



Malawi Extractive Industries Transparency Initiative(EITI)

*Processes and work done in the EITI debate in
Malawi*



**Ministry of Finance and Development Cooperation
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Malawi**

List of Acronyms and Abbreviations

CFJ	Citizens for Justice
CHRR	Centre for Human Rights and Rehabilitation
CONGOMA	Council for Non Governmental Organizations
COSTi	Construction Industries Transparency Initiative
CSO	Civil Society Organization
DFID	Department for International Development
EITI	Extractive Industries Transparency Initiative
GDP	Gross Domestic Product
GHEITI	Ghana Extractive Industries Transparency Initiative
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GTZ	Germany Technical Support(Translated)
ISO	International Standards Organization
MDTF	Multi Donor Trust Fund
MGDS	Malawi Growth and Development Strategy
MNRJN	Malawi Natural Resources Justice Networks
MSG	Multi Stakeholder Group
NGO	Non Governmental Organization
OPC	Office of the President and Cabinet
OSISA	Open Society Initiative of Southern Africa
PS	Principal Secretary
PWYP	Publish What You Pay
SMEs	Small and Medium Enterprises
UK	United Kingdom
WB	World Bank

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i. Foreword

The Extractive Industries Transparency Initiative (EITI) is increasingly becoming one of the tools to promote revenue tracking in the extractive sector across the world. Since its introduction in 2002, 35 countries of which 22 are from Africa, have subscribed to the initiative. Benefits are accruing from the tool as countries are reporting increasing transparency between private companies and national governments on revenues flowing from the sector. Initially, EITI was meant to focus on Oil, Gas and Minerals, but looking at its importance, some countries have even moved to include other natural resources like timber and fisheries.

Malawi is at the crossroads as to whether to join EITI or not. The debate to join the EITI in the country began in 2008. The National Stakeholders conference held in November 2010 was a milestone in the debate in that it was a decisive moment on a number of crucial processes. The conference recommended to the EITI Task Team to come up with a comprehensive study whether Malawi should or should not join EITI. The Task Team commissioned a study on the impact analysis of implementing EITI in Malawi which was concluded in June 2011. The Team also recommended a study tour to Ghana in August 2011 to understudy the country's EITI programme. The findings and subsequent recommendations from both studies pointed to the fact that it would be in the interest of Malawi to join the EITI.

The debate on EITI in Malawi comes at a time when the mining sector is growing fast. Currently the sector contributes between 4-6% to the National Gross Domestic Product (NGDP) but this is projected to grow to about 10% per annum. The number of investors is also growing at a fast pace, so far there are close to 144 prospecting as well as mining companies with Kayerekera Uranium and Mchenga Coal mines being the biggest. The country is also discovering more and more mineral deposits the most recent being the Niobium and Uranium in Kanyika. There is also exploration of Oil and Gas in the Northern part of Lake Malawi. This entails that in a few years to come, the extractive sector would become an important economic industry in the country and therefore matters of governance, accountability and transparency of revenues from the sector would be a must to put in place.

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ii Acknowledgements

The EITI debate would not have come to this level if it were not for the technical support from the Ministry of Finance and Natural Resources, Energy and the Environment, the department of Mines, the Civil Society Organizations especially the Citizens for Justice, Centre for Human Rights and Rehabilitation, the Institute for Policy Interaction, Women in Mining and the Gemstone Association who worked closely with the Malawi government to see through this programme.

Private Companies, Paladin LTD, Shayona Cement Company and Mchenga Coal Mines must also be commended for having participated in some of the Task Force Meetings. Development Partners especially the Germany Embassy through GIZ Malawi, the Royal Norwegian Embassy and the African Development Bank must also be commended for their technical and financial support throughout the four year period but especially for financing the EITI studies in Malawi and the Study Tour to Ghana.

This report was compiled by Mr Francis Ng'ambi whom the Task Team contracted to collect and collate the stories contained in the booklet.

iii. Background

This booklet is a compilation of stories and activities that have taken place over the past four (4) years period on the possibility of Malawi joining the Extractive Industries Transparency Initiative (EITI). EITI discussions took a three fold approach, one from the civil society side spearheaded by the Civil Society Mining Network now known as the Malawi Natural Resources Justice Network (MNRJN) which is chaired by Citizens for Justice (CFJ). The second route has been from the government side and it has been the Ministries of Finance and Natural Resources, Energy and the Environment that have been participating in EITI discussions at the local and the international levels. The donor community too was already engaged. The Africa Development Bank (AfDB) had also moved the idea to the Malawi government to consider adopting the EITI as a tool to help promote transparency and accountability in its mining sector looking at the growing interest in the area and also looking at the potential the sector had to contribute to the country's Gross Domestic Product (GDP). At this time, the construction sector had already initiated a similar tool called the Construction Industries Transparency Initiative (CoSTI) with support from the Department of International development (DFID) and the World Bank (WB). And so the debate on EITI was just timely!

It was only in April 2009, just before members of the civil society held their first national workshop that an initial approach was made to the Malawi government to consider adopting EITI. The civil Society national workshop was organized by the Centre for Human Rights and Rehabilitation (CHRR) with support from the Open Society Initiative for Southern Africa (OSISA) under the Southern Africa Revenue Watch (SARWATCH) programme.

To move the discussions forward, the Ministry of Finance Revenue Policy Division was mandated to set up a Task Team comprising government officials, private companies and members of Civil Society while the development partners, the AfDB, GIZ, Norwegian Embassy were observers offering the required technical and financial support.

Amongst some of its achievements, besides steering government and civil society discussions on EITI, the Task Team was able to organize and hold the first EITI Stakeholders conference from November 22 to 23 2010 at the Sun Bird Capital Hotel whose theme was ***“Does Malawi Need the Extractive Industries Transparency Initiative.”*** It also managed a research study on implementation of EITI in Malawi as well as a study tour to Ghana that became the basis for recommending to the Malawi government that joining EITI would be to the interest of the country as a tool to assist in governing and tracking revenues from the sector.

1. Introduction

The concept of the EITI the brain child of the then Prime Minister of the United Kingdom, Mr Tony Blair at the World Summit on Sustainable Development (WSSD) held in 2002 in Durban South Africa. The idea was introduced mostly because there was a realization that many rich resourced countries especially in Africa were impoverished and yet they were in abundance of natural resources such as oil, gas. Minerals, timbers, water and land and the question was why were these countries in such impoverished state? It was also noted that many poor countries experiencing conflicts were the very rich resourced countries! Would it then be right to assume that there was a connection between poor management of resources to poverty and to war conflicts? And many schools of thought have agreed to the fact that where there is no proper accountability of revenues from natural resources especially accrued from extractive sector, the likelihood that such revenues would benefit a few rich people and even go towards fuelling conflicts is very high.

It was probably for that reason that Mr Tony Blair and many other world leaders intimated that it would probably assist to bring forth transparency and proper tracking of revenues from the extractive sector if private companies were to declare what they paid to national governments and also that the national governments likewise declared what they received from the private companies. This became the basis for the concept of the EITI and also later on for the “Publish What you Pay initiative (PWYP)”. Since 2002, 35 countries have joined the initiative out of which 22 are from Africa and Malawi’s neighbours, Tanzania, Mozambique and Zambia are all members.

1.2 What is EITI?

EITI is a global voluntary initiative that helps to promote accountability in the extractive sector whereby private companies are encouraged to reveal what revenues they pay to national governments for extracting resources and at the same time national governments also reveal what receipts they get from the private companies operating in their boundaries.

EITI is aimed at the creation of simple and clear accountability mechanisms for companies and governments on payments and revenues.

The UK Department for International Development, London 2005

In other words this is an initiative that helps to track revenues accrued in the extractive sector so that citizens are made aware of how much their governments are getting from the country’s natural resource and in so doing citizens can hold their governments accountable for proper use

of the finite non renewable resource for national development. Figure 1 below helps to illustrate the concept.

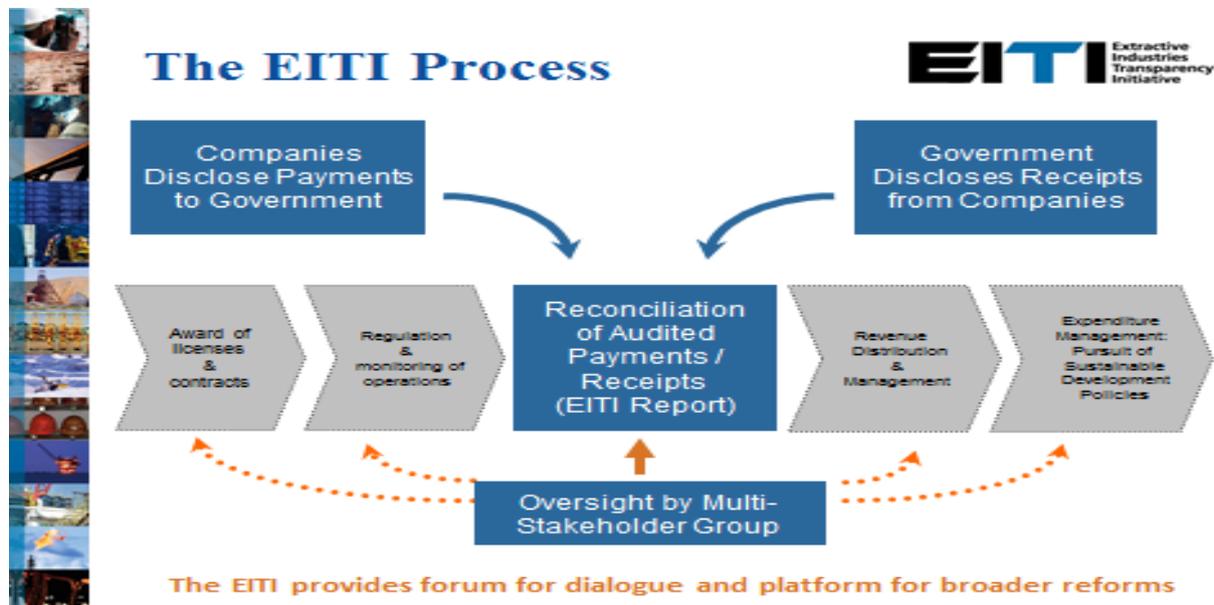


Figure 1: The EITI Concept: source www.eiti.org

1.3 Requirements to be an EITI member

1.3.1 Expressing Interest to join EITI

The first step for any interested country is of course, a sovereign decision by the government to express willingness to join and to fulfil EITI. At this stage a country has to go through the **5 signing-up**¹ requirements which include:

1. The government issuing an equivocal public statement of its intention to implement EITI
2. The government showing willingness to work with Non State Actors, the civil society and private companies
3. Government willingness to appoint a senior level person as an EITI Champion
4. Government willingness to set up a multi-stakeholder group (MSG) to oversee the implementation of the EITI
5. The ability of MSG in consultation with key stakeholders (experts) who would comprise a steering committee to publish a fully costed work plan containing measurable targets, and implementation time table.

¹Requirements for EITI implementing Countries, EITI Rules p14

1.3.2 **Becoming an EITI Candidate**

Once these steps are fulfilled, the country then moves on to the second stage of being an **EITI Candidate** and in this stage the country must demonstrate partnership between government, civil society and the private sector that the three would work with independence without undue government intervention. The country must also be geared at fulfilling preparation requirements to produce reports, number of companies to work with, removing obstacles that would affect EITI implementation. The country must also be ready to handle disclosure requirements for instance materiality of payments, such as what taxes and payments must be disclosed by both parties. The country also needs to appoint a reconciler and also agree on standards of making reports for publication. The published reports must then be disseminated widely and also be made accessible both in terms of the language used as well as being available to the public. After this, the MSG must also devise plausible methods of monitoring disclosure challenges and discrepancies so that they are corrected in time. Once the reports are validated, copies must be sent to the EITI Board in accordance with deadlines for submission set by the EITI International Office in Oslo Norway.

1.3.3 **Becoming an EITI Compliant Country**

Once these stages are fulfilled, the country becomes an **EITI Compliant Country** and what is expected of the country is adherence to all requirements, such as periodic reporting on progress of EITI in the country, in order to retain the compliant status.

1.4 **The Government as the lead agent in EITI**

It must be stressed that EITI is a government led process, and not donor or civil society driven. As pointed out above once a country expresses interest to join EITI, the government indicates its willingness to drive the process and as such the government becomes responsible for the progress of EITI implementation. The government takes the lead role; it must also make all efforts necessary to involve industry and the civil society organizations at an earlier stage in the process. The role of the national assembly too must be visible since the legislators have the right to question the executive on how a country's natural resources are being utilized and what benefits are accruing to the citizenry.

Interms of the civil society, it is only a well informed civil society that could propose better arguements for a constructive dialogue with companies and the government².

EITI therefore entails a tripartite process whose goal is to ensure proper use of the country's natural resources for the development of the country by seeing to it that revenues flow properly from private companies to government and also that received revenues at all levels, be it community, local, district and national are disclosed for easy tracking thereafter.

1.5 Conditions conducive to establishment of EITI

For the EITI to operate and bear the desired fruits, which is openness in tracking revenues, a number of critical conditions ought to be put in place or at least cultivated with time. These are common to many EITI countries:

1.5.1 For civil society organizations

- i) That CSOs are able to operate without fearing harassment;
- ii) That CSOs are able to cooperate with each other, hold meetings and select representatives to the MSG;
- iii) That CSPO representatives participating in the MSG are able to liaise with the broader CSO community
- iv) CSOs can access the information and communicate it to the population at large in an accessible manner; and
- v) CSOs are motivated to advocate for revenue transparency.

1.5.2 For Government

- i) Government does not influence the selection of CSO representatives on the MSG;
- ii) Government cooperate with CSOs;
- iii) Legislation or a decree is passed that removes obstacles to the disclosure requirements;
- iv) Government acts in good faith;
- v) The EITI champion appointed by Government is a true champion; and
- vi) Political will is harnessed.

² Public Policy Research Center, Implementation of Extractive Industries Transparency initiative in Kazakhstan: Problems and Prospects, Soros Foundation Kazakhstan, 2005, page 9

1.5.3 For the Multi-stakeholder group

- i) The chosen definition of materiality does not exclude significant revenue or number of companies engaged in the extractive industries sector;
- ii) Sufficient funds are available for the MSG to meet regularly and conduct its activities; and
- iii) MSG meetings are held regularly.

1.6 Benefits of being an EITI member country

There are so many benefits for a country to be a member of the EITI and some of the major ones accrued to each stakeholder are as follows:

1.6.1 To Government

- i) Implements a standardised, internationally recognized procedure for transparency in natural resource management;
- ii) Demonstrates a commitment to good governance;
- iii) Improves international credibility, including financial standing in capital markets; and
- iv) Affirms that the government is committed to fighting corruption.

1.6.2 To Companies

- i) Improved investment climate;
- ii) Engaging in a constructive way with citizens and civil society; and
- iii) Level playing field (as all companies are required to disclose the same information)

1.6.3 To Citizens and civil society

Increased transparency through holding their government and companies to account when tax payments are disclosed

1.7 Some Potential legislative obstacles to joining EITI

Besides having an old legislative and policy framework, Malawi also has pieces of legislation and policies that might pose problems now that Malawi has decided to embrace EITI. Some aspects of legislation that would need to be reviewed or examined are as follows:

1.7.1 Non-Disclosure Clause:

This often is included in contracts between a private company and Government, in which both parties legally bind themselves not to divulge information to a third party, in part or totality.

1.7.2 Official Secrets Act (1913):³

This empowers governments to classify information and demarcate what is considered public information from State information. Most mining contracts are classified as State information and so access to such information may not be granted.

1.7.3 Access to Public Information (2000 Bill):

This is directly related to the Official Secrets Act in that it seeks to make it possible and easy under the laws of Malawi for a citizen to access public information when he or she needs it to exercise his or her rights. Currently, Malawi has not passed the 2000 Access to Public Information Bill, which means that Malawians may not easily access public information. Even though Section 37 of the Republican Constitution supersedes the necessity of the Bill on Access to Public Information, if enacted, the Bill would guide access to public information and so would be very useful in EITI work.

1.7.4 Taxation Act (2005):

The taxation act stipulates that tax issues cannot be disclosed to a third party or to the public. This means that the bodies charged with collecting taxes and revenues from mining companies may not publicize such information to protect the taxpaying companies, unless they themselves voluntarily disclose it.

EITI benefits from an atmosphere where institutions as well as the individual laws promote good governance, openness and transparency, and also access to public information on mining. The Malawi government will have to find ways of revising and updating the aforementioned clauses and legislation items. There is, in fact, already a basis for promoting EITI and transparency as well as access to public information to all Malawians. This is provided in the Constitution of the Republic of Malawi, Chapter 4, section 37, which guarantees citizens the right to access public information:

Subject to any Act of Parliament, every person shall have the right of access to all information held by the State or any of its organs at any level of Government in so far as such information is required for the exercise of his rights.

2. Processes leading to Malawi's Joining EITI

2.1 The first EITI National Stakeholders' Conference

³KonradAdenauerFoundation(2003),*A Handbook for Media Practioners, Comparative Overview of the Laws and Practices in Malawi, Namibia and South Africa, Volume 1*; KonradAdenauer Foundation, Johannesburg.

The Ministry of Finance in collaboration with the Centre for Human Rights and Rehabilitation (CHRR) supported by members of the Civil Society Mining Network held the first national stakeholders conference from 22 to 23 November 2010 at the Sunbird Capital Hotel, Lilongwe under the theme ***“Does Malawi Need the Extractive Industries Transparency Initiative (EITI)?”***



Figure 2: Mr Peter Simbani, Director of Debt and Aid Division, guest of honour at the conference

Prior to the conference, the debates on EITI were very limited or were not there at all. In the circles where the question whether Malawi should or should not be a member, such discussion often brought forth dissenting and varied opinions. Where people thought Malawi should not join, the fundamental argument given then was that Malawi’s extractive industry was still in its infancy stages characterized by weak policy framework and so it needed more time to mature prior to introducing such initiatives as the EITI. There was also general lack of awareness and knowledge across the board on what EITI could do to the country if adopted.

2.1.1 Delegates to the conference

The conference drew participants from the Malawi Government Line ministries and Departments, Civil Society Organizations, the private Sector and also from Development partners. The Guest of Honour was the Director of Debt and Aid Management, Mr Peter Simbani. There were also dignitaries from the Royal Norwegian Embassy Charge d’Affaires Mr Jan Hakon Olsson, the Germany Ambassador to Malawi His Excellency Rainer Mueller while the rest of the participants came from civil Society groups and the private sector. In total 38 participants took part in the 2 days’ conference



Figure 3: Mr Matupa, Director, Revenue Policy Division, spelled out the Aims and Objectives of the conference

2.1.2 Aim of the stakeholders conference

The realization that Malawi was increasingly becoming a mining country somehow changed the minds of some government officials and created room to take forward the debate on EITI, hence the creation of the Task Team that spearheaded the holding of the Stakeholders conference. At the back of such officials’ minds probably was the thought

that there was need to ensure that the country was better prepared to use revenue from minerals in a manner that would benefit the people of Malawi while the sector was still at such a small level.

And so the overall objective of the conference was to create room for people to discuss, debate and build consensus as to whether Malawi needed to join the EITI or not and use it as a tool to promote transparency and accountability in its extractive sector.

2.1.3 Specific Objectives

Some of the specific conference objectives were as follows:

- To discuss, debate and build consensus as to whether or not Malawi needed EITI
- Through the national stakeholders' meeting, to provide information on global experiences on EITI to Malawians
- To develop a roadmap on next course of action with recommendations on how Malawi would handle results of the debate on setting up EITI in the country



Figure 4: Rafiq Hajat from IPI

2.1.4 Main topics at the conference

The main topics of the conference were as follows:

- The State of the Extractive/Mining Sectors in Malawi-(Potentials, challenges and constraints by Dr Kalindakafe, Geological Surveys
- Challenges in Revenue Collection from the extractive sector by the Malawi Revenue Authority,
- Progress, production and prospects in the extractive sector, Mr Mwalweni, Shayona Cement Company
- Why Malawi needs EITI. Dr. Rafiq Hajat, IPI Malawi
- Why Malawi does not need EITI, Ms Patience Masi, Ministry of Finance
- Experiences from Liberia EITI, by Mr Fenwick Kamanga, AfDB
- The Case of the Construction Industries Transparency initiative (COSTi) in Malawi-

2.1.5 Recommendations from the conference

Although the attendance to at the conference was good in that out of the 50 participants invited only the 38 turned up⁴, the delegates were concerned that attendance from the private sector was low. Conspicuously missing at the conference were private companies such as Kayerekera(Paladin LTD) Uranium Mines, Eland Coal Mine. Considering that the EITI is a tripartite process, there should have been more private companies in attendance and the conference recommended that the Task Team should find ways and means to bring more private companies aboard the debate. At the end of the conference recommended the following things:



Figure 5: His Excellency the Germany Ambassador, Rainer Mueller making opening remarks

2.1.6 The need for more study on EITI in Malawi

Participants felt that the stakeholders' conference was more or less an awareness raising conference as such it was very difficult to come up with any tangible position as to whether Malawi should or should not join the EITI. The conference had also left many people indecisive having learnt that Malawi's extractive sector was also ridden with so many other policy and legislative challenges which needed immediate and urgent attention besides just promoting transparency and accountability in the sector. For instance, participants raised many other issues that they felt needed attention as well such as:

- Fees,taxes, licences and rental charges
- Weak revenue collection ability
- Capacity issues in terms of expertise in the extractive sector
- Inadequate Personnel and material resources
- Weakness in contractual negotiations
- Smuggling of precious stones

There was need for more information to help reach a decisive position. The Task Team recommended an impact analysis study on the implementation of EITI in Malawi as a way to gather the required information.

⁴Ministry of Finance, Report on the proceedings of a national conference on extractive industries transparency initiative in Malawi, November 22-23, 2010, Lilongwe page 12

2.1.7 Loose Note to Ministry of Finance to approve existence of the Task Team

The conference also recommended that to ensure that the Task Team had the mandate of government; the Revenue Policy Division had to write a loose note to the Ministry of Finance through the Secretary to the Treasury for approval with clear terms of reference. This would also show commitment from the Ministry to champion the EITI process.

2.1.8 Second National Stakeholders' Conference

The conference also recommended that once more information had been gathered, another stakeholders' conference should be held to report back and charter the way forward.

3 Impact Analysis of EITI Implementation in Malawi

This study was commissioned by the EITI Task Team, whose Terms of Reference developed were under the supervision of the Revenue Division in the Ministry of Finance. The study was co-financed by the Germany Embassy through the GIZ Malawi and the Royal Norwegian Embassy. It was conducted from April to May of 2011 by a team of three people; Nils Junge (USA), Francis Ng'ambi (Malawi) and JurgenReitmaier(Norway). The research drew on several sources of information local and international, including meetings with stakeholders from Government, civil society, private sector and donors.

3.1 Objective of the study

The objective of the study was to generate information that would give the basis to inform the government on deciding whether Malawi should or should not sign up to EITI through an analysis of the implications for Malawi. The analysis drew upon lessons learned from the EITI experiences of other African countries; challenges and constraints faced by EITI countries and their relevance to Malawi; and the legal framework for exploration of resources in Malawi.

3.2 Who was interviewed?

50 people were interviewed, 20 of whom were government officials, including policy makers, senior level officers and technicians. Amongst others were 16 civil society organizations, three private companies and six donor organizations.

3.3 Responses of the stakeholders

3.3.1 From Government Officials

Government officials were favorably disposed toward joining EITI. The potential revenue implications of joining were frequently discussed. Officials and technicians were interested in learning how the EITI process could potentially strengthen the Government's ability to better manage the country's natural resources and how greater transparency could help the government obtain more favorable terms on mining contracts.

3.3.2 From Civil Society Organizations

CSO representatives with whom the team met were strongly supportive of EITI for Malawi. They felt greater transparency would result in significant benefits. They also expressed a range of other concerns beyond revenue transparency, including environmental impacts, policy and legislative framework in place, harm done to local communities and lack of access to mining site.

3.3.3 From Private companies

Among the six major private companies contacted, only three (Paladin, Mchenga Coal, and Shayona Cement) responded and agreed to meetings. All three noted they would fully support EITI if it was implemented in Malawi (and Paladin through its parent company's affiliation in Australia, indirectly supports EITI already). At the same time, they expressed reservations, concerning the cost effectiveness of EITI, the potential impact on the taxes they pay, and the scope of EITI. Although they understood it was voluntary for the country (not subsequently for the companies) to join the initiative, the question of whether there were not invisible strings attached was raised. Some felt that it would be useful to broaden it to include the other sectors that come up – forestry and fisheries.

3.3.4 From the Donors

The team met with six donors, all of whom were highly supportive of Malawi joining EITI. Donors felt that EITI would encourage good governance, enhancing revenue collection, and reducing aid dependence in Malawi. They were therefore ready to support EITI. Their concern was whether government and civil society would work in partnership and also if at all CSOs had adequate capacity to play their role and also if there was political will from the Government to implement EITI.

3.4 Study Conclusion

The general conclusion was that it would be to the interest of Malawi to join EITI first because the concept resonates with government policies expressed in the MGDS and the Anti- Corruption strategies as well as revenue collection enhancement. Other reasons are as follows:

- i) EITI presents a potentially significant revenue enhancement opportunity to Malawi as there was an expectation of high mining sector growth;
- ii) If more information were publicly available, Government could talk openly about what revenue it is getting from mine companies, thereby quashing rumours and speculation and also that mining companies could not make unsubstantiated or vague claims that could not be disproven because of non-disclosure agreements; they could also showcase their true contribution that sometimes goes unrecognized;
- iii) Costs are low to government (mostly covered by MDTF and other donors) while benefits are potentially high, in both monetary and nonmonetary terms;
- iv) May enhance Malawi's reputation and investment rating by signalling its interest in good governance;
- v) Malawi's neighbours are members and this would also encourage cross border disclosure of revenues;

3.4.1 Some obstacles that need to be ironed to promote EITI

While the above benefits are persuasive, there exist a number of conditions which are important if EITI is to be successful in a given country. The study found out that there is need to look into some challenges, which are not unique to Malawi, but could be overcome. These are:

- i) CSOs are able to operate without fearing of harassment;
- ii) CSOs are able to cooperate with each other, hold meetings and select CS representatives on the MSG;
- iii) CS representatives participating in the MSG are able to liaise with the broader CSO community
- iv) CSOs can access the information and be able communicating it to the population at large in an accessible manner; and
- v) CSOs are motivated to advocate for revenue transparency.

- vi) Government does not influence the selection of CS representatives on the MSG; Government and CSOs cooperate;
- vii) Obstacles to EITI implementation are removed, including, if necessary, through legislation;
- viii) Government acts in good faith, and political will is harnessed;
- ix) The EITI champion appointed by Government is a true champion, well respected by stakeholders.

4.0 Study Tour to Ghana

The Study Tour to Ghana was suggested by the Tsk Team as a way to gather more details on EITI implementation in Malawi to beef up findings of the impact analysis of implementing EITI in Malawi. Its key objective was to draw lessons on the costs and benefits of Malawi joining EITI and the impacts of the EITI by learning from Ghana's experiences of implementing the EITI.

The delegates that went on the study tour included the Principal Secretary (PS) II for Natural Resources, Energy and Environment who was the Head of Delegation; Commissioner of Mines; an officer from the Department of Mines; an officer from the Office of President and Cabinet (OPC), two officers from Ministry of Finance and two representatives of the Civil Society Organisations. The full list of the participants is provided below:



1	Mr Anthony Livuza, PS (II) Leader of Delegation	Ministry of Natural Resources, Energy and Environment
2	Mr Kenneth Matupa	Ministry of Finance
3	Mr George Harawa	Ministry of Finance
4	Mr Elliot Phiri	Office of the President and Cabinet
5	Mr Peter Chilumanga	Department of Mines
6	Mr Charles Kaphwiyo	Ministry of Natural Resources, Energy and Environment
7	Mrs. Adamu	Women in Mining
8	Mr Reinford Mwangonde	Citizen for Justice
9	Dr Florian Lang	GIZ Malawi

While in Ghana the delegation met with GIZ Ghana; Ministry of Finance; Ministry of Energy; Coordinating Office of the Ghana Extractive Industries Initiative; Commission of Mines; Steering Committee of Ghana Extractive Industry Initiative; Publish What You Pay; Revenue Watch International; Chamber of Mines and the Aggregator.

4.1 Why Ghana was chosen for the study tour

First and foremost it was because Ghana had already become an EITI compliant country meaning that Ghana had acquired more experience of setting up and implementing EITI for some time. Ghana had also produced at least one audited report. Like Malawi, Ghana is considered relatively stable country in terms of its governance system and its economy was growing rapidly. The GHEITI had graduated from being supported by the Multi Donor Trust Fund (MDTF) of the World Bank to being supported from Government funds. These conditions therefore presented the Malawi delegation with best learning curve.

4.2 History of the Ghana EITI

Ghana joined EITI in 2004 and when the Malawi delegation was visiting the country, Ghana Extractive Industries Transparency Initiative (GHEITI) had a fully fledged National Secretariat, with a coordinator, two technical officers, two support staff and a functional EITI steering committee and an EITI Champion who was a deputy Minister of Finance. The National Secretariat was housed in the Ministry of Finance. In 2005 GHEITI produced its first audited report and in 2010 Ghana became EITI Compliant. The scope of the GHEITI was at first only focusing on mining but with the discovery of Oil, the scope was widened to include Oil Revenues.

The history of the GHEITI is that it began as a pilot project to test the viability of implementing EITI through carrying out independent audits of the Ghana extractive industry, developing and implementing a revenue disclosure programme, as well as coming up with oversight and also publication mechanism that ensured that the citizenry got the relevant information on the extractive industry's revenue and expenditure to enable them hold government and extractive industries accountable.

The basis for the scope of work was that EITI requires transparency over payments made by extractive industry companies to public entities as reconciled against revenues declared to have been received by the public entities. However Ghana added on independent audit of extractive industry companies so as to check whether the amounts paid by the various companies were correct. Now that

Knowing how much money is coming into government from different sources is a necessary first step in ensuring that those resources are better managed

MR. FRANKLIN ASHIADEY; THE Ghana Extractive Industries Transparency Initiatives NATIONAL COORDINATOR

GHEITI is EITI compliant, it ensures that quarterly public statements on revenues are issued and disseminated widely.

4.3 Lessons for Malawi from the Study Tour:

4.3.1 EITI has the potential to bring forth Benefits

From the study tour, the delegation was able to identify a number of benefits which Ghana has derived from implementing EITI. Some of the major benefits identified were as follows:

- That the EITI in Ghana had assisted to bring in more capital gain tax due to companies declarations after being aware that they would be exposed with the EITI Audits
- Also that EITI had assisted in strengthen collaboration among government agencies and ensure that government got a fair share from mining revenues.
- Also that by implementing EITI, Ghana's investment rating had improved and this was also true with credit rating
- That from actively and beneficiallyengaging the Civil Society Organisations (CSOs) in EITlassisted the government in Ghana in tracking public revenue received from the extractive industry.
- That EITI greatly minimised tensions between mining company and the communities since the communities knew exactly how much the companies paid instead of just speculating that they are being reaped off or cheated.
- That EITI assisted the government to improve its book keeping and receipts.
- Also that EITI made it easier for all parties to monitor taxes being generated from extractive industries.
- And finally that EITI had assisted in the debate on the usage of revenue accrued from the mining sector.

4.3.2 EITI has some inherent challenges

The delegation also learnt from interacting with the GHEITI that EITI had some inherent challenges which every country has to deal with to makes sure that EITI acheived its goals. These were also apparent from sharing with the Ghana counterparts. Some of these challenges are:

- It is sometimes difficult to get senior government officials to drive the process which is critical in EITI process. To surmount this, there is need to have a key government official to drive the process.
- It is sometimes not easy to get data from the private sector since the initiative is voluntary. However once a country joins EITI, it becomes automatic that all registered private companies in the extractive sector to begin to provide data on revenues. Therefore there should not be a company that chooses the contrary.
- High staff turnover both in government and mining companies gives rise to lack of continuity and loss of institutional memory.
- The initiative requires that the cost of validation be borne by government. Validation is conducted initially every three years and later every five years and costs are huge.
- Need for specialised skills for tax auditors for auditing mining sector since most of the costs in mining sector originate from their sister / parent companies through management fees and acquisition of heavy equipment which could even be of second hand which could lead to transfer pricing. Hence the need for capacity building in mining auditing.
- Small and Medium Enterprises (SMEs) are left out of the initiative since the cost of accommodating everybody would outweigh the benefits.

4.3.3 Cost Implication to Government

It was clear from the study tour that EITI process has associated implementation costs. In order to successfully implement EITI Government has to bear costs as follows:

- Using GHEITI as an example, the country needs to set up an EITI Office composed of the EITI Coordinator, two technical staff and two support staff. All of which would be civil servants who would be paid by government.
- Cost of operations exists but could be met by the World Bank through the EITI Trust Fund. Other donors like GTZ, Africa Development Bank and Norwegian Embassy have shown commitment to assist Malawi as well in its implementation of the initiative.
- Hiring of the independent auditing services is an additional cost to the government.

4.4

Study Recommendations based on the study tour

4.4.1 Malawi to Join EITI

- Malawi should join EITI with revenue transparency as the first phase and other issues such as auditing companies' payments to government should be in the second phase.
- It is recommended that Malawi should join EITI since there are many more benefits in joining EITI than the costs.
- As a way forward, we recommend that a Cabinet Paper should be written to Cabinet recommending joining EITI. This cabinet paper should be co-signed by the Minister of Finance and the Minister of Natural Resources, Energy and Environment.
- For smooth and proper entrenchment of EITI, Malawi should consider taking a phased approach to transparency with the mining sector being first
- There is need for national sensitisation on the EITI.

4.4.2 Need for Policy and Legislation amendments to accommodate EITI

- Legislation be enacted that would allow government to own 10% of equity of all mining operations by virtue of the ownership of all mining rights. Initially Malawi could use the existing legislation and come up with new legislation on EITI that meets the needs of Malawi. The legislation should be designed in such a way that it meets the needs of Malawi.
- All fiscal aspects of mining should be legislated. This gives a level playing field for all tax payers and it protects the taxes from being given away during contract negotiations. All tax incentives should be in the legislation.
- Need to avoid exemption of taxes of non-resident firms.
- Need to ring-fence mining projects for taxation purposes from new reconnaissance, new explorations and developing projects.
- With the petroleum prospects in Malawi, there is need to have legislation for the revenues which will accrue from petroleum as well as taxation of the petroleum.
- Malawi should consider increasing the mining royalties from 3% to 5% just as Ghana has done.
- Royalties are paid based on gross sales without any deductions.
- Need to assay (mineral content analysis) minerals before export for cross validation. This could be achieved through purchasing of necessary lab equipment for Malawi

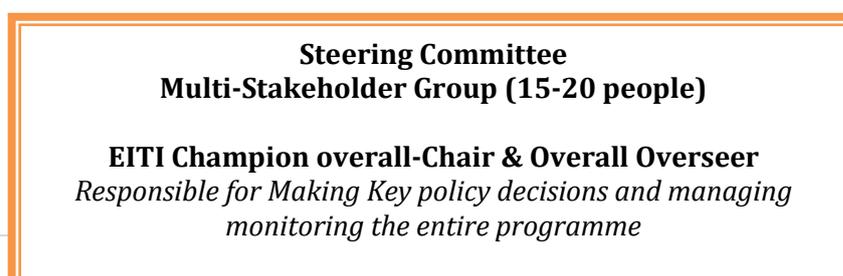
Bureau of Standards and have the lab accredited to ISO standard. This would assist in ensuring that Malawi does not get cheated on the quality of mineral being exported.

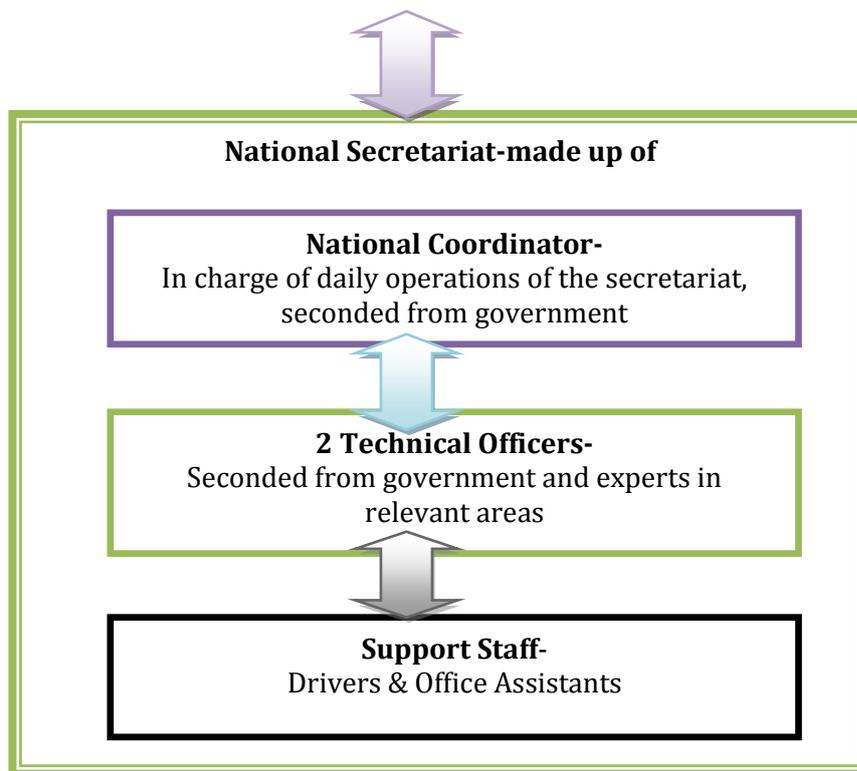
- Malawi needs to move from the current mining licensing regime to cadastral system for efficient distribution of land for mining purposes.

4.4.3 Proposed Institutional and Organizational Arrangements of Malawi EITI Office

- EITI Office should be located in the Ministry of Finance, Revenue Policy Division with a Coordinator and desk officers.
- Selection of the EITI Steering Committee should be conducted in a democratic way.
- Need to have alternate membership in the EITI Steering Committee.
- There will be need to contact CONGOMA to nominate the CSOs representation in the EITI Steering Committee. The CSOs to be represented on the committee should be those with development focus.
- Malawi should consider either the Minister or the Deputy Minister of Finance to champion the EITI Process in Malawi. In the case of Ghana, the Deputy Minister of Finance turned out to be the champion.
- Only registered mining companies should be included in the initiative since the cost of inclusion of SMEs would outweigh the benefits.
- Documentation of all the EITI processes is very important at the time of validation hence the need for proper filing of all the documentation.
- Malawi could reduce its debt – equity ratio requirement in the mining sector from the current 75% to 66% so as to reduce thin capitalisation.
- Need to create a section within MRA that would deal with taxation of natural resources and build the relevant capacity to deal with such matters.

A proposed office and governance structure is given below in Figure 2





5.0 Malawi attends the 5th EITI Global Conference in Paris

In March 2011, Malawi attended the 5thEITI Global Conferences in Paris France which was held from 2nd to 3rd, March 2011 whose objective to discuss the impact of the EITI, share lessons learnt from implementation and address future challenges for the EITI under the theme *Transparency Counts*. Heads of states, government leaders, companies and civil society organizations, and around 1,000 participants from more than 70 countries gathered at the OECD in Paris to shape the future of the EITI.

5.1 Conference objectives:

The overall objective of the conference was to assess the impact EITI is making to nearly half a billion people in the 27 countries who now have access to reliable revenue figures from their country's natural resources. Previously in most of these countries, the revenue figures were never been available before and in some instances, the very revenues had been the source of bitter conflict, mismanagement and plunder.

The specific objectives of the conference objectives were as follows:

- To convey the impact that the EITI was having in implementing countries through a strong focus on sharing experiences and demonstrating how revenue transparency and the EITI multi-stakeholder process changes countries.
- To give momentum to policy debates that would shape the future of the EITI such as how EITI reporting could be strengthened by addressing policy issues emerging from EITI implementation.
- To increase commitment and level of engagement in key outreach countries working on EITI.
- To endorse to the EITI Board some key policy issues including revisions to the EITI Rules.

5.2 The Malawi Delegation to the Conference

Initially, Malawi was supposed to send a delegation of five people of which two from Ministry of Finance, two from NGOs, and one from the department of Mines. Due to a number of challenges, Malawi managed to send only 2 people, one from civil society Mr. Reinford Mwangonde from Citizens for Justice and the other one from the Department of Mines, Mr Peter Chilumanga. These two people participated to represent the EITI

Task Team and the mandate was to bring lessons learnt from the 5th EITI global conference. The Malawi delegation was also spiced by Dr Florian Lang of GIZ Malawi.

5.3 Background to the Conference

The conference took place against a backdrop of uprisings in resource-rich countries in North Africa demanding more accountability in government; the renewed focus on resource revenue transparency by the French G-20 presidency; and the debate over mandatory disclosure requirements in the US and Europe also sparked some energy with different positions clearly set out from the very opening plenary. The conference provided a space for these important discussions between key stakeholders.

One of the expected outcomes of the conference was how countries could put at the centre of their planning EITI to help track revenues and how the revenues were being used thereafter. At the conference, besides paper presentations, there were also national exhibition by participants on how EITI was making a difference on the ground. Some countries such as Azerbaijan, Central African Republic, Ghana, Kyrgyzstan, Liberia, Mongolia; Niger, Nigeria, Norway, Timor Leste, and Yemen who are EITI Compliant reported that EITI had contributed to trust building, improved natural resource governance, civil society engagement and improved business environment.

5.4 Lessons learnt:

Malawi's neighbours were represented by a high powered delegation. For instance, Mozambique's President attended accompanied by two ministers from Finance and Economic Development; Tanzania's President was also there with three ministers from Mines, Finance and Economic Development and Zambia was represented by two ministers from Finance and Mines. This was a sign of commitment to the EITI that such high level delegates were in attendance.

5.5 Recommendations:

Malawi has an opportunity to do better than its neighbours as it could be involved early enough in the process by introducing policies which could help the government realize more revenue from the extractive industries. The EITI could be one tool that government could use in improving revenue tracking and collection and therefore the Task Team strongly recommended that Malawi joins EITI.

6.0 **Way Forward**

Going by what most stakeholders responded in the impact analysis study on implementing EITI in Malawi as well as findings from the study tour to Ghana, recommendation to the Malawi government is that it is in the interest of the government to join EITI and that Malawi stands to benefit more from the sector if EITI was adopted. The challenges cited and other inherent issues are all surmountable; a decree on EITI by the State President or an designated Minister would be adequate to begin the rolling the process and other legal and policy matters would be dealt with in due course.

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