



Government of Malawi



Technical Assistance to the Government of Malawi to support the implementation of Public Finance Management Reforms

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Malawi EITI Project Level Reporting Feasibility Study Report

Consultant: Manuel Chisale

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List of abbreviations

DoM	Department of Mines
DoF	Department of Forestry
EITI	Extractives Industries Transparency Initiative
FBT	Fringe Benefits Tax
MoFEA	Ministry of Finance and Economic Affairs
MRA	Malawi Revenue Authority
MSG	Multi-Stakeholder Engagement Group
MWEITI	Malawi Extractives Industries Transparency Initiative
MNS	MWEITI National Secretariat
NAO	National Authorising Office
NRJN	Natural Resource Justice Network
NKE	Non-Key Expert
PAYE	Pay As You Earn
PLR	Project Level Reporting
PWYP	Publish What You Pay
RGD	Registrar General's Department
RPD	Revenue Policy Division
TEVETA	Technical, Entrepreneurial and Vocational Education and Training Authority
TPIN	Tax Payer Identification Number
TOR	Terms of Reference

1. Introduction

The Government of Malawi, with financial support from the European Union, is implementing the Chuma Cha Dziko programme (Public Finance Management Reforms Project). One element of this programme is the project titled *Technical Assistance to Public Finance Management Reforms in Malawi*, which is being implemented through a service contract held between the Government of Malawi's National Authorising Office (NAO) and DAI Brussels, in consortium with Tetra Tech and with support of local operating partner O&M.

Key Result Area 3 of the project aims to improve the effectiveness and efficiency of revenue policy implementation and support the Malawi extractive industries transparency initiative (MWEITI).

Improving domestic resource mobilisation is one of the strategic priorities for Malawi and a main driver for achieving the aspirations under Malawi 2063, the national long-term development vision. In its strategic documents the Government focuses on policies aiming at expanding the revenue base, stimulating investment and economic activities. One of the main activities to achieve the strategic priorities is by creating an enabling environment for smooth investment and governance of natural resources under the extractive sector.

Malawi has been an EITI international member country since 2015 and so far, produced 6 EITI reports. The EITI is guided by a set of principles (the EITI Standard) that enhances transparency and accountability in the extractive sector. With the Government of Malawi's aim to create enabling environment for smooth investment in the extractive sector particularly mining, the EITI presents an important path to realising this objective. The 2023 EITI Standard enables implementing countries to disclose the information required by the EITI Standard through routine government and corporate reporting systems such as websites, annual reports etc. In February 2019, the EITI Board performed a validation of Malawi's progress and agreed that the country had made "meaningful progress" in implementing the 2016 EITI Standard. The next validation for Malawi was performed in 2022 and in its findings, the Board noted that Malawi achieved a moderate overall score of 80 points in implementing the 2019 EITI Standard. The EITI Board commended the country for achieving a moderate score of 84 points on Outcomes and impact and allocated a high component score of 86 points on Stakeholder engagement. However, despite the constant improvements in the implementation of the EITI Standard, the Board recommended that Malawi still needs to put more efforts in achieving improved ratings during the next validation scheduled to commence on 1 January 2025 and among the areas identified by the Board for improvement is the MWEITI's performance under the standard requirement related to Disaggregation of data (Requirement 4.7) which relates to project level reporting.

To implement EITI project level reporting, countries are encouraged by the EITI to undertake feasibility study to assess the robustness, readiness, capacity and capabilities of existing government systems and corporate reporting systems in ensuring disaggregation in public disclosures of company payments and government revenues from mining, forestry and Oil & Gas that enables the public to assess the extent to which the government can monitor its revenue receipts as defined by its legal and fiscal framework, and that the government receives what it ought to from each individual extractive project. Further, the feasibility study is expected to identify opportunities and challenges that may face the project level reporting under EITI reporting process.

As a result, the Chuma Cha Dziko programme engaged a consultant to undertake a project level reporting feasibility assessment by engaging all government reporting entities and other key stakeholders including the Revenue Policy Division (RPD), the MWEITI National Secretariat (MNS), and the MSG. Therefore, this report presents the study activities, findings and recommendations action plan to address the project level reporting challenges identified. Further, the report presents the revised reporting template in line with the project level data capturing for the project level EITI report.

2. Understanding of the Terms of Reference

Since the production of the first MWEITI report which covered the financial year 2014/15, reporting entities, both government entities as well as companies, have had challenges in making available/ reporting disaggregated data (payment flows, exports and production). It is in view of this challenge that all previous EITI reports have had a recommendation to the National Secretariat to engage the various reporting entities to ensure that they should commence submission and reporting of EITI data at project level. Nonetheless, many stakeholders are not able to understand a number of aspects related to project level reporting.

Based on the aforementioned reasons and with the quest to deepen and expand the scope of MWEITI's work on project level reporting, the consultant was expected to support MWEITI Secretariat and the MSG with the feasibility study on disclosure of EITI data on a project level on the basis of robust data analysis of documents made available through the MWEITI National Secretariat on the basis of EITI International standard as well as consultations with key stakeholders.

The consultant undertook one-on-one interview with key EITI major reporting entities namely Government reporting entities, extractive Companies, and stakeholders which included: the MSG, Civil Society Group on extractives, experts in the legal, financial and extractives sectors, National and International EITI Secretariat to better understand how projects and project-level reporting are legally documented and practically applied and to develop an understanding of:

- 2.1 The demands, opportunities and potential difficulties in implementing EITI project level reporting in Malawi.
- 2.2 The types of legal agreements giving right to payments and falling under the definition of 'project', incl. identifying instances of substantially interconnected legal agreements.
- 2.3 The extractive sector payment types (taxes, fees, etc) levied or imposed on a project basis, and those levied on a company basis.
- 2.4 Whether there are any obstacles to disclosing payments levied at project level.
- 2.5 Recommendations to be considered for the purposes of the feasibility study.
- 2.6 Countries that have successfully/partially implemented project level reporting, experience to date of other implementing countries in making progress on project level reporting and how Malawi can tap the knowledge on how to successfully implement the initiative.
- 2.7 Challenges faced by implementing countries in making project level reporting mandatory part of EITI implementation for reporting entities and how to address the difficulties in meeting this EITI reporting requirement.
- 2.8 Approach and action plan to address the project level implementation challenges identified.

3. Objectives of the Assignment

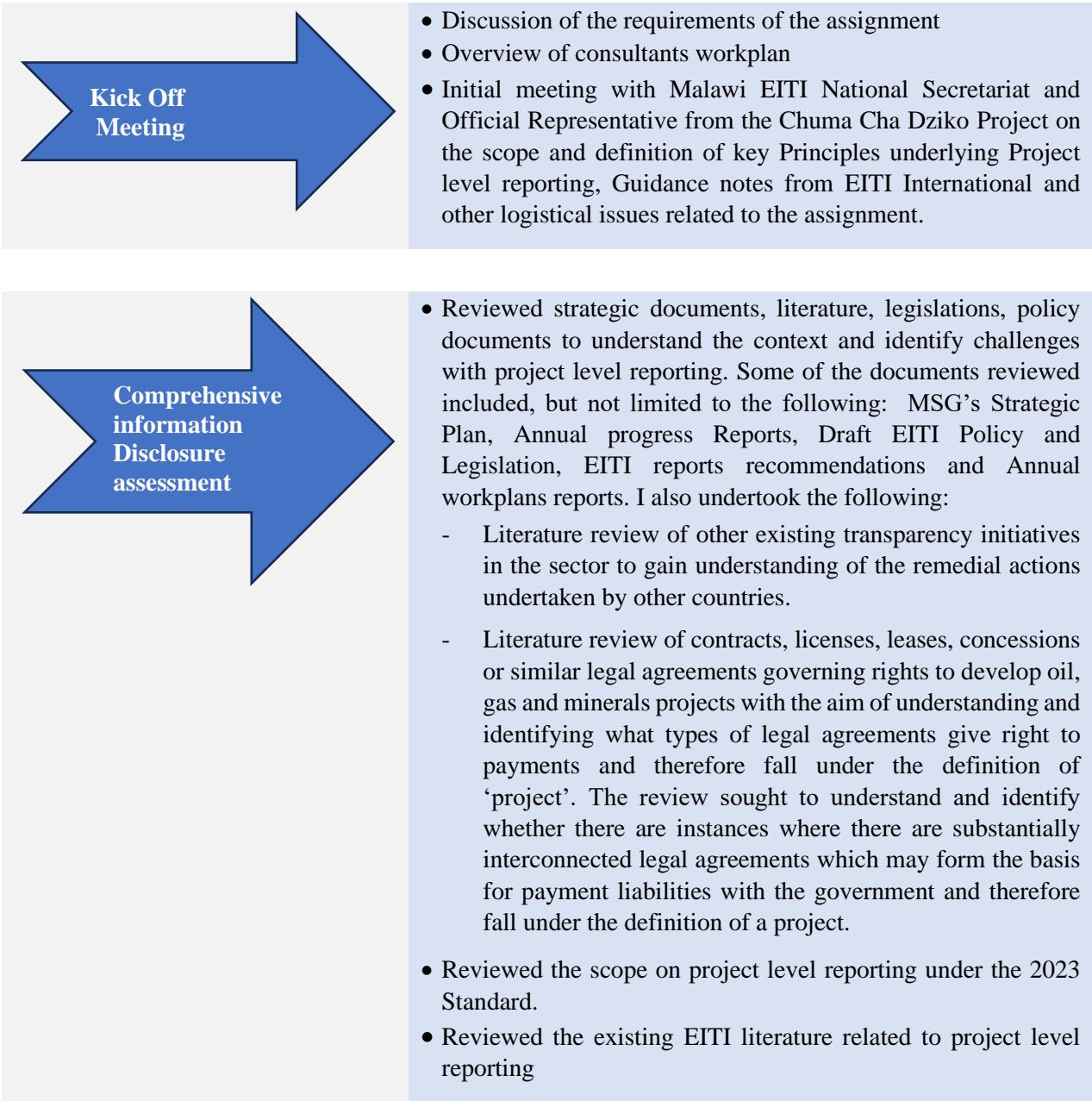
The objective of project level reporting feasibility study was to help the MSG and the MWEITI National Secretariat to implement one of the EITI requirements which would make disclosure of project level financial data mandatory. This requirement would apply to data covering 2018 and onwards. This data would provide more granular information on the government revenues collected from each individual extractive project. Project-level payment data is relevant information to local communities, district local councils, governments and investors alike. It enables companies to demonstrate the economic contribution they are making in relation to specific projects, and the communities they affect. Based on the terms of reference, the assignment was expected to:

- 3.1 assess the robustness, readiness, capacity and capabilities of existing government systems and corporate reporting systems; and
- 3.2 produce a Project Level Reporting Feasibility Study Report considering the country's specific context and good international practice.

To achieve these objectives, the consultant was expected to undertake the following:

- a) Identify legal agreements under the definition of ‘a project’.
- b) Provide a proposed definition of a project to the MSG for consideration and approval.
- c) Identify which revenue streams should be reported by project and which companies should report/disclose by project.
- d) Develop a project-level reporting framework/ template for the MSG to consider and approve.
- e) Outline practical obstacles to disclosing payments levied at a project level.
- f) Document the findings and proposed recommendations on how revenues should be reported.
- g) Provide an action plan for the effective implementation of the project level reporting in Malawi in line with the EITI standard requirement.

4. Approach and Methodology





Stakeholder Mapping and Consultation

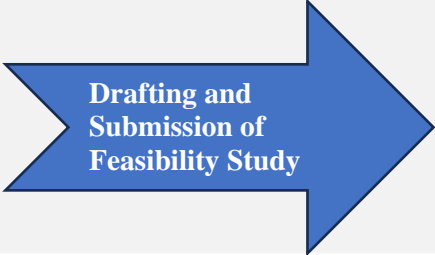
- Conducted stakeholder mapping exercise in order to ensure all relevant stakeholders are included in the feasibility study and the list is included in this report under Annex 1.
- Reviewed the current EITI information and guidance notes against stakeholder information provisions
- Developed a questionnaire that was used for information gathering during stakeholder consultation process
- Documented minutes from all stakeholder interviews and consultation meetings



Gap Assessment

This process involved the following:

- Identification of obstacles faced by reporting entities in terms of provision of data at project level.
- One on one interviews with all key stakeholders identified including government and corporates to identify the challenges in trying to disclose EITI data project by project as per EITI requirements focusing on challenges that may emanate from such issues as technical capacity and institutional capability gaps.



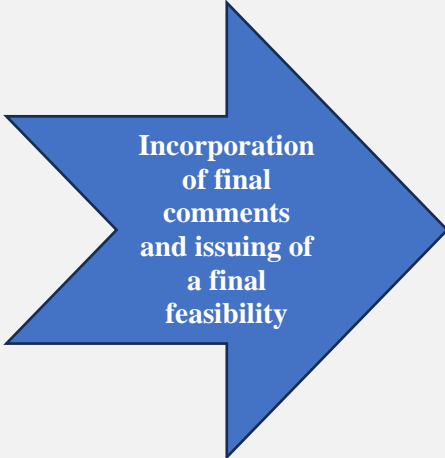
Drafting and Submission of Feasibility Study

- Population of all relevant information gathered through review of documentation, interviews and consultation into a draft feasibility report
- Ensuring that the draft feasibility report fully covers all the items in the TORs are approved by the MSG and that it clearly highlights key results and findings identified as well as recommendations to be taken on board by the MSG.



Validation Workshop and Roadmap

- Meeting with MSG members and other stakeholders to validate findings from the study
- Develop a roadmap to guide implementation of project level reporting



Incorporation of final comments and issuing of a final feasibility

- Meeting with MSG members and other stakeholders to validate findings from the study
- Develop a roadmap to guide implementation of project level reporting

5. Implementation of Requirement 4.7 ‘Level of Disaggregation’ for the 2023 EITI Standard

The 2023 EITI Standard under requirement 4.7 requires implementing countries to disclose EITI data disaggregated by each individual project, company, government entity and revenue stream. Where a payment covered by the scope of EITI disclosures is levied at entity level rather than at project level, the company is encouraged to disclose the payment at the entity level. This requirement is for reporting covering fiscal years ending on, or after, 31 December 2018.

Definition of ‘A Project’ under EITI for MSG Consideration and Approval

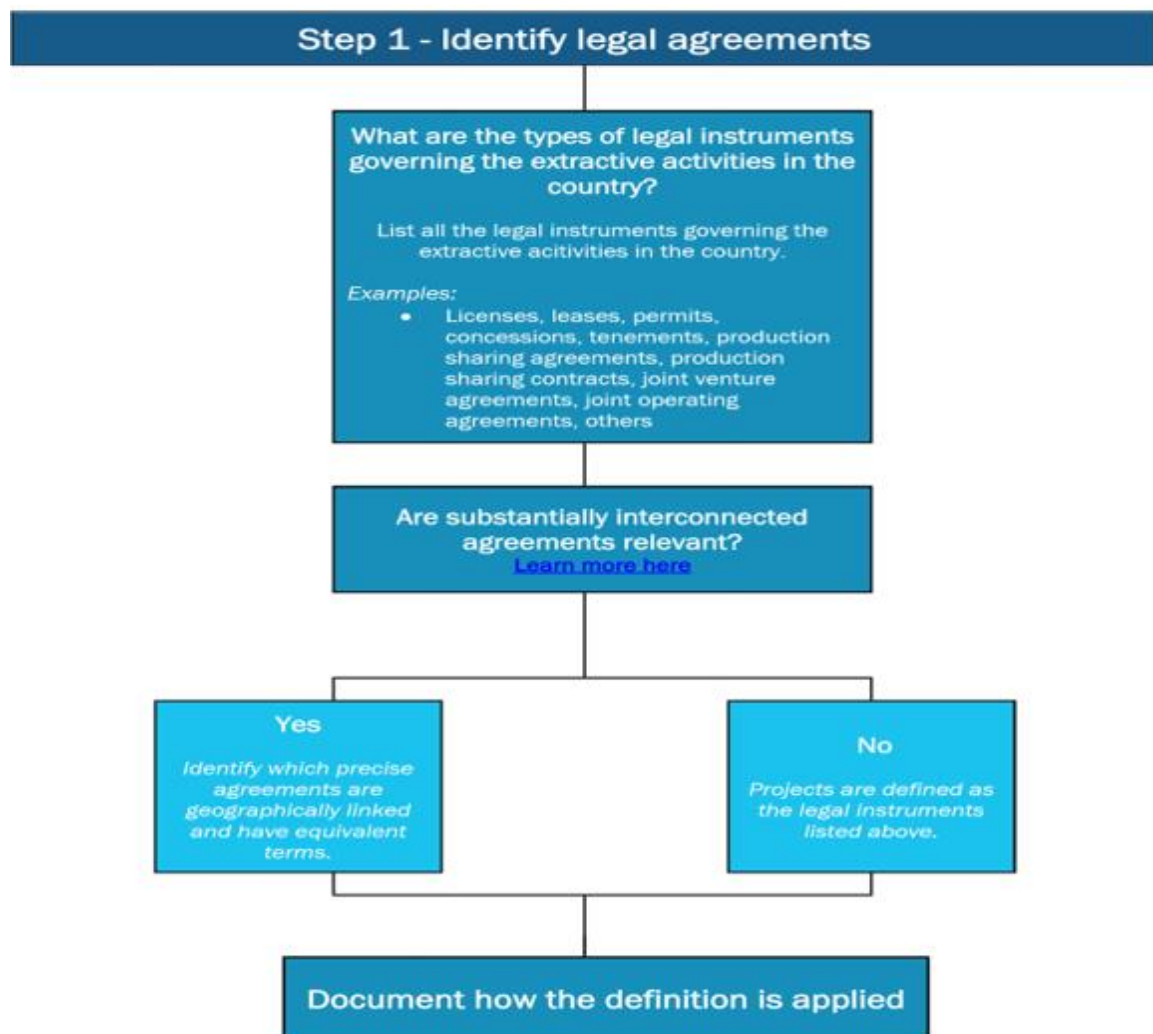
The EITI requires that implementing countries report financial data by project, applying a definition based on emerging practices in different jurisdictions to ensure consistency with globally applicable mandatory payment disclosure rules.

Definition

A project is defined as operational activities that are governed by a single license, a concession, a contract, a lease agreement, production sharing agreement or other overarching legal agreement and form the basis for payment liabilities with the government of Malawi. Operational activities are being referred to as extraction of natural resources from underground (Solid Minerals and Oil & Gas) or from above the ground (forestry products) for commercial purposes.

Where a payment covered by the scope of EITI disclosures is levied at entity level rather than at project level for instance income tax, the company may disclose the payment at the entity level.

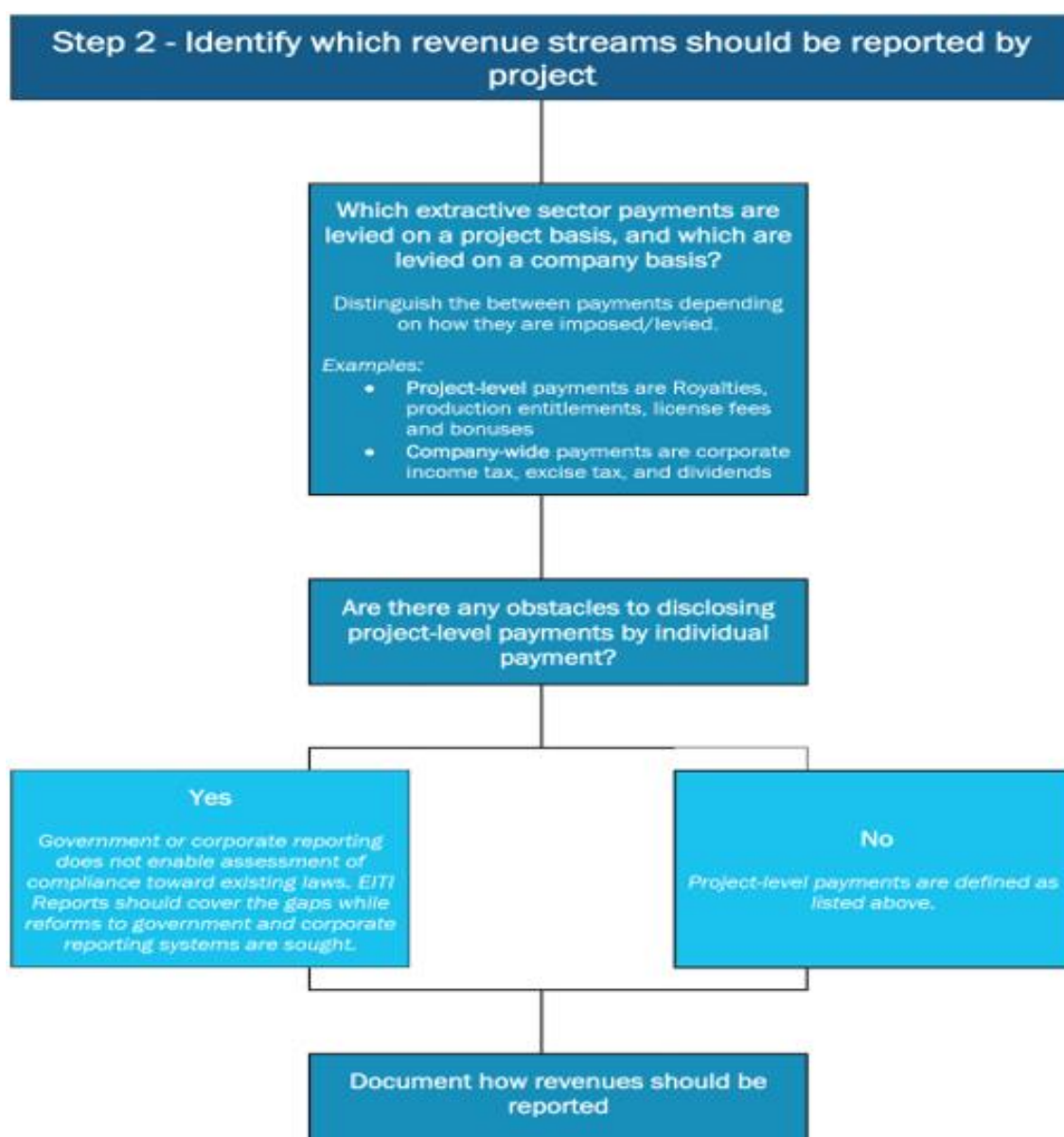
Step-by-Step Guide to the MSG on How to Implement and Report “Project-by-Project”¹



¹ https://eiti.org/sites/default/files/attachments/guidance_note_29_project-level_reporting_-_annex_flowchart_final.pdf

Identification of legal agreements under the definition of ‘a project’.

Reconnaissance Licence	Granted when the area is not already a prospecting, Mining, or Claim Area. The holder is given exclusive rights to carry out reconnaissance operations in that area using the techniques authorised to him. The area shall not exceed 100 Km ² . The application should include a plan of the area, identify the minerals sought, and the financial and technical resources available.
Exploration Licence	Granted when the area is not already a Mining or Claim area and is not already subject to a reconnaissance licence. The holder is given exclusive rights to carry out prospecting operations. The application should include a plan of the Area, identify the Minerals sought, and the financial and technical resources available. The application should also be accompanied by a statement of planned Malawi citizens’ employment and a training proposal.
Medium-Scale and Large-Scale Mining Licence	The holder of an EL can also apply for this within 2 months of his notification of the Minister of any minerals discovered and only for the land subject to the EL. The holder has exclusive rights to carry out both prospecting and mining operations.
Non-exclusive Prospecting Licence	Gives authorisation to the holder to enter and prospect/carry out prospecting operations in a district or part of a district as specified in the licence. The area must not already be a reconnaissance area, a prospecting area, or a mining area.
Small-Scale Mining Licence	A NEPL holder can apply for a claim. A Claim gives the holder exclusive rights to enter a claim area to prospect, mine, remove from and dispose of minerals identified from that Claim.
Mineral Permit	Allows the holder to enter any public or customary land and mine. Forest Reserves, National Parks, Game Reserves, any protected Monuments or Relics are prohibited. Underground mining operations, use of explosives and any powered machinery for the purposes of mining are also prohibited under this licence.
Reserved Minerals Licence	Issued by the Commissioner pointed by the Minister, this licence authorises the holder to buy reserved minerals (usually identified as precious stones and metals), and only entitled persons to possess the reserved minerals.
Retention Licence	A retention licence applicant shall be a holder of a valid exploration licence. Once the Mineral Resources Committee grants a retention licence, the retention licence area shall cease to be part of exploration licence area to which it related.
Concession Agreement under mining activities	A concession agreement is a licence, permit, or other contract that gives a private company the right to extract minerals or forestry products from public land(s), subject to particular agreed terms.



Identification of the revenue streams to be reported by project

Payments/Receipts Under DoM

Nature of revenue Stream	To be reported by project or not
Royalties	Yes
License Fees	Yes
Annual Charges / Ground rent	Yes
Application fees	Yes
Dividend paid to Government (Government as being shareholder)	No – dividends relate to the payment made by the company as a whole and not project by project and therefore such revenue stream may be disclosed at entity level without artificially allocating them among particular projects
Penalties	Yes
"Mandatory" Training fees	Yes
Other material payments to Mining authority	Depends on the nature of other payments

² https://eiti.org/sites/default/files/attachments/guidance_note_29_project-level_reporting_-_annex_flowchart_final.pdf

Identification of the revenue streams to be reported by project

Payments/Receipts Under DoF

Nature of revenue Stream	To be reported by project or not
Sale of Firewood	Yes
Forest Seed Sales	Yes
Log Sales	Yes
License Fees	Yes
Export Permit	Yes
Concessions (logs and firewood)	Yes
Royalties on Forestry Produce	Yes
Other material payments to the Department	Depends on the nature of other payments

Payments/Receipts Under TEVETA

Nature of revenue Stream	To be reported by project or not
Tevet levy	No - Tevet levy relates to the payment made by the company as a whole and not project by project and therefore such revenue stream may be disclosed at entity level without artificially allocating them among particular projects

Malawi Revenue Authority (MRA)

According to the relevant laws and regulation and data collected from MRA there are eight (8) categories of taxes payable by oil, gas, mining and forestry companies to MRA. These taxes are set out in the table below:

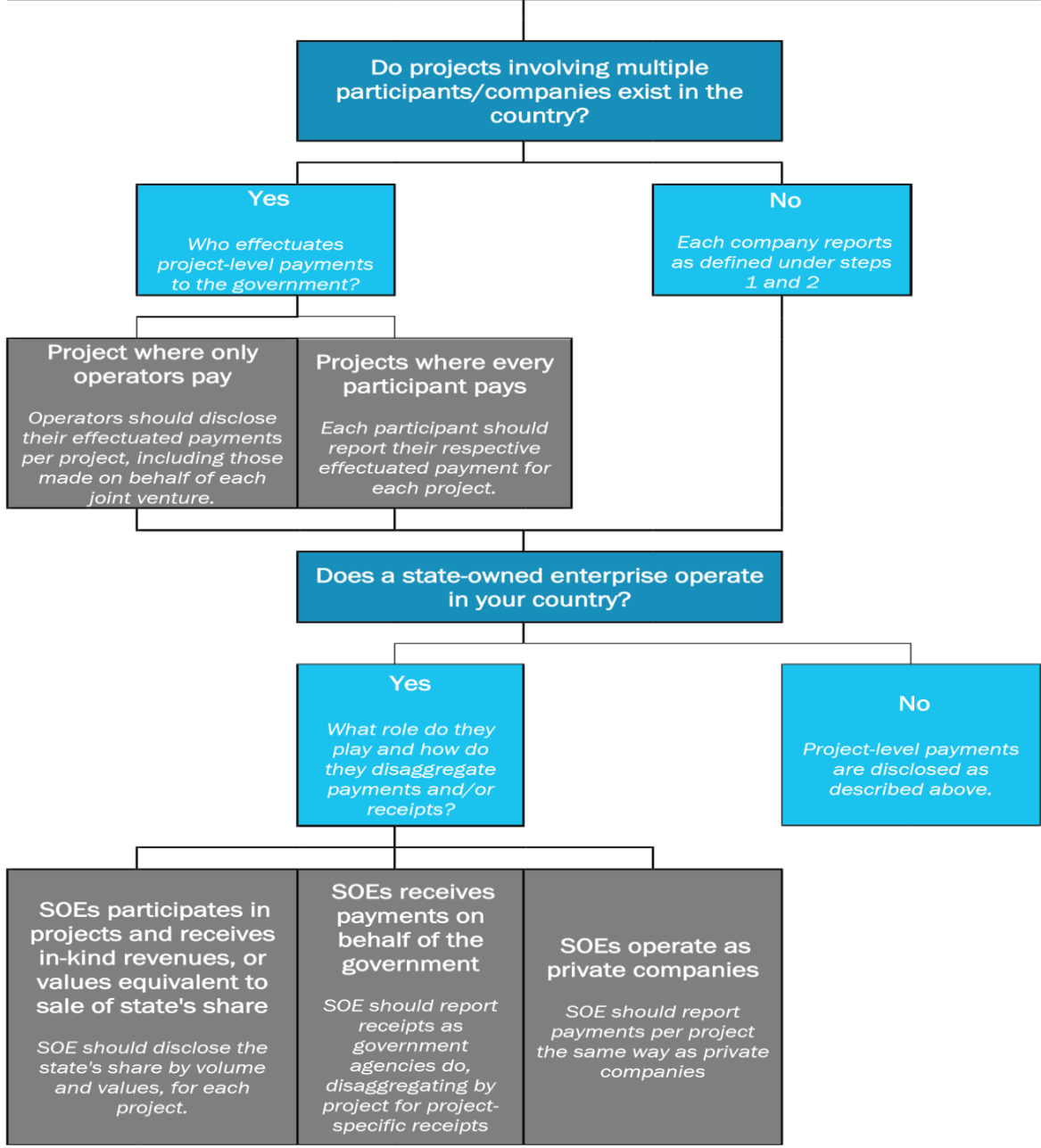
Nature of revenue Stream	To be reported by project or not	
Corporate Income tax	No – This is levied or imposed on a company as a whole and not project by project. The EITI Standard recognises that such payments may be disclosed at entity level without artificially allocating them among particular projects.	These should be disclosed at project level, otherwise the provisions of Section 64A of the Taxation Act will not have been satisfied.
Non-resident tax	Yes – This can be reported on the project where the related non- Malawian staff are working. Where such time for such workers is also spent on other projects, then the related revenue stream should be apportioned based on the amount of time spent on each project (staff should be completing timesheets).	Should be reported at project level with clear guidelines for apportionment.
Pay As You Earn "PAYE"	Yes – This can be reported by project assuming each project has its own staff members. However, where some staff work on multiple projects, then their PAYE should be apportioned based on the amount of time spent on each project (staff should be completing timesheets).	Should be reported at project level with clear guidelines for apportionment.
Withholding tax on payments	Yes – taxes are withheld from payments due to the company but the sources of the services rendered must have been a specific project. However, where a particular WHT is levied at entity level rather than at project level, the company is encouraged to disclose the payment at the entity level.	Should be disclosed at project level.

Identification of the revenue streams to be reported by project (Continued)

Malawi Revenue Authority (MRA) - Continued

<u>Nature of revenue Stream</u>	<u>To be reported by project or not</u>	<u>MRA Comments</u>
Customs Duty / Excise Tax	No – This relates to taxes levied or imposed on a company as a whole and not project by project. The EITI Standard recognises that such payments may be disclosed at entity level without artificially allocating them among particular projects.	Agreed. Disclosure at entity level.
Fringe Benefits Tax	Yes – This can be reported by project assuming each project has its own staff members receiving fringe benefits. However, where some staff (who receive fringe benefits) work on multiple projects, then then their FBT should be apportioned based on the amount of time spent on each project (staff should be completing timesheets).	Should be reported at project level with clear guidelines for apportionment.
Value Added Tax (VAT)	No – This relates to taxes levied or imposed on a company as a whole and not project by project. The EITI Standard recognises that such payments may be disclosed at entity level without artificially allocating them among particular projects.	These should be disclosed at entity level.
Other payments to MRA	Depends on the nature of the other payments	

Step 3 - Identify who should report what



³ https://eiti.org/sites/default/files/attachments/guidance_note_29_project-level_reporting_-_annex_flowchart_final.pdf

Step 4 - Agree on a reporting framework and templates

Reporting templates

Reporting templates should be designed to capture all project-level payments that are not systematically disclosed and reliable.

Development of a project-level reporting framework/ template for the MSG consideration and approval

One of the deliverables for this study is to redesign and review the MWEITI data reporting template so that it can capture project level reporting information. The current EITI reporting template has been reviewed in the following areas based on the findings and consultations with key stakeholders; 1) Creation of categories to specify the name and number of projects; 2) the revenue inventory which requires to be captured under project level and those which do not; 3) TPIN code for the project and the related license/concession number; 4) Social payment details per project; and 5) Export details per project.

A sample of project level reporting framework/template has been included in **Annex 2** below. This are for the MSG to consider and approve.

6. Outline of practical obstacles to disclosing payments levied at a project level in Malawi

6.1 **Section 64A** of the Taxation Act (2016 amendment) clearly states that “a person shall be taxed in respect of each mining project they have in accordance with the Sixteenth Schedule”, implying that each mining project is supposed to be registered separately for tax purposes, have its own TPIN and consequently report financial data according to each individual project.

MRA understanding of this provision is that the following administrative challenges will need to be addressed:

- whether those mining companies who already registered for tax many years ago and have multiple projects will have to file fresh applications to register each of their projects separately.
- At the moment, Msonkho Online only recognises businesses registered with the Registrar of businesses/companies as well as individuals except those in employment. It recognises the registration number provided by the Registrar General to uniquely identify an organisation or a business.
- A person or organisation with more than one mining projects, the system will fail to uniquely identify and recognise the other projects.

6.2 Lack of equipment and metering (measuring) tools for determining the production data.

6.3 The requirement to report EITI information project by project is a new requirement and compliance is likely to be a challenge unless there is adequate training by MWEITI on how this can be done, completion of the project level reporting template as well as nature of the revenue streams to be included in the template.

6.4 Lack of relevant legal provisions penalising all non compliant extractive companies.

⁴ https://eiti.org/sites/default/files/attachments/guidance_note_29_project-level_reporting_-_annex_flowchart_final.pdf

6. Outline of practical obstacles to disclosing payments levied at a project level in Malawi

- 6.5 Reporting entities find it time consuming to report EITI data project by project considering they are in business and more time is required for them to undertake their normal business operations.
- 6.6 Mining companies that have over the years been compliant in completing EITI reporting templates have not seen /realised any tangible benefits in them being compliant.
- 6.7 Some revenue streams may be difficult to split into various projects considering the basis of apportionment may be very clear.
- 6.8 The current nature of record keeping systems (i.e. systems from which EITI data is produced) for the MRA, DoM and DoF, may not enable project level disclosures immediately unless some customisation is made.

7. Documentation of Findings and Proposed Recommendations to be Considered

Finding Number 7.1 – MRA have highlighted administrative challenges in implementing the 2016 Taxation Act amendment related to section 64A

The Mining Fiscal regime in the Taxation Act was amended in 2016 to provide for registration of mining companies according to each project that they have (**Section 64A**). This means if a particular mining company has more than one mining project, each one of them will have to be registered separately and allocated a TPIN. This automatically means revenues and any other data relating to these projects will be reported separately. MRA understanding of this provision is that the following administrative challenges will need to be addressed:

- Whether those mining companies who already registered for tax many years ago and have multiple projects will have to file fresh applications to register each of their projects separately.

MRA Comments

This issue is still under discussion. Within the coming financial year a decision would have been made on how to tackle this issue. Reference will be made to other jurisdictions on how they have dealt with this problem.

- At the moment, Msonkho Online only recognizes businesses registered with the Registrar of businesses/companies as well as individuals except those in employment. It recognises the registration number provided by the Registrar General to uniquely identify an organization or a business.
- A person or organization with more than one mining project, the system will fail to uniquely identify and recognize the other projects.

MRA Comments on the two issues above

Currently the system also recognises even those who are not registered with the Registrar of businesses. So each project can be separately registered and can be recognised in Msonkho Online. This is no longer a challenge as of now.

Recommendation and MRA Comments

- There is a need for the MRA to determine how to administratively enforce project level reporting considering the fact that one taxpayer who holds several licences will need to have multiple TPINs which consequently raises administrative challenges.

MRA Comments

This is indeed under discussion as highlighted in the comment above. However, at the moment a timeline cannot be ascertained. But we are optimistic that in the course of the coming financial year (2024-25), the issue will be dealt with accordingly.

7. Documentation of Findings and Proposed Recommendations to be Considered

Finding Number 7.1 – MRA have highlighted administrative challenges in implementing the 2016 Taxation Act amendment related to section 64A (Continued)

Recommendation and MRA Comments (Continued)

- MRA should consider adding project codes to the existing single TPIN. This will mean information submitted by a company with more than 1 project and having completed a project level reporting template, can easily be captured into the MRA system (after project coding).

MRA Comments

This option will be explored.

- MRA should consider upgrading (customising) the information systems in order to include the relevant modules for reporting EITI data at project level (improvement of record keeping systems)

MRA Comments

Noted.

- Where necessary, undertake study tours to some countries that have so far successfully implemented project level reporting to understand the challenges they faced and how these challenges were dealt with.

MRA Comments

This is noted.

Finding Number 7.2 – The Law does not make it mandatory for reporting entities to provide data on project basis and no penalties are levied on non compliant entities

Section 168 MMA 2023 No.25 (Section 173 MMA 2019, Sub-Sections 1 & 2)

- (1) A holder of a medium-scale mining licence or large-scale mining licence shall submit to the Authority the following reports:
 - (a) in respect of each calendar year, a report giving full details of all work undertaken on or in connection with the licence including particulars of production of minerals, development work and exploration'
- (2) A holder of a medium-scale mining licence or large-scale mining licence shall submit the reports required by subsection (1) at such time, **in a prescribed form.**

Recommendation

- 1) Regulations for the MMA 2019 were drafted and submitted to the Ministry of Justice by the DoM. However, considering that MMA 2023 No.25 is now effective, DoM should draft regulations for the MMA 2023 No.25 and then submit them to the Ministry of Justice.
- 2) Once the EITI Law is enacted, it will take care of the enforcement of penalties on all non compliant companies. The MSG through MWEITI Secretariat should push for a quick review of the Draft MWEITI Policy at the Ministry of Justice in order for an appropriate Bill preparation and debate at Parliamentary level to be done within a reasonable period. This process will be key to having an EITI Law and the related regulations in place.
- 3) DoM should initiate a review of the MMA 2023 No.25 and propose relevant amendments to particular provisions of the Act and ensure that the country achieves key principles of transparency under the EITI standard and also ensure compliance with provision 4.7 Level of disaggregation.

7. Documentation of the Findings and Proposed Recommendations to be Considered

Finding Number 7.3 – Mining Law Restricts Access to Mining Information

This is noted in the following sub-sections (Confidentiality)

Section 301 MMA 2023 No.25 (Section 38, MMA 2019, Sub-Sections 3 & 4)

(1) The Authority shall treat with strict confidence information provided by an applicant for registration, licence or permit or holder of a certificate, licence or permit or any other information considered exclusive to the person who provided the information in compliance with this Act.

(2) Notwithstanding subsection (1), the Authority may release the information upon being served with an order to release the information by a court of competent jurisdiction.

Section 168 MMA 2023 No.25 (Section 173 MMA 2019, Sub-Sections 1 & 2)

(1) A holder of a medium-scale mining licence or large-scale mining licence shall submit to the Authority the following reports.

(a) in respect of each calendar year, a report giving full details of all work undertaken on or in connection with the licence including particulars of production of minerals, development work and exploration;

(3) Subject to subsection (4), until a mining licence expires or is cancelled or surrendered, a report submitted under subsection (1) shall not be made available to any person outside the Authority nor can its content be revealed except—

Recommendation

The above provisions indicate a conflict between EITI Principles on transparency accountability and the stipulations in the following:

- Sub-Sections (1) and (2) of Section 301 of the MMA 2023 No.25 (Section 38, MMA 2019, Sub-Sections 3 & 4); and
- Sub-Sections (1) and (3) of Section 168 of the MMA 2023 No.25 (Section 173 MMA 2019, Sub-Sections 1 & 2).

Road map and Recommendation

DoM should initiate a review of the MMA 2023 No.25 (Section 38, MMA 2019, Sub-Sections 3 & 4) and propose relevant amendments to particular provisions of the Act and ensure that the country achieves key principles of transparency under the EITI standard and also ensure compliance with provision 4.7 Level of disaggregation.

Finding Number 7.4 – Project level reporting is a new requirement for EITI data reporting and most reporting entities may find it challenging

Recommendations

1. Changes to reporting templates requiring project-level reporting should be communicated explicitly through capacity building and training for reporting entities to avoid misunderstandings. The training should also focus on the revenue streams to be included when completing the templates.
2. If possible, the training should be in phases starting with training of government reporting entities, then training of extractive companies themselves. Considering the challenges with compliance in completion of reporting templates by reporting entities, it may be advisable to have three separate training sessions: one in the southern region, another one in the central region and the final one in the northern region. Experience has shown that getting closer to where the companies operate has a positive impact on the rate of compliance.

7. Documentation of the Findings and Proposed Recommendations to be Considered

Finding Number 7.5 – The current nature of record keeping systems at MRA, DoM and DoF i.e. systems from which EITI data is produced, may not enable project level disclosures immediately

Recommendations

1. There is a need to upgrade (customise) the information systems of the Department of Mines, Department of Forestry and the MRA in order to include the relevant modules for reporting EITI data at project level (improvement of record keeping systems).

MRA Comments

Noted.

2. Malawi may require at least 3 years down the line before it can fully adopt project level reporting. In the meantime government reporting entities:
 - Should commence the customisation of their information systems in order to include all relevant modules for reporting EITI data on project level (improvement of record keeping systems);
 - Should make efforts to ensure any administrative challenges are resolved and clear the way for project level reporting ; and

Note

MRA has commented on the administrative challenges. Comments are included on finding 7.1 above.

- Where necessary, undertake study tours to some countries that have so far successfully implemented project level reporting to understand the challenges they faced and how these challenges were dealt with.

MRA Comments

This is noted.

Finding Number 7.6 – No apparent benefits to extractive companies that have provided data for EITI reporting over the year

Most of the extractive companies are of the view that there are no tangible benefits for the reporting entities that have over the years been compliant in completing EITI reporting templates.

Recommendation

During the training on completion of the project level reporting template as well as nature of the revenue streams to be included in the template, MWEITI secretariat should arrange for special training material covering the benefits for reporting entities and Malawi as a country in complying with EITI Standard (currently 2023 EITI Standard in force) when it comes to governance of natural resources.

Finding Number 7.7 - Some revenue streams may be difficult to split into various projects considering the basis of apportionment may not be very clear.

Recommendation

1. The proposed trainings highlighted above will take care of this finding.
2. The revised project level reporting template will also take care of this challenge.

8. Provision of an action plan for the effective implementation of the project level reporting in Malawi in line with the EITI standard requirement

Implementation Action plan

This is a project that can be implemented within medium to long-term considering the period it takes to pass all relevant Bills into law. Implementation will largely depend on the passing into law of all the proposed amendments identified above, legislations as well as the EITI Law in the country.

No.	Challenge Identified	Action Plan	Responsible body	Time Frame				
				Y1	Y2	Y3	Y4	Y5
1	The Law does not make it mandatory for reporting entities to provide data on project basis and no penalties are levied on non-compliant entities	The MWEITI Secretariat should push for a quick review of the Draft MWEITI Policy at the Ministry of Justice in order for an appropriate Bill preparation and debate at Parliamentary level to be possible within a reasonable period. This process will be key to having an EITI Law and the related regulations in place. Once in place the Law will help improve on compliance as all non-compliant entities will be legally penalized.	MSG/ MWEITI Secretariat/ Ministry of Justice					
2	The Law does not make it mandatory for reporting entities to provide data on project basis and no penalties are levied on non-compliant entities	Regulations for the MMA 2019 were drafted and submitted to the Ministry of Justice by DoM. However, considering that MMA 2023 No.25 is now effective, DoM should draft regulations for the MMA 2023 No.25 and then submit them to the Ministry of Justice for further action. Of particular focus is Section 168 MMA 2023 No.25, sub-sections (1) and (2) (Section 173 MMA 2019, Sub-Sections 1 & 2).	MSG/MWEITI Secretariat/ Ministry of Justice/ Department of Mines					
3	Mining Law Restricts Access to Mining Information	DoM should initiate a review of MMA 2023 No.25 and propose relevant amendments to particular provisions of the Act and ensure that the country achieves key principles of transparency under the EITI standard and also ensure compliance with provision 4.7 Level of disaggregation. Of particular focus is Section 301 MMA 2023 No.25, sub section (1) and (2) (Section 38, MMA 2019, Sub-Sections 3 & 4); but also Section 168 MMA 2023 No.25, sub section (1) and (3) (Section 173 MMA 2019, Sub-Sections 1 & 2).	MSG/MWEITI Secretariat/ Ministry of Justice/ Department of Mines					

Implementation Action plan (Continued)

No.	Challenge Identified	Action Plan	Responsible body	Time Frame				
				Y1	Y2	Y3	Y4	Y5
4	MRA have highlighted administrative challenges in implementing the 2016 Taxation Act amendment related to section 64A	<ul style="list-style-type: none"> • MRA to determine how to administratively enforce project level reporting considering the fact that one taxpayer who holds several licences will need to have multiple TPINs which consequently raises administrative challenges. • MRA should consider adding project codes to the existing single TPIN. This will mean information submitted by a company with more than 1 project and having completed a project level reporting template, can easily be captured into the MRA system (after project coding). • Where necessary, undertake study tours to some countries that have so far successfully implemented project level reporting to understand the challenges they faced and how these challenges were dealt with. Lessons learnt can then be utilised for the Malawi case. • A reference point should also be on how companies with subsidiaries (but with one TPIN) are currently reporting their data to the MRA. <p><i>Note</i> MRA has commented on the administrative challenges. Comments are included on finding 7.1 above.</p>	MWEITI Secretariat/ MRA					

Implementation Action plan (Continued)

No.	Challenge Identified	Action Plan	Responsible body	Time Frame				
				Y1	Y2	Y3	Y4	Y5
5	Project-by-Project reporting is a new requirement in Malawi and most reporting entities may find it challenging to comply.	<ul style="list-style-type: none"> MWEITI Secretariat should communicate to the reporting entities, the new project-level reporting framework/ template for them to appreciate the contents and requirements. MWEITI Secretariat should arrange training/capacity building sessions for reporting entities to avoid and clear any misunderstandings. Training should be for both government reporting entities and the extractive companies. <p>For extractive companies, trainings should be in phases for satisfactory attendance. Three sessions may be arranged as follows: One in the southern region, another one in the central region and a third one in the northern region. Experience has shown that getting closer to where the companies operate has a positive impact on the rate of compliance.</p>	MWEITI Secretariat					
6	Nature of record keeping at MRA, DoM and DoF may not enable project level disclosures immediately	<ul style="list-style-type: none"> There is a need to commence the upgrading (customisation) of the information systems of the Department of Mines, Department of Forestry and the MRA in order to include relevant modules for reporting EITI data at project level (improvement of record keeping systems). Where necessary, undertake study tours to some countries that have so far successfully implemented project level reporting to understand the challenges they faced and how these challenges were dealt with. Lessons learnt can then be utilised for the Malawi case. <p><i>Note</i> <i>MRA has commented on these issues. Comments are included on finding 7.1 above.</i></p>	Department of Mines, Department of Forestry, Malawi Revenue Authority					

Implementation Action plan (Continued)

No.	Challenge Identified	Action Plan	Responsible body	Time Frame				
				Y1	Y2	Y3	Y4	Y5
7	No apparent benefits to extractive companies that have provided data for EITI reporting over the year	During the training on completion of the project level reporting template as well as nature of the revenue streams to be included in the template, MWEITI secretariat should arrange for special training material covering the benefits for reporting entities and Malawi as a country in complying with EITI Standard (currently 2023 EITI Standard in force) when it comes to governance of natural resources.	MSG/MWEITI Secretariat					
8	Some revenue streams may be difficult to split into various projects	<ul style="list-style-type: none"> • MWEITI Secretariat should communicate to the reporting entities, the new project-level reporting framework/ template for them to appreciate the contents and requirements. • MWEITI Secretariat should arrange training/capacity building sessions for reporting entities to avoid and clear any misunderstandings. Training should be for both government reporting entities and the extractive companies. <p>For extractive companies, trainings should be in phases for satisfactory attendance. Three sessions may be arranged as follows: One in the southern region, another one in the central region and a third one in the northern region. Experience has shown that getting closer to where the companies operate has a positive impact on the rate of compliance.</p>						

9. Analysis of the opportunities of project level reporting

This section provides an analysis of the benefits that would come with project level reporting in Malawi and is being into the following:

Opportunities for the Government Reporting Entities

- Project-level disclosures could make EITI reporting easier, as it will streamline EITI reporting with existing monitoring, recording and reporting practices of governments and companies, complementing new areas of implementation such as mainstreaming.
- Project-level reporting allows relevant government reporting entities to review payments from individual extractive projects and compare them to the legal or contract terms through financial modelling. In the absence of such type of reporting, it is difficult to make a detailed analysis of EITI financial data from individual projects.
- Project-level reporting can strengthen countries' position when negotiating contracts. Disclosing company payments by individual extractive operation can help address information asymmetry in contract negotiations, as everyone has the same granularity of information.
- Project data will help the Malawi Revenue Authority (tax administrations) address possible tax evasion or avoidance by shedding light on pricing arrangements and identifying risks of transfer pricing manipulation that may take place in some extractive companies.
- Project level reporting can assist governments in making more accurate forecasts for future changes in revenues.
- In terms of costs and benefits of project-level reporting in the EITI, it would be easier than current reporting of aggregates. This could reduce time, costs and discrepancies in EITI Reporting. Communities around the projects are likely to be supportive of project-level reporting, noting how such reporting can contribute to a more stable investment climate and improve investors' ability to manage risk.

Opportunities for the extractive companies

- It can help create a level-playing field for companies by ensuring data is publicly available across each individual project. Combined with beneficial ownership disclosures, project-level reporting can also facilitate companies' due diligence procedures when considering new joint ventures or mergers and acquisitions.
- Project-level reporting helps companies demonstrate the economic contribution they are making in relation to specific projects and the communities they affect.
- It can aid companies in meeting international reporting requirements under various international jurisdictions and or national legislation. It will avoid duplication of efforts, making reporting cheaper (consolidation processes may be time consuming).
- Project-level reporting would be helpful to the companies in terms of showing the benefits that each mining site is bringing to local communities.
- Project-level reporting would be useful to the companies in terms of assessing the efficiency of the producing assets per project/mining site.

Opportunities for the Communities around the Projects

- Communities and civil society organisations (CSOs) can use project data to hold government reporting entities and extractive companies to account. For example, they can compare what companies actually pay to the government with other project-level data, to ensure the terms stipulated in contracts and licenses (their legal terms) are followed.
- Project-level reporting makes it easier to track cash-flows from an extractive company to the community. It enables civil society and communities to assess whether the local community is benefitting from a project operating in their area. The public can hold the direct beneficiaries in their communities to account, once equipped with full information regarding local contributions being made.

Opportunities for the Communities around the Projects

- Some large projects may involve several companies. Project-level data on joint ventures enables communities to identify and focus their attention towards the right parties responsible for the payments.
- Public disclosure of payments and revenues by project (also called “project-level” or “project-by-project” reporting) enables the public to assess the extent to which the government receives what it ought to from each individual extractive project, because actual payments can be compared with the terms set out in the laws or contracts governing the project.
- For host communities, project level reporting can contribute to show the benefits that each extractive project generates and can enable subnational government entities to calculate their share of project-level income.

10. Countries that have fully disaggregated data by project

#	Name of the Country	Comment
1	Indonesia	Successfully implemented PLR
2	Philippines	Successfully implemented PLR
3	Trinidad and Tobago	Successfully implemented PLR
4	Kazakhstan	Successfully implemented PLR
5	Liberia	Partially implemented PLR
6	Azerbaijan	Partially implemented PLR
7	Republic of the Congo	Partially implemented PLR
8	Ghana	Partially implemented PLR
9	Philippines	Partially implemented PLR

Detailed analysis summarized below

Impact to date

In 2017 the EITI assessed the reports of 45 implementing countries to understand how many countries reported by project and following the 36th Board meeting in Bogota, the International Secretariat completed a review of current reporting practices of EITI implementing countries. **Three of 45** EITI implementing countries seemed to have fully disaggregate data by project, and these are identified in the table above. This had been achieved by disaggregating payments and revenues by individual Product Sharing Contracts/Agreements (PSCs/PSAs), which gave rise to payment liabilities, consistent with the EU’s approach to project-level reporting.

An additional 25 countries, or 56% of all implementing countries, were deemed to partially report by project meaning that their EITI Reports were disaggregated by project for some projects or for some revenue streams. Three of these countries included an explicit definition of the term ‘project’ in their EITI Report, but disclosures by project were nonetheless only provided for some sectors, companies or revenue streams. The remaining 17 countries could not be deemed to report by project.

Experience to date of some implementing countries in making progress on project level reporting

Country	Issue	MSG’s Action
Mongolia	Government record keeping systems might not always enable project level disclosure	The MSG assessed the feasibility of disclosing financial data by project. Although there were no legal barriers, the reporting system itself was not able to disaggregate EITI-required data to a granular level. Mongolia EITI used a simple table to compare whether revenues were levied/imposed on a company or project level, and whether the reporting system was able to disaggregate at the necessary level.

11. References and Other Sources

Policies and Legislation

- EITI Standard 2019
- EITI Standard 2023
- Mines and Minerals Act, 2019
- Mines and Minerals Act, 2023 No.25
- MWEITI Draft EITI Policy, 2023
- MWEITI Initiative Bill, 2023 (Draft)

Other Sources

- The EITI Standard, <http://eiti.org/document/standard>;
- The online Guide to implementing the EITI Standard, <https://eiti.org/guide>
- EITI implementation guidance notes issued by the International Secretariat, <https://eiti.org/guidance-notes-standard-terms-of-reference>, in particular the guidance notes on outcomes and impact (#7). The consultant is advised to contact the EITI International Secretariat for any questions or clarifications related to the EITI Standard and the implementation of the EITI requirements;
- [Implementing EITI for Impact: A Handbook for Policymakers and Stakeholders](#), in particular chapters 4 and 5;
- EITI and project by project reporting: <https://eiti.org/blog/eiti-project-byproject-reporting>
- Guidance note 29 Project-level reporting, including reporting template: <https://eiti.org/GN29>
- Blog: Project-level reporting – let’s get granular: <https://eiti.org/blog/projectlevel-reporting-lets-get-granular>
- Project-level reporting practices of the EITI: <https://eiti.org/document/projectlevel-reporting-practices-in-eiti>

Annex 1: Officials contacted or involved

Manuel Chisale Team Leader – Director EMJ Advisory

MWEITI Secretariat

Catherine Chilima Coordinator MWEITI Secretariat
Leonard Mushani MWEITI Secretariat

MWEITI Multi-Stakeholder Group

Dr Caroline Lindah Mphande Chairperson of the MSG Sub Committee

Ministry of Forestry and Climate Change

Teddie Kamoto Deputy Director – Department of Forestry
Moses Njiwawo Forest Cadastre Officer

Department of Mining (DoM)

Samuel Sakhuta Director and Commissioner of Mines and Minerals
Mphatso Chikoti Head of Mineral Rights
Umali Muhammad Yasidu Senior Mining Engineer – Department of Mines

Malawi Chamber of Mines

Hon. Grain Phillip Malunga Chairperson

Department of Registrar General

Joseph Chimtolo Deputy Registrar General

Malawi Revenue Authority

Davie Khonje Manager Mining Unit
Lusayo Mwentumba Tax Auditor, Mining Unit

Technical Education, Vocational and Entrepreneurship Training Authority (TEVETA)

Joseph Kampondeni
Mr Kampondeni
J Kaphiri

Geological Survey Department

Dr Chiona Assistant Director

Natural Resources Justice Network (NRJN)

Kennedy Rashid National Coordinator

Centre for Environmental Policy and Advocacy (CEPA)

Herbert Mwalukomo Executive Director

Church & Society

Frestus Paul

Shayona Cement Company

Mr Prajeesh Padmanabhan Operations Manager

Zalewa Agriculture Lime Company

Mr Martin Saunders Managing Director
Amanda Saunders Finance Director

Raiply Malawi Limited

Mr Krishna Das Chief Executive Officer

EITI International Secretariat

Edwin Wuadom Warden Anglophone Africa Officer

Annex 2: Project-level reporting framework/ template

See the attachment