



ZEITI ANNUAL REPORT - 2021

1.0 Introduction

In early 2021, as we planned for our virtual meetings, we were uncertain how online meetings would work in practice. I'm pleased to report that our experience has generally been positive. However, virtual meetings have come with their costs, especially for new ZEC members. The lack of face to face interactions has meant explaining EITI concepts and processes online, which is quite limited in practice.

Many of you will have experienced similar challenges in your constituencies. While technology has helped to facilitate EITI implementation, there is still a lot of scope to leverage on the available online platforms to implement the EITI. A case in point is the use of company and government reporting systems to publish information that brings gains in the timeliness, accessibility and cost effectiveness of disclosures.

The following below highlights some of the key activities that were implemented in 2021.

2.0 Mainstreaming

During the year under review, the implementation of the Mainstreaming requirement gained momentum. Generally, Zambia systematically discloses information on licences through its online mining cadastre. For example, the Ministry of Mines and Minerals Development disclosure of legislative documents does not encompass all relevant laws, policies, and regulations.

The companies' disclosures contain some data on tax payments, production data, reserves, environmental information, and employment data from their operations.

The ZEC created a Technical Working Group specifically focusing on Mainstreaming in order to enhance the stakeholder engagement process. Plans are underway to hold meetings with key agencies that are relevant to the implementation of the Mainstreaming requirement.

3.0 Beneficial ownership

During the year under review, the EITI International Secretariat in collaboration with the Open Ownership commenced implementation of the Beneficial Ownership disclosure project. A selection of 13 EITI implementing countries including Zambia were enlisted to join the programme.

The Zambia Companies Act of 2017 mandates the collection and publication of beneficial ownership data, with public access subject to the payment of fees. The Act, which came into effect in June 2018, is championed and actioned by the Patents and Companies Registration Agency (PACRA), which currently centrally collects beneficial ownership data, and is working to establish a register, but in the meantime publishes data through the ZEITI.

4.0 2020 ZEITI report

During the year under review, the ZEC agreed to produce the 2020 ZEITI report under the flexible reporting mechanism as approved by the EITI International Board. However, the ZEC further decided to include a risk based approach to four (4) revenue streams based on the risks identified in the previous reports.

The 2020 ZEITI report, noted that the mining sector remained the country's major productive industry with the highest contribution to Zambia exports (79.5%) and Government revenues (31.4%).

According to the data collected from the Government Agencies, the extractive companies and ZCCM-IH, the payments generated by the extractive sector totalled ZMW 25,853.86 million in 2020 against ZMW 18,348.94 million in 2019.

The payments to Government Agencies amounted to ZMW 25,167.75 million, representing 97.34% of the total payments made by the extractive companies and ZCCM-IH in 2020.

In terms of Copper production in 2020 increased by 3.7 percent to 837,003.6 Mt from 807,447 Mt in 2019. Production was relatively higher from the second quarter due to increased demand as major economies, in particular China, reopened after stringent lockdown measures in the first quarter of 2020.

In terms of Gold production declined to 3,672 Kgs in 2020 compared to 3,913 Kgs produced in 2019. The reduction was due to reduced grades of gold in ores mined at Kansanshi mine Plc. The subsector recorded 93.6 Kg of gold from Zambia Gold Company Limited which commenced mining operations at Kasenseli in Mwinilunga in mid-2020. (2020 Economic Report, Ministry of Finance)

The production of Coal increased by 34.0 percent to 448,821.4 Mt in 2020 from 335,042 Mt produced in 2019. The increase was largely on account of increased demand for the commodity for the generation of power.

The Emerald production decreased by 142 percent to 9,783.43 Kgs in 2020 from 23,704.61 Kgs in 2019. According to the Gemfield Annual report the decrease in production was as a result of the suspension of operations at both Kagem and Gemcanton due to the COVID-19 Pandemic. The Amethyst production reduced to 518,198.67 Kgs in 2020 from 1,104,372 Kgs recorded in 2019. The decrease was attributed to reduced production by small-scale miners due to Covid pandemic. In terms of sales, only 4 auctions were held in Lusaka, Dubai and online in the year 2020 down from 7 auctions conducted in 2019. Consequently, there was a reduction in revenue from auctions to US \$52.76 million in 2020 from US \$125.5 million in 2019.

The Manganese production increased by 40 percent to 28,409 Mt from 15,904 Mt produced in 2019. This was largely on account of additional processing facilities being set up in Serenje district and the increased compliance of the small-scale miners, leading to the rise in the submission of production statistics.

The Cobalt production declined by 16.6 percent to 316 Mt in 2020 from 379 Mt produced in 2019. The reduction in production was attributed to operational challenges at Konkola Copper Mine and reduced mineralization (2020 Zambia Economic Report, Ministry of Finance).

The data on exports has been collected from the 2020 Bank of Zambia Annual report and from Ministry of Finance Economic Report. It is worth noting that the total export value for Copper and Gold increased to US (\$) 6,087.7 Million in 2020 from US (\$) 5,190.88 Million in 2019. This is mainly attributed to increased copper export volume in 2020.

5.0 Financial Modelling

During the year under review, the ZEITI undertook a number of analytical projects using the publicly available data on the mining sector. A consultant from Invhestia was hired to provide support towards this work.

The analysis by the consultant established the following:

- a. *The push from mining companies for MRT to be tax deductible should be taken seriously. A comparison of Zambia's fiscal regime to other international regimes not only showed that it generated a higher government take than the rest (the only exception being Chile) but also that Zambia is the only country that does not allow for MRT to be tax deductible;*
- b. *Getting inspiration from Chile where the state has been able to craft a regime that is able to take a relatively high Government take while taking into account company performance, we have crafted as one of the options for consideration a regime where MRT is not based on company gross revenues but on their operation profits and operating profit margins;*
- c. *Granted such measure requires a lot of tax administration which may pose a challenge especially considering that most mining companies in Zambia declare losses. Based on our analysis we find that these types of royalties produce the highest government takes without affecting company returns significantly. As such we propose these regimes for the government to look at a transitional fiscal regime to respond to a future where prices are more volatile and investors have a wider choice of where to invest their funds;*
- d. *We have also produced a regime which would have MRT as tax deductible and further computed on an incremental basis as opposed to the current stepped approach. We found that a number of jurisdictions employ this approach. We find that such a regime results in a reduction in government revenues and an increase in company returns and should only be introduced in conjunction with other fiscal measure to shore up government earnings; and,*
- e. *As indicated earlier when we compare Zambia's fiscal regime with other jurisdictions we find that it has one of the highest government takes, with the exception of Chile. While tax is not the highest ranked factor when*

companies are looking to make investment decisions the government should take this into account when setting the next fiscal regime.

6.0 Contract Transparency

During the year under review, a consultant was hired to conduct a mapping exercise on contract transparency. The EITI Standard requires implementing countries to disclose any contracts and licenses that are granted, entered into or amended after 1 January 2021 (Requirement 2.4.a). Implementing countries are encouraged to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals. Countries are also required to document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals (Requirement 2.4.c).

In view of the above, requirement 2.4 of the 2019 EITI Standard requires the following:

- a) Implementing countries are required to disclose any contracts and licenses that are granted, entered into or amended from 1 January 2021. Implementing countries are encouraged to publicly disclose any contracts and licenses that provide the terms attached to the exploitation of oil, gas and minerals.
- b) The multi-stakeholder group is expected to agree and publish a plan for disclosing contracts with a clear time frame for implementation and addressing any barriers to comprehensive disclosure. This plan will be integrated into work plans covering 2020 onwards.
- c) It is a requirement to document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of oil, gas and minerals. This should include:
 - i. A description of whether legislation or government policy addresses the issue of disclosure of contracts and licenses, including whether it requires or prohibits disclosure of contracts and licenses. If there is no existing legislation, an explanation of where the government policy is embodied should be included, and the multi-stakeholder group should document its discussion on what constitutes government policy on contract disclosures. Any reforms relevant to the disclosure of contracts and licenses planned or underway should be documented.
 - ii. An overview of which contracts and licenses are publicly available. Implementing countries should provide a list of all active contracts and licenses, indicating which are publicly available and which are not. For all published contracts and licenses, it should include a reference or link to the location where the contract or license is published. If a contract or license is not published, the legal or practical barriers should be documented and explained.
 - iii. Where disclosure practice deviates from legislative or government policy requirements concerning the disclosure of contracts and licenses, an explanation for the deviation should be provided.

d) The term 'contract' in 2.4(a) means:

- i. The full text of any contract, concession, production-sharing agreement or other agreement granted by, or entered into by, the government which provides the terms attached to the exploitation of oil, gas and mineral resources.
- ii. The full text of any annex, addendum or rider which establishes details relevant to the exploitation rights described in 2.4(d)(i) or the execution thereof.
- iii. The full text of any alteration or amendment to the documents described in 2.4(d)(i) and 2.4(d)(ii).

e) The term 'license' in 2.4(a) means:

- i. The full text of any license, lease, title or permit by which a government confers on a company(ies) or individual(s) rights to exploit oil, gas and/or mineral resources.
- ii. The full text of any annex, addendum or rider that establishes details relevant to the exploitation rights described in 2.4(e)(i) or the execution thereof.
- iii. The full text of any alteration or amendment to the documents described in 2.4(e)(i) and 2.4(e)(ii).

Zambia currently benefits from a degree of licence transparency. The licence process and standard terms for each type of licence are set out in law. For the mining industry, the process and terms for granting each type of licence are set out in the MMDA2015. In addition, the MMMD website provides details of the steps (including indicative timeline), fees and required documents for a licence application at https://www.mmmd.gov.zm/?page_id=5323. For the oil and gas sector, the PA2008 sets out the process and terms for granting both PELs and PDPLs. However, there is no further guidance available on the MMMD website. Also at the time of compiling this report, the detailed regulations for both the mining and petroleum sectors were not available on the MMMD website.

Basic information on each type of licence is available through the MCD's portal. The portal is available at: <https://portal.miningcadastre.com/site/> and includes a map through which basic information on both mining and petroleum sector licences is available. This map can be found at: <https://portals.landfolio.com/zambia/>. Figure 5 below is a screenshot of the map. When the map is first accessed, a pop up box notes that the MCD is undertaking verification on all tenements and the information is updated in real time.

A final report will be presented to the ZEC for approval before the end of the year.

7.0 Looking ahead - 2022

Looking ahead into 2022, the implementation of EITI in Zambia will be leveraged on the available online platforms through mainstreaming. The mainstreaming of EITI implementation is critical for the sustainability of the EITI in Zambia.

In terms of Beneficial Ownership, the ZEITI could consider going through the following next steps and doing some analysis. Much of the initial work on BO is likely to be looking at what data already exists.

- i. **Determine the full scope of entities:** Get an overview of all the companies that hold a participating interest in mining, oil and gas license and/have applied for a license in the year covered by the reporting period (e.g. 2019). This information is potentially with the Cadastre Department.
- ii. **Determine the level of existing information:** Get an overview of which of the companies in the scope (step 1) have provided BO data to PACRA (or the Cadastre). This information appears to already have been provided by PACRA.
- iii. **Determine level of comprehensiveness and data quality:** Check if the available information is comprehensive and if not, what gaps exist. This could include cross checking some of the licence data with the BO information. Also check what data assurances are requested from the companies by PACRA and the Cadastre, and whether this is considered sufficient for data reliability purposes.
- iv. **Determine options for publication:** Can all of the BO data that PACRA has previously shared with ZEITI can be made public/ can all the BO data with PACRA be made public by PACRA? What would be the potential legal or practical challenges with publication (e.g. is the information considered confidential by PACRA and would the companies be informed of disclosures? Who would be best placed to make this information public?)

In terms of Contract Transparency, the ZEITI will need to undertake the following:

1. ZEITI implements the license transparency roadmap set out in Appendix 3.
2. ZEITI develops a comprehensive plan to meet Requirement 2.4 as soon as practicable based on guidance provided by the EITI Secretariat¹. This plan should take a phased approach, starting with exploitation licenses (see Recommendation 3), with consideration of exploration licenses being left to a later phase.
3. With regard to exploitation licenses granted after 1 January 2021, ZEITI takes a phased approach to making the full text of license documents publicly available. Priority should be given to LMLs, then SMLs and then AMRs. This approach should be agreed with the MCD and carried out in collaboration with the MCD.
4. As part of this plan, ZEITI monitors the passage of the draft petroleum law through the legislative process to ensure that the transparency provisions remain in place and allow the future disclosure of PSCs in the oil and gas sector.
5. ZEITI advocates for revisions to the MMDA2015 or statutory instruments to put in place transparency provisions which establish a legal framework for license transparency in the mining sector.
6. ZEITI advocates for a specific extractive industry transparency law that places implementation of the EITI Standard in Zambia on a statutory basis.
7. ZEITI monitors and encourages efforts to enact a freedom of information (or similar) law in Zambia.

¹ <https://eiti.org/document/guidance-note-eiti-requirement-24>

8. The Mining Cadaster Office in collaboration with ZEITI, civil society organizations and other stakeholders identifies funding sources to finance the digitisation of all relevant licence documents and the establishment and maintenance of an online platform to make them accessible to Zambian citizens.
9. The search functionality on the mining cadastre portal map is upgraded to allow searching by a wider range of parameters. ZEITI co-operates with MCD to understand the feasibility of such an upgrade and the resources required to undertake it.
10. Consent agreements with traditional and local authorities are included in scope for disclosure and the full text is published online.
11. ZEITI consider other aspects of the EITI Standard 2019 which have a direct link to the effectiveness of licence transparency. For example beneficial ownership (the consultants are aware that there is work ongoing in this area), commodity trading transparency and the transparency of state-owned enterprises. Scoping studies on these topics would support the effective use of transparency licences.