

Final Report

Malawi Extractive Industries
Transparency Initiative (MWEITI):
Scoping Study
(Minerals, Oil and Gas, Forestry)

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ACRONYMS

Acronym	In full
AAIM	ActionAid Malawi
ACB	Anti-Corruption Bureau
AER	Annual Economic Report
AG	Attorney General
ASM	Artisanal and Small-scale Mining
ATI	Access to Information
ATS	Automatic Transfer Service
BO	Beneficial Ownership
C&M	Care and Maintenance
CCAP	Church of Central Africa, Presbyterian Synod of Livingstonia
CEPA	Centre for Enviromental Policy and Advocacy
CFJ	Citizens for Justice
CSR	Corporate Social Responsibility
DA	Development Agreement
DoM	Director of Mines
EI	Extractive Industries
EITI	Extractive Industries Transparency Initiative
EIU	Economist Intelligence Unit
EPL	Exclusive Prospecting License
FAO	Food and Agriculture Organization of the United Nations
FDMF	Forest Development and Management Fund
FOCUS	Foundation for Community Support Services
FRAS	Forestry Rights Administration System
FY	Financial Year
GFS	Government Finance Statistics
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
GR	Gross Revenue
GSD	Geological Survey Department
IA	Independent Administrator
K	Kwacha
Ltd	Limited
MAWIMA	Malawi Women in Mining Association
MCAS	Mining Cadastre Administration System
MCL	Mining Claim License
MISA	Media Institute of Southern Africa

Acronym	In full
ML	Mining License
MMA	Mines and Minerals Act
MRA	Malawi Revenue Authority
MSG	Multi-Stakeholder Group
MW	Malawi
MWEITI	Malawi EITI
NAO	National Audit Office
NEPL	Non-Exclusive Prospecting Licence
NGO	Non-Governmental Organisation
PAYE	Pay As You Earn
PE	Permanent Establishment
PPPC	Public-Private Partnership Commission
PSA	Production Sharing Agreement
RBM	Reserve Bank of Malawi
RDF	Revenue Development Foundation
RL	Reconnaissance License
RML	Reserved Mineral License
RT	Revenue Type
RQ	Requirement (in the EITI Standard)
SQ KM	Square Kilometer
Tbd	To be determined
Tpin	Taxpayer Identification Number
VAT	Value-Added Tax
WP	Work Plan

1 | EXECUTIVE SUMMARY

This **Scoping Study** has been commissioned by the **Multi-Stakeholder Group (MSG) of the Malawi Extractive Industries Transparency Initiative (MWEITI)** to an external consultant team in order to prepare the MSG's decision to define the scope for the start of the EITI reporting cycle.

The MSG approved the study on January 28, 2016. The results shall inform the work of the MSG and the Terms of Reference (ToR) of the **Independent Administrator (IA)**, who will be assigned to do the reconciliation and production of the 1st MWEITI report until April 22, 2017.

The **EITI** is a global standard that promotes revenue transparency and accountability in the extractive sector. It has a **robust yet flexible methodology** for monitoring and reconciling company payments and government revenues from oil, gas, mining and further sectors at the country level. **Each implementing country creates its own EITI process** adapted to the **specific needs** of the country. EITI implementation has two core components:

- » **Transparency:** Extractive companies (e.g. oil, gas and mining) disclose their payments to the government, and the government discloses its receipts. The figures are reconciled and published in annual EITI Reports alongside contextual information about the extractive sector.
- » **Accountability:** A Multi-Stakeholder Group (MSG) with representatives from government, companies and civil society is established to oversee the process and communicate the findings of the EITI Report.

The **EITI in Malawi** has been set up by the MSG to become an entry and anchor point of Malawi's strive to increase transparency and accountability in the natural resource sector. MWEITI is widely considered by stakeholders as an integral part of government policies.

With a view to Requirement (RQ) 7 of the EITI Standard and achieving impact through EITI implementation the study identified a need for consistency of the **MWEITI narrative**. In the Mines and Minerals Policy, the Candidature Application and the EITI country website it is stated that the government's aim is that the share of GDP will rise from 1 percent to 20 percent until 2020. The Scoping Study could not find supporting evidence for this claim. However, the MSG can build on its work plan 2015-2017, in which the strategic goal "National sustainable development through revenue transparency" and the four objectives match the challenges and priorities of the stakeholders in the extractive industries. For these objectives and in the following areas, a **tentative impact of EITI generated data** is anticipated by stakeholders with a view to:

- » improving the business and investment climate,
- » using the multi-stakeholder mechanism for dialogue and building trust and
- » in general mainstreaming the EITI principles in government and corporate reporting.

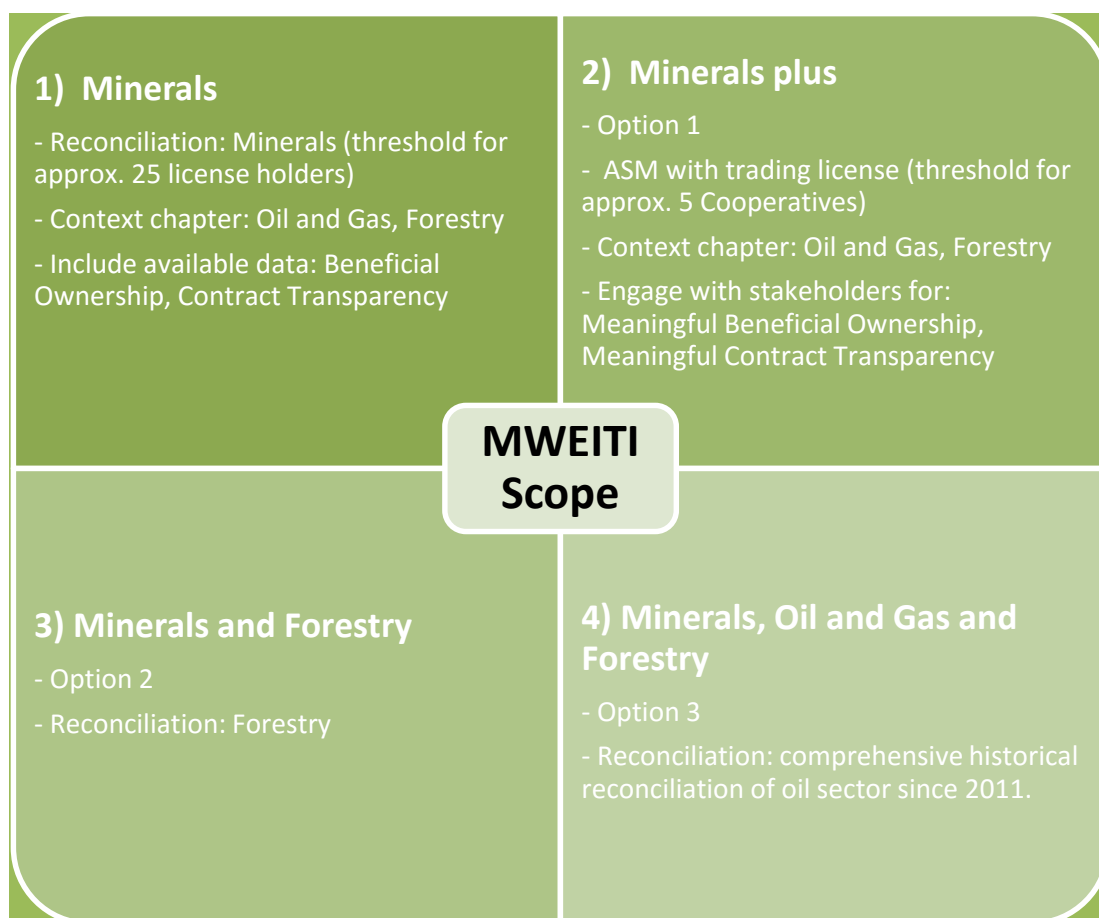
According to international EITI practices the **MSG should review and adjust the scope and thresholds for each annual reporting cycle**. After the 1st MWEITI report, a review on the processes and the use of data should be made for the 2nd MWEITI report, costs kept down (costs of reporting in relation to sector revenues) before a decision is made to expand the scope and impose on reporting entities subsequent efforts for reconciliation. Thus, based on the lessons learned from the 1st MWEITI report the scope might change for the 2nd MWEITI report even before EITI validation will be sought in 2018.

The Scoping Study recommends **starting the annual EITI reporting cycles** in Malawi with

- » the **Financial Year (FY) 2014/15**,
- » a **narrow scope with thresholds for reconciliation of payments by mining companies**, and
- » a **broad, but manageable scope for contextual reporting**

as outlined in **option1 of Figure 1**.

FIGURE 1: STRATEGIC OPTIONS FOR THE SCOPE OF THE 1ST MWEITI REPORT BASED ON FINANCIAL YEAR (FY) 2014/2015



Option 1: The MSG is on the **safe side for the 1st MWEITI report given current available data**. **12 mining companies including quarrying** fall within the scope of the 1st MWEITI report. As

data improves 25 companies could possibly be included by the time of the reconciliation exercise according to the Malawi Revenue Authority (MRA). If the same data and staff resources are to be made available that have been provided for this Scoping Study, the scope outlined in option 1 can be achieved.

Elements of the options can be mixed: for instance, starting with a focus on large companies extracting minerals (Option 1), and aiming at meaningful stakeholder engagement for Beneficial Ownership (Option 2)

From option 1 to 4 the challenges increase, thus requiring more human resources and institutional capacities both from MWEITI Secretariat and stakeholders.

Both **oil and gas**, and **forestry sectors** should be subject to **contextual reporting**, but **not to reconciliation**.

- » The **oil and gas sector** is not feasible for reconciliation for the time being. **No information** can be disclosed **without the prior approval of the company** in question. Furthermore, legal interpretation differs on the issue of the **award and suspension of licenses** (after 11/2014) and is likely to prevent comprehensive disclosure unless those issues are solved by both parties.
- » Data from the **forestry sector** would not allow a comprehensive reconciliation. Data required by the EITI Standard needs to be accessible in the Department of Forestry.

Two governmental institutions need to report (see below i-ii), in case the MSG decides for a **narrow scope on minerals** as outlined in option 1 and option 2. A broader scope of option 3 and option 4 would require **three institutions** (see below i-iii):

- i) Malawi Revenue Authority**
- ii) Ministry of Natural Resources, Energy and Mining – Department of Mines**
- iii) Ministry of Natural Resources, Energy and Mining – Department of Forestry**

The Government is required to **fully disclose all revenues** from the extractive sector (RQ 4.2.b). Once revenues accrue from the Moatize railway this will be one of the largest sources of revenue in the extractive sector, and EITI Requirement 4.1.f) will require the **Public-Private Partnership Commission (PPPC)** to disclose the revenues received. Further institutions such as **Reserve Bank of Malawi (RBM)** and **National Audit Office (NAO)** will need to be involved in order to contribute and consolidate data from government systems for a comprehensive and reliable EITI report. There are **no sub-national government entities** that receive direct or indirect revenues from the extractive sector, **except for license fees** and on ad-hoc basis for emergency challenges (e.g. floods) and social responsibility.

According to EITI Criterion 1 and Requirement (RQ) 4 **payments and revenues are considered material** if their omission or misstatement could significantly affect the comprehensiveness of the EITI Report. Thus the existing revenue streams in Malawi had to be identified. Materiality is determined by establishing e.g. the share production output or the share of total revenues from extractive industries that each revenue stream represents:

» **Table 2: Main payment types and recommendations for inclusion**

Furthermore, given the relatively small number of reporting entities findings from most governmental records of revenues and from cross-checks with records of payments by companies relevant for the 1st MWEITI report can be presented at this early stage:

» **Table 3: Project-level payments by minerals companies**

» **Table 5: Payments by oil and gas companies**

» **Table 6: Payments by forestry companies**

Based on these findings the Scoping Study proposes that the MSG establishes certain **thresholds for company disclosures** (RQ 4.1.a) in excess of which the payments stream is considered material and companies should report payments for the 1st MWEITI Report:

- » **Threshold of K 10 million** for the payment types: **Corporate Tax, PAYE (Pay As You Earn) and VAT (Value-Added Tax).**
- » **Threshold of K 1 million** for the payment types: **Non-Resident Tax, Royalty, Ground Rent Fee.**

Some stakeholders see a benefit by including license fees (e.g. improving the oversight of the sector, license registers, management of work flows). If capacities allow, the MSG might want to consider doing a **pilot for the reconciliation of license fees.** This would require a zero threshold. But in order to keep cost-benefit in balance this could be done in form of a system-check of some license types, e.g. Reserved Mineral License (RML) and Mining License (ML), in selected districts, e.g. 3 out of 28 districts, but not country-wide or institutions-wide.

2 | CONTEXT

2.1 | LEGAL FRAMEWORK (RQ 3.2)

This chapter provides details of the **legal regime** and licenses. The assessment is based on secondary legal expertise, which was retrieved by the Consultants during interviews with legal experts and practitioners. Interviewees included the Attorney General and the Department of Justice. A separate [study on legal and regulatory obstacles to implementation](#)¹ is forthcoming, as foreseen in the **MSG work plan output 1.13**.

Reforms are underway regarding three central pieces of the framework:

- » Mines and Minerals Act,
- » Taxation Act and
- » Access to Information Bill.

There is however no clear opinion across stakeholder groups on the status and prospects of ongoing reforms in extractives. An up-to-date status can be expected to be provided by the Independent Administrator (IA) in the 1st MWEITI report as any EITI report needs to include not just the frameworks as of the reporting period, but a description of laws and regulations that are in force at the time the report is being produced.

As a matter of principle laws are not to be applied in retrospect. Thus for the 1st MWEITI report due on April 22, 2017 and designated to cover the fiscal year 2014/15 the following laws as of the reporting period 2014/15 are to be included for a comprehensive legal framework analysis:

Taxation Act (2006)

The [Taxation Act \(2006\)](#)² covers tax on all types of income. It defines income as the total amount in cash or otherwise, including any capital gain, received by or accrued to a person in any year or period of assessment from a source within or deemed to be within Malawi. The taxpayer's assessable income excludes any amount exempt from tax under this act. Section 27 limits the income that may be deemed to have arisen to the following:

- » Remuneration for services rendered or work performed.
- » Remuneration for services rendered or work performed in or out of Malawi where the amount may be claimed as a tax-deductible expense by a permanent establishment (PE).
- » Amounts incurred, claimed, or claimable in connection with a PE.
- » Realized exchange gains and losses arising in connection with a PE or foreign exchange assets and liabilities held.
- » Capital gains and losses realized with respect to tangible property and interests in companies incorporated in Malawi.

In general, locally incorporated companies have an income tax rate of 30%. A **special clause applies for mining**: an additional resource rent tax of 10 percent is levied on profits after tax

if a mining company's rate of return exceeds 20 percent. The basis for calculating rate of return has not been defined.

Stakeholders from government and civil society indicate that internationally invested mining companies make **extensive use of realizing losses** arising in connection with a PE. In 2015, a controversy emerged around an analysis by the non-governmental organization (NGO) ActionAid concerning the largest industrial mine in Malawi run by Paladin Africa, a subsidiary of Paladin Energy. No unlawful behavior was uncovered, but the [ActionAid Report](#)³ and the [response by Paladin Energy](#)⁴ have provided input to the tax debate both in Malawi and globally. MWEITI offers a platform for permanent local dialogue as, for instance, both ActionAid and Paladin are members of the MSG.

Mines and Minerals Act (1981)

The [Mines and Minerals Act \(1981\)](#)⁵ governs the management of the minerals sector. The Act provides for, amongst other administrative and institutional arrangements, the licensing and regulation of private operators. Related to this Act, license holders are subject to **pay the following fees** concerning their respective type of license:

- i) Application fees
- ii) Reconnaissance license
- iii) Prospecting license (exclusive or non-exclusive)
- iv) Mining license
- v) Ground rent
- vi) Reserved minerals
- vii) Renewal fees

Payment of **royalty** is mandatory. The rates vary: the minimum is five percent. The maximum for precious and semi-precious stones is ten percent (see Schedule regulation 5).

Regulations are **published in the Government Gazette**. The Government Gazette is not available online.

Furthermore, there is the option to regulate **large mining projects in separate Development Agreements (DA)**. A DA determines the provisions for a mining project on a contract-by-contract basis. When there is no DA, what is in the law applies.

According to Government, currently **two DAs are in effect**:

- i) **Paladin Africa Ltd and Paladin Energy Minerals NI** came into effect on February 22, 2007. The fiscal regime is in Attachment B (p. 75-76) of the DA and includes:
 - » 15 percent of the equity are issued to Government.
 - » depreciation of full amount of all capital expenditure from the normal 30 percent corporate tax rate.
 - » exemption from the resources rent tax for the life of the mine.
 - » exemption from import duty and import VAT.

- » payment of royalty after the commencement of sale of yellowcake, first until third year: 1.5 percent; fourth and subsequent years: 3 percent.

Provisions regarding social responsibility include (DA, p. 45-46, Attachment C, p. 77):

- » Training for two Malawian doctors, construction of a primary school, housing for four teachers

In November 2007 a variation was agreed to the DA and Clause 20.2 in the DA was deleted and replaced by the provision:

- » Expend and/or cause other governments or agencies to expend USD 10 million in accordance with the following: USD 8.2 million in conjunction with the Government through the Northern Region Water Board towards the Karonga Water Supply Project, up to USD 50.000 for repair work and the balance plus anything remaining from the funds to be applied to infrastructure projects.

The DA contains **no further local content metrics** that can be monitored by EITI.

Comprehensive corporate reporting on CSR Projects undertaken in connection with the Kayelekera Mine from 2008 to 2015⁶ is published on the company's website.

ii) Nyala Mines Ltd. entered into a DA on 18th June 2008. The company is identified under the registration number 7976 and the license ML0150/2007. According to stakeholder views from civil society, the content and implementation is not well known to the general public. The DA includes the provisions:

- » Government has 30 percent participation in Nyala.
 - » 10 percent of the equity of Nyala are issued to Government.
 - » Government receives 10 percent Royalty on the gross value of Corundum exported.
 - » Government receives an amount equivalent to the Sales Royalty, once the Corundum has been cut, polished and sold by Columbia Gem House, Inc., Vancouver, Canada⁷.
 - » Exemption from Resource Rent Tax, VAT on capital purchases, duty and tax for imported materials, equipment and consumables – for the use in the mining and processing of minerals.
 - » Training to Malawians, support to local education and health sector.
- Whereas the DA contains no precise local content metrics, except: USD 20.000 per annum for a local clinic Katsekera, construction funds and materials for four houses for Kandoma school
- » Set-up a lapidary in Malawi

The DA contains **no further local content metrics** that can be monitored by EITI.

Disclosure: Information cannot be disclosed without the consent of the license holder. The Director of Mines (DoM) has rights to waive this only in connection with individuals carrying out their duties. A fine or prison term or both await violation. One needs to be careful about what information this prohibition covers. For example, payments to government may not be in this prohibition: these can and must be disclosed through government receipts in accounting and budget records of government. But ownership and all other transactions not related to government may be a problem to declare without consent.

Reform: An amended Mines and Minerals Act has been drafted. Stakeholders from the Ministry of Natural Resources, Energy and Mining and World Bank expect the Act to come into effect in the first half of 2016. The **objectives and challenges of the reform** which is ongoing since 2013 have been well documented in consultation reports leading up to the preparation of the recent draft of the Mines and Minerals Bill. Key among them are issues of the institutional framework and coordination within and across the mining sector. Clarity between policy making, oversight and regulation has been sought as well as better cross sectoral coordination with lands, water, environment, etc. New bodies have been included in the draft Bill with reduced powers for the Minister and the Commissioner. Mandates for revenue collection will be transferred to other government entities. For instance, the MRA will then have the responsibility (and not anymore the Department of Mines) for royalty collection. However, not all parties, especially the **civil society**, are convinced with the adequacy of the proposed institutional arrangements that do not seem to be in line with other sectors of the economy where they state that institutional frameworks that reflect better roles of oversight and regulation are in place.

- » Even if the enactment of the amended Mines and Minerals Act will be in time for the production of the 1st MWEITI report, the **reporting period 2014/2015 will be regulated by the current Act**. The amended Act might apply for the 2nd and subsequent MWEITI reports.
- » As the current Act can be interpreted that it prohibits full disclosures for the reporting year in question, the MSG should consider voluntary approach applying confidentiality waivers from companies.

Petroleum (Exploration and Production) Act (1983)

Malawi's existing petroleum exploration and production licenses were issued under the Petroleum Act of 1983⁸. The Act has deficiencies regarding the modern day transparency and accountability arrangements as it recognizes no authority other than the Minister responsible and the Commissioner (of Petroleum Exploration and Production); the latter being appointed singlehandedly by the Minister so that at the end of it all, the Act is entirely administered by the Minister. The Petroleum Act provides for, amongst other administrative and

institutional arrangements, the licensing and regulation of private operators who are expected to pay the following fees with respect to two types of licenses (the exploration license and also the production license):

- i) Application fees
- ii) Assignment fees
- iii) Ground rent
- iv) Training fees
- v) Social contribution

Payment of **royalty** is mandatory, but the rate is at the discretion of the Minister as well as the mode of payment, and it can be non-monetary.

Disclosure: Information cannot be disclosed without the consent of the license holder. The Commissioner has rights to waive this only in connection with individuals carrying out their duties. A fine or prison term or both await violation. One needs to be careful about what information this prohibition covers. For example, payments to government may not be in this prohibition: these can and must be disclosed through government receipts in accounting and budget records of government. But ownership and all other transactions not related to government may be a problem to declare without consent.

- » There are no legal reforms envisaged for the Petroleum Sector in the immediate future, but according to Government the Petroleum Act shall be next to be reviewed once the reform of the Mines and Minerals Act has been finalized.
- » Controversy has continued since 2014 on the awarding, suspension and operation of the granted licenses including the Production Sharing Agreements (PSA). This constituted a hindrance to the dialogue with license holders during the scoping exercise, and would substantially affect EITI reporting.

Forestry Act (1997)

The Forestry Act is the principal legislation that governs forestry. It set the framework for participatory forestry, forest management, forestry research, forestry education, forestry industries, protection and rehabilitation of environmentally fragile areas and international cooperation in forestry. Stakeholders consider as a weakness that the Act was developed without sufficient consultation and neglecting environmental issues. As an example, a lack of harmonization with the National Parks and Wildlife Act (1992) is given. **Revenues streams** received by the Department of Forestry:

- » sale of logs,
- » concessions,
- » licenses,
- » royalties on forestry produce and firewood sales.

The Act established a **Forest Development and Management Fund (FDMF)**. The Fund consists of various categories of payments, including levies on wood felled or extracted by the Forestry Department; sale proceeds of seized forest produce; voluntary contributions; and sums appropriated by Parliament or donated by international partners. The fund is administered by the Minister of Natural Resources. The [FAO assessed](#)⁹ that the Fund is a typical example of international practices and allows Malawi's **Forestry Department to retain up to 80 percent of the taxes and fees** it collects.

Public Private Partnership Bill (2010)

Malawi has assigned the Public Private Partnership Commission (PPPC) to implement a cross-sectoral Public Private Partnership (PPP) program. The PPPC was established by an [Act of Parliament](#)¹⁰ and is guided by a [policy](#)¹¹. The institution is the government's sole authority to develop and receive revenues from large PPPs i.e. the Moatize railway line, **which is expected to generate state revenues from coal transportation from Mozambique.**

Access to Information Bill (2015 revised draft)

Subject to this Bill is that every public authority shall grant any person who **requests access to any information that the public authority holds**. The law follows the Model Law that was launched by 53rd Ordinary Session of the African Commission. The Malawi chapter of the Media Institute of Southern Africa (MISA-Malawi) offers the 2015 revised draft for [download](#)¹².

The objective of the Bill is to provide for the right of access to information, define the scope of information that the public has a right to access, establish the Public Information Commission and define its functions, and promote transparency and accountability of public officers.

As the scoping study found that intra-departmental guidance to official publications and archival systems are weak or informal, the provisions of ATI on **maintaining complete records** are supportive to future EITI reports.

Protection of **confidential commercial information** is duly considered, but allows for a quite pro-transparency results-oriented (15 days) process:

"Where a public authority reasonably determines that a request for access to information involves the confidential commercial interests of a third party, the authority shall forthwith notify the third party in writing of the specifics of the request and that the disclosure of the information is imminent unless the third party, within fifteen days of receipt of the notice, responds in writing that it considers the information to be confidential and gives reasons as to why harm would result from disclosure; and upon receipt of such response the authority shall claim an exemption."

The effective application of the ATI Bill may be expected to contribute to an enabling legal framework for MWEITI implementation. Whether and to what extent the ATI could be used to override the confidentiality clauses of the existing laws would need an in-depth legal analysis.

2.2 | KEY FEATURES OF THE EXTRACTIVE SECTOR (RQ 3.3)

The **extractive sector has shown a growth of 2.0 percent in 2015** and is expected to grow by 3.2 percent in 2016, according to Government's Annual Economic Report 2015, p. 10. Currently the share of the sector of GDP is at around 1 percent.

Malawi has new projects such as Globe Metals & Mining's Kanyika Niobium Project¹³ in Mzimba and Mkango Resources exploration of rare earth¹⁴ at Songwe in the pipeline. Furthermore, the results of the countrywide geophysical airborne survey were released in August 2015. They are expected to give rise to exploration and eventually to mining activities, and thus to a medium-term growth of the sector. The geophysical airborne survey has produced for the first time this kind of extensive data for the extractive sector, enabling authorities and investors to base their decisions on better information for exploration activities.

Minerals

- » **Low production output, low revenue level.** The commodity super cycle boom is over, however, it is not hitting Malawi as hard as other countries in the region as Malawi's minerals sector is only emerging.
- » **500+ licenses in total** (estimated), which include
 - **2 Development Agreements** (Paladin, Nyala), whereas the country currently has only **1 large industrial mine**, which is held by Paladin Energy for uranium mining. The Kayelekera Uranium Mine remains on Care and Maintenance (C&M) for commercial reasons since 2014. Economist Intelligence Unit (EIU) predicts that in 2019 earliest the world prices for uranium will recover.¹⁵ Uranium production is not expected to restart before commercial sustainability will be given in a few years' time. As the license holder is stock exchange listed¹⁶ in Australia and Canada, in-depth corporate reporting according to international standards¹⁷ is available.
 - 136 large scale licenses: 74 licenses of the type EPL, 50 licenses of the type ML and 4 licenses of the type RL.
 - **Small-scale mining** licenses number at 350+ (estimated), and have an effect in employment and sustaining household incomes in rural areas, but little effect on government revenue generation. The study did not come across robust quantitative figures concerning the contribution of Artisanal and Small-scale Mining (ASM) to the economy. Stakeholder expressed views that MWEITI could help generate data and create a clearer picture for policy makers and the public.
- Against this background, the Malawian minerals sector is characterized by little short-term, but (not yet specifiable) **medium and long-term potential** for revenues and economic development.

Oil and Gas

The oil and gas sector is nascent in Malawi, and there is no oil production. Discovery of commercial oil fields in Malawi could clearly transform national economic development.

The government divided Malawi area into six blocks, three cover the Lake Malawi and the remainder are on land in the north and south of the country along the Rift Valley. For all of these blocks, six exclusive prospecting licenses (EPLs) have been awarded. For Block 5 and Block 6 Production Sharing Agreements (PSAs) have been signed. Since November 2014 exploration activities have been suspended by Government and investigations of due diligence during contract award are ongoing.

Government informs on the [Ministry's website](#)¹⁸ briefly on selected license awards but is not found to be systematically communicating about the context and development of the oil sector. Publicly available sources of information stem from limited corporate reporting, such as [SacOil for Block 1](#)¹⁹, [Surestream Petroleum for Block 2 and Block 3](#)²⁰ (no corporate information on Blocks 4, 5 and 6), from Malawian media such as [Nyasa Times](#)²¹, [The Times](#)²², [The Nation](#)²³ and the monthly Mining & Trade Review. Civil society organizations provide analysis and opinions, and privately run websites such as [Mining in Malawi – Oil and Gas](#)²⁴ are useful sources.

Forestry

Commercially viable logging is conducted by a few license holders such as RAIPLY Malawi and Vizara Timber plantation. Generally, the forestry sector is in decline and faces widespread depletion of forestry resources in the next three to four decades. There are only some plantations replanted to meet the rate of depletion, however illegal logging mostly done by locals is reported by concessionaires to be a major obstacle to long-term sustainability. According to the Annual Economic Report 2015 (p. 36), 47 timber export licenses and 1,231 export permits have been issued. The Department of Forestry maintains an evolving section on the website on [facts about the sector](#)²⁵.

Transportation

The Annual Economic Report (AER) 2015 (p. 11) estimates that the Vale Railway Project, that has been financed by the Brazilian mining company Vale SA and constructed by Mota Engil, has contributed to a growth rate of the construction sector by 6.1 percent in 2014.

The [Annual Economic Report 2014](#)²⁶ states on p. 47:

- » In December 2011 Government signed a Concession Agreement with Vale, a Brazilian mining company and holder of one of the major mining concessions in Moatize, Tete Province, for the construction of a rail line in Malawi under a Build, Own, Operate and Transfer Scheme.

- Construction was commissioned in November 2012, railway not yet in operation.
- Cost of the project USD1bn
- Project has employed over 3,500 Malawians
- Government did not receive revenues until today as the transportation (and subsequent generation of revenues) started in December 2015. According to a government official from PPPC annual state revenues will amount to USD 6 million.
- Once the state starts to receive these revenues, they are likely to be one of the largest EI revenue streams and should thus not be omitted in EITI reporting.

No further transportation projects or transportation revenues came to the attention of the study.

➤ **In conclusion**, the **public narrative** (e.g. Mining Policy and EITI candidature application) of achieving a **share of 20 % of GDP in 5 years' time** (by 2020) from extractive industries starting from the current base at 1 percent cannot be supported against the background of the findings of the MWEITI scoping study. It could only be achieved by contraction of other sectors, not by the current outlook of the extractive industries themselves. Regarding the dynamics of the extractive sector:

- » **No palpable increase of extractive activities** and associated revenues is taking place or is prognosticated by interviewed stakeholders (see stop of production and subsequent royalty payments from the only industrial mine in the country Kayalekera Uranium Mine).
- » **No indication of adequate world market commodity price** increases in the short and medium term that might apply for Malawi (namely uranium, petroleum, coal, rare earths, and gemstones).

In order to **adjust the public narrative** to realities stakeholder expressed views that the extractive sector and subsequently MWEITI as a new sector standard should rather apply a narrative of

- » improving the business and investment climate,
- » strengthening anti-corruption,
- » using the multi-stakeholder mechanism for dialogue and building trust and
- » in general mainstreaming the EITI principles in government and corporate reporting.

Sources of information

The Government provides a comprehensive annual report on the context of the extractives sector, published as a hard copy and online by the Ministry of Finance, Economic Planning

and Development: Annual Economic Report (AER), in the most recent published version as of 2014). The AER 2015 was available as a hard copy only at the time of writing this report.

The following EITI relevant information is published in the AER. On a regular basis data and estimated published in the AER are not older than a year.

Facts and Figures on the relevance of the extractives sector:

- » Table 2.1: GDP by activity at constant prices
- » Table 2.2: Sectoral shares to GDP
- » Table 2.3: Annual percentage growth rates

On **mining**, the Annual Economic Report 2014²⁷ in Chapter 6, p. 49, offers the following data:

- » Table 6.1: Mineral production and monetary values (2012-2014)
- » Table 6.3: Mineral exports
- » Table 6.2: Formal employment in the mining sector by 2014
- » Table 6.5: Known mineral deposits, reserves and grades
- » Table 6.6: Potential mining projects

On **forestry**, the Annual Economic Report 2014²⁸ offers:

- » Table 3.9: Export values for forest products for 2013/14 financial year (up to April 2014).
- » Table 3.11: Revenue collected by the Department of Forestry by 30th March in the 2013/14 FY
- The 1st MWEITI report could elaborate on table 6.5 (mineral deposits and reserves) and table 6.6 (potential mining projects) to provide a forward-looking perspective on mining. Moreover, the Geological Survey Department (GSD) is assigned to provide mineral data to the EITI reports. The GSD has 2 Regional Offices located in Lilongwe and another in the northern region, in the City of Mzuzu. Six stations across the country can provide support: Bangula in Nsanje District, Chileka in Blantyre District, Feremu in Neno District, Linthipe Ceramics Station in Dedza District, Kanengo Coal Analysis Laboratory in Lilongwe District and Mponela station in Dowa district.
- The data of the AER on the key features of the sector is in line with what is required by RQ 3.

2.3 | CONTRIBUTION OF THE EXTRACTIVE INDUSTRIES TO THE ECONOMY FOR 2014/2015 (RQ 3.4)

The economy is categorized by Government reporting (AER) in 17 sectors. The GDP in 2014 was estimated at K 1,229.7 billion.

Minerals

The mining sector (which includes quarrying) had its output estimated at K 11.7 billion and was the second smallest out of the 17 sectors.

- » **Mining sector's share of the economy** as measured by GDP is at around **1 percent**. The largest share belongs to agriculture at 30 percent.
- » **Mining contracted by 4.6 percent in 2014** on account of suspension of uranium production at Malawi's largest mining operation. It is the only sector that contracted out of the 17 sectors of the economy.
- » Government projects the above mentioned **rebound on the assumption of new mining and exploration ventures** as a result of the country-wide geophysical mining survey.

However, there may be **strong grounds to doubt the estimated figures** for both the output and the contraction in 2014. This study finds that the return on capital (profit and interest) and labor costs for the formal sector may not exceed K 9 billion at market values which, using the 2014 GDP deflator, does not come close to half the reported real GDP of 11.5 billion for the year.

This study would propose a GDP share for the mining sector of **not more than 0.6 in 2013**, and **slightly lower for 2014**. This study's methodology can only manage to establish minimums as it does not include the informal sector nor collects all data relevant for national income accounting. The **data of official Government reporting (AER) are higher** and the 1st MWEITI report would perhaps help to confirm that they are in the right direction.

Mining's contribution to the national economy would still rank second from the bottom out of the 17 sectors in terms of value, but it would not be much different from the last sector.

- The **rebound in the economic contribution of the mining sector in the short term**, to be more realistic in the circumstances, should be closely linked to the resumption of uranium mining operations rather than to new investment projects in mining.

Oil and Gas

In the oil and gas sector, there is **neither exploration nor production** so the sector has limited effect on the economy.

Forestry

The AER 2015 states that by April 2015 timber export licenses and permits generated revenue amounting to K 8.5 million. The products were exported to the Republic of South Africa,

Mozambique, Kenya, Tanzania, Botswana, India, Zimbabwe, China, Zambia, Germany, France and other countries. The total export value was K 3.3 million. The reporting period is, however, unclear and primary data could not be made accessible to the study; thus **forestry cannot be assessed**.

- When **forestry** is decided to be within the MWEITI scope, **data access** would need to be ensured, **otherwise this Requirement (RQ) cannot be met**.

2.4 | PRODUCTION DATA (RQ 3.5)

The [Data Portal Malawi](#)²⁹ provides figures and visualized information on production and trade of natural resources based on input as recent as 2012, e.g. from the National Statistical Office.

- » MWEITI could serve as a push to integrate information from the Annual Economic Report (AER) and additional EITI data in the online data portal. This would help revitalise use of the data portal with updated information, make data from the AER more accessible and make EITI reporting more cost-efficient.

Minerals

The [AER 2014](#) publishes production data:

- » Table 6.1: Mineral production and monetary values (2012-2014)

Oil and Gas

In the oil and gas sector, there is **no production**.

Forestry

The [AER 2014](#) provides **export figures but no information for production**:

- » Table 3.9: Export values for forest products for 2013/14 financial year (up to April 2014).
- Based on the evidence provided, this **Requirement can be met for minerals but not for forestry** for the 1st MWEITI report.

2.5 | STATE-OWNED COMPANIES, QUASI-FISCAL EXPENDITURES, AND GOVERNMENT OWNERSHIP IN OIL, GAS, AND MINING COMPANIES (RQ 3.6)

Government does not own any extractive company from which it has been receiving revenues in the time period FY 2010 – FY 2015.

- » Government is entitled to 15 percent of the issued capital of Paladin Africa (wholly owned subsidiary of Paladin Energy Minerals NL) on the **Kayelekera uranium mine**

as regulated in the respective DA. No profits have been recorded and subsequently no payments been made.

- » The Government has a **10 percent share in the Nyala Mines** as regulated in the respective DA. An indication of an unreconciled payment has been found during the study, and it might be an aggregate payment related to Government's ownership.
 - Both DAs are put on open file at the DoM office. Government MSG members have committed that by the time of the 1st MWEITI report the DA shall be made available online on the forthcoming MWEITI Website and/or the Website of the Ministry of Natural Resources, Energy and Mining.
 - » **Production sharing and in-kind contributions** of significant value are anticipated in connection with the **petroleum blocks** awarded in Malawi, but companies are yet to make such payments.
- Based on the evidence provided, this Requirement can be met for the 1st MWEITI report, if the payment from Nyala Mines can be reconciled.

2.6 | REVENUE ALLOCATIONS AND DISTRIBUTION OF REVENUE (RQ 3.7 and 3.8)

In principle, all revenues are transferred to Malawi government Account No. 1. Thus revenues from extractive industries are **not separately reported** in the national budget; but they are estimated and recorded primarily as

- » departmental receipts for the Department of Mines and
- » as part of the overall tax revenue estimates for each tax category of the budget books prepared for each year for the national assembly

This data is provided in the budget books and the financial statements for vote 47/2/019. In the year 2013/14, the budget books showed revenue of **K 1.5 billion for the Vote 47/2/019**.

This **did not capture funds worth K 0.2 billion** related to mining and paid through wire transfers, that would however need to be reconciled for EITI.

The Standard requires that Government discloses **total** revenues received from the sector. This means that the MSG will need to find a way to achieve comprehensive understanding of revenues. The 1st MWEITI report is a good opportunity to improve on record-keeping. If government records are incomplete, MWEITI may require more time and effort to contact all companies holding licenses which require payments to get an overview of payments made.

Separate accounts and reporting is provided for:

Transportation: The Divestiture Proceeds Account is established by PPPC Act No. 27 of 2011, section 54. Reportedly no payments were received from the Moatize railway line, but they are to be expected for the 2nd MWEITI report.

Forest Development and Management Fund (FDMF) (Forestry Act, Part IX, sections 55 -62). The FDMF became operational in 2011. In 2014, the Department of Forestry was allocated K 900 million. The major expenditures for the FDMF are:

- i) Tree Planting and Management;
- ii) Contract work in government plantations;
- iii) Law enforcement;
- iv) Training of Forestry Assistants at Malawi College of Forestry and Wildlife.

Minerals

Unlike the FDMF for the forestry sector, there is **no specific allocation** for the revenues from the mining sector to the **Department of Mines**. The Department of Mines is funded through such revenues (departmental receipts); for the estimated allocation for operations of not more than K 0.15 billion in 2013/14, one could make the assumption it would leave the balance of around **K 1.6 billion that was allocated elsewhere**. This data is referenced in the Budget Document 4 'Approved Estimates of Expenditure on Recurrent and Capital Budget for the Financial Year 2013/14', including the guidelines linked to Budget Documents. In 2014/15, the gap in allocation for the Department of Mines was somewhat lower simply because of lower revenues as reported earlier on.

Oil and Gas

Oil and gas exploration licenses have some mandatory expenditure on **training** and **social contribution** but these are not captured in the national or sub-regional budgets. Sources of specification are in the Act and in the PSA. The minimum is K 14.0 million per block per annum for training and social contribution on the exploration license; and K 42.0 million for the same in the PSA. The national budget was not found to have codes for capturing these payments but there is evidence that some oil companies have made some of these payments. A bank statement for the Mines Department retrieved by the Consultants shows a payment of K 92.87 million from RAKGAS MB 45 (holder of Block 4 and 5) in April 2014. Pacific Oil (holder of Block 6) paid K 0.25 million in July 2013. These are the only two payments traceable from oil companies to the Mines Department Account for the last two Financial Years: between June 2013 and July 2015. RAKGAS MB 45 seems also to have transferred USD 35,000 to a Petroleum Training Account held at RBM. Neither independent confirmation nor tracking of money could be achieved by the study.

- » The **companies contacted did not appreciate the information requests**. And in one case the contact details of the license holder as filed with Government were **not even in effect**. No contact could be established by Government with the license holder at the point of writing this report.
- **In conclusion**, earmarked **allocation of government revenues** to specific activities or geographic region in the country **does not exist**. Government allows revenue generating departments to retain a proportion of the revenues collected not exceeding 60 percent.

- » **Stakeholders from civil society, private sector and regional state authorities** indicate to the Consultants a need to debate fiscal decentralization especially in the context of extractive industries.
 - » The 1st MWEITI Report could analyze the situation in more detail and lay the basis for decision-making regarding revenue management and expenditure.
- Based on the evidence provided, this Requirement can be met for the 1st MWEITI report, except for the oil sector.

2.7 | LICENSE REGISTERS AND LICENSE ALLOCATIONS (RQ 3.9 and 3.10)

In accordance with the EITI Requirement (RQ) 3.9 „The term **license** in this context refers to any license, lease, title, permit, or concession by which the government confers on a company(ies) or individual(s) rights to explore or exploit oil, gas and/or mineral resources“.

The Scoping Study identified **insufficient license management systems** plus **disjointed cross-institutional work flows**, especially in terms of license management / revenue collection (Lilongwe / Blantyre). The extent of the disjointedness indicates that a meaningful 1st MWEITI report cannot be produced if these issues are not addressed in time.

In 2009, Malawi started to switch **from a paper-based system to a digitalized Mining Cadaster Administration System (MCAS)** in the **web portal**: <http://malawi.revenuesystems.org/login/auth>.

All sectors relevant for MWEITI are covered in the MCAS. However, officials in Government stopped using this system in 2012 for oil licenses, and in 2013 for mineral licenses. Whereas the Department of Forestry recorded the last update in the system in July 2015, the Department of Forestry seems not to be using or having access to the system anymore, which may be explained by the absence of the key administrator. Nevertheless, the provider Revenue Development Foundation (RDF) supplied evidence that the system is working properly from a technical point of view.

- » According to a review done by the authors of this study the **MCAS allows in principal** (if implemented fully) for a complete license registry, referenced with Tax ID numbers, matching with revenue data for compliance and full disclosure on repository, including all license related payments.
- » Support has been requested under the [World Bank Mining Governance Project](#)³⁰ for a new system to be introduced. The project is currently being restructured to extend beyond its original closure date of 30th September 2016. Until the restructuring is complete, the project will not be able to procure items that extend beyond the initial closure date, which may delay the completion of certain key project activities, like the cadaster. Early indications are that full implementation to an operational stage of a new cadastral system is unlikely to be completed in time of the 1st MWEITI report

(April 2017). According to stakeholder views from Government and World Bank the new system will cover minerals only, while seeking compatibility (to the extent possible) with the other government cadastral systems such as those used for forestry and/or land titles etc.

- **All of the sectors have no up-do-date list of licenses** available and instead the lists had to be **produced by hand** for the minerals, oil and gas and forestry sector for the purpose of the Scoping Study.
- The **tax register at MRA shows 13 registered companies** for minerals, oil and gas, and forestry (quarrying companies are mostly listed of filed as construction companies and they are shown under that category).
- No comprehensive templates or checklists are available of **what should have been received / has been received** by government.

Minerals

The Department of Mines is operating on a **mixed paper and Excel-based system**, after the MCAS had been abandoned in expectation of a new system in 2013.

The Director of Mines (DoM) provided 2 guidelines about license award process:

- » [Guideline for Application of a Mining License](#)³¹
- » [Guideline for Application of an Exclusive Prospecting License](#)³²

The guidelines can be obtained at the DoM office by anyone seeking to apply for a license and in the document's section on www.mines.gov.mw.

An administrative arrangement has been made to put an inter-ministry mining license committee in place in order to accept and reject applications. The establishment of such a committee is foreseen in the amended draft Mines and Minerals Act 2015 (not yet in effect).

Oil and Gas

The Department of Mines started the license register with two licensees (see MCAS), but the process was disrupted by the Ministry of Natural Resources, Energy and Mining with the direct award of three more licenses for three blocks.

- » The Department was directed to stop, but as of October 2015 has received approval to resume.

Efforts are currently underway to access records kept by the Ministry on three additional licenses, and there is also updating of the earlier two issued by the Department itself.

- The Ministry has shown commitment to proceed in this way, but results are yet to be shown in terms of EITI compliance.

The Petroleum Act makes specific provisions about the applications and awarding of exploration and production licenses. In principle, documents of applications, tenders and decisions are kept at the Ministry of Natural Resources, Energy and Mining. Documentation of the bidding, awarding and transferring of licenses was disclosed partially to the Scoping Study. **Bid criteria** and a **list of applications** (RQ 3.10.b) were disclosed concerning one PSA awarding process. However, the **process** could only be reconstructed according to the recollection (registered by the Consultants on 4 December 2015) from one participant in the licensing process for the PSA of Block 5 awarded 12 May 2014:

- i) Advertisement in the local and international papers for Block Allocation.
- ii) Reception of Applications that include Block number, experience of applicant, Environmental Assessment Statement and Financial Statement.
- iii) Formation of Interministerial Task Force Team to act as Evaluation Team (Natural Resources, Energy and Mining, Finance, Economic Planning and Development, Trade and Industry, Lands and Agriculture).
- iv) Recommendation of award of block to Minister (including evaluation report).
- v) Seeking final approval from head of state to issue license.
- vi) Negotiation for PSA.
- vii) Award of License.

Forestry

The Department of Forestry started processing and issuing all timber export records (licenses and associated permits) through a Forestry Rights Administration System (FRAS)³³ by RDF in February 2015, which is now running separately from the former MCAS approach (see above). The system includes the management of royalty payments, conveyance certificates and firewood licenses at the largest plantation office, Viphya Plantation. However, it does not include licenses and revenues resulting out of these that are collected by other Plantation Offices.

Manuals and guidelines³⁴ are available on the Department's website, whereas information on licenses³⁵ is forthcoming.

- Based on the evidence provided, this Requirement can be met for the 1st MWEITI report, if concerted action is taken for all sectors.

2.8 | BENEFICIAL OWNERSHIP (RQ 3.11)

All stakeholders consulted want to make progress on Beneficial Ownership (BO). Given the introduction of the EITI in Malawi, the Ministry of Natural Resources, Energy and Mining, the Department of Justice and the Attorney General see no limitations to disclosure.

As part of the application for a **mineral right** (step 1 and step 2), the DoM receives information on the natural person who applies and the registration information of the company. However, publication (in an EITI report) is not automatic, and will need capacities both within the Department of Mines and the team of the Independent Administrator.

Information on Beneficial Ownership in the **oil sector** has to be provided where there is ownership of more than five percent shares (Petroleum Act, subsidiary legislation G.N. 48/1984, section 78). The Petroleum Act stipulates (Part II, 7 'Information not to be disclosed') that information in a report submitted, pursuant to the Regulations by a licensee shall not, for as long as the license has effect, be disclosed, except with the consent of the licensee. This applies certainly on any transaction not related to government operations. Any person who contravenes is guilty of an offence and liable on conviction to a fine of K 1,000 (approx. USD 1,40 USD) or to imprisonment for a term of two years, or to both.

The policies and practices regarding BO in the **Forestry** Department would need clarification in preparation of the 1st MWEITI report.

- Legal and practical obstacles may emerge in the oil sector – and depending on the depth of the BO information to be disclosed in the other sectors, too. The MSG could establish and maintain dialogue with the reporting entities and envisage an agreement first on goals and subsequently on a roadmap for disclosure.
- Based on the evidence provided, this Requirement can be met for the 1st MWEITI report, if further action is taken.

2.9 | DISCLOSURE OF CONTRACTS AND LICENSES (RQ 3.12)

Minerals

The Ministry of Natural Resources, Energy and Mining states that all licenses including the two Development Agreements are on open file at the DoM office.

Beyond practical limitations, the Mines and Minerals Act and Taxation Act offer restrictions that shall be investigated in a legal obstacles study according to the MWEITI work plan.

- » All minerals and forestry companies contacted are willing to disclose revenues and payments.

- » It is not known what other specific provisions are in the licenses / agreements with the licensees, as the Minister has discretionary powers to include some other negotiated conditions.

Oil and Gas

The Ministry of Natural Resources, Energy and Mining states that licenses for all six blocks are on open file at DoM office. One PSA could be retrieved by the study.

The Petroleum Act restricts disclosure without the approval of the license holders (see Beneficial Ownership section): Will the oil and gas licensees agree to certain disclosures out of good will, like the licensees in the minerals sector appear to do? It is not fully known what other specific provisions are in the licenses as the Minister has discretionary powers to include some other negotiated conditions.

The issuance of production licenses has created a legal dilemma: Government announced suspension and investigation in 2014.

- » Government would not be willing to publish something that is not in line with its public stance. Companies might also dispute information not in line with their lawful position.

Forestry

The [Forestry Rights Administration System \(FRAS\)](#)³⁶ allows transparency for export licenses and associated permits, however concession agreements are not included.

- Based on the evidence provided, this Requirement can be met for the 1st MWEITI report for minerals and forestry, if further action is taken.

3 | RECONCILIATION

3.1 | COMPANIES' PAYMENTS AND GOVERNMENT'S REVENUES (RQ 4.1)

According to Government files:

- » Taxes are the most important sources of domestic revenues averaging around 88 per cent of the total revenue (K446 billion in 2014).
- » Of the tax revenues, income taxes (companies and individuals) are highest; followed by value added taxes; and lastly, international trade taxes, with their relative shares varying from year to year.

The overall status of government revenue types and the estimated contribution from the mining companies is given in Table 1 below.

TABLE 1: REVENUE TYPES AND COMPANIES' PAYMENTS

Revenue type (RT)	FINANCIAL YEAR 2013/14				
	NATIONAL BUDGET		COMPANIES		
	Amount	<i>Share GR</i>	Amount	Share RT	<i>Share GR</i>
	(K' million)	%	(K' million)	%	%
Gross revenue (GR)	466,370		5,155		1.11
Gross revenue (GR) without PAYE	374,928		3,392		
Income tax (Cos, In-div, other)	183,707	39.4			
<i>Corporate tax</i>	47,698	10.2	965	2.0	0.21
<i>PAYE</i>	91,442	19.6	1,763	1.9	0.38
<i>Non-resident</i>	3,319	0.7	178	5.4	0.04
<i>Fringe benefit</i>	4,495	1.0	88	2	0.02
<i>Withholding tax</i>	33,715	7.2			
<i>Other</i>	3,036	0.7			
VAT	126,049	27.0	500	0.4	0.11
Excise duty	42,257	9.1			
Trade (customs) taxes	41,115	8.8			
Non-tax revenue	52,785	11.3			
<i>Departmental receipts</i>	10,668	2.3	1,750	16.4	0.38

Source: Annual Economic Report 2015; MRA audited financial statements; and authors calculations.

The estimated overall share of mining revenues in gross revenue is 1.11 percent, with the highest shares coming from corporate tax, PAYE and departmental receipts. The contribution of the companies to specific revenue types shows a similar trend with the exception of non-resident tax, where the contribution of the companies is much higher than all other types except departmental receipts. For the EITI report, it may be important to focus on revenue types where the contribution of the extractives is estimated to be high. For example, fringe benefit tax and non-resident tax constitute very small shares in gross revenue, which implies that the contribution of the extractive industry will be even smaller or not material.

The EITI Standard does not require the inclusion of PAYE as it is a payment made by the company on behalf of individual employees. Thus Table 1 shows the figure of total government revenue from the sector excluding PAYE. Some countries in the Southern African region e.g. Mozambique, however, do include it in EITI reporting.

- » The Consultants consider PAYE a **suitable indicator for the economic value of labor** in the Malawian extractives industry.

The **mining revenues recorded by the Department of Mines** (i.e. royalties, ground rent, license fees) fell from around K 1.7 billion in 2014 to K 0.55 billion in 2015. The difference is almost fully attributable to the contribution of the uranium mine of around K 1.3 billion. Those figures are based on annual bank statements for the Mines Department Account produced by the Reserve Bank of Malawi (RBM).

- » For 2014/2015 the cash books at the Department of Mines (covering specifically royalty, ground rent, license fees) show **aggregate revenue of K 600 million**.
- » Civil Society stakeholders expressed views that this sum is **hugely under collected**. Citizens for Justice (CFJ) estimates the actual sum to be collected as high as K 5 billion.

Construction companies have substantial interests in the production of **rock aggregates** but their revenues from resource extraction are not accounted for separately from their main business. This would create problems for overall revenue payments reporting especially on taxes: corporate, PAYE, VAT, etc.

The Annual Economic Report 2015 (p. 36) offers the table 3.13: revenue collected by the Department of **Forestry**. It gives an overview. But for EITI reconciliation first-hand access to primary data would be needed, which could not be achieved by this study despite considerable and sustained efforts.

- Based on the evidence provided, this Requirement can be met for the 1st MWEITI report for minerals and forestry, if access to data is supported and safeguarded by the MSG.

3.2 | REVENUES STREAMS (RQ 4.1b)

In accordance with the EITI requirement 4.1 b) and subject to discussion in the MSG, materiality for a minimum of three tax revenue types and three non-tax revenue types from minerals, oil and gas, and forestry can form the scope of the 1st MWEITI report:

- 1 Profit (corporate) tax
 - 2 PAYE
 - 3 VAT
 - 4 Non-tax revenues: royalty, ground rental, and concession fees (rail transport)
 - 5 The RQ envisages other revenue types like the host government's production entitlement (such as profit oil); national state-owned company production entitlement; dividends; and bonuses, such as signature, discovery and production bonuses. These revenue types do not exist at the moment. Except for:
 - i) **Signature bonuses** as stated in the PSA of the oil and gas sector amounting to USD 100,000. No independent verification of whether signature bonuses should have been paid or actually have been paid could be achieved at the point of writing this report.
 - ii) Government owns a **15 percent stake** in the uranium mine (Paladin Energy) but there have been no dividends paid to date because of losses, which have been projected to continue into the foreseeable future.
 - iii) Government owns a **10 percent stake** in the Nyala Mines, but no payments could be attributed.
- The 1st MWEITI report could seek clarification on 5 i) and 5 iii). Based on the evidence provided, this Requirement can be met for the 1st MWEITI report.

TABLE 2: MAIN PAYMENT TYPES AND RECOMMENDATIONS FOR INCLUSION (COVERING OPTIONS 1 – 4, SEE FIGURE 1)

Payment type	State reporting entity	Number of Private Sector reporting entities (estimated)	Revenues in FY 2013/14 (estimated in K'million) and percent of GR	Inclusion in context section	Inclusion in reconciliation section	<ul style="list-style-type: none"> - If inclusion: action required by entity to overcome possible bottlenecks before 1st MWEITI report - If no inclusion, reason stated
Corporate tax	MRA	12	965 (0.21% GR)	yes	yes	Accuracy in capturing correct amount (time period and paid amount in relation to provisional and withholding taxes) needs to improve through hands on training using two dedicated MRA staff. MWEITI Secretariat to have those names.
VAT	MRA	12	500 (0.11% GR)	yes	yes	Accuracy in capturing relevant 12-month time period. Supervision required.
Excise duty	MRA	N/A	Not reported	No	No	More time needed to estimate per company, different system from others at MRA, but likely insignificant revenue source as the national contribution to GR for all companies is at 9 %.
Import duty	MRA	N/A	Not reported	No	No	More time needed to estimate per company, different system from others at MRA, but likely insignificant revenue source as the national contribution to GR for all companies is at 9 %.
PAYE	MRA	12	1,763	Yes	Yes	Accuracy in capturing relevant 12-month time period. Supervision required
Royalty (mining)	Department of Mines + Regional Offices	20+	1,438	Yes	Yes	Inclusion of wire transfer payments and improved debt collection required. Regular reconciliation of cashbook and bank statements needed. Commissioner and Accountant at Mines to take action.

Payment type	State reporting entity	Number of Private Sector reporting entities (estimated)	Revenues in FY 2013/14 (estimated in K'million) and percent of GR	Inclusion in context section	Inclusion in reconciliation section	<ul style="list-style-type: none"> - If inclusion: action required by entity to overcome possible bottlenecks before 1st MWEITI report - If no inclusion, reason stated
Ground rent	Department of Mines + Regional Offices	20+	118	Yes	Yes	Inclusion of wire transfer payments and improved debt collection required. Regular reconciliation of cashbook and bank statements needed. Commissioner and Accountant at Mines to take action.
Ground rent for oil and gas	Department of Mines	3	18	Yes	No	Block 4 (area 11295 SQ KM x K500), Block 5 (area 17261 SQ KM x K500), Block 6 (area 8448 SQ KM x K500).
Signature Bonus for oil and gas	Department of Mines	2	120	Yes	No	PSA for Block 4 and Block 5.
Export permit	Department of Mines + Regional Offices	20+	0.00	Yes	No	Insignificant source of revenue but good indicator of trading activity
Mining license (ML) fee	Department of Mines + Regional Offices	58	5.8	Yes	No	Insignificant source of revenue but good indicator of mining activity and potential

Payment type	State reporting entity	Number of Private Sector reporting entities (estimated)	Revenues in FY 2013/14 (estimated in K'million) and percent of GR	Inclusion in context section	Inclusion in reconciliation section	<ul style="list-style-type: none"> - If inclusion: action required by entity to overcome possible bottlenecks before 1st MWEITI report - If no inclusion, reason stated
Exclusive Prospecting License (EPL) fee	Department of Mines + Regional Offices	74	3.7	Yes	No	Insignificant source of revenue but good indicator of mining activity and potential
Reconnaissance License (RL) fee	Department of Mines + Regional Offices	4	0.4	Yes	No	Insignificant source of revenue but good indicator of mining activity and potential
Small Scale License fees (NEPL, MCL, RML)		350+	1,1	Yes	No	Insignificant source of revenue but good indicator of mining activity and potential
Explosives license	Department of Mines + Regional Offices	20+	(0.00% GR)	No	No	Insignificant source of revenue
Stamp duty	Registrar General	N/A	0.00	No	No	None of the companies involved registered in 2013/14. One-off payment at registration and insignificant source of revenue
Fringe benefits tax	MRA	0	88 (0.02% GR)	No	No	Insignificant source of revenue, in the region on non-resident tax below

Payment type	State reporting entity	Number of Private Sector reporting entities (estimated)	Revenues in FY 2013/14 (estimated in K'million) and percent of GR	Inclusion in context section	Inclusion in reconciliation section	<ul style="list-style-type: none"> - If inclusion: action required by entity to overcome possible bottlenecks before 1st MWEITI report - If no inclusion, reason stated
Non-resident tax	MRA	12	178 (0.04% GR)	Yes	No	Insignificant source of revenue but good indicator of usage of foreign labor. A reflection of local skills gaps that may be addressed through training.
Concession fees	PPPC	1	300++ (>0.06% GR)	Yes	Yes	Significant individual source of earmarked revenue.
Royalty (forestry)	Forestry Department	1	457.7 (0.10% GR)	Yes	Yes	Significant individual source of revenue, for general allocation.

3.3 | STATE'S SHARE OF PRODUCTION OR OTHER REVENUES COLLECTED IN-KIND (RQ 4.1.c)

Government does not own any extractive company where evidence was found that state has received revenues in the time period FY 2010 – FY 2015.

- i) Government is entitled to 15 percent of the issued capital of Paladin Africa (wholly owned subsidiary of Paladin Energy Minerals NL) on the **Kayelekera uranium mine** as regulated in the respective DA.
 - ii) Government has a 10 percent share in the **Nyala Mines** (Columbia Gem House) as regulated in the respective DA, whereas a payment might possibly be attributed to this RQ. The largest recorded payment has been outside the reference period, K 4.9 million, early the FY 2015/16, but records show no specification what it is for.
 - iii) **Production sharing and in-kind contributions** of significant value are anticipated in connection with the **oil and gas blocks** awarded in Malawi, but companies are yet to make such payments.
- The 1st or 2nd MWEITI report could seek clarification on ii). Based on the evidence provided, this Requirement can be met for the 1st MWEITI report.

3.4 | INFRASTRUCTURE PROVISIONS AND OTHER BAR-TER ARRANGEMENTS (RQ 4.1.d)

None have been brought to the attention of the study.

3.5 | MANDATORY AND VOLUNTARY SOCIAL EXPENDITURES (RQ 4.1.e)

Mandatory

Licenses for **oil and gas** have the highest mandatory amounts for social expenditure (**training and social contribution**), at a minimum of K14.0 million per block per year and a maximum of K42.0 million for PSAs.

The license of **Nyala Mines** entails a mandatory amount of USD 20.000 per year for a local **health clinic**. One-off contributions were made in the past and thus are beyond the designated EITI reporting period of 2014/15.

Voluntary

The most significant voluntary expenditure has been noted in connection with Paladin Energy which spent USD 11.0 million on **water treatment** works in Karonga for the people of the town.

This study has not come across voluntary payments associated with training and social contribution from the oil companies.

3.6 | TRANSPORTATION PAYMENTS (RQ 4.1.f)

The concession for the Moatize Coal Railway link provides for annual fees of 4 percent gross turnover of the concessionaire on product (coal) transportation over the concessionaire's railway section. The payments are meant to be collected by the PPPC. They are earmarked (i.e. they do not go to Account No 1) for government contribution towards railway services maintenance and improvement of the old railway network for transportation of general goods. Services are also run by a concessionaire. However, at the time of the study, PPPC could not provide a record of the contractual agreement between Government and the Concessionaire (infrastructure manager) for the rail link for transportation of coal. This implies that PPPC is not in the position to collect the anticipated revenues unless they have a copy of the agreement and they put in place mechanisms for such payments.

- » No payments to date on this since it is not yet running. But even if it were running, there would be no payments collected until government provided PPPC with the agreement with the concessionaire and are given specific instructions to begin collection.
- » According to Government payments are expected in 2015/2016 FY, thus this RQ will apply for the 2nd MWEITI report.

3.7 | MATERIALITY THRESHOLDS FOR COMPANY DISCLOSURE IF APPROPRIATE (RQ 4.1)

Government records produce a relatively small number of 15 mining companies from the minerals sector, including companies with the core business of quarrying. The MRA estimated that while record keeping is going to improve after the start of MWEITI, there are of about 25 companies to fall under the designated scope of the 1st MWEITI report. However, targeting just these reporting entities and reported revenue types might miss the point of RQ 4.1, as many more production licenses have been handed out (see, key features of the sector). Of those 15 companies:

- » In total 2 companies are reported to have paid Corporate Tax.
- » In total 7 companies have paid royalties amounting to K 1,419.7 million, whereas 95 percent of Malawi's recorded royalties have been paid by one company (Paladin Africa) for the yellowcake of Kayelekera Uranium Mine. However, the production has been suspended for commercial reasons until further notice.

TABLE 3: PROJECT-LEVEL PAYMENTS BY MINERALS COMPANIES

Minerals	Payments: 2013/14 Financial year (K'million)					
	Corpo- rate tax	VAT	PAYE	Non Res	Royalty	Ground rent
Cement Products Ltd	-	138.9	21.5	-	0	0
Kaziwiziwi Coal Mine	-	13.9	-	-	2.5	0
Mchenga Coal Mine	-	41.5	11.2	-	7.2	0
Malcoal	-	-	-	-	0	0.6
Mean Jalawe Coal Mine	-	1.3	-	-	0	0
Mota Engil					1.9	0.2
Nyala Mines					0	0
Eland Coal Co	-	-	-	-	2.5	-
Globe Metals and Mining	-	-	9.7	-	-	2.0
Paladin Africa	-	-	1,521.6	37.9	1353.7	-
Lynas Africa	-	0.4	2.2	-	-	-
LaFarge Cement Ltd	963.7	104.1	167.7	110.2	-	-
Shayona Cement Co	-	195.0	27.4	29.6	0.2	-
Terrastone					49.3	6.4
Zunguziwa Quarry	1.4	4.6	1.5	-	2.4	-
Total	965.1	499.6	1,763.0	177.6	1419.7	9.2

Source: MRA and Cash Control Books of Department of Mines.

Explanation:

- » "0" means no payments according to the Department of Mines' cash book in the stated time period.
- » "-" means data could not be retrieved and conclusions could not be drawn beyond doubt from the available sources (Domestic Tax Division at MRA, RBM).

If the **four largest coal mines** (Kaziwiziwi, Mchenga, Malcoal and Eland) are subject to reconciliation, about **95 percent of Malawi's coal production** is to be covered by EITI.

Some **construction companies** engaged in **quarrying**, pay more royalty than most of the mining companies listed. For example, Terrastone Ltd paid about K 49 million. Thus, quarrying should not be omitted. The production of rock aggregates declined in 2014 which is, according to the AER, due to the slowdown of economic activities in the country including construction and rehabilitation of roads and a number of infrastructures. In 2015, there were prospects that the production will pick up as the economy is stabilizing. There are more than 20 operating quarries for production of rock aggregate both at commercial and project level. Out of these, **six** are **commercial quarries** and the rest are project quarries.

The challenge for EITI in including **licenses and ground rent** is that these are often paid in arrears, up to two or three years, with some years recording nothing. This will allow for reconciliation, but sound assessments would be needed to explain data as EITI reports will be done on an annual basis. EITI could be used to change the current practice of arrears.

Regarding the **oil sector**, the study identified in interviews and documents and subsequently validated in the consultation workshop (12/2015) the following status quo:

TABLE 4: LIST OF OIL AND GAS COMPANIES BLOCKS 1-6

Oil and Gas	Block	Date of issue	License type
SacOil Holdings Limited	1	December 12, 2012	Prospecting
Hamra Oil in Joint Operating Agreement with Surestream Petroleum	2	September 22, 2011	Prospecting
Hamra Oil in Joint Operating Agreement with Surestream Petroleum	3	September 22, 2011	Prospecting
RAKGAS MB45	4	PSA awarded May 12, 2014	Production Sharing
RAKGAS MB45	5	PSA awarded May 12, 2014	Production Sharing
Pacific Oil Limited	6	PSA awarded May 12, 2014	Production Sharing

Source: Ministry of Natural Resources, Energy and Mining (as of October 28, 2015), Attorney General, Third Party Sources.

According to Government, **all licenses and PSA are suspended and under investigation** since November 2014. Five blocks have been acquired by clearly related parties (beneficial owners) which is not lawful as it exceeds the legal maximum of two contiguous blocks.

It has been possible to **identify records of payments for all four licensed oil and gas companies**. However, records are **incomplete and not comparable** in terms of amounts or reference period covered by the payment.

TABLE 5: PAYMENTS BY OIL AND GAS COMPANIES

Oil and Gas	Payments (K'million)			Comments
	2013/14	2014/15	Payment day	
Hamra Oil in Joint Operating Agreement with Surestream Petroleum		10.21	02/2015	Ground rent
Pacific Oil Limited	0.25		07/2013	Application license fee
RAKGAS MB45	136.39		04/2014	No GR
SacOil Holdings Limited		14.08	12/2014	No GR

Source: Cash control books at the Department of Mines.

Reconciliation will be challenging, and without voluntary commitment of the companies not feasible:

- » The 'Chart of Accounts' at Ministry of Finance, Economic Planning and Development's **Accountant General** as a matter of principle does not specify the type of payment. The Consultants checked the 'Chart of Accounts' from 1 July 2013 until 30 June 2015 (2 FY). Only one payment relating to the oil sector was recorded. Deducing from the amount found it concerns an application fee for exploration license (Block 6).
- » The **RBM account for the Department of Mines** in the time period from 1 June 2013 until 30 November 2015 (2 FY plus 5 months) shows only two payments from the oil sector (see the ones indicated with "no GR" in Table 5). These two wire payments are likely to be related to Block 4 or Block 5, as they correspond to respective commercial bank statements, that were retrieved by the Consultants. However, one of these includes an aggregate sum of several license related payments (possibly e.g. signature bonus, ground rent, application fee) to the amount of USD 235,700 which cannot be attributed without doubt to the legal payment obligation. It can thus be established that some, but not all of the amounts due have been paid.
- » The RBM account for the Department of Mines shows as a regular means of payment '**mail transfer**'. This, however, cannot be traced except for the sum received, as it does not indicate the source of payment or reference.

These are the only payments this study could identify (given full access to the Department's and RBM's books). Quite obviously a **number of questions** had to be raised by the Consultants, but the facts could not be clarified through the companies or through the Government at this point in time. Thus if the petroleum sector falls in the scope of the MWEITI reporting, the MSG might consider continuing to seek clarification of the following questions:

- » What did RAKGAS MB45 pay for?

- » Training fees of K 7.0 million and social contribution of K 7.0 million per year are due on each block with exploration licenses (K 21.0 million each for PSA); where are the payments or records of payments?
- » It is noteworthy that two payments from companies were made after the suspension of licenses in November 2014. Does this show that the license suspensions were not agreeable from the perspective of the oil companies and what has resulted from these payments?

Given this situation, **no meaningful progress** in reporting payments of oil and gas companies can be made **without resolving the license suspensions**. The case of Block 1 – SacOil Holdings – may be explored further on its own. However, the merits of following an isolated case for EITI reporting may not hold much meaning for the sector.

The situation in the **forestry** sector mirrors that in minerals: There are many licensed companies, a few registered with the tax authorities, and much fewer submitting financial returns. Both sectors have a host of companies whose core business is not in the particular sector; construction companies in the case of mining, and tobacco processing companies present in forestry.

TABLE 6: PAYMENTS BY FORESTRY COMPANIES

Forestry	Payments: 2013/14 Financial Year (K'million)						TPIN
	Corporate tax	VAT	PAYE	Non-Res	With-holding Tax	Gross Revenue	
Raiply (EPZ) Ltd		0	14.31	0	4.69	1,482.00	2017972 8
Raiply Malawi Limited	105.56	306.67	149.05	0	21.99	6,201.00	2015445 7
Uchizi Investments	0.23					16.00	3089765 9
Vizara Eco Timbers Ltd	16.36	1.54	19.08	0	2.86	-	2017602 1
Vizara Plantations Limited	56.37	8.20	47.71	27.30	75.70	2,955.00	2013838 6
TOTAL	178.52	316.41	230.15	27.30	105.24	10,654.00	
Non-core forest business							
Alliance One Tobacco	360.62		1,151.05	9.67	412.46		0102208

Association of Jehovas Witness			2.53				20179489
JTI Leaf Malawi Ltd		33.26	53.92	31.10	86.65		20180361
PEZ General Dealers			0.05				30245353
PLEM Construction Limited		16.47	72.01	0	23.09		20155950
SR Nicholas Ltd	21.70	1,177.75	102.48	0	34.99		20116887
Transglobe Produce Export	17.94	0	27.25	0	5.09		20128783

Source: MRA and Department of Forestry.

Only five companies may be considered for EITI reporting in the forestry sector. In terms of thresholds and Beneficial Ownership, maybe only two of them can be of consequence: Raiply and Vizara. Vizara, however, is primarily focused on the extraction of tree-based fluids for rubber production and not in logging or timber production. At this point of the scoping exercise, there is only one company eligible for project-level reconciliation: Raiply. This proposal is based on tax-based revenue types. Departmental receipts (licenses, royalties, etc.) are not taken into account because data provided for this study was neither comprehensive nor representative.

There is a need to gain access to more comprehensive data in order to decide on the merits for contextual reporting on the forestry sector.

- » **Forestry seems much smaller than the mining sector.** Estimated gross turnover is close to K 11 billion compared to K 87 billion (around K 40 billion without Paladin Africa), and contracting given the unsustainable way of deforestation over the years.
- » Stakeholders outside the Department observed that the FRAS does not capture all revenues, and that the **Forestry Development Management Fund (FDMF)** records are expected to add to comprehensiveness of the 1st MWEITI report.

Definitions for Materiality Thresholds

- **In conclusion**, based on data made available to the Scoping Study, the interviews and discussion in the consultation workshop (12/2015), the following definitions to cover “all material payments and revenues” (EITI Standard) could be considered by the MSG for the 1st MWEITI report:
 - » In the **minerals** sector:
 - Threshold of K10 million can be applied for the payment type: Corporate Tax, PAYE and VAT

- Threshold of K1 million for the payment type: Non-Resident Tax, Royalty, Ground Rent Fee.
- **Piloting reconciliation of license fees:** If license fees are to be included this would require a zero threshold. But in order to keep cost-benefit in balance this could be done not country-wide and institutions-wide, but in the form of a system-check of some license types (e.g. RML, ML) in selected districts (e.g. 3 out of 28 districts).
- » The **oil and gas sector** has material payments, but most are outside the reporting period 2014/15. Furthermore, prospects for reconciliation cannot be assessed due to issues regarding the suspension and a possible lack of voluntary commitment to engage with EITI (i.e. no reconciliation in the 1st MWEITI report).
- » In the **forestry sector, thresholds similar to those in the minerals sector** could be applied. However only one company (Raiply) seems to be eligible for a comprehensive and meaningful reconciliation exercise, which would however not represent the sector adequately (i.e. no reconciliation in the 1st MWEITI report).

The Consultants wish to express reservations that the picture might change, when more comprehensive information will be forthcoming and/or payments made in 2014/15/16 differ from those that have been taken as a basis for this study from FY 2013/14. This applies predominantly for forestry, but also for the minerals sector, in which one of the two companies operating under a Development Agreement is active in production and exportations for years, but has not been recorded as making material payments.

4 | REPORTING ENTITIES

4.1 | PRELIMINARY LIST OF THE COMPANIES THAT MAKE MATERIAL PAYMENTS AND SHOULD BE COVERED IN THE EITI REPORT (RQ 4.2.a)

The list of companies from governmental revenue systems include:

- » Company's Tax Payer Identification Number
- » Sector and phase of operation, i.e. exploration, production, oil, gas, mining etc.
- » Type of license(s) held and the license number(s).

TABLE 7: PRELIMINARY LIST OF COMPANIES: MINERALS

Mining	Tpin	Sector	Phase	Li- cense type	License No
Zunguziwa Quarry	20182945	Rock aggregate	Production	ML	MLO207
Mchenga Coal Mine	20136744	Coal	Production	ML	MLO164R
Malcoal	20200870	Coal	Production	ML	MLO143
Kaziwiziwi Coal Mine	20167690	Coal	Production	ML	ML0118R
Mean Jalawe Coal Mine	20172186	Coal	Production	ML	MLO135R
Eland Coal Co	20178655	Coal	Production	ML	MLO152
Globe Metals and Mining	20188208	Niobium, Tantalum, Uranium	Exploration	EPL	EPL0289R EPL0421
Paladin Africa	20170867	Uranium	Production Exploration	ML EPL	MLO152 EPL0225R2 EPL0417 EPL0418
Lynas Africa	20179364	Rare earth	Production	ML	ML0122
LaFarge Cement Ltd	20108793	Limestone	Production	ML	MLO200
Cement Products Ltd	20189264	Limestone	Production	ML	MLO180
Shayona Cement Co	20150059	Limestone	Production	ML	MLO142 MLO130R

At a minimum it can be expected that these 12 license holders will fall under the scope of the 1st EITI report. They provide:

- » audited financial information and
- » registration with the tax authorities.

No information came to the attention of the Consultants that these 12 companies are not ready or willing to report under MWEITI.

4.2 | PRELIMINARY LIST OF GOVERNMENT ENTITIES THAT RECEIVE PAYMENTS AND SHOULD BE REQUIRED TO REPORT (RQ 4.2.b)

Three institutions need to report (see below i-iii), in case the MSG decides for a **broad scope including minerals, oil and gas and forestry**. In case of a **narrow scope on minerals** this would require **only two institutions** (see below i-ii):

- iv) Malawi Revenue Authority**
- v) Ministry of Natural Resources, Energy and Mining – Department of Mines**
- vi) Ministry of Natural Resources, Energy and Mining – Department of Forestry**

Once revenues accrue from the Moatize railway this will be one of the largest sources of revenue in the extractive sector, and EITI Requirement 4.1.f) will require the **Public-Private Partnership Commission (PPPC)** to disclose the revenues received.

Further institutions such as **Reserve Bank of Malawi (RBM)** and **National Audit Office (NAO)** will need to be involved in order to contribute and consolidate data from government systems for a comprehensive and reliable EITI report.

There are **no sub-national government entities** that receive direct or indirect revenues from the extractive sector, **except for license fees** and on ad-hoc basis for emergency challenges (e.g. floods) and social responsibility.

General observation about the process of collection of non-tax revenues (e.g. license fees):

There are **three offices to receive payments**: North, South, and Centre (headquarters). Payments, after collection, are deposited directly with RBM (in a Mines Department holding account) by the offices in the Centre and the South, but the office in the North deposits to a commercial bank which transfers the money to the Department's account at RBM. RBM periodically, at the request of Accountant General, transfers the money into Account No. 1. Statements on the Department's account are sent to the **Accountant General**.

According to Accountant General **three modes of payment** are used:

- » cash (<1 percent),
- » cheque (<70 percent) and

- » wire transfers (>29 percent).

Cash and cheques enter through the Departments pay points, but wire transfers come **through commercial banks straight to RBM**. There have been occasions when cheques have bounced and were sent back to the Department, but such occasions are not common. The Departments cash control book return does not often include wire transfer payments, and as such it understates payments received. For the FY 2013/14, the **understatement** may have been **close to 12 percent**.

The Department's money flows to its RBM account can be mis-posted to other existing accounts and vice versa but there is **no way for rectifying such mistakes** as there was no evidence of reconciliation of the account at RBM. RBM confirmed the existence of such cases but believes that this time they are much lower as they were associated with the early days for the Automatic Transfer Service (ATS) between commercial banks and the central bank itself.

There seems to be **accuracy in recording company receipts** in the **Department of Mines' cash control book** (an Excel-based book), as the Consultants could trace some of the payments all the way from payment records into Account No 1, but there is **very high likelihood of under collection**.

The **royalty** declared in audited accounts for two coal mining companies was not equal to the record in the Department's cashbook: **less than 15 percent** was verified by receipt. The Department of Mines admitted to reminding one of the companies about the correct level of royalty payment expected but **efforts to collect it have proved futile to date**.

- The existing situation implies that it is **not possible to reconcile all payments** by individuals or companies to what is received by government; there will be **considerable discrepancies** largely due to payments through **wire transfers**. The main instrument for reconciliation are government receipts but these are not being issued for most of the wire transfer payments unless the payer specifically follows up with the Mines Department. The money is not necessarily lost, as it arrives at the RBM and is part of the proceeds transferred into Account No 1, but it cannot be ascertained what the payment is for and who has paid it unless there is further follow up to the source or origin of the transaction. That is not being done at the moment.

General observations about the process of tax collection:

IMF and EITI are jointly developing an **extractives-specific Government Finance Statistics (GFS) coding** which can be helpful for classifying revenues from the sector. Money collected by MRA (not directly but through agents, mainly commercial banks and 22 agents spread in different parts of the country) is recorded with receipts for the tax payment, with codes and name for the tax type, issued by agent. But for payments by wire transfer receipts are issued by MRA.

Everyday returns are sent to **MRA** and **uploaded semi-electronically**, into a tax system. Using tax pin identification numbers, each company tax payment account is automatically updated for every type of tax it has paid: VAT, PAYE, withholding tax, provisional tax, etc.

Agents keep collected revenue for maximum three days (in an MRA holding account) before transfer to an MRA holding account at RBM.

All transfers to the MRA **Holding Account at RBM** are **routed automatically to MRA** who are part of the automated transfer system between commercial banks and RBM.

Using companies' receipts of tax payments, MRA was in the position to provide the documentation (bank statements) normally used for reconciliation from payment stage up to the holding account at RBM. Thus it can be established for EITI reporting that MRA reconciles its cash control books with banks at three stages:

- i) payments to the agents,
- ii) transferring to RBM, and
- iii) at the RBM Withholding Account before transferring to Account No 1.

RBM transfers to Account No 1 once a month, after **MRA confirms the collected amounts**. The **cash reconciliations** help to resolve mis-postings (both debits and credits) at all stages and also identify the wire transfer payments. **Occasionally commercial banks transfer into MRA holding account at RBM** money belonging to other government accounts, or vice-versa.

- » **This has to be corrected for comprehensive EITI reporting.**

Ideally, government departments like the Department of Mines are supposed to do reconciliations, but **capacity problems** may be limiting such performance in the **accounting function**. The **anticipated automated license and royalty payment system** will help with the linkages between technical (licensing functions) and payments but may not sort out the need for reconciliation functions at the banking system level for the mining revenues.

All amounts of taxes paid by a company can be easily provided by period, total amount and type but the **challenge is with Corporate tax**. Corporate tax has elements of provisional and withholding tax which are coded separately. These have to be reconciled with tax assessment returns for each year before the correct figure can be established. If the company's corporate tax account is in debit, it cannot be said that the most recent corporate tax has been paid; if it is in credit, one has to consult the tax assessment report manually in the files to establish the amount of corporate tax paid.

- The challenges for MRA under EITI are the **prevalence of separate tax system components** that have to be linked semi-automatically or manually; and out-of-dated consolidated tax system that cannot easily show 'corporate tax paid'.

5 | DATA QUALITY

5.1 | AUDIT AND ASSURANCE PROCEDURES IN COMPANIES AND GOVERNMENT ENTITIES (RQ 5.2 b)

The **National Audit Office (NAO)** has the mandate to examine all transactions, books and accounts of Ministries, Departments and all other institutions that receive public funds. NAO subscribes to international public sector auditing standards. Under the Public Audit Act, the Auditor General (the head of NAO) is responsible for drawing up a program of audit, and on occasions can respond to requests to carry out audits outside the normal program and that is usually at the cost of the requesting institution. The program of audit for government accounts can lag behind, more likely in the current years of budget austerity, to the extent that some government departments may not have audited accounts for over a number of years. The challenge is that NAO does not have specialized capacity for auditing transactions involving the mining industry or the oil and gas sector.

All 15 companies on the proposed list for EITI reporting have their own auditors appointed from private practice and who subscribe to international accounting and auditing standards.

While on the government side and in public institutions the **accounting year is uniform, such is not the case with the private sector**. The most common private sector accounting year ends are in December, April or June - judging from audited accounts submitted to MRA.

- » **Differing Financial Years** may raise problems for the reconciliation process especially for revenue types like corporate taxes. It is unlikely that companies can adjust their financial reporting periods voluntarily for the sake of EITI reporting, especially in the near future.
- » However, given that **transactions with companies are recorded on a daily basis**, it may be possible to query government books, especially cashbooks, for statements on receipts/payments for a particular revenue type that can correspond to each company's financial reporting year.

A particular case is the oil and gas sector. The Consultants found a blurred picture in practicing responsibilities if not confusion between the Ministry of Natural Resources, Energy and Mining and the Department of Mines on the management of licenses and related payments. A search through the Department's cash control book shows sporadic payments from a few of the oil companies, and no budget codes seem to have been established for these.

- » **All license holders have paid application fees.**
- » Annual charges like **ground rent are being paid by some.**
- » **No findings** were made regarding other mandatory payments like **training fees and social contribution.**

The Department of Mines has started liaising with the Ministry about this, as responsibilities were clarified at the end of the first joint MWEITI scoping mission on October 29, 2015. Once

records are gathered and analysis done by government, the feasibility of including the oil and gas sector should become clearer – the legal issues arising from suspension set aside.

5.2 | PROPOSED ASSURANCES TO BE PROVIDED BY REPORTING ENTITIES TO THE IA (RQ 5.2 c)

The revenue types proposed for EITI reporting are paid on a regular basis, being mostly monthly (e.g. PAYE, VAT, royalty) or quarterly (e.g. corporate tax). Licenses are regular on a longer basis – annually or once in several years. **Companies**, judging from the consultations carried out for the study, **are keeping records of every transaction and report**. It is not clear whether at such detail it can be subjected to specific auditing, given that the private auditor (for purposes of auditing financial statements) operates on the principle of sampling and materiality and as such may not examine every payment transaction.

In the circumstances, the EITI standard recommends three approaches to provide assurances about the quality of information provided:

- i) That a senior company or government official from each reporting entity signs off on the completed reporting form as a complete and accurate record.
- ii) That the companies attach a confirmation letter from their external auditor, produced as part of their normal auditing program, confirming that the information submitted is in line with their audited financial statements.
- iii) Where relevant and practicable, government reporting entities may be requested to obtain a certification of the accuracy of the government's disclosures from their external auditor or equivalent.

The Consultants did not receive any information that would indicate that at least the **signing by senior officials accompanied with willingness for verification** cannot be done with the 15 companies.

6 | BARRIERS TO IMPLEMENTATION

6.1 | LEGAL, REGULATORY, ADMINISTRATIVE OR PRACTICAL BARRIERS TO COMPREHENSIVE DISCLOSURE

The Scoping Study comes to the following **key summary assessment** of the **legal, administrative or practical barriers** for the 1st MWEITI report.

- » The list of barriers does not include those that are already addressed in the **MSG work plan 2015-2017**. In case the outputs of the work plan are not achieved within the given deadlines, more barriers are likely to emerge.

TABLE 8: LEGAL, ADMINISTRATIVE OR PRACTICAL BARRIERS FOR THE 1ST MWEITI REPORT

Barriers	Comments
Legal	<p><i>Minerals, Forestry:</i> No substantial legal barriers to comprehensive disclosure regarding the mandatory clauses of the EITI Standard were brought to the attention of the Consultants, however companies might opt to reject participation. All minerals and forestry companies contacted were willing to participate.</p> <p><i>Oil and gas:</i> Provisions have been identified in licenses that no information can be disclosed without the prior approval of the company in question. Furthermore, legal interpretation differs on the issue of the award and suspension of licenses (after 11/2014) and is likely to prevent comprehensive disclosure unless those issues are solved by both parties.</p>
Administrative	<p>All sectors:</p> <ul style="list-style-type: none"> i) Disjointedness of Government reporting systems ii) Systems were not configured for these emerging EITI needs, thus collection of most revenue types from the current reporting systems, even if done electronically, will require extensive effort for the staff and IA. iii) Lack of modern institutional archival systems for contracts (in particular for the oil sector) and general record and receipts keeping iv) Hybrid and error-prone constructs of cadaster systems (i.e. paper/excel/digitalized versions and not integrated work flows across departments)
Practical	<p>All sectors:</p>

- i) Contact details of some license holders are not up-to-date or not effective
- ii) Commitment to dialogue and voluntary participation ranges from companies holding MSG membership to companies actively rejecting information exchange. It is unclear how many of the 12 (or eventually 25) reporting entities, if a core scope approach of option 1, is followed will engage themselves voluntarily.
- iii) Capacity: While individual staff assigned to the study showed interest and commitment, it was not possible to have their constant availability. If this is the case during the production of the MWEITI report, the exercise might not fulfill the tasks.

6.2 | RECOMMENDATIONS FOR ADDRESSING THESE BARRIERS

TABLE 9: RECOMMENDATIONS FOR ADDRESSING BARRIERS OUTLINES IN CHAPTER 6.1

Barriers	Recommendation	When
Legal	<p><i>Minerals, Forestry:</i> MSG shall seek to confirm and broaden the voluntary commitment of companies, applying the tool of confidentiality waivers when collecting data for EITI reports.</p> <p><i>Oil and gas:</i> Unless the issue of the award and suspension of licenses is resolved, no comprehensive reconciliation is feasible. A new legal framework cannot help because it cannot be enforced retrospectively. It is difficult to propose a timeframe.</p> <p>In-depth reporting in the context chapter is possible.</p>	<p>30/09/2016 (focus of MSG WP output 1.20)</p> <p>Pending</p> <p>30/09/2016</p>
Administrative	<p>All sectors:</p> <p>i) Disjointedness of Government reporting systems: no short-term recommendation, which goes beyond recommending a narrow scope for the 1st MWEITI report and sufficient staff time to be allocated both from the state authorities and the IA. In the medium-term, EITI principles should be embedded in the country system.</p>	<p>continuously (focus of MSG WP output 1.17)</p>

	<p>ii) Cadaster systems:</p> <ul style="list-style-type: none"> - <i>Minerals</i>: Option A to complete the reform by introducing a new system as preferred by the Ministry of Natural Resources, Energy and Mining is not feasible short-term, i.e. in time for the 1st MWEITI report, thus Government should pursue: <ul style="list-style-type: none"> Option B to produce quality hand-picked Excel lists for the IA for the 1st MWEITI report and ensure that new system will materialize for the 2nd MWEITI report, or Option C to cancel Option A and B and complete the reform of the existing system. The original technical proposal is still considered valid by the provider RDF, and if fully implemented is announced to lead to readiness for EITI reporting within 5 months' time, with a one-year sustainability phase, requiring funds of less than USD 200,000. - <i>Oil and gas</i>: DoM office should continue to gather the documents that have been signed by the Ministry of Natural Resources, Energy and Mining in the past three years, and build a comprehensive Excel list, which is considered to be sufficient, as the sector (6 licenses) is tiny. At best, the licenses should be included in an integrated cadaster system like the MCAS as it was done until 2011. - <i>Forestry</i>: The FRAS was launched in 2015, and integration of data with other sectors should be pursued. <p>iii) Systems were not configured for these emerging EITI needs: Bank reconciliations for Department of Mines (and Forestry) are difficult and some wire transfers may be left out. It is a government-wide accounting practice shortfall.</p> <p>iv) Lack of modern institutional archival systems: no short-term recommendation, which goes beyond recommending a narrow scope for the 1st MWEITI report and sufficient staff time to be allocated both from the state authorities and the IA.</p>	<p>tbd</p> <p>30/09/2016 (focus of MSG WP output 2.4)</p> <p>30/09/2016 (focus of MSG WP output 2.4)</p> <p>30/09/2016 (focus of MSG WP output 2.4)</p> <p>30/09/2016 (focus of MSG WP output 2.4)</p> <p>30/09/2016 (focus of MSG WP output 2.4)</p> <p>30/09/2016 (focus of MSG WP output 1.20)</p> <p>30/09/2016 (focus of MSG WP output 1.20)</p>
Practical	<p>All sectors:</p> <p>i) Contact details: Responsible authorities need to start updating and cross-checking the lists as a pre-requisite for</p>	<p>30/09/2016</p>

<p>the work of the IA. The MSG should hold business round tables and tailor the communication strategy to ensure a timely outreach to potential reporting entities.</p>	<p>(focus of MSG WP outputs 1.19, 1.20, 2.5)</p>
<p>ii) Voluntary participation: MSG should work with peers in the sector, such as the businesspeople of the Malawi Chamber of Mines and Energy, to create a level-playing field of attitudes towards EITI transparency principles.</p>	<p>30/09/2016 (focus of MSG WP output 1.20)</p>
<p>iii) Capacity: Assign 4-5 staff per Government institution and provide hands-on training for EITI reporting, in order to ensure both expertise and capacity of 2-3 staff per institution once the reporting is done.</p>	<p>30/09/2016 (focus of MSG WP output 1.20)</p>

7 | CONTRIBUTION TO PUBLIC DEBATE (RQ 7 AND 8)

The Scoping Study focuses on **phases 1 and 2** (Preliminary Analysis and Data Collection) of the EITI reporting process whilst taking **into its horizon the entire process until phase 5**.

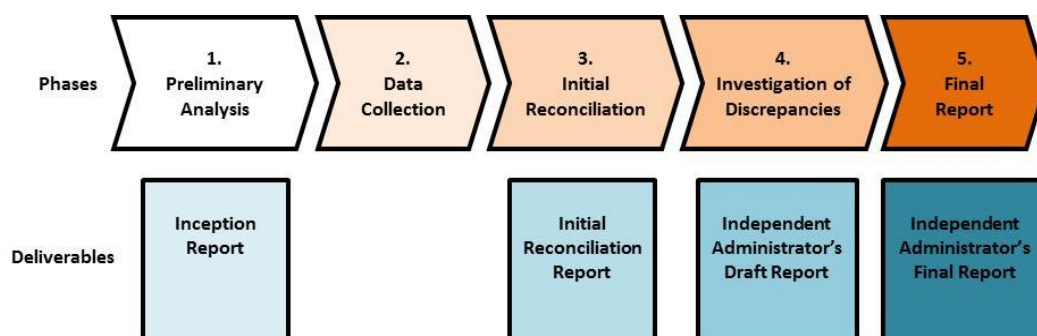


Figure 1: Overview of the EITI Reporting process and deliverables. Source: EITI Template Terms for IA.

Central for the contribution to public debate is to **link the findings from the scoping study** (later on from the MWEITI reports) **to the strategic communication of MWEITI** by setting objectives and measuring progress, as foreseen in the MSG work plan as output 4.3 '[Communication and Engagement Strategy and Work plan drafted and endorsed by MSG](#)'³⁷.

Recommended **short-term action by the MSG** until the IA will commence the assignment:

- i) **Business round-table** with reporting entities beyond those directly represented in the MSG to identify and harmonize positions on revenue transparency in the extractives sector, and to verify and improve the basis of contact details for future dissemination of information.
- ii) **Institutional dialogue** with the [Malawi Chamber of Mines and Energy](#) that shall be [launched in February 2016](#)³⁸. The businesspeople in support of the Chamber have announced that they want to help the government to scrutinize the sector, and in case of

non-compliance of companies with their license applications to either see that operations are done accordingly or that licenses are actually revoked. This offers opportunities for outreach to a broader target group among license holders.

- iii) **Use expertise from the MSG and data from the AER to produce charts and graphics** that can be made available to the media.
- iv) **Express an opinion** on the needs arising from EITI to build on **sound cadaster systems**, thus supporting one of the Options A-C, outlined above. MSG could subsequently observe whether robust cadaster information is linked with the **Malawi Data Portal**.
- v) **Continue the Work of the MSG Sub-Committee on Scoping**: The Scoping Study has shown that a **participatory approach**, for instance working jointly with the MSG Sub-Committee on Scoping is helpful in terms of credibility of the results. **As much as the results, it is the process of data production that matters**. The work of the MSG Sub-Committee on Scoping should be continued for the benefit of the credibility of the work of the IA. Credible data will foster an evidence-based public debate.
- vi) **Be of use for reforms as an instrument of collective governance** as it has representatives from several agencies and resource persons from companies and civil society. It seems that lack of coordination between government agencies and lack of clarity regarding responsibilities are major challenges for information management and transparency, as prerequisites for informing the public debate.
- vii) **Ensure consistency of the narrative**: With a view to Requirement 7 and achieving impact through EITI implementation the study identified a need for consistency of the **MWEITI narrative**. In the Mines and Minerals Policy, the Candidature Application and the EITI country website it is stated that the government's aim is that the share of GDP will rise from 1 percent to 20 percent until 2020. The Scoping Study could not find supporting evidence for this claim. However, the MSG can build on its work plan 2015-2017, in which the strategic goal "National sustainable development through revenue transparency" and the four objectives match the challenges and priorities of the stakeholders in the extractive industries. For these objectives and in the following areas, a **tentative impact of EITI generated data** is anticipated by stakeholders with a view to:
 - » improving the business and investment climate,
 - » using the multi-stakeholder mechanism for dialogue and building trust and
 - » in general mainstreaming the EITI principles in government and corporate reporting.

These recommendations can be considered as **exploratory next steps, which need constant review by the MSG**. Based on these, further steps and strategic goals for communication can be developed in accordance with the MSG work plan, with a view to standing up to validation and achieving EITI compliant status in 2018.

ANNEXES

1 | DOCUMENTS

Laws, Regulations and Government Documents, Malawi

- 1 Access to Information Bill (revised draft 2015)
- 2 Department of Mines Headquarters: Cash Control Book (2013-2015), License Registers, PSAs
- 3 Malawi Revenue Authority: tax payer files
- 4 Mines and Minerals Act (1981)
- 5 Petroleum (Exploration and Production) Act (1983)
- 6 PPP Act (2010)
- 7 Taxation Act (2006)
- 8 VAT Act (2005)

EITI

- 9 MWEITI MSG (2015) Malawi EITI Work Plan³⁹ and candidature application⁴⁰
- 10 MWEITI preparatory group (2011) Task team activity report⁴¹
- 11 Scanteam (2011), Achievements and Strategic Options Evaluation of the Extractive Industries Transparency Initiative⁴²
- 12 Scanteam (2015), Report on the Technical and Financial Support to an Evolving Global Governance Mechanism⁴³
- 13 EITI (2007-2015), Progress Reports⁴⁴
- 14 EITI Standard⁴⁵ (2013/2015)
- 15 EITI implementation guidelines,⁴⁶ in particular the guidance notes on scoping and materiality

Others

- 16 ActionAid (2015) An Extractive Affair. How one Australian mining company's tax dealings are costing the world's poorest country millions.⁴⁷
- 17 Alba, Elendoro Mayorga (2009) Extractive Industries Value Chain. A comprehensive integrated approach to developing extractive industries.⁴⁸ A working paper by the Oil, Gas and Mining Policy Division and the Africa Poverty Reduction and Economic Management Department of the World Bank. Washington.
- 18 Independent Evaluation Group (2011) Global Program Review. Multi-Donor Trust Fund for the Extractive Industries Transparency Initiative. Corporate and Global Evaluations

and Methods, World Bank, Washington.

- 19 Kosack, Stephen; Archon Fung (2013). Does Transparency Improve Governance?⁴⁹.
- 20 Malawi Economic Justice Network (2009). Unmasking the Malawi Taxation System.⁵⁰ Consultancy Report by Collins V.P. Magalasi.
- 21 Moberg, Jonas; Rich, Eddie (2015). Beyond Governments: Making Collective Governance Work - Lessons from Extractive Industries Transparency Initiative.⁵¹
- 22 MSI Integrity (2014). Protecting the Cornerstone. Assessing the Governance of Extractive Industries Transparency Initiative Multi-Stakeholder Groups.⁵²
- 23 Ravat, Anwar; Kannan Sriwar (2012). Implementing EITI for Impact: A Handbook for Policymakers and Stakeholders⁵³ published by the World Bank.
- 24 Schmaljohann, Maya (2013). Enhancing Foreign Direct Investment via Transparency? Evaluating the Effects of the EITI on FDI.⁵⁴
- 25 Tilitonse (2013). The Political Economy of Access to Information in Malawi.⁵⁵
- 26 UNESCO World Heritage Centre – IUCN (2014). Mission Report. Reactive Monitoring Mission to Lake Malawi National Park (Malawi)⁵⁶.
- 27 Westenberg, Erica; George-Wagner, Max (2015). From Reporting to Reform: Eleven Opportunities for Increasing EITI Impacts⁵⁷.
- 28 Wilson, Emma; van Alstine, James (2014). Localising Transparency. Exploring EITI's contribution to sustainable development.⁵⁸
- 29 World Bank (2015). Multi-Donor Trust Fund for Extrastives Global Programmatic Support (EGPS) Program Concept Document.

2 | INTERVIEWS

Institution	Name	Position
Accountant General	Mhango, Monaosyile	Chief Accountant
ActionAid Malawi (AAIM)	Elyvin Nkhonjera-Chawinga	Mining Project Coordinator
Anti-Corruption Bureau (ACB)	Musopole, Ipyana	Principal Corruption Prevention Officer
Ministry of Justice and Constitutional Affairs, Attorney General's Chambers	Kaphale, Kalekeni	Attorney General and Principal Legal Advisor to Government
Centre for Environmental Policy and Advocacy (CEPA)	Mwalukomo, Herbert	Programme Director
Church of Central Africa, Presbyterian (CCAP) Synod of Livingstonia – Church & Society Programme	Escott, Jennifer	Paralegal Advisor
Church of Central Africa, Presbyterian (CCAP) Synod of Livingstonia – Church & Society Programme	Mvula, Paul	Project Manager - Mining
Citizens For Justice (CFJ)	Etter-Phoya, Rachel	Head of Accountability Policy and Programmes
Citizens For Justice (CFJ)	Mwangonde, Reinford	Executive Director
Embassy of the People's Republic of China	Hudson Wang, Jiaxin	Counsellor, Economic & Commercial Counsellor's Office
FOCUS – Foundation for Community Support Services	Jabess Nyirenda	Deputy Director
FOCUS – Foundation for Community Support Services	Munthali, Kossam Jomo	Executive Director
Gemstone Association of Malawi	Chikomoto, John D.	Chairman
Gemstone Association of Malawi	Likubwe, Mathias U.V.	Acting Regional Chairman South
GIZ	Dutzler, Barbara	Program Director, Strengthening Public Financial and Economic Management in Malawi

GIZ	Margesson, George	Technical Advisor, Strengthening Public Financial and Economic Management in Malawi
GIZ	Schlötterer, Andreas	Technical Advisor, Strengthening Public Financial and Economic Management in Malawi
International Centre for Asset Recovery	Bacarese, Alan	Senior Asset Recovery Specialist
Karonga District Council	Moyo, Rosemary	District Commissioner (DC)
Malawi Women in Mining Association (MAWIMA)	Ntandasya, Eneles	Board Member
Malawi Women in Mining Association (MAWIMA)	Padambo, Ruth	Chair
Malawi Revenue Authority (MRA)	Khonje, Davie	Team Leader
Malawi Revenue Authority (MRA)	Phiri, Crosby M.	Deputy Commissioner Technical – Domestic Tax Division
Malawi Revenue Authority (MRA)	Somba Banda, Tiya	Revenue Accountant
Ministry of Justice and Constitutional Affairs	Mlenga, Kelious	Legislative Counsel
Ministry of Finance, Economic Planning & Development	Chanza, Fredrick	Revenue Policy Division
Ministry of Finance, Economic Planning & Development	Harawa, George	Chief Economist
Ministry of Finance, Economic Planning & Development	Kulemeka, Crispin C.	Director Revenue
Ministry of Finance, Economic Planning & Development	Mushani, Leonard	Coordinator MWEITI Secretariat
Ministry of Natural Resources, Energy and Mining	Botolo Ben	Principal Secretary
Ministry of Natural Resources, Energy and Mining - Forestry Department	Chilimampungwa, Francis H.D.	Deputy Director
Ministry of Natural Resources, Energy and Mining - Forestry Department	Chilima, Dr. Clement Z.	Director

Ministry of Natural Resources, Energy and Mining - Forestry Department	Kamoto, Teddie	Assistant Director
Ministry of Natural Resources, Energy and Mining - Forestry Department	Makhambera, Thomas	Forestry Department
Ministry of Natural Resources, Energy and Mining - Forestry Department	Njiwawo, Moses	Payment System Administrator
Ministry of Natural Resources, Energy and Mining – Department of Mines	Kaphwiyo, Charles E.	Commissioner for Mines and Minerals / Director of Mines
Ministry of Natural Resources, Energy and Mining – Department of Mines (Mzuzu)	Maneya, George J.	Chief Mining Engineer
Ministry of Natural Resources, Energy and Mining – Department of Mines	Mpambe, Caroline	Accounts Assistant
Ministry of Natural Resources, Energy and Mining – Department of Mines	Moyo, L	Accountant
Ministry of Natural Resources, Energy and Mining – Department of Mines	Nyirenda, Gibson	Senior Mining Engineer
Ministry of Transport and Public Works	Magwede, G.F.	Director for Railways
Ministry of Transport and Public Works	Phiri, John-Bosco	Director of Planning
Mkango Resources Ltd.	Cheka, Chikondi	Geologist
Mkango Resources Ltd.	Kachinjika, Burton	Country Manager
National Audit Office	Makiwa, Thomas	Deputy Auditor General
Paladin Africa Ltd.	Cumming, Alan	General Manager
Paladin Africa Ltd.	Malunga, Grain	Consultant
Paladin Africa Ltd.	Ryan, Bruce	Manager Environment
Paladin Energy Ltd.	de Goede, André	Financial Manager
Reserve Bank of Malawi	Chikuta, Frank	Senior Economist
Reserve Bank of Malawi	Chingoli, Bartwell	Manager Exchange Control Programmes
Reserve Bank of Malawi	Jere, Yvonne	Cheque Clearing Officer

Reserve Bank of Malawi	Nyirongo, Rhoda	Senior Officer Govern- ment Accounts
Reserve Bank of Malawi	Thengeza, Fredrick	Supervisor Banking Op- erations
World Bank	Greer, Claire Louise	Operations Analyst, Energy & Extractives
World Bank	Lokanc, Martin	Task Team Leader, Min- ing Governance Project
World Bank	Sichinga, Gresham	Energy Specialist, Mining Governance Project

Participants of the Consultation Workshop on 15th December 2015

Institution	Name	Position
ActionAid Malawi (AAIM)	Kwataine, Martha	Head of Programmes and Policy
Anti-Corruption Bureau (ACB)	Mwalabu, Maurine	Senior Officer
Bwanje Cement Company	Munthali, Mesheck	Director
CAPA	Simkonda, Cynthia	Programme Officer
Catholic Commission for Justice and Peace (CCJP)	Sikwese, Success	Project Officer
Church of Central Africa, Presbyterian (CCAP) Synod of Livingstonia – Church & Society Programme	Mkandawire, Moses	Executive Director
Citizens For Justice (CFJ)	Etter-Phoya, Rachel	Head of Accountability Policy and Programmes
Citizens For Justice (CFJ)	Mwangonde, Reinford	Executive Director
GIZ	Mkandawire, Vitima	Technical Expert
FOCUS – Foundation for Community Support Services	Munthali, Kossam Jomo	Executive Director
Gemstone Association of Malawi	Chikomoto, John D.	Chairman
Institute for Policy Interaction (IPI)	Rashid, Kennedy	Head of Programs
Lilongwe University of Agriculture & Natural Resources	Chiwona, Edwin	Head of ESM
Karonga District Assembly	Moyo, Rosemary	District Commissioner (DC)
Malawi College of Forestry	Senganinalunje, Trinnitas	Principal
Malawi Revenue Authority (MRA)	Khonje, Davie	Team Leader
Malawi Women in Mining Association (MAWIMA)	Adam, Emma Eunice	President
Ministry of Finance, Economic Planning & Development	Kandio, Grecium	Deputy Director of Revenue
Ministry of Finance, Economic Planning & Development	Harawa, George	Chief Economist
Ministry of Finance, Economic Planning & Development	Kandoje, Natasha	Economist
Ministry of Finance, Economic Planning & Development	Mgawi, Victoria	Economist

Ministry of Finance, Economic Planning & Development	Mushani, Leonard	Coordinator MWEITI Secretariat
Ministry of Natural Resources, Energy and Mining	Botolo Ben	Principal Secretary
Ministry of Natural Resources, Energy and Mining – Department of Mines	Kaphwiyo, Charles E.	Commissioner for Mines and Minerals / Director of Mines
Ministry of Natural Resources, Energy and Mining – Department of Mines (Mzuzu)	Maneya, George J.	Chief Mining Engineer
Ministry of Transport and Public Works	Geoffrey Magwede	Controller of Railways
Mkango Resources Ltd.	Cheka, Chikondi	Geologist
MWEITI Scoping Study	Hannock Kumwenda	Consultant
MWEITI Scoping Study	Lutz Neumann	Consultant
National Audit Office	Chikwana, George B.	Chief Auditor
Reserve Bank of Malawi	Chikuta, Frank	Senior Economist
Reserve Bank of Malawi	Mchakulu, Charles	Senior Analyst
Reserve Bank of Malawi	Jere, Yvonne	Bank Officer
University of Malawi, Chancellor College	Mwathunga, Evans	Head of Geography and Earth Science

3 | LISTS OF LICENSE HOLDERS

1 **Minerals License holders** (see separate file)

Categories:

- » Mining Claim License (MCL)
- » Exclusive Prospecting License (EPL)
- » Reconnaissance License (RL)
- » Mining License (ML)

2 **Oil and Gas License holders** (see separate file)

Categories:

- » Prospecting License
- » Production Sharing Agreement (PSA)

3 **Forestry License holders** (see separate file)

Those separate files have been submitted to the MWEITI Secretariat and to the members of the MSG Sub-Committee on Scoping.

4 | TERMS OF REFERENCE FOR A SCOPING STUDY FOR 2015/2017 EITI REPORT, MALAWI

BACKGROUND

The Extractive Industries Transparency Initiative (EITI) is a global standard that promotes revenue transparency and accountability in the extractive sector. It has a robust yet flexible methodology for monitoring and reconciling company payments and government revenues from oil, gas and mining at the country level. Each implementing country creates its own EITI process adapted to the specific needs of the country. EITI implementation has two core components:

- **Transparency:** Oil, gas and mining companies disclose their payments to the government, and the government discloses its receipts. The figures are reconciled and published in annual EITI Reports alongside contextual information about the extractive sector.
- **Accountability:** A multi-stakeholder group with representatives from government, companies and civil society is established to oversee the process and communicate the findings of the EITI Report.

The requirements for implementing countries are set out in the EITI Standard¹. For further information, please see www.eiti.org

Malawi applied to the EITI International Secretariat to join the EITI in July 2015. The application was made following the completion of the four EITI sign-up requirements, including the public declaration of the country's intentions to join the EITI (made in June 2014 by HE President Arthur Peter Mutharika), the selection of an EITI champion (the Minister responsible for Finance), the formation of the multi-stakeholder group (MSG) and the development of a fully costed workplan, available from the Ministry of Finance, Economic Planning and Development's Revenue Policy Division.

The MWEITI strategic goal is to achieve national sustainable development through revenue transparency through the following objectives,

- 1) EITI-compliant status achieved.
- 2) The MSG forms and strengthens partnerships between government/administration, companies and public for attracting quality investments.
- 3) Increased revenue base and socio-economic impacts from extractive industries.
- 4) Strengthened trust among stakeholders of natural resource management.

Malawi will be given a decision on its application by EITI Board after the Board meets 21-22 October, Berne, Switzerland. Given the high likelihood of Malawi being accepted as a candidate country, the MSG had directed the interim MWEITI Secretariat to conduct a scoping study to inform the production of Malawi's first EITI report within 18 months after approval as an EITI candidate.

In this regard, the MWEITI supported by GIZ seeks a competent and credible firm or individual to undertake the scoping study in accordance with these Terms of Reference.

OBJECTIVE OF THE ASSIGNMENT

The objective of the assignment is to produce a report which will inform the MSG's discussions regarding the scope of the 1st EITI Report (to be published in 2017, based on data of the fiscal year 2015), including :

- collating the necessary contextual information given the MSG's objectives and workplan, and the EITI's requirements (EITI Requirement 3);
- identifying the payments and revenues streams to be reported, including appropriate materiality thresholds where applicable (EITI Requirement 4.1);
- describing additional benefit streams from the extractive sector to be reported (EITI Requirement 4.2)
- listing the companies, state-owned enterprises and government entities expected to report (EITI Requirement 4.3);
- an overview of the auditing practices and the assurances to be provided by the reporting entities (EITI Requirement 5);
- identifying and making recommendations on any barriers to disclosure of the requisite information;
- making recommendations on scope of contract transparency and beneficial ownership as outlined in MWEITI workplan under objective 2; and
- Charting a path for the inclusion of future natural resource sectors that are not included in the first EITI report.

In addressing these points, the consultant may wish to set out options available to the MSG, taking into account the overall objectives, the EITI requirements, and the resources available. The MSG and the Independent Administrator will draw on the scoping study in agreeing the scope of the reporting process, in accordance with the 'agreed upon procedure for EITI Reports' (requirement 5.2). This may include modifications and refinements to the scope of the reporting process recommended by the consultant.

The consultant's report will be submitted to the MSG and made publically available.

SCOPE OF WORK

The consultant will be expected to undertake the following tasks:

1. Examine the MSG's workplan in order to gain a clear understanding of the objectives and scope of Malawi's EITI implementation. The consultant should also consult with the MSG on the different perspectives of inclusion of natural resources in the contextual information, for revenue reporting, and contract transparency.
2. The consultant should also review minutes of the MSG meetings, the MSG Salima retreat of 2015, reports from the June Zambia Study Tour and August Training in Ghana, and the activity report of 2011.

CONTEXTUAL INFORMATION

3. Review and summarize the legal framework governing the extractive industries (EITI Requirement 3.2).
4. Provide an overview of key features of the extractive sector (EITI Requirement 3.3).
5. In accordance with EITI Requirement 3.4, prepare a summary of the contribution of the extractive industries to the economy for 2014/2015.
6. Identify sources of information about production data and comment on the quality and reliability of the data with a view to inform the MSGs approach to EITI Requirement 3.5.
7. Where applicable and in accordance with EITI Requirement 3.6, investigate the role of state-owned companies in the extractive sector and suggest an approach for reporting on financial relationships between the government and the SOE, quasi-fiscal expenditures, and government ownership in oil, gas and mining companies operating in Malawi. This should include identifying any barriers to comprehensive disclosure.
8. Propose a framework for reporting on revenue allocations and distribution of revenues in accordance with EITI Requirements 3.7 and 3.8.
9. Review the currently available information about license registers and license allocations assess the completeness and timeliness of the information, and propose a mechanism for reporting and disclosure in accordance with EITI Requirements 3.9 and 3.10.
10. In accordance with EITI Requirement 3.12(b), review Malawi's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas, and minerals. This should include a summary of relevant legal provisions, actual disclosure practices and any reforms that are planned or underway.
11. Identify any barriers to disclosure of contextual information set out above, and set out options and make recommendations for addressing these barriers.

EITI RECONCILIATION

- 13 Undertake a comprehensive analysis of the payments and government revenue streams related to the extractive sector, noting in particular the revenues streams that must be covered in accordance with EITI Requirement 4.1(b). The analysis should also cover revenues related to the sale of the state's share of production or other revenues collected in-kind (4.1.c), infrastructure provisions and other barter arrangements (4.1.d), mandatory and voluntary social expenditures (4.1.e), and transportation payments (4.1.f).
- 14 Taking into account the findings of (13) above, review cadastre and revenue data from 2014/2015 and make recommendations as to which of these tax payments and government revenues streams should be considered material, including suggesting materiality thresholds for company disclosure if appropriate (with reference to the guidance note² and EITI requirement 4.1).

- 15 Based on the proposed materiality definition, develop a preliminary list of the companies that make material payments and should be covered in the EITI Report (EITI requirement 4.2.a). Where materiality thresholds are proposed, this should include an estimate of coverage of company payments that will be disclosed relative to total government revenues from the sector. It should also identify the total contribution of companies not required to report (i.e. those that fall below the materiality threshold), with a clear indication of the relative size of each company. (This information will inform the assessment of the comprehensiveness of the EITI Report as per Requirement 5.3.c.)
- 16 For each company, identify where available:
 - a. Company's Tax Payer Identification Number
 - b. Sector and phase of operation, i.e. exploration, production, oil, gas, mining etc.
 - c. Type of license(s) held and the license number(s).
- 17 Based on the proposed materiality definition, identify which government entities should be required to report. It should be noted that the government is required to disclose all revenues, regardless of the materiality (EITI Requirement 4.2.b). Thus where materiality thresholds for company disclosures are established, a reconciliation of the company payments and government revenues in accordance with the materiality threshold would be appropriate. Any additional government revenues (i.e. from companies below the materiality threshold) would also need to be disclosed in the EITI Report as per Requirement 4.2.b.
18. In considering which government entities should be disclosed, the consultant should identify whether sub-national government entities receive direct or indirect revenues from the extractive sector in accordance with Requirement 4.2(d) and Requirement 4.2(e).
19. Identify any legal, regulatory, administrative or practical barriers to comprehensive disclosure, and if necessary set out options and make and recommendations for addressing these barriers.

ISSUES REQUIRING SPECIFIC ATTENTION

As the consultant will be providing recommendations for the scope of Malawi's first EITI report, it is important to include consideration of a breadth of Malawi's natural resources (minerals, oil, gas and forests) for not only reporting of revenue and payment data but also for contextual information, contract transparency and the publishing of beneficial ownership data which are relevant for sectors and companies that remain in exploration only at present. This information will be useful for understanding the direction MWEITI and the MSG for determining the inclusion of different natural resources in the first and then subsequent reports

DATA QUALITY

20. In accordance with EITI Requirement 5.2(b), examine the audit and assurance procedures in companies and government entities that are likely to participate in the EITI reporting process, including the relevant laws and regulations, any reforms that are planned or underway, and whether these procedures are in line with international standards.
21. In accordance with EITI Requirement 5.2(c), propose assurances to be provided by reporting entities to the Independent Administrator.

PRESENTATION

23. Prepare and present the draft scoping study report to the MWEITI MSG, GIZ and the National Secretariat for review and comment;
24. Prepare a final scoping study report to the MWEITI and provide recommendations for the 2014/2015 EITI report;
25. Recommend how future scoping reports can be improved.

DELIVERABLES

(Need to review timeframes based on availability of consultant)

1. Inception report by 19th October 2015
2. Draft report until 1st December 2015.
3. Presentation to MSG of draft report by 8th December 2015
4. Presentation of final report to GIZ, MSG and other stakeholders by 15th December 2015.
5. Final report of no more than 40 pages until 15th January 2016.

Documentation to be submitted in English to the MSG Chairperson through National Coordinator of MW EITI or any other person designated by MW EITI, and to GIZ Malawi.

CONSULTANT REQUIREMENTS

The Consultant will need to demonstrate:

- Technical and financial skills, including knowledge and work on transparency and governance, public finance and financial accountability, and multi-stakeholder dialogue. Preferably, proven experience related to the EITI.
- Knowledge of the oil, gas and mining sectors or other natural resources sectors, preferably in Malawi.
- A demonstrable track record in similar work.
- Knowledge and experience with review of legal framework.
- Willingness to work and cooperate with MWEITI MSG and Secretariat throughout the study.

The Consultant is expected to carry out its assigned tasks over a period from 1st October 2015 to 31 January 2016. A total of up to 45 working days, of which

- 30 days for data collecting, consultations and presentations in up to 3 missions to Malawi.
- 15 working days for preparation of assignment, presentations, drafting and finalisation of report (at home).

ADMINISTRATIVE ARRANGEMENTS

- Logistical arrangements including accommodation, transport for official work, consultant honoraria and Research Facilitators allowances, office space and internet access at the office will be provided by GIZ.
- The consultant is to report to GIZ, the interim MWEITI Secretariat and the MSG sub-committee responsible for the scoping report. The sub-committee was selected by the MSG on the 24 September 2015 during the fourth MSG meeting.
- The Consultant will be supported by MWEITI Secretariat, and MSG sub-committee responsible for the scoping report. The MWEITI Secretariat and MSG sub-committee on scoping will support the consultant to get access to data, whenever need may arise (e.g. contextual information, revenue streams, list of reporting entities).
- The Consultant will conduct joint meetings together with the MWEITI Secretariat's staff and stakeholders whenever possible for capacity building purposes. In principal, the consultant shall work in close cooperation with the MWEITI Secretariat and/or MSG committee members, with the international EITI-Secretariat, as well as with other consultants / stakeholders as may be indicated by MWEITI and GIZ. Further short-term and local experts will be onboard to the process according to needs and MWEITI / GIZ agreement as one way of building both Secretariat and Local Consultant capacity on EITI process.
- The MWEITI Secretariat will provide a counterpart to work with the consultant closely as Research Facilitator and shall be responsible for facilitation and arrangement of meetings and help consultant on collection of data and any help the consultant may require for the report, without influencing the result of the research.
- Logistics for travel in Malawi, meetings and workshops will be arranged and provided by GIZ and MWEITI Secretariat under Revenue Policy Division, Ministry of Finance, Economic Planning and Development.

REFERENCE MATERIALS:

- **The EITI Standard**, in particular Requirements 2 -5, <http://eiti.org/document/standard>;
- **EITI implementation guidance notes** issued by the International Secretariat, <http://eiti.org/document/guidance-notes>, in particular the guidance notes on scoping and defining materiality. 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;
- **Agreed upon procedures for Independent Administrators**, including standard EITI reporting templates, available from the International Secretariat;
- **Implementing EITI for Impact: A Handbook for Policymakers and Stakeholders**, in particular chapters 4 and 5;

- **Malawi EITI activity report 2011** <https://eiti.org/files/processess-and-work-done-in-the-EITI-debate-in-malawi.pdf>
- **Malawi EITI Workplan and candidature application (2015)**

4 | ENDNOTES

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