

MSG Terms of Reference (ToRs)

Malawi EITI National Secrétariat
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Malawi's Extractive Industries Transparency Initiative (MWEITI)

Multi-Stakeholder Group (MSG)

TERMS OF REFERENCE

1. Malawi and the Extractive Industries Transparency Initiative

The purpose of these Terms of Reference is to define the scope, responsibilities and functions of the MSG formed to govern the implementation of the EITI.

The extraction of Malawi's natural resources and its associated revenue should underpin broad-based sustainable growth and socio-economic development of all Malawi's citizens. Greater transparency and accountability must be in place to make this a reality. Recognising this, the government found it fit to commit to the **Extractive Industries Transparency Initiative (EITI) Standard** in 2014. This global standard promotes open and accountable management of natural resources by requiring the full disclosure of taxes and other payments made by companies to governments. This data is reconciled with government receipts and published in a report which is aimed to enhance trust and to stimulate public debate on how the country's resource wealth should be managed.

Malawi's EITI (MWEITI) seeks to introduce and institutionalise transparency and accountability along the extractive industries value chain in accordance with the EITI Standard and Principles. This is expected to be achieved through open dialogue among stakeholders. The ministry responsible for Finance, through the Revenue Policy Division, is coordinating the MWEITI in coalition with the Multi-Stakeholder Group (MSG) comprising government institutions, civil society organisations and companies in the extractive industry. The direction, programmes and activities of the MWEITI will be determined by the Multi-Stakeholder Group (MSG). The MSG will be supported by a National Secretariat that will be organised and sustained by national government, housed within the Revenue Policy Division. However, in the long run, the secretariat will need to move out of Ministry of Finance and become independent.

2. Role of the MSG

The MSG will work together in collaboration and cooperation to direct the governance and implementation of EITI in Malawi, ensuring that Malawi meets its objective of gaining candidacy, producing EITI reports in a timely and effective manner, gaining compliance status with EITI, ensuring that the findings contribute to public debate and economic development.

2.1 Responsibilities of the MSG Members

The MSG is made up of government, extractive industry and civil society representatives.

- a) These members shall contribute to the responsibilities and functions of the MSG (2.2) and uphold the principles of engagement (2.3).
- b) As MSG members are representative of their constituency, they shall consult regularly and transparently to ensure the views of their constituency continue to be reflected. Each member

shall also ensure the full participation of its constituency and communicate updates and results to their respective constituency and is responsible for assessing and building the capacity of their constituency to understand and engage in the EITI process. Minutes or reports of such consultation meetings shall be presented at the MSG ordinary meetings

- c) The MSG will be chaired by the designated representative from the Ministry of Finance and Economic Planning and Development who will be responsible for convening the group. In addition, the Chair will be responsible for organising a National Secretariat, which will coordinate the EITI work and organise other related activities as determined by the MSG.
- d) The MSG will ensure that data on payments made by the extractive industry and on government revenues received and any other relevant information must be received in an accurate and timely manner, at a level of detail to be agreed upon by the MSG. Civil society is placed to monitor these disclosures by the extractive industry and government.

2.2 Responsibilities and functions of the MSG

Issues to be discussed by the MSG shall be limited to those related to EITI, unless otherwise agreed upon by consensus of the MSG.

The Malawi MSG shall be responsible for:

- a) Defining the scope and strategic direction of the EITI process
- b) Developing in consultation, publishing and maintaining a fully costed work plan with measurable targets and timeframe for implementation, reflecting areas where capacity development is required
- c) Overseeing the implementation of the EITI and work plan in line with the EITI Standard
- d) Identifying any legal barriers and regulations that prevent the full implementation of the EITI Standard
- e) Developing a communications protocol to target and tailor communication and building awareness about EITI, its objectives, the experience and gains of other countries and the progress of the EITI implementation in Malawi with different stakeholder groups and the general public
- f) Establishing and supporting any sub-groups or/ and ad hoc sub-groups to examine or respond to specific issues as the needs arises (e.g. the preparation of reporting templates and contextual information, addressing a breach of the MSG Terms of Reference by an MSG member, contribution to legislation and policy review from the perspective of the EITI). The sub-groups may invite outside expert to participate, but only with approval of the MSG
- g) Reviewing and approving the Terms of Reference of Independent Administrator drafted by the National Secretariat
- h) Developing an annual activity plan
- i) Directing and supervising the National Secretariat (roles outlined in a separate Terms of Reference)

2.3 Principles of Engagement

- i. Engagement between government, extractive industry and civil society stakeholders in the MSG will be based on the following principles:
 - a) **Openness** – provide an environment where all participants can engage freely and openly
 - b) **Transparency** – provide all parties, as well as the general public, timely, access to relevant and verified information/data, subject to the limits set by law and the EITI Openness Policy
 - c) **Accountability** – abide by the policies, standards and guidelines of engagement that may be agreed upon, and fulfil commitments
 - d) **Integrity** – adhere to moral and professional standards in fulfilling our commitments
 - e) **Inclusivity** – freely appoint their own representatives, bearing in mind the desirability of diverse implementation
 - f) **Partnership** – cooperate, share responsibilities and uphold mutual respect to ensure that the objectives of the engagement are achieved
 - g) **Consultation, Capacity-Building and Empowerment** – enhance knowledge-sharing and continuing dialogue and will endeavour to equitably provide other opportunities
 - h) **Confidentiality**-respect for internal processes, and not discuss or use outside MSG meetings and activities any confidential information made available at any point during MWEITI business which is not already in the public domain in case of any conflict of interest, it has to be disclosed to the Chair
 - i) **Sustainability** – ensure continuing engagement by instituting progressive policies and operational mechanisms that will promote an environment of mutual trust
 - j) **National Interest** – uphold the national welfare above the interests of organisations or individuals
 - k) **Channel and Procedures** – All issues and inquiries shall be channelled through the EITI Secretariat
 - l) **Gender balance**-MSG shall endeavour to abide by national gender policy
- ii. All instances of failure to adhere with these principles will be reviewed by the MSG and may result in exclusion from any further participation in MSG meetings.
- iii. All these principles are applicable to anybody involved in MWEITI business including observers, and Secretariat staff

3. MSG Membership

3.1 Composition of the MSG

- i. The MSG will be composed of the following:
 - a) Four government representatives drawn from ministry responsible for finance, ministry responsible for natural resources, Reserve Bank of Malawi and National Audit Office selected through a process initiated by Government with the support of the National Secretariat. This

includes the Ministry of Finance and Economic Planning and Development through the Revenue Policy Division which chairs the MSG and houses the National Secretariat

- b) Four extractive industry representatives selected through a process initiated by extractive industry through the Chamber of Mines and Energy of Malawi (CMEM) with the support of the National Secretariat
 - c) Four civil society representatives selected through a process initiated by CSOs with the support of the National Secretariat and the Council for Non-Governmental Organisations in Malawi (CONGOMA)
 - d) The MSG may agree by consensus to change the composition of the MSG, such as, by selecting new members from the extractive industries currently not represented (e.g. oil and gas, timber, fisheries) and the respective government institutions. Government, extractive industry and civil society must always be represented.
- ii. Each organisation shall designate two named representatives, one being the principal member and the other an alternate, for the MSG to ensure the presence of each organisation at MSG meetings and other activities. Only the principal member or the alternate representatives are able to attend and vote in the MSG.
 - iii. All sub-groups will have at least one member from each constituency, be led by an MSG member and may invite outside experts to participate but only with agreement of all MSG sub-group members.

3.2 Terms of Membership

- a) Members of the MSG shall serve for a term of 3 years and may be reappointed for an extra 3 year term, making a maximum of two terms; the members of each constituency shall select their MSG members. Each constituency, upon the decision of its members and through its own independent process, can replace their representatives in the MSG at any time following their own governance mechanisms.
- b) The MSG may through general agreement, or if general agreement cannot be reached, a formal vote, remove a full member of the MSG if there are grounds for believing that member's participation would be detrimental to the ongoing work or reputation of the MWEITI, in line with these ToRs.

3.3 Observers and Experts

- a) The MSG shall welcome up to 6 observers and experts at each meeting; they will be able to engage in the discussion at the MSG but will not have the right to vote. Observers and experts for each meeting will be nominated by government, extractive industry or civil society representatives at least one week in advance of the relevant meeting through email or other open channel of communication to allow MSG members to see the nominated observers. The Chair, on recommendation of the MSG, will select observers and experts from those put forward

considering the sensitivity of the meeting as well as the relevance and expertise of the nominated observer or expert.

- b) Permanent observer status may only be obtained upon application and approval of the MSG
- c) Standing observer slots will be allocated to Parliamentary Committees as well as to the EITI International Secretariat.

4. MSG Operations and Proceedings

4.1 Frequency, Notice and Venue of Meetings

- a) The Chair will call and preside over the MSG meetings. In the absence of the alternate Chair, the Chair shall delegate an MSG member or alternate to chair the meeting. Notice of meetings and an agenda shall be sent by the National Secretariat at least two weeks before the date of the meeting.
- b) The Multi-Stakeholder Group shall meet every three months (quarterly) or more frequently if the need arises at a place conducive and convenient enough for a meaningful discussion. In the event of an emergency, a meeting may be proposed by a member and be called by the chairman in consultation with the MSG
- c) Costs incurred by MSG members while in the course of conducting MWEITI business will be reimbursement where applicable and according to the prevailing guidelines

Decision Making

- a) Fifty percent of the members, with at least one representative from the government, extractive industry and civil society, shall represent the quorum of the MSG.
- b) The MSG shall, in good faith, make every effort to adopt resolutions by consensus and all members shall be bound by it.
- c) If a vote is required, resolutions are adopted by a qualified simple majority requiring the support of at least two thirds of the total votes cast and must include the support of at least one third of the votes cast by the Members representing each Constituency
- d) For urgent matters where decision is needed, necessary information shall be circulated through email so that decisions can be made electronically, also by consensus.
- e) The MSG Terms of Reference can be reviewed on a needs basis, by consensus.
- f) Decisions made by MSG are final, secretariat shall ensure that it furnishes the MSG with enough information for it is the one to finally implement such decisions

4.2 Record Keeping and Communication

- a) The National Secretariat will keep a central record of documents, events and publicity on EITI with the aim to frequently update a MWEITI website.
- b) 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.
- c) The members will also have one week to send their comments and when comments are not sent, the minutes shall be deemed endorsed. Implementation of the decisions made by the MSG will be reported by the National Secretariat and will be discussed in the subsequent MSG meeting.
- d) Minutes of meetings will be circulated to the MSG and will be made publicly available after agreement among the members. Names of attendees will be listed in the minutes but views that have been expressed within the meeting will not be allocated to individuals.

Attendees shall not allocate views to individuals when discussing the MSG outside the meetings and shall respect that differences of opinion may arise as it relates to the MWEITI business and should refrain from engaging in public discourse that would be disruptive to the development of the draft work plan prior to release for public review and commentary.