

EITI Candidature Application Form

EITI CANDIDATURE APPLICATION FORM

Contents

APPLICANT COUNTRY INFORMATION	3
EITI SIGN-UP REQUIREMENTS.....	4
EITI REQUIREMENT 1.1	4
EITI REQUIREMENT 1.2	5
EITI REQUIREMENT 1.3	7
EITI REQUIREMENT 1.4	11
INFORMATION ABOUT THE MULTI-STAKEHOLDER GROUP (MSG).....	13
ANNEXES.....	16

APPLICANT COUNTRY INFORMATION

Applicant

Republic of Malawi

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Point**

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Date of Application

July 13, 2015

EITI SIGN-UP REQUIREMENTS

EITI REQUIREMENT 1.1

The government is required to issue an unequivocal public statement of its intention to implement the EITI.

The statement must be made by the head of state or government, or an appropriately delegated government representative.

On June 17 2014 the President and Head of State, H.E. Professor Arthur Peter Mutharika declared at the opening of the 45th Session of Parliament:

“Mr. Speaker, Sir, Government will also ensure that in future, mining contracts are properly negotiated to maximise benefits for the country. In this regard, Government will establish an independent contract negotiating unit in extractive resources. Further, we will subscribe to the Extractive Industries Transparency Initiative (EITI).”

Source: http://www.parliament.gov.mw/docs/general/he_addr_45th_sess_opening.pdf

Furthermore the Government states in the “Mines and Minerals Policy of Malawi” (March 2013): *“Malawi also subscribes to and needs to actively participate in and respond to global and regional initiatives such as the Extractive Industries Transparency Initiative (EITI) that address mineral sector issues including practice, governance and other emerging realities.”*(p. vi and p. 21) The “Mines and Minerals Policy of Malawi” is referenced in the EI Source Book:

<http://www.eisourcebook.org/cms/Malawi%20Mines%20%26%20Minerals%20Policy%202013.pdf>

EITI REQUIREMENT 1.2

The government is required to appoint a senior individual to lead on the implementation of the EITI.

- a) The appointee should have the confidence of all stakeholders
- b) The appointee should have the authority and freedom to coordinate action on the EITI across relevant ministries and agencies
- c) The appointee should be able to mobilize resources for EITI implementation.

The President of the Republic appointed the Minister of Finance, Economic Planning & Development, Hon. Goodall E. Gondwe as the senior individual to lead implementation of the MWEITI.

The Minister of Finance, Hon. Goodall E. Gondwe acknowledges on the occasion of submitting the EITI candidature application:

“Malawi EITI benefits from an atmosphere where institutions as well as the law promote good governance, openness and transparency, and also access to public information on the extractives sector. EITI is about disclosure of payments and revenues from extracting natural assets. We want to make sure that Malawi does not just have a transparent governance of the sector, but actually reaches higher levels of accountability for the benefit of the people. We thus go beyond minimum requirements. We will make public the beneficial owners of corporate entities that bid for, operate, or invest in extractive assets and we will go for a level playing field of contract and license disclosure. This information will be put on public file and published on the Government Website. As such, Malawi government and the representatives from the Companies and Civil Society have decided to embrace EITI.”

The Minister of Finance, Goodall Gondwe furthermore expressed thanks for support from a wide-range of stakeholders:

“The EITI in Malawi would not have come to this level if it were not for the technical support from Ministry of Natural Resources, Energy and Mining, Central Bank and National Audit Office. The Civil Society Organizations especially members of the Natural Resources Justice Network (NRJN), the Citizens for Justice (CfJ), Centre for Human Rights and Rehabilitation (CHRR), Publish What You Pay (PWYP), the Institute for Policy Interaction (IPI), Malawi Women Mining Association (MAWEMA) and Gemstone Association of Malawi (GAM) among others who worked closely with the Malawi government to see through this endeavour.

We commend our mineral right holders, which are represented by Paladin Ltd, Global Metals & Mining Ltd, Bwanje Cement Co. Ltd and Mkango Resources Ltd in the MSG and the Malawi Chambers of Mining Companies, for having not only participated but actively pushed for a meaningful EITI set up. We have counted and should like to count on our development partners especially the World Bank, African Development Bank, German International Cooperation through GIZ Malawi, the Royal Norwegian Embassy and the staff of the International EITI Secretariat to meet the goals and timeline of the MWEITI.”

Obtaining or accessing information on revenue from the mining sector is regulated by the Taxation Act, which currently in part prevents the Government from making public and divulging clients’ tax information; however, a tax payer may publicise such information. In fact, registered companies do declare such information in their audited reports to the office of the Registrar of Companies and Patents, and occasionally also in the print media. Reforms of both the Taxation Act and the Mines and Minerals Bill are ongoing and the Minister of Finance, Economic Planning and Development ensures that the forthcoming implementation of the EITI is being observed in these legal reforms.

The press release was published from 6th July 2015 to 12th July 2015 in the two major newspapers of Malawi, namely The Nation Newspaper and The Malawi Daily times Newspaper. It was published three times in each Newspaper among which one was on Weekend News. A copy of these press releases are attached as Annex C.

EITI REQUIREMENT 1.3

The government is required to commit to work with civil society and companies, and establish a multi-stakeholder group to oversee the implementation of the EITI.

- a) The government, companies and civil society must be fully, actively and effectively engaged in the EITI process.
- b) The government must ensure that there is an enabling environment for company and civil society participation with regard to relevant laws, regulations, and administrative rules as well as actual practice in implementation of the EITI. The fundamental rights of civil society and company representatives substantively engaged in the EITI, including but not restricted to members of the multi-stakeholder group, must be respected.
- c) The government must ensure that there are no obstacles to civil society or company participation in the EITI process.
- d) The government must refrain from actions which result in narrowing or restricting public debate in relation to implementation of the EITI.
- e) Stakeholders, including but not limited to members of the multi-stakeholder group:
 - i. must be able to speak freely on transparency and natural resource governance issues;
 - ii. must be substantially engaged in the design, implementation, monitoring and evaluation of the EITI process, and ensure that it contributes to public debate;
 - iii. must have the right to communicate and cooperate with each other; and
 - iv. must be able to operate freely and express opinions about the EITI without restraint, coercion or reprisal.
- f) In establishing the multi-stakeholder group, the government must:
 - i. ensure that the invitation to participate in the group is open and transparent;
 - ii. ensure that stakeholders are adequately represented. This does not mean that they need to be equally represented numerically. The multi-stakeholder group must comprise appropriate stakeholders, including but not necessarily limited to: the private sector; civil society, including independent civil society groups and other civil society such as the media and unions; and relevant government entities which can also include parliamentarians. Each stakeholder group must have the right to appoint its own representatives, bearing in mind the desirability of pluralistic and diverse representation. The nomination process must be independent and free from any suggestion of coercion. Civil society groups involved in the EITI as members of the multi-stakeholder group must be operationally, and in policy terms, independent of government and/or companies;
 - iii. ensure that senior government officials are represented on the multi-stakeholder group; and
 - iv. consider establishing the legal basis of the group.
- g) The multi-stakeholder group is required to agree clear public Terms of Reference (ToRs) for its work. The ToRs should at a minimum include provisions on:

The role, responsibilities and rights of the multi-stakeholder group:

- i. Members of the multi-stakeholder group should have the capacity to carry out their duties.
- ii. The multi-stakeholder group should undertake effective outreach activities with civil society groups and companies, including through communication such as media, website and letters, informing stakeholders of the government's commitment to implement the EITI, the central role of companies and civil society, as well as widely disseminating the public information that results from the EITI process such as the EITI Report.
- iii. Members of the multi-stakeholder group should liaise with their constituency groups.

Approval of workplans, EITI Reports and annual activity reports:

- iv. The multi-stakeholder group is required to approve annual workplans, the appointment of the Independent Administrator, the Terms of Reference for the Independent Administrator, EITI Reports and annual activity reports.

- v. The multi-stakeholder group should oversee the EITI reporting process and engage in Validation in accordance with chapter 3.

Internal governance rules and procedures:

- vi. The EITI requires an inclusive decision-making process throughout implementation, with each constituency being treated as a partner. Any member of the multi-stakeholder group has the right to table an issue for discussion. The multi-stakeholder group should agree procedures for nominating and changing multi-stakeholder group representatives, decision-making, the duration of the mandate and the frequency of meetings. This should include ensuring that there is a process for changing group members that respects the principles set out in Requirement 1.3(f).
- vii. There should be sufficient advance notice of meetings and timely circulation of documents prior to their debate and proposed adoption.
- viii. The multi-stakeholder group must keep written records of its discussions and decisions.

Applicants should also take note of protocol note #4 regarding the participation of civil society¹

In Malawi, the debate to implement the EITI began in 2008. The Government set up an EITI Task Force in 2010 comprising of government departments, civil society organisations and private companies to drive the exploratory processes. Following open invitations, the first EITI Stakeholders Conference from 22 to 23 November 2010 was a milestone in the public debate. The conference was trying to answer the question which was unclear at the time that “Does Malawi really Need EITI?”. The conference recommended the EITI Task Force to produce a comprehensive study on the impact analysis of implementing EITI in Malawi which was concluded in June 2011. The results were published in Malawi and on the EITI International Secretariat website for the international transparency community: “Malawi Extractive Industries Transparency Initiative (EITI) Processes and work done in the EITI debate in Malawi”, published by the Ministry of Finance and Development Cooperation in October 2011: <https://eiti.org/files/processess-and-work-done-in-the-EITI-debate-in-malawi.pdf>.

A study tour was conducted to Ghana in August 2011 to understand the country’s EITI programme. The findings and subsequent recommendations pointed to the fact that joining EITI would be to the interest of the country as a tool to assist in governing and tracking revenues from the sector.

After discussions with other constituencies, the Government decided on an equal 4/4/4 split between representatives from government, companies and civil society with a fixed alternate scheme. It was agreed that this would ensure an effective and broaden the open spirit in which the meetings are to be held.

Each organisation designated two named representatives for the MSG to ensure the presence of each organisation at MSG meetings and other activities. Only the named representatives are able to vote in the MSG. Any other representatives from the member organisations can attend on an observer only basis with the advance permission of the Chair. The Government invited industry and civil society to elect its constituency members following an EITI stakeholder meeting in Lilongwe in November 2014 where EITI’s Juergen Reitmaier presented on the next steps for Malawi to apply to EITI.

Government constituency has about 15 government stakeholders’ members, and the MSG members reach out to them through meetings and workshops upon invitation and on Mining and Governance project meetings. The Government selected the four MSG members representatives through a meeting which was convened on 20th November 2014 at the Ministry of Finance, Economic Planning and Development where 11 Government Departments and Institutions were represented.

Companies (Industry) constituency under the Chamber of Mines and Energy of Malawi has 3

¹ See *The EITI Standard*: <http://eiti.org/document/standard>, p. 41-42.

Reconnaissance Licenses holders, 71 Exclusive Prospecting Licences and 50 Mining Licence holders' members and the MSG members reach out to them through a Chambers of Mines and Energy group meeting. The Chamber selected the four members on 5 February 2015 at the Paladin Africa Ltd. offices in Lilongwe.

The CSO constituency has 33 members in the Natural Resources Justice Network, of which 15 are part of the Publish What You Pay Malawi Coalition. The MSG members reach out to them through the Natural Resources Justice Network and the Publish What You Pay Coalition. This constituency group elected four representatives for the MSG on 15 December 2014 in Lilongwe. The electoral process was overseen by Council for Non-Governmental Organisations in Malawi and the decisions and procedures have been documented in the meeting minutes.

On 18 March 2015, the MWEITI Multi-Stakeholder Group (MSG) met for the first time, and MSG members and resource persons came together from 30 to 31 March 2015 for a retreat to work on and create consensus concerning the MSG governance, the objectives and activities to be pursued in the pre-candidature phase and the candidature process until reaching compliant status.

The Terms of Reference of the MSG are enclosed as Annex B. Representatives from Government, Industry and Civil Society drafted the Terms of Reference which re-affirms their willingness to work together to make MWEITI a success. The purpose is to define the scope, responsibilities and functions of the MSG formed to govern the implementation of the EITI. The MSG will work together in collaboration and cooperation to direct the implementation of EITI in Malawi, ensuring that Malawi meets its objective of gaining candidacy followed by compliance with EITI in a timely and effective manner.

The MSG established committees to assist with certain work lines:

- Committee on Communication & Engagement, which task is to ensure that the communication plan is drafted and implemented and e.g. MWEITI website is updated in a timely manner to provide relevant information, messages from EITI generated data are customized (content, format, channel) for target groups; outreach and capacity building activities with targeted stakeholders conducted; involvement and mobilizing capacities of stakeholders beyond the MSG members.
- Committee on Contextual Information, which shall ensure that resource persons from relevant government agencies provide information for requirements 3 and in assistance of the Independent Administrator/Reconciler.

Special interest issues will be followed to provide direction to the MSG on what positive and negative results MWEITI should focus on. These may also prove useful for the development and shaping of the overall EITI on international level. For instance, an activity will deal with measuring the effect of MWEITI on the level of trust in the extractives sector, though a representative, quantitative and scientifically robust survey sets baseline before starting with MWEITI. The same survey will be conducted after 1st MWEITI report; this will cover the following relations: state authorities / citizen, state authorities / chiefs, state authorities / companies, companies / chiefs, companies / citizens, chiefs / citizens, CSOs / citizens; parliamentarians, media. This list is not exhaustive.

The direction, programmes and activities of the MWEITI are determined by MSG. The MSG is currently supported by a 2-person staff unit at the Ministry of Finance, Economic Planning and Development, which performs the function of a National Secretariat. Plans are underway to establish a National Secretariat and the preliminary budget has been developed. The National Secretariat will keep a central record of documents, events and publicity on EITI with the aim to frequently update a MWEITI website. The National Secretariat shall support the Chair in the documentation and preparation of the minutes of the meetings.

The minutes and all supporting documents shall be circulated to the members no later than one week after the meeting. The members will also have one week to send their comments and no comment will be considered approval. Implementation of the decisions made by the MSG will be reported by the National Secretariat and will be discussed in the subsequent MSG meeting.

The National Secretariat and peers from the MSG have also been in regular communication with the International Secretariat and with other countries including Zambia, Mozambique and Ghana.

EITI REQUIREMENT 1.4

The multi-stakeholder group is required to maintain a current workplan, fully costed and aligned with the reporting and Validation deadlines established by the EITI Board.

The workplan must:

- a) Set EITI implementation objectives that are linked to the EITI Principles and reflect national priorities for the extractive industries. Multi-stakeholder groups are encouraged to explore innovative approaches to extending EITI implementation to increase the comprehensiveness of EITI reporting and public understanding of revenues and encourage high standards of transparency and accountability in public life, government operations and in business;
- b) reflect the results of consultations with key stakeholders, and be endorsed by the multi-stakeholder group;
- c) include measurable and time bound activities to achieve the agreed objectives. The scope of EITI implementation should be tailored to contribute to the desired objectives that have been identified during the consultation process. The workplan must:
 - i. assess and outline plans to address any potential capacity constraints in government agencies, companies and civil society that may be an obstacle to effective EITI implementation;
 - ii. address the scope of EITI reporting, including plans for addressing technical aspects of reporting, such as comprehensiveness and data reliability (Requirements 4 and 5); and
 - iii. identify and outline plans to address any potential legal or regulatory obstacles to EITI implementation, including, if applicable, any plans to incorporate the EITI Requirements within national legislation or regulation.
- d) identify domestic and external sources of funding and technical assistance where appropriate in order to ensure timely implementation of the agreed workplan;
- e) be made widely available to the public, for example published on the national EITI website and/or other relevant ministry and agency websites, in print media or in places that are easily accessible to the public;
- f) be reviewed and updated annually. In reviewing the workplan, the multi-stakeholder group should consider extending the detail and scope of EITI reporting including addressing issues such as revenue management and expenditure (3.7-3.8), transportation payments (4.1.f), discretionary social expenditures (4.1.e), ad-hoc subnational transfers (4.2.e), beneficial ownership (3.11) and contracts (3.12)². In accordance with requirement 1.3 (g)(viii), the multi-stakeholder group is required to document its discussion and decisions;
- g) include a timetable for implementation that is aligned with the EITI reporting and Validation deadlines established by the EITI Board³ and that takes into account administrative requirements such as procurement processes and funding.

The MWEITI's strategic goal, objectives and key activities were drafted during a two-day retreat of MSG members and further resource persons on 30 to 31 March 2015 in Salima, Malawi. Subsequently, a core group met on several occasions to finalise a draft work plan.

The work plan 2015-2017 was endorsed by the MSG in the meeting of 8 May 2015. Each constituency consulted with their constituents in advance of this meeting and agreement was reached at this point.

The strategic goal is to contribute to sustainable development through revenue transparency. Four objectives are agreed: (1) EITI-compliant status achieved; (2) Increased revenue base and socio-economic impacts from extractive industries; (3) The MSG forms and strengthens partnerships between government/administration, companies and public for attracting quality investments (4) Strengthened trust among stakeholders of natural resource management. For more details check Annex A- Strategic Workplan.

² See *The EITI Standard for specifications of these issues*: <http://eiti.org/document/standard>, p. 35-39.

³ See *The EITI Standard*, paragraph 1.6 a) *EITI reporting deadlines*, p. 15.

The full work plan is enclosed as Annex B. It provides details for the categories: Objectives, EITI-requirements addresses, Activities, Expected Output, Expected Outcome, Responsible Entity, Timeline, Costs 2015-2017, Challenges and Obstacles, Funding Source. Implementation progress is to be discussed at each MSG meeting.

In defining the scope of the MWEITI, the MSG met to discuss possible innovative areas of reporting that could help meet wider tax transparency and resource management transparency objectives. For the 1st MWEITI report, the scope should cover at least mining and possibly oil and exploration licences in the contextual background, in order to keep a clear focus for getting the reporting cycle successfully completed for the first time. This is considered to be justifiable because there are only a few mining operations of any significance currently operating in Malawi.

However, the sector is dynamic – in both directions. During the implementation of the Malawi Growth and Development Strategy I (MGDS I) until 2011, contribution of mining to GDP rose from 3 percent to 10 percent due to the opening of the Kayalekera Uranium Mine in 2009. The suspension of production since 2014 had the opposite effect. Numerous companies are conducting exploration activities and, within a few years, the extractives sector including oil and gas may be contributing as much as 20% to GDP. At least 124 companies in Malawi have licences related to mining. The EITI work plan shall be adjusted to this dynamic environment.

INFORMATION ABOUT THE MULTI-STAKEHOLDER GROUP (MSG)

Provide a list of members from the national Multi-Stakeholder Group, their organisational affiliation and contact details. If appropriate, attach information regarding additional government, civil society and private sector stakeholders involved in the sign-up process.

Name	Title	Organisation	Contact details (Phone & Email)
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Observers			
N.N., standing observer seat, International EITI Secretariat			
N.N., standing observer seats, Parliamentary Committees			

N.N., observers approved by the MSG Chair

ANNEXES

Annex A – Work Plan 2015-2017 (separate document)

Annex B – Terms of Reference (ToR) of the MSG (separate document)

Annex C – Press Release