprehensive of data in the supplementary report.</p>

	Issue Raised	Response
13	<p>Requirement 2.5 - Beneficial Ownership Disclosures</p> <p>(a) Only two companies provided beneficial ownership data as part of EITI reporting, and the names of these individuals are not included in the EITI Report.</p> <p>(b) There is no up-to-date publicly-available information on the stock exchange filings of publicly listed companies.</p> <p>(c) There is no indication of outreach to companies to explain why disclosing beneficial information is important or to provide advice on filling the template.</p> <p>The scarce information that is available is disclosed in pdf format on the TEITI website.</p> <p>(d) 2016/2017 EITI Report notes that, in 2016, the government committed to setting up such a register in 2020, but stakeholder consultations suggest that there has been no concrete progress towards this. Civil society's analysis supports this conclusion.</p> <p>(e) Regulations to the TEITA Act do not appear to provide any sanctions for lack of compliance,</p>	<p>a) Table 33 of the 2016/17 TEITI Report, the IA provides the names of individuals for the two companies.</p> <p>b) Table 33 of the 2016/17 report, The IA indicates that two companies are publicly listed. The link of the stock exchange will be provided in the supplementary report.</p> <p>c) On 5th December, 2019 IA conducted a one day training workshop on how to fill the reporting template for reporting entities. During the workshop, the facilitator provided clear Instructions and clarified all issues including beneficial ownership to the representatives of the reporting entities.</p> <p>d) The setting up of the register of BO depend on the amendment of various Acts including the Companies Act. Government is still in the discussion on how this agenda will be well implemented. While, we are waiting for the amendments of various Acts and build a register, the BO information will be disclosed in the TEITI reports.</p> <p>e) Section 23 of the TEITA Act, 2015 imposes the penalty companies which fail to produce a document or an information required under the Act. Since the functions are imposed from the TEITI Act, thus its regulations ought not to restore the same sections thereof.</p>



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