

WORLD BANK GROUP

**EXTRACTIVE INDUSTRIES
TRANSPARENCY INITIATIVE (EITI)
SCOPING STUDY FOR THE
REPUBLIC OF ZAMBIA**

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THE WORLD BANK

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ABBREVIATIONS

EITI	Extractive Industries Transparency Initiative
GRZ	Government of the Republic of Zambia
MMMD	Ministry of Mines and Minerals Development
ZCCM-IH	Zambia Consolidated Copper Mines Investment Holdings Plc
ZRA	Zambia Revenue Authority

EXECUTIVE SUMMARY

1. The government and people of Zambia, and mining companies operating in the country, are facing a dilemma which is increasingly faced by many countries with significant mineral or hydrocarbon resources: against a backdrop of a sustained boom in the price of commodities such as copper, how can one ensure that all of the people of Zambia can share in this boom, whilst at the same time maintaining a climate attractive enough to the investors which have contributed to that boom?
2. In Zambia it is a dilemma which surrounded by significant history and tensions between various groups. It is clear that at the time of the privatization of the state-owned Zambian Consolidated Copper Mines (ZCCM) in the late-1990s that the sector was suffering from low copper prices and sustained under-investment. As a result the sector was in severe decline and was a significant financial burden on the Government of Zambia. Those companies which then bought into the sector were more than often able to negotiate attractive terms from a government which was in a weak position. The negotiation of these mine development agreements remains today a controversial process, which many stakeholders perceive as having been opaque.
3. Today's tensions subsequently are focused on three key areas:
 - A doubling of Zambian copper production and a quadrupling of copper prices over the past 7-8 years combined with a favorable outlook for the sector has not resulted in significant revenues for Zambia's Government. However, it is expected that the mining companies in Zambia have either started to pay corporate income taxes or will be doing so shortly.
 - The terms of mine development agreements negotiated at a time of stagnation in copper prices are very favorable to investors, particularly in the light of the changed outlook for the sector, globally as well as domestically.
 - But at the same time Government has not been able to fill the gap in the provision of key infrastructure and social services which were previously maintained by ZCCM.
4. It is the interplay of these factors which leads to the question with which this report opens, i.e. how to develop a more equitable balance between the development needs of the Zambian people and an investment climate which encourages mining companies to continue to invest and create wealth.

5. Against this backdrop, in early-2007 the Government of Zambia requested assistance from the World Bank to carry out a scoping study on whether the country should join and implement the Extractive Industries Transparency Initiative (EITI). The EITI, launched in 2003, is the leading standard for promoting transparency and accountability in resource rich countries. It is also a global coalition of resource rich developing countries, donors, major companies, civil society groups, and investors. Countries implementing EITI commit to publishing all payments made by oil, gas, and mining companies to government, and all revenues received by the government from those companies. EITI implementers also commit to closely involving civil society in the design and monitoring of the EITI process.
6. The finding of this scoping report – based on numerous interviews with a wide variety of stakeholders – is that a significant amount of the tension which exists between mining companies, the government, and civil society groups in Zambia, can be attributed to:
 - a history of opacity in the negotiation of mine development agreements (most are now publicly available);
 - a profound lack of information (or access to information) on what mining companies are paying to the Government, and what the Government is receiving from those companies; and
 - A lack of sustained multi-stakeholder dialogue between the parties concerned.
7. Whilst EITI can certainly contribute to the resolution of these issues, it is important to note that the EITI can neither undo history nor solve all of the perceived problems of the Copperbelt. Many very important issues (such as the provision of infrastructure and social services; working conditions in mines; monitoring the environmental impact of mines) cannot be addressed by an EITI program. This is not because they shouldn't be addressed, but rather because EITI facilitates discussions of these issues but is not designed to address them.
8. That disclaimer aside, this report found that virtually all stakeholders believed that establishing an EITI process in Zambia would be beneficial. As a first step towards this, this report recommends bringing all stakeholders together to discuss in a public, tripartite forum how EITI might be taken forward in Zambia. For its part, the World Bank stands ready to provide technical and financial support to any EITI process which emerges in Zambia.

1. INTRODUCTION

ORIGINS OF THE SCOPING STUDY

1.1 In April 2007 the Government of the Republic of Zambia (GRZ) wrote to the World Bank requesting support to carry out a scoping study on the Extractive Industries Transparency Initiative (EITI) in Zambia. The purpose of the study (the terms of reference of which are attached as **Annex B**) would be to help GRZ decide whether to implement the Initiative by:

- Meeting with stakeholders (government agencies, extractive industry companies, civil society groups) to assess their attitudes to the governance of the mining sector in Zambia; and
- Providing practical guidance to GRZ on how to implement an EITI program in the case that it decided to commit to the Initiative.

METHODOLOGY

1.2 This report is based on:

1. A mission by Charles Husband (Lead Mining Specialist) and Sefton Darby (EITI Consultant) visited Lusaka and Kitwe between May 14 -22, and met with a variety of government, industry, and civil society stakeholders. Based on this mission, the terms of reference for further research were developed.
2. From 4 July to 26 July, Dr. Mwaka Chulu (Copperbelt University School of Business) carried out a number of stakeholder interviews in Lusaka, Ndola, Kitwe, Chambeshi, Chibuluma and Chingola. The majority of Chapter 4 of this report is based on these interviews.
3. During August 2007 Sefton Darby and Mwaka Chulu developed the first draft this report. Much of the guidance on EITI in Chapter 5 is based on the forthcoming World Bank publication: *Implementing EITI: Applying Early Lessons from the Field* – which summarizes the experiences of other countries which have been implementing the EITI since 2004.

STAKEHOLDERS CONSULTED

1.3 During the course of the study a wide variety of stakeholders were interviewed, including:

- Government ministries and agencies;
- Extractive industry companies;
- Business associations;
- Civil society groups, including trade unions, non-governmental organizations, faith-based groups, and academia; and
- Development partners.

A full list of people interviewed during the course of this study is attached as Annex A.

FUNDING OF THE STUDY

- 1.4 This study was funded by the multi-donor EITI trust fund administered by the World Bank. At the time of writing, donors to this trust fund included Australia, Belgium, Canada, France, Germany, Netherlands, Norway, and the United Kingdom.

2. BACKGROUND

THE MINING INDUSTRY IN ZAMBIA

Recent history

- 2.1 From the late 1960s to the early-1990s mining in Zambia was dominated by the state-owned Zambia Consolidated Copper Mines (ZCCM). ZCCM was established not only to ensure that the people of Zambia were the primary drivers of the main revenue earning industry in the country, but also to act as a parastatal organization which provided services significantly beyond that typically delivered by a major mining enterprise. At its height ZCCM provided – in addition to its core operations – hospitals, schools, housing, utilities (electricity and water), and funding for youth groups and sports teams. It was far more than just a company – it was the heart of the social and economic development of the Copperbelt Region.

Box 1: Key Statistics on the Zambian Mining Sector

- Copper production has varied immensely over time – from a high of 750,000 tonnes of copper in 1973 to a low of 227,000 tonnes in 2000.
- In 2005 a total of 468,000 tonnes of copper was produced, and production is expected to increase substantially over the coming years.
- The international price of copper has fluctuated significantly over the past decade, from around \$1,600 per tonne in the early 2000s, to \$7,200 at the time of writing.
- Total capital investment in the Zambian mining industry totaled \$350 million in 2005

- 2.2 Under-investment and low copper prices eventually lead to a massive decline in production by the mid 1990s ZCCM was a loss making enterprise. Against this backdrop, as well as programs of broader economic reform and privatization, ZCCM was broken up and privatized in the late-1990s and early-2000s. At the time copper prices were extremely low, and the mines themselves in need of significant new investment. In order to attract investors the Government of Zambia (GRZ) negotiated a series of mine development agreements with what were (for investors) comparatively attractive levels of taxation, royalties, and conditions for depreciation of capital investment. The GRZ has maintained stakes in virtually all of the mines through ownership of 87% of the shares of ZCCM's

successor company – ZCCM Investment Holdings (ZCCM-IH), which is publicly listed in both Lusaka and London. The ownership and levels of production of the mines currently producing in Zambia is outlined in Table 1 below

Table 1: Zambian mines—Their Ownership Structure and Levels of Production

Mine	Ownership	Production (2005)
Bwana Mkubwa Mining	100% First Quantum Minerals	49,080 tonnes copper (primarily processed ore from DRC)
Chambishi Metals	90% Enya Holdings BV (J&W Group) 10% ZCCM-IH	15,500 tonnes copper
Chibuluma Mines	85% Metorex Ltd 15% ZCCM-IH	5,699 tonnes copper
Kansanshi Mines	80% First Quantum Minerals 20% ZCCM-IH	79,626 tonnes copper
Konkola Copper Mines	51% Vedanta Resource Holdings Ltd 49% ZCCM-IH	163,603 tonnes copper 19 tonnes cobalt
Luanshya Copper Mines	90% Enya Holdings BV (J&W Group) 10% ZCCM-IH	17,632 tonnes copper 3,652 tonnes cobalt
Lumwana	100% Equinox Minerals Limited (6.5% of which is owned by ZCCM-IH)	Not yet operational at that time
Mopani Copper Mines	73.1% Glencore International 16.9% First Quantum Minerals 10% ZCCM-IH	132,719 tonnes copper 1,777 tonnes cobalt
NFC Africa Mining	85% China Nonferrous Metal Industry Engineering and Construction Corporation 15% ZCCM-IH	19,789 tonnes copper

2.3 New foreign investors have shown significantly less interest in taking responsibility for the non-core-business services which ZCCM provided to the population. At the same time the GRZ has in some cases not been able to adequately fill the gap in the provision of social services left by the break-up of ZCCM.

2.4 Following significant investment in mines by new owners, as well as a more than quadrupling of copper prices, the Zambian mining industry is now – in terms of both the amount and value of production – booming. The result is increasing pressure on both companies and government to renegotiate the terms under which companies operate so that the people of Zambia are able to benefit from the boom.

Revenue streams and mine development agreements

2.5 Under legislation introduced by GRZ as part of the 2006 budget, the generic fiscal terms for base metal mining operations in Zambia is:

- 0.6% Production royalty
- 25% corporate income tax
- 0% withholding tax on dividends and interests
- Depreciation for tax purposes (capital allowances) 100%

2.6 Much of this fiscal framework does not apply to those companies who, during the privatization process, negotiated mine development agreements. These agreements vary from company to company and amongst other things contain variable rates of royalty and corporate income tax. As part of these agreements some mines also agreed to price participation agreements under which ZCCM-IH would received an increased take from companies in which it held shares once copper exceeded a certain price, and once the company concerned began to pay a dividend. A full summary of the revenue streams generated by the mining sector in Zambia is summarized in Table 2 below.

Table 2: Mining Revenue Streams in Zambia

Revenue Stream	Paid to / collected by
Corporate Tax	Zambia Revenue Authority
Mineral Royalties	Zambia Revenue Authority
Withholding Tax	Zambia Revenue Authority
Customs Duty	Zambia Revenue Authority
Value Added Tax	Zambia Revenue Authority
Pay As You Earn	Zambia Revenue Authority
National Pension Scheme (NAPSA)	National Pensions Authority
Property Rates and Levies	Local Government / Authorities
Price participation agreement payments	ZCCM-IH
Dividend payments from companies in which GRZ has a stake	ZCCM-IH

Audit and disclosure requirements

- 2.7 Under the Companies Act it is a regulatory requirement that all companies undergo an annual external audit and that this audit report is lodged with the Company Registry. All of the major mining companies in Zambia are audited by well known international audit firms.
- 2.8 The Zambia Revenue Authority conducts regular (at least 3 times a year) audits of all mining companies on taxes such as VAT and PAYE. The ZRA also makes assessments of corporate tax and mining royalties based on information provided by mining companies. These assessments are, in turn, scrutinized by the Office of the Auditor General, which reviews the revenues received and collected by the ZRA. The Office of the Auditor General reviews the financial accounts of all mining companies.
- 2.9 The Ministry of Mines and the Bank of Zambia also periodically request information from companies regarding their operating, income, and expenditure data. Finally, these government agencies are all scrutinized by the Parliamentary Public Accounts Committee.

THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI)

Background

- 2.10 The Extractive Industries Transparency Initiative (EITI)¹ was established in 2002. Since then the EITI has become a well established and well recognized broad-based global coalition of resource rich developing countries, donors, major companies, civil society groups, and investors. Countries implementing EITI commit to publishing all payments made by oil, gas, and mining companies to government, and all revenues received by the government from those companies. EITI implementers also commit to closely involving civil society in the design and monitoring of the EITI process.

Core standards

- 2.11 International EITI policy and standards are based on the EITI Principles which establish the basic tenets of the Initiative; the EITI Criteria (see below) which outline the minimum outcome of an EITI program; and the EITI Validation Guide (2006 – a summary is attached as Annex C) which sets out a number of indicators which will be used to measure progress in countries implementing the EITI.

¹ For more information on the Initiative, see www.eitransparency.org

Box 2: The EITI Criteria

1. Regular publication of all material oil, gas and mining payments by companies to governments (“payments”) and all material revenues received by governments from oil, gas and mining companies (“revenues”) to a wide audience in a publicly accessible, comprehensive and comprehensible manner.
2. Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.
3. Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator’s opinion regarding that reconciliation including discrepancies, should any be identified.
4. This approach is extended to all companies including state-owned enterprises.
5. Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.
6. A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

Source: EITI Source Book, EITI Secretariat (2005)

Benefits of implementing the EITI

- 2.12 Different countries have implemented a broad variety of EITI programs which in turn have focused on different aspects of promoting transparency (for further details see *Chapter 4: Deciding the Scope of an EITI Program*). As a result, different countries have experienced different benefits from their EITI programs.
- 2.13 In general, however, EITI programs can help governments and other stakeholders – companies, civil society groups, investors, media, etc. – **to systematically report, review and assess** on what is being paid by companies to (and received by) government agencies. By developing such a program with the involvement of all stakeholders, accountability of government and companies is increased. The kinds of benefits to EITI-implementing countries can include:
 - *Demonstrating a national commitment to transparency:* Implementing EITI can send a clear signal to all stakeholders that a government is serious about the transparent and accountable payment and receipt of extractive industry revenues – perhaps within an overall program of governance reforms in these sectors. Because EITI is an international standard, a country which is listed as being “EITI compliant” is meeting a

series of internationally agreed criteria on improving transparency (with performance independently monitored via validation).

- *More efficient revenue collection:* By increasing scrutiny over payments and revenues, EITI programs sometimes lead to more efficient tax collection from extractive industry companies. By making public information on payments and revenues, it can also make it easier to detect corruption.
- *A systematic framework for collaboration:* Greater accountability of government, companies, and civil society via EITI can improve trust between these groups. By providing a platform for communication between all stakeholders, EITI can help develop consensual solutions to problems. Doing this can reduce the risk of conflict and promote stability - essential to promoting a favourable investment climate and ultimately sustainable economic development;
- *Improving sovereign and corporate ratings:* By producing regular EITI reports on payments and revenues a country may be able to improve the credit worthiness of the government and of companies. Sovereign credit ratings are based on a country's medium-term ability to meet its financial obligations, so the more information about revenues that is in the public domain, the greater the ability of financial institutions and rating agencies to assess a country's credit-worthiness.
- *Providing a basis for follow-on public engagement:* By clearly stating what has been paid to different government agencies (and in some cases to sub-national levels of government), citizens can then organize themselves to hold those agencies to account for how these revenues are then used in public expenditure programs. Government budget monitoring is an important activity which can complement an EITI program, but it is difficult to carry out meaningfully in the absence of reliable information on revenues.
- *Corporate risk management:* EITI can help reduce risks to extractive industry companies. By clearly showing what is being paid to government and to communities, a company is also reporting the benefits which are accruing from its operations and this in turn helps to place responsibility on governments for the long-term sustainable development of the sector and of the economy. Good corporate risk management benefits both companies (from lower long-term operating and reputational costs of extractive activities) and countries (by lowering the costs to companies, extractive industries projects will begin payments to governments sooner).

EITI implementing countries

- 2.14 At the time of writing some 28 countries from Latin America, Africa, Europe, and Asia had committed to implementing the EITI. Active implementation is underway in the majority of these countries, and thus far 8 countries have

produced one or more EITI reports. A list of these countries can be found in Box 3 below.

Box 3: EITI Countries as of August 31, 2007

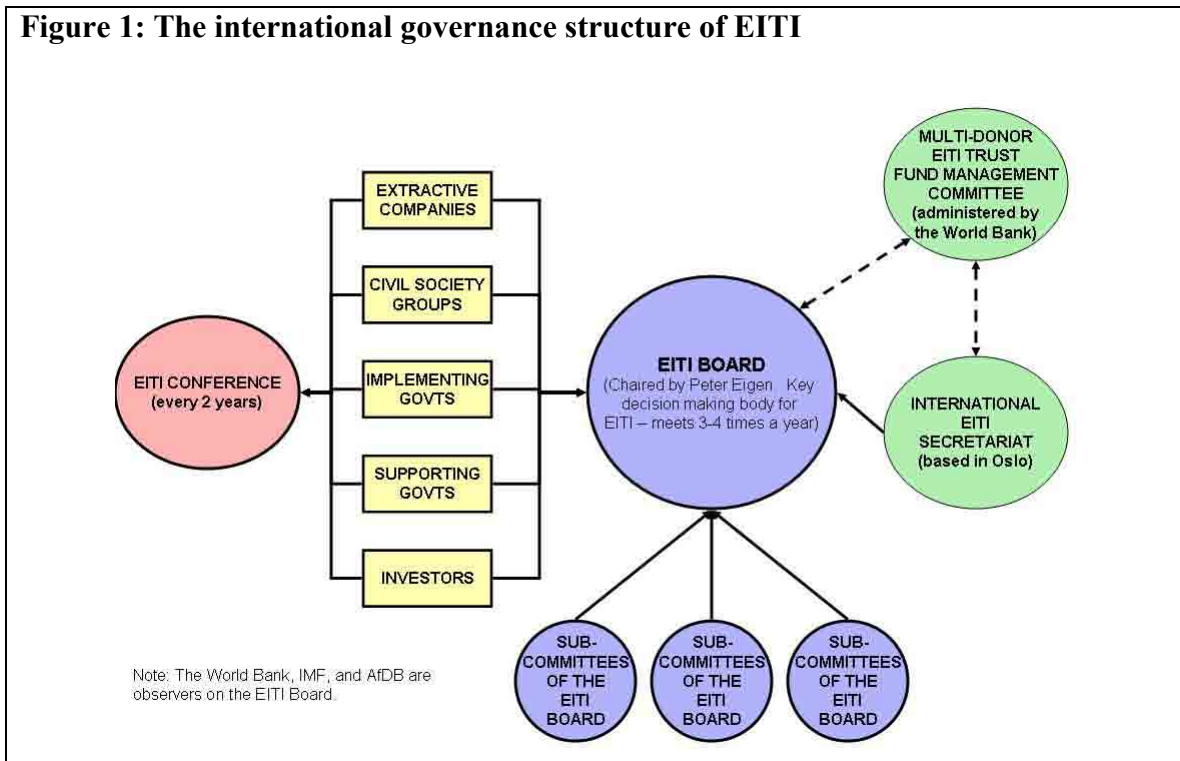
<u>Europe and Central Asia</u>	<u>Africa</u>	
Azerbaijan	Botswana	Mauritania
Kazakhstan	Cameroon	Niger
Kyrgyz Republic	Chad	Nigeria
	Congo, D.R.	Sao Tome e Principe
<u>East Asia</u>	Congo, Republic	Sierra Leone
Mongolia	Cote d'Ivoire	
Timor Leste	Equatorial Guinea	<u>Middle East</u>
	Gabon	Yemen
<u>Latin America and Caribbean</u>	Ghana	
Bolivia	Guinea	
Columbia	Liberia	
Peru	Madagascar	
Trinidad and Tobago	Mali	

It is important to note that this table does not take into account the EITI validation status of the countries listed and the inclusion of any country in this table is not intended to imply any such connection. Countries in **bold** have produced multiple EITI reports.

International governance structure

- 2.15 The EITI is an international initiative with its own independent board and secretariat. EITI implementation is also supported by the International Financial Institutions and as well as other development agencies such as the African Development Bank, DFID and other bilateral donors. The key aspects of international EITI governance are described below and are summarized in Figure 1.
- 2.16 *The EITI Board:* The EITI Board is the key decision making body for the Initiative, and is headed by an elected Chair. The current Chairman of the Board is Peter Eigen, the founder and former chairman of Transparency International. The membership of the EITI Board is determined at the EITI Conference. The Board also works with various smaller sub-committees covering issues such mining-specific issues.

Figure 1: The international governance structure of EITI



- 2.17 *The International EITI Secretariat:* The Secretariat is the first point of contact for all organizations involved and interested in the EITI. It is an independent Secretariat staffed by internationally recruited staff and is based in Oslo, Norway. It is funded by supporting countries and certain members of the EITI Board.
- 2.18 *The EITI Conference:* The Conference held every two years and is the major international gathering of all stakeholders involved in the Initiative globally. It meets to agree major EITI policy issues; to share experience on EITI implementation; and to elect new members of the EITI Board.
- 2.19 *International Financial Institutions / Donors:* The World Bank, the International Monetary Fund, and the African Development Bank (AfDB) all attend meetings of the EITI Board as observers² and participate in the EITI Conferences.

² The World Bank, IMF, and African Development Bank sit as observers (rather than voting members) so as to not compromise their primary role of providing technical and financial assistance to EITI implementing countries.

3. STAKEHOLDER FEEDBACK

METHODOLOGY

- 3.1 For this section of the study a number of interviews with key stakeholders were carried out. The interviews were based on semi-structured questionnaires that were developed for the government, civil society, and industry stakeholders. The objective of this research was to get a clear view from a variety of stakeholders on a number of issues relating to developing an EITI program in Zambia. Stakeholders were specifically asked to discuss:
- Their perceptions of the level transparency which presently exists between Government and extractive industry companies in Zambia;
 - What disclosure – if any – of extractive industry revenues and payments already existed;
 - What barriers there might be to the adoption of an EITI program in Zambia;
 - What actions and resources would be required to overcome these barriers and to implement an EITI program in Zambia;
 - Which stakeholders would need to be involved in the successful implementation of such a program; and
 - Their perceptions of what the benefits (and costs) of adopting the EITI would be.

PERCEPTIONS OF TRANSPARENCY IN THE EXTRACTIVE INDUSTRIES IN ZAMBIA.

Government views

- 3.2 Government stakeholders had a mixed view on the state of transparency in the extractive industries in Zambia. Some felt that the governance and transparency of the sector was efficient. Several government stakeholders felt that the perceptions of a lack of transparency in the sector was due to both the absence of reported data, as well as because of overly generous concessions granted to the companies (i.e. that people perceived the sector to be opaque because there weren't substantial revenues to report).
- 3.3 Others felt that there was the possibility that companies were under-reporting production figures and the values of exports, and that there was a lack of institutional capacity and resources in government to determine whether this is or

is not the case. Finally, some felt that the secrecy which had surrounded the negotiation of the mining development agreements during the late 1990s and early 2000s was so significant that it continued to make it very difficult for anyone to trust either the government agencies or the companies operating in the sector.

Company views

- 3.4 Mining companies, on the other hand, all felt that they were meeting the terms of their development agreements (and the reporting requirements therein) and that they were regularly called upon to disclose a wide variety of data to different government agencies. The lack of transparency, in their view, came not from a lack of information, but rather that that information was disclosed to government agencies which did not in turn see it as being necessary to disclose that information to the wider public.
- 3.5 Companies felt that as their agreements were with the government, any disclosure was not the responsibility of the companies. Whilst some companies recognised that the secrecy that accompanied the negotiation and implementation of the development agreements created an impression of a lack of transparency and accountability, other companies were concerned that an EITI program would require the disclosure of confidential commercial agreements between the governments and companies, as well as other proprietary information.
- 3.6 Some companies felt that the demands by government and civil society groups for a change in the fiscal provisions of the development agreements ignored the flow on effects of the very significant capital investments made in recent years in the mining sector, as well as the fact that once the cost of those investments were recouped, tax payments (and presumably dividend payments to ZCCM-IH) to the GRZ would increase significantly.
- 3.7 Other companies, however, noted that the increase in copper prices was so significant that it would ultimately prove very difficult for them to maintain their investments in Zambia unless they were shown to be passing some of the benefits of the boom in copper prices. The desire of these companies is for a fiscal regime which is not so punitive that it discourages further investment. Furthermore, there is an intense desire amongst companies for any negotiations regarding the terms of the existing mine development agreements to be carried out as a rational negotiation, rather than as a drawn out public political debate.

Civil society views

- 3.8 Civil society groups, on the other hand, had an almost universally negative perception of the level of transparency in the extractive industries. Many felt that on a variety of issues (such as environmental management, occupational health and safety) there was a profound lack of regulation in the sector. The general

view of civil society groups was that the amount of revenues paid by companies, and the amount of monitoring to which they were subject, was primarily a function of how good their political connections were, rather than whether they were paying what they should pay, and operating in the way that they should.

- 3.9 Once again, the lack of transparency of the mining development agreements has created suspicion and was cited by virtually all civil society stakeholders as being clear evidence of a broader lack of transparency in the sector. Civil society groups felt that the negotiation of these agreements had been overly secretive, and that there had been (and continues to be) little consistency in the way in which mining licenses were/are awarded and monitored. This perception endures despite the introduction of a modern, fully automated mining registry and cadastre systems created by SEED and MSDP projects funded by the World Bank. This inconsistency was interpreted by most civil society groups as being a form of discretion which allowed political figures and government officials to engage in corruption.
- 3.10 One group made a similar observation to that of the companies – namely that the issue of transparency in the sector was not a lack of information, but rather a lack of disclosure by the government of the information which they receive from companies.

Additional issues

- 3.11 Several stakeholder mentioned that whilst a lot of attention was paid to the state of the copper sector, the gemstones sector was increasingly important and that due to the predominantly artisanal methods of mining, there was very little regulation or monitoring of the sector.³ Some felt that there were very significant amounts of revenue being lost due to the lack of proper regulation in the gemstones sector.
- 3.12 Other stakeholders mentioned that Zambia was just now begun to issue exploration licenses for oil and gas and that there was little public understanding of how this process was being carried out and what the fiscal consequences were (i.e. are there / will there be significant revenues generated even during the exploration phase).

DISCLOSURE OF PAYMENT AND REVENUE DATA BY MINING COMPANIES TO GOVERNMENT AGENCIES

- 3.13 Company interviewees were asked whether they disclosed or were prepared to disclose the levels of payment which they were making to the government. Of

³ This is despite the development of a national minerals policy (which included artisanal mining issues) which had been consulted on with stakeholders at workshops held under the auspices of the SEED program.

- these companies, only ZCCM-IH and Chibuluma Mines were able to provide detailed figures of their payments, and payments of their associated mining companies, while Chambeshi provided details of the levels of tax payments to the GRZ.
- 3.14 It is unclear what contributions were made to ZCCM-IH under price participation agreements. Nor is it clear whether any such contributions, as well as revenues from any dividends paid by companies in which ZCCM-IH holds a stake, were passed on to the Ministry of Finance; were retained by ZCCM to fund further investments ; or were used to reduce ZCCM-IH's debt to the GRZ.
 - 3.15 ZCCM-IH stated that as a company quoted on the Lusaka and London stock exchanges, it is required to produced annual audited financial statements which are disclosed to numerous institutions (the Companies Registry, the Auditor General, the Securities and Exchange Commission, etc.), and thus access to this data was more a question of making the information held by these institutions more accessible, rather than a need to actually disclose the data.
 - 3.16 Other companies were barred by confidentiality clauses in their development agreements from disclosing the level of payments made to government. Many companies noted that their contracts were with the government, and thus they would only disclose information to the government – not to the general public. Some companies noted that as joint stock companies they would need permission from all of their board members (which in virtually all cases includes the Zambian Government in the form of ZCCM-IH and MMMD) to disclose this kind of information.
 - 3.17 Some stakeholders questioned the independence and objectivity of the external auditors contracted by the mining companies. It should be noted that this is often a question posed by civil society groups in many EITI countries, who are sometimes unaware of the international standards and codes of conduct require audit firms to produce a statement of accounts based on what they find, rather than what the company wants them to produce (though obviously there have been several prominent examples of companies trying to manipulate data provided to auditors).
 - 3.18 On October 28 2007, the Minister of Finance and National Planning, Honourable Ng'andu Magande revealed that the Government expected to receive in excess of US\$100 million (K400 billion) in mineral royalties and mine company tax by end of December 2007.

POSSIBLE BARRIERS/IMPEDIMENTS TO THE ADOPTION AND IMPLEMENTATION OF EITI

- 3.19 During the course of interviews with stakeholders, the EITI process was explained to them and they were invited to identify any possible barriers to the implementation of such an Initiative.

Political barriers

- 3.20 There was a mix of opinion amongst stakeholders as to how committed the government was in its good governance / anti-corruption campaign. On balance the opinion seemed to be that whilst there was genuine senior level political commitment to anti-corruption efforts, there were still a number of politicians and officials who would feel threatened by an EITI program. Several stakeholders cited the disbanded HIPC monitoring team as an example of a good governance / anti-corruption campaign which had run into significant opposition from certain quarters within government.
- 3.21 Many stakeholders mentioned that because the management of the mining sector had been made such an intensely political issue, it might be difficult for an initiative such as EITI to make any significant progress without getting bogged down in a party political debate.

Economic barriers

- 3.22 Some stakeholders believed that some politicians had direct financial stakes in some mines which would lead them to oppose an EITI initiative. Others stated that low average wages often compromised the integrity of government officials who are involved in monitoring the industry.
- 3.23 Some stakeholders observed that given adverse public sentiment and the existing tensions between the government and companies regarding the negotiation / renegotiation of their development agreements that some companies might perceive an EITI program as a tool which the government would use to build public pressure on the companies to renegotiate their existing contracts, and that this would ultimately be damaging to Zambia's investment climate.

Regulatory and contractual barriers

- 3.24 A majority of stakeholders noted that the current regulatory instruments do not actually place an adequate public disclosure requirement on mining companies except to selected government agencies. The current Companies and Securities Act provisions on disclosure were considered to be inadequate by most stakeholders.

- 3.25 Some stakeholders noted that many of the mining companies are subsidiaries of larger multinational holding companies and that this ownership structure would limit how much they would be able to disclose.
- 3.26 The majority of respondents felt that the existing contracts between the government and companies were a significant barrier to EITI implementation. Whilst companies were happy to disclose information to government agencies, stakeholders felt that they would either feel no obligation to release this information to the public, or would actively claim that the contracts guaranteed confidentiality of this information – i.e. that even if government asked for them to disclose the information to third parties, the companies would not be obliged to do so.

Institutional capacity barriers

- 3.27 The majority of interviewees noted that there were severe capacity constraints in virtually all the relevant public agencies (e.g. ZRA, Ministry of Mines and Minerals Development; the Auditor General; the Parliamentary Public Accounts Committee). These capacity constraints would affect the government’s ability to properly gather and process information; to adequately audit mining companies; and disclose that information to the public.
- 3.28 Several stakeholders noted that the main effect of this lack of capacity was an inability of government agencies to advance from merely gathering information on what is paid to carrying out the greater scrutiny that would be required to properly determine what should be paid. In short, there is a perception that there is an over-dependence on company self-assessment of taxation and costs, not to mention how to address more technical issues such as foreign exchange gains and losses; timing differences; transfer pricing and taxing goods in transit (e.g. copper which is transported from D.R. Congo through Zambia, which may or may not undergo processing in Zambia).

Other barriers

- 3.29 Some stakeholders noted that in Zambia there was at worst an active culture of secrecy, or at best a culture of complacency or indifference in which neither the government nor companies saw it as their responsibility to disclose information to the public. One stakeholder observed that EITI had, in some other countries in Africa, been implemented as a “voluntary” initiative (i.e. that there was no underpinning legislation to mandate disclosure). This stakeholder felt that an EITI

program would not work in Zambia without a legal basis that included sanctions against companies which did not disclose information.⁴

3.30 Finally, some stakeholders questioned why Zambia should consider implementing EITI, whilst developed countries rich in natural resources (for example Norway or Canada) are not implementing the Initiative.⁵

Actions and resources required to address identified barriers

3.31 Stakeholders interviewed recommended a wide variety of solutions to remove or mitigate the barriers identified above, including:

- A review of all regulatory instruments that pertain to disclosure to ensure they do not act as barriers. In addition to this, some interviewees suggested the passing of whistle blower legislation to protect government or company employers who disclosed information which they believed to be in the public interest.
- A review of all contractual agreements signed between government and mining companies by an independent body.
- Adoption of an agreement to publicly disclose and publicize mine development agreements.
- The creation of a specialist team/crack team with expertise from various disciplines relevant to the EITI and with representation from key stakeholders to oversee the process.
- Enhancing the institutional capacity of the Ministry of Mines, Finance and Auditor Generals office in the area of staffing and training.
- Enhancing Parliamentary oversight of mining companies
- Some of the interviewees suggested that the audit function of the Auditor General should be contracted out to independent audit companies.
- Several stakeholders mentioned the need for capacity building programs for civil society to help them better understand how the extractive industries work.

⁴ Whilst EITI is a voluntary initiative insofar as it is up to countries to decide whether they wish to join the Initiative, once a country does join there are clear criteria and validation indicators which include mandating participation in the EITI by all companies operating in the country.

⁵ Part of the answer is that these developed resource rich countries have, in the context of their own governance and transparency, corporate governance, legislation, civil society and media systems effectively mainstreamed all of the key components of EITI into their overall management and regulation of the extractive sectors. The result of this is that there is a significant disparity in the perceptions of stakeholders as to how transparent a country such as Zambia is relative to countries such as Norway. Transparency International's 2006 Corruption Perceptions Index, for example, rates Norway as being the 8th (out of 163) most transparent country in the world, whilst Zambia is rated 111

THE ROLE OF STAKEHOLDERS IN THE EITI PROCESS

3.32 Interviewees were asked to identify which organizations should be involved in implementation of the Initiative. They were as follows:

Government

- Ministry of Mines and Minerals Development.
- Ministry of Finance.
- Ministry of Justice.
- Office of the Auditor General.
- Anti-Corruption Commission.
- Zambian Revenue Authority.
- Local authorities in mining regions.

Some stakeholders felt that in order to drive the initiative forward or to ensure that government was joined up, either the President or a senior official in the President's office would need to be involved.

Companies and professional associations

- All significant mining companies would need to be involved.
- Industry bodies such as the Chamber of Mines.

Civil society organizations

- Civil society groups should be involved, with an emphasis on those with expertise on transparency and accountability and/or the mining sector – e.g. Transparency International Zambia, CCJP.
- Trade Unions.
- Many stakeholders emphasized that the selection of which civil society groups should be involved would have to be done in an open and consultative manner.

Parliament

- The Parliamentary Public Accounts Committee.

PERCEIVED BENEFITS OF ADOPTING THE EITI

3.33 Despite the numerous barriers to implementation identified by interviewees, most were able to clearly identify both (i) why adoption of an EITI program would be particularly useful now; and (ii) the benefits of such a program.

3.34 Many stakeholders felt that despite malfeasance by some individual politicians and officials, there is genuine commitment in government to increasing transparency and accountability in the management of public resources. Moreover, there is considerable public interest in ensuring that either revenues from mining are used to help develop mining communities and / or to ensure that mining companies pay more than they presently are. Finally, many stakeholders observed that the openness of Zambian society, and the robustness of civil society groups, would make implementation of EITI easier in Zambia than in other countries.

3.35 The benefits which stakeholders believed could accrue as the result of implementation of an EITI program included:

- An EITI program would help address the general lack of trust of both the companies as well as the government agencies involved in monitoring the mining sector.
- An EITI program would help improve the overall reputation and standing of the companies operating in Zambia, and in doing so improve the sustainability of their long-term mine development contracts.
- Many companies felt that an EITI program would help demonstrate explicitly the overall contribution that they were making to the Zambian economy and, in doing so, would ensure that civil society groups looked to government agencies (instead of companies) to address development issues in mining areas.
- A more thorough audit and disclosure regime might encourage compliance and deliver additional revenues and/or curtail the misuse of funds.
- A full disclosure of payments would enable miners and mining communities to demand a more equitable share of the benefits. Many stakeholders observed that very little of the revenues collected by the government from mining companies seems to be directed back to mining communities.

CONCLUSIONS ON STAKEHOLDER FEEDBACK ON THE EITI

3.36 The feedback in the proceeding sections has been almost entirely based on stakeholder's general perceptions of the mining sector, and the governance thereof, rather than on EITI specifically. Whilst a few stakeholders had heard of EITI, and most could understand the general thrust of the Initiative, very few stakeholders clearly understood what adopting the EITI would actually entail. As a result of this lack of understanding it is very important to note that some stakeholders have unnecessary concerns about what implementing EITI would entail, whilst others have very high expectations as to what an EITI program would be able to deliver.

- 3.37 Virtually no stakeholders interviewed were against the idea of an EITI program. At worst, some stakeholders (particularly companies) were of the view that implementation of an EITI program was not so much an issue for them to consider, but rather for government.
- 3.38 It is clear that a lot of detailed disaggregated information on company payments and government revenues already exists but that it is not available to the public because:
- It is scattered across many different government agencies; and/or
 - It is subject to confidentiality agreements in contracts which allow it to be disclosed to government but not to third parties; and/or
 - It is lodged in the Companies Registry. Access to financial accounts in the Company Registry requires the payment of a search fee of K25,000 (approx. US\$6). One stakeholder noted, however, that the quality of the financial information lodged by the companies with the Companies Registry is too general to allow for detailed examination. The exception to this is the information lodged by ZCCM-IH, which provides relatively detailed and extensive financial information.
- 3.39 Further research is required to determine what the balance is between these three reasons for the lack of publicly available information.
- 3.40 Many stakeholders observed that any EITI program would need to be championed politically at the highest level. There will inevitably be some who would perceive an EITI program as being a threat to their interests, and thus the government would need to enter into such a program with a high level of commitment, and would need to assign significant resources (both human and financial) to ensuring that an EITI program got off the ground.

4. IMPLEMENTING THE EITI

- 4.1 At the outset of this study the Government of Zambia requested that the scoping report very clearly lay out what implementing the EITI would actually require. Some of this information has been provided in *Chapter 2, The Extractive Industries Transparency Initiative (EITI)* this report, but this chapter provides further details.

FIRST STEPS – COMMITTING TO THE EITI

- 4.2 In deciding on whether to sign up to EITI, governments almost always consult closely with at least those groups which would be affected by or interested in EITI implementation. At a minimum, major international and national extractive industry companies and business associations, local civil society groups, and other government agencies (and possibly sub-national governments and traditional leaders) need to be consulted.
- 4.3 Many countries have held seminars or conferences on EITI in order to consult with stakeholders and build a national consensus on whether EITI would be useful and ways to implement it. Given the lack of knowledge amongst stakeholders in Zambia regarding the specifics of EITI (see *Chapter 3, Conclusions on Stakeholder Feedback on the EITI*), this would obviously be a useful step if the Government of Zambia decided to implement the Initiative. The EITI Trust Fund (administered by the World Bank) is able to provide logistical support and funding for such events.
- 4.4 The practice is that once a government has decided to commit itself to EITI, it typically undertakes the following initial steps in line with EITI Criteria and Validation Guide:
- *Issue an unequivocal public statement of its intention to implement EITI* – this statement would need to be well publicised in the national media in Zambia.
 - *Commit to work with civil society and companies on EITI implementation* – EITI is a multi-stakeholder process. All EITI countries establish multi-stakeholder working groups with government, company, and civil society representatives on it to oversee and manage the Initiative.
 - *Appoint a senior individual to lead on EITI implementation* – in most countries this individual is a Cabinet level minister or a senior adviser to

the head of state, and is someone who has the influence and the resources to coordinate the government's position on EITI and drive the Initiative forward.

- *Publish a work plan* which is costed; contains measurable targets; and has a timetable for implementation.

- 4.5 Once a government has either carried out these four steps, or has established a time-bound action plan for carrying them out, they normally inform the EITI Board and EITI Secretariat of their desire to be listed as an “EITI Candidate Country”. Furthermore it should advise likely sources of technical and financial assistance (such as the World Bank and bilateral donors) of its commitment to the EITI, and if necessary, seek support from these agencies.

INVOLVING STAKEHOLDERS

- 4.6 A key underpinning principle of EITI is that it is implemented using a participative, multi-stakeholder approach. This means that stakeholders outside of government – such as extractive industry companies and civil society organizations – are not just consulted as the Initiative progresses, but are actively involved in designing, steering, and governing it.

- 4.7 At the same time this is often the part of EITI which governments most struggle with. There are a number of tensions which will inevitably arise, including most commonly:

- *Who should be represented on the multi-stakeholder steering group?*
There is a natural tension between having a steering group which is large enough to be broadly representative of the stakeholders involved, whilst small enough that it can meet easily, and take decisions quickly.
- *How should they be selected?* Because it is very difficult to include everyone who wants to be involved in an EITI program, governments need to think very carefully about ensuring that the nomination process for the steering group is open and transparent.

- 4.8 The role of EITI stakeholder working groups varies from country-to-country, but typically such groups carry out the following functions:

- *Overall strategic decision making* – they meet regularly to make the day-to-day decisions regarding the Initiative, and to oversee the work of the government's EITI secretariat or implementation unit.
- *Developing or agreeing a work plan*
- *Appointing and managing an auditor and/or a reconciliation organization* which will gather and reconcile the data provided by companies and government agencies.

- *Raising public awareness on EITI*
- *Assessing and removing barriers to implementation* – EITI in Zambia, for example, may require a legislative or regulatory basis to allow government agencies and companies to disclose information to third parties.

4.9 In order to fully involve all stakeholders and to be clear on the steering group’s operations and rules, most countries have developed a type of Memorandum of Understanding (MoU) or Terms of Reference (TOR) for the steering group or for the national EITI initiative as whole. Such MoUs are signed by steering group members (and many other organizations to demonstrate their commitment to the EITI) and commonly state:

- Signatories’ commitment to the EITI Principles and Criteria;
- How the Initiative will be governed and taken forward;
- The rights and responsibilities of every organization which signs the MoU;
- A description of how the EITI report will be produced; and
- How the independent administrator or auditor (responsible for reconciling payments and revenue data) will be appointed.

A typical governance structure for an EITI program is attached at Annex D.

DECIDING THE SCOPE OF AN EITI PROGRAM

4.10 Different countries have implemented a wide variety of EITI programs. Very early on in the process all stakeholders will need to decide how broad or how narrow an EITI program in Zambia should be. The four areas in which EITI programs tend to vary are:

- i. *A reconciliation process or an audit process?* A fundamental scoping decision in EITI countries is whether the EITI Report will be a reconciliation of payments and revenues (carried out by a firm acting as a reconciler or administrator), or whether it will go further and allow for payments and revenues data to be audited under accepted international auditing standards (i.e. carried out by an appropriately qualified audit company).
- ii. *What will be the materiality level for payments or company participation?* Individual countries have set their own materiality limits for payments (i.e. the size of payment below which it is excluded for efficiency from the EITI process) or company participation materiality (i.e. threshold size of company operations below which it is excluded from EITI reporting process).

- iii. *Degree of aggregation or disaggregation of data disclosure in EITI Reports:* In addition to materiality, a key element of the scope of EITI is degree of aggregation or disaggregation that an EITI Report contains, with respect to separately identifying – or not identifying – total payments by reporting companies and the types of payments.
 - iv. *Including sub-national or social/community payments:* Some EITI countries chose to only report on what companies pay to the national or federal government. Other programs, however, also cover and require reporting of payments made to sub-national levels of government (e.g. state, district) or to social / community groups.
- 4.11 There is no “right” answer as to what kind of EITI program a country should adopt – different stakeholders will have concerns about different aspects of the EITI program. Typically these concerns will be raised at the early meetings of the EITI stakeholder working group, and decisions will be made on the scope of the program. That said, some core factors can be discerned regarding the scope of EITI program:
- i. *Amount of data already publicly available:* In some countries very little information on company payments and government revenues is either publicly available, or is consolidated in a single, easy to understand source. In other countries a lot of such revenues data already exists and is made available to the public via a few, easily accessible sources. Based on stakeholder interviews, it seems that there is already a lot of information which is being produced in Zambia and that implementing EITI would, in the first instance, be benefited by the consolidation and publication of that data.
 - ii. *Quality of revenue data in the public domain:* Of the data which is already been produced and is publicly available, whether it is audited to international standards or not has a bearing on the scope of the EITI program. Further research is required to determine what the quality is of existing payments and revenue data in Zambia.
 - iii. *Public perception of the level of transparency in the country:* Notwithstanding the information made available by the government and companies, the perceptions of their reliability (trust) by the public at large is also an important factor in deciding how rigorous an EITI program should be.
 - iv. *Resources available to conduct an EITI process:* A core driver of scope is simply levels of resources available for the task, whether from government or from donor-provided funds that supports the EITI program.

- 4.12 The experience of a number of countries as observed by the World Bank Group is that the countries with more extensive EITI programs have produced higher quality EITI Reports and have tended to benefit a lot more from EITI in the long-run (by setting up a solid platform for extractive industry governance reforms). More information is ultimately better.
- 4.13 Equally, however, there is a clear trade-off of cost/benefit: certain countries have seemed to struggle in deciding between EITI program scope they aspire to, as opposed to scope of EITI program which is possible to achieve with the resources available. These countries are seeing that each expansion of the scope of an EITI program has a cost – both financially, as well as in the amount of time and effort it takes to complete a reporting process. Stakeholders need, therefore, to be very clear on the trade-offs involved in determining the scope of the EITI program.
- 4.14 Finally, it is worth noting that many EITI countries have evolved the scope of their EITI program over time – i.e. that they have begun with limited EITI programs but have broadened them as the Initiative develops.

Box 4: Case study – EITI in Ghana

The EITI process was initially launched in Ghana in 2004, but began in earnest early-2006. The “GEITI” process is overseen by a National Steering Committee which includes representatives of government ministries; the Chamber of Mines; district assemblies; and a coalition of civil society organizations. An Implementation Secretariat based in the Ministry of Finance and Economic Planning supports the work of the NSC and helps to implement the EITI program.

In 2006 an independent audit company was appointed by the Government of Ghana to compile EITI reports. The terms of this audit company included:

- Checking revenues received from 8 large mines; to compare them to the revenues received by government; and to explain any discrepancies should they occur.
- To scrutinize payments made by both companies as well as central government (which redistributes a fixed percentage of mining royalties) to district assemblies and traditional authorities.
- To ascertain the appropriateness of royalty, tax, ground rent, and dividend payments by companies.
- To review the financial statements of companies, specifically to review company capital investments and operating costs.

- To check if the declarations of the quantities of minerals declared are in conformity with the declarations made to Ghana's Mineral's Commission.

Two Ghana EITI reports have now been produced. The process is funded by a combination of funds provided by the Ministry of Finance and Economic Planning; the multi-donor EITI trust fund administered by the World Bank; and the German Technical Cooperation Corporation (GTZ).

More information on Ghana's EITI process can be found at www.geiti.gov.gh

DEVELOPING A WORK PLAN

4.15 At the national level, countries have found that developing a comprehensive work plan for approaching EITI (and its requirements for political commitment and funding) is an important pre-requisite of EITI implementation. If Zambia were to commit to implementing EITI, together with forming a multi-stakeholder steering group, developing such a work plan would be a priority task. EITI work plans typically address the following issues:

- i. *Bringing together stakeholders:* The work plan will need to have actions which specifically address the issues of how stakeholders will be identified and brought together – and how a steering group will be appointed and how its work will be supported
- ii. *Removing barriers to implementation:* The work plan will need to have actions which specifically address:
 - How any barriers to implementation will be identified.
 - How to ensure that all companies and all government agencies will be legally able to disclose audited figures.
 - How to ensure that all companies will engage in the process.
- iii. *Building capacity in government:* The work plan will need to have actions which specifically address:
 - How the government will support and carry out the EITI process.
 - How a secretariat or implementation unit will be set up and supported.
 - What the government will need to do in order to produce its own reports on the revenues which it has received.
- iv. *Building capacity in companies and civil society:* The work plan will need to have actions which specifically address:

- How companies will be engaged in the process.
 - What companies will need to do in order to be able to produce a report – based on audited figures – of what they have paid to government.
 - How civil society will be engaged in the process.
 - How issues of capacity building for civil society groups will be addressed – do they, for example, have a good understanding of the extractive industries and of the different kinds of payments and revenues?
- v. *Producing an EITI report:* The work plan will need to have actions which specifically address:
- How a reconciliation or audit firm will be appointed to produce an EITI report.
 - How the reporting templates and guidance for government and companies will be designed.
 - How the reconciliation or audit firm will be managed and funded.
 - How the EITI report will be reviewed and then disseminated.
- vi. *Communicating the EITI program:* The work plan will need to have actions which specifically address:
- How all stakeholders affected by or interested in the EITI process will be engaged.
 - Which media and communications products will be used to explain EITI.
 - How the EITI reports will be widely disseminated and discussed.
- vii. *Monitoring and evaluating the EITI program:* The work plan will need to have actions which specifically address:
- How the entire program will be monitored and what the success criteria for the program will be.
 - At what points the program will be reviewed in order to determine whether it is working well, and if not, how changes to the program will be made.
 - How and when the program will be validated and a validation report produced.
- viii. *Developing and funding the work plan:* The work plan will need to have actions which specifically address:
- How the work plan itself will be developed and reviewed.

- Who will be responsible for making any necessary changes to the work plan.
- How funding and resources will be identified and allocated to support all of the actions of the work plan.

Work plan actions need to be given clear targets for when they will be achieved; show where sequencing is necessary (i.e. where one action can only proceed once another one has been completed); and how individual actions will be resourced and by who.

RESOURCES AND EXTERNAL ASSISTANCE

- 4.16 The Government of Zambia requested that this report briefly outline the likely costs of implementing an EITI program, and how those costs might be met. The primary costs of an EITI program are:
- i. *Establishing an implementation unit:* EITI programs require a full-time implementation unit / secretariat capable of coordinating government policy on EITI; supporting the stakeholder group; and contracting with an audit company to compile an EITI report. This would require at least 1 full-time individual with administrative support in the first 2 years of the Initiative, though a more complex program would require more staff.
 - ii. *Consulting with stakeholders and communicating the EITI process:* An important part of EITI programs is ensuring that the public is widely consulted on and informed about the EITI process. Most EITI countries typically spend around \$100k on stakeholder consultation and communications in the first 2 years of an EITI program, though these costs decline over time.
 - iii. *Hiring an independent reconciliatory / audit firm:* EITI requires an independent third party – almost always an audit firm – to either verify reconcile existing data, or to carry out an audit of payments and revenue data. Because the scope of an EITI reporting process (see above) can vary immensely. On average, however, countries tend to spend approximately \$200k-\$300k on early reports, though this decreases over time.
- 4.17 Should the Government of Zambia decide to further pursue the EITI, there are several sources of external assistance available to provide technical and financial assistance for implementation in the short to medium term:
- *The World Bank* administers a multi-donor EITI trust fund which provides support to numerous EITI-implementing countries. The Bank also has an EITI Team which is able to provide technical assistance to implementing countries.
 - *Many individual donors* have funds available to support EITI programs.

- *International civil society groups* such as the RevenueWatch Institute and the Publish What You Pay Coalition exist to provide support to civil society groups involved in implementing EITI programs.

4.18 An important component of assistance for a Zambia EITI program would be linking up with other African countries which already have experience with implementing EITI programs such as Ghana and Nigeria.

5. CONCLUSIONS AND RECOMMENDED NEXT STEPS

CONCLUSIONS

- 5.1 Based on interviews with stakeholders, it is clear that there is a broad consensus in Zambia that an EITI program would be both possible and beneficial.
- 5.2 That said, there is a lack of knowledge as to what an EITI program would specifically entail. If the Government of Zambia wishes to commit to implementing an EITI program, one of the most immediate tasks would be to bring a broad group of stakeholders together in order to sensitize them on what EITI implementation requires. Moreover, when asked, very few stakeholders were able to identify who would be the best senior level champion to take forward the Initiative. Should the government decided to implement the EITI, identifying the champion would need to be a priority task.
- 5.3 Whilst EITI programs in other countries have traditionally not focused on contract transparency, the perceived opacity of the various minerals development agreements is so intense in Zambia that it would be difficult for an EITI program in Zambia to be seen as meaningful unless this issue is somehow addressed.
- 5.4 Many stakeholders were of the view that an EITI program in Zambia would be difficult without an underpinning regulatory or legislative framework which would allow (and where necessary compel) government agencies and companies to disclose payments and revenue data which they are presently unable to disclose to third parties. Any EITI program in Zambia would need to address this issue early on in the process.
- 5.5 Whilst the copper industry is clearly dominant in Zambia, an EITI program would have to consider how to involve the gemstones and the nascent oil sector as well as any revenues which accrue from future oil and gas exploration.
- 5.6 As an open and democratic country, Zambia has – relative to other countries – a diverse and vigorous civil society. One of the challenges of establishing an EITI program in Zambia would clearly be establishing a multi-stakeholder steering group which was broad enough to be representative, whilst at the same time being small enough to be able to meet regularly and make decisions quickly.

RECOMMENDED NEXT STEPS

- 5.7 Based on these conclusions, this report makes the following recommendations:
- That this report is published jointly by the Government of Zambia and the World Bank, and is distributed to all of the stakeholders who were interviewed as part of the scoping report's research. EITI is an initiative which is not only about transparent reporting of payments and revenues data, but is also about a transparent process. Publication of this report could be the first step in establishing such a process.
 - That the Government of Zambia convene a meeting of all government agencies, companies, and civil society organizations which are involved in or interested in the mining sector in Zambia, to discuss the findings of this report and to debate whether Zambia should launch an EITI process.
 - If all of the stakeholders at such a meeting agree that an EITI process would be beneficial, then the Government of Zambia's immediate priorities should be to:
 - Form a multi-stakeholder steering group to oversee the implementation of the Initiative.
 - Appoint a senior level "EITI champion" to coordinate and lead government action on the Initiative.
 - Develop a comprehensive and costed work plan for implementation of the Initiative which can be used to support applications for funds from development partners.
 - Begin a nationwide public consultation process to help promote the Initiative and to determine what the scope the Initiative should be.

ANNEX A: LIST OF PEOPLE MET AND INTERVIEWED FOR THE SCOPING STUDY

GOVERNMENT / LEGISLATURE

Chikomani Banda	Chief Research Officer, Parliament.
Samuel Bwalya	Director of Research, Zambia Revenue Authority.
Anna Chifungula	Auditor General.
Davidson Chiipamushi	Permanent Secretary, Ministry of Trade and Commerce.
Dr. Denny Kalyalya	Deputy Governor – Operations, Bank of Zambia.
Benjamin Musuku	Executive Assistant to the Deputy Governor, Bank of Zambia.
Lennard Nkhata	Permanent Secretary, Ministry of Mines and Mineral Development.
Peter Phiri	Assistant Commissioner, Zambia Revenue Authority.
Dominic Sichinga	Acting Permanent Secretary / Chief State Advocate, Ministry of Justice.
Rosewin Wandii	Deputy Director-General, Anti-Corruption Commission.

EXTRACTIVE INDUSTRY COMPANIES

Bill Allen	Commerical Manager, Kansanshi Mining (FQM).
Jeremy Allen	General Manager, FQM Bwana / Lunshi.
Russell Alley	General Manager, Kansanshi Mining (FQM).
Anil Bangur	CFO, Luanshya Mine and Chambishi Metals.
Frederick Bantubonse	General Manager, Chamber of Mines of Zambia.
Malcolm Bullock	CFO, Chibuluma Mine.
Joseph Chikwola	CEO, ZCCM-IH.
Joel Chitambala	Business Manager, Konkola Copper Mines.
Gavin Heale	CFO, Mopani Copper Mines.
Passmore Hamukoma	Chief Services Officer, Mopani Copper Mines.
Edward Mounsey	CEO, Chibuluma Mine.
Wigan Mumba	HR manager, NFCA Mine.
Hira Singh	CEO, Luanshya Mine and Chambishi Metals.

CIVIL SOCIETY ORGANISATIONS

Elijah Banda	President, Law Association of Zambia.
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Peter Henriot	Director, Jesuit Centre for Theological Reflection.
Mwilola Imakando	Economic Association of Zambia.
Eddie Kapungulya	Kitwe Chamber of Commerce
Mischek Kaunda	Catholic Commission for Justice, Peace, and Development.
Reuben Lifuka	President – Transparency International Zambia and CEO of Dialogue Africa.
Goodwell Lungu	Executive Director, Transparency International Zambia.
John Lungu	Professor, Copperbelt University.
Albert Malama	Copperbelt University.
Albert Mando	Director of Research, National Union of Mining and Allied Workers.
Charles Muchimba	Director of Research, Mineworkers Union of Zambia.
Stephen Mumbi	Director of Research, Zambia Congress of Trade Unions.
Fred Mutesa	Development Lecturer, University of Zambia
Marianne Munyinda	NGOCC.
Adrian Shikwe	Formerly the Publish What You Pay contact point with the Zambian Congress of Trade Unions, now with the International Labour Organisation.
Peter Sinkamba	Citizens for a Better Environment

DEVELOPMENT AGENCIES

Juan Jose Villa Chacon	Attache – Private Sector Development and Civil Society, European Commission.
Francesca Di Mauro	Counsellor, European Commission.
Henny Gerner	First Secretary – Private Sector Development, Netherlands Embassy.
Lena Hasle	First Secretary – Political Governance, Norwegian Embassy.
Sari Jormanainen	Counsellor, Finnish Embassy.
Solomon Milimbo	Trade Commissioner, Canadian High Commission.
Birgit Pickel	First Secretary – Head of Development Cooperation, German Embassy.

OTHERS

Victor Muhundika	Consultant, Deloitte and Touche
Timothy Mushibwe	Partner, Deloitte and Touche

ANNEX B: TERMS OF REFERENCE OF EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI) SCOPING STUDY IN ZAMBIA

MAY - SEPTEMBER 2007

1. Summary

The Extractive Industries Transparency Initiative (EITI) is the global standard for promoting greater transparency and accountability in countries rich in oil, gas, and mineral resources. The Government of Zambia has requested that the World Bank carry out a scoping study on EITI in order to help them decide whether EITI implementation would be useful for Zambia. The study will consist of desk research; a mission by World Bank staff; and local consultancy. The study will be completed by September 2007.

2. Background – the Extractive Industries Transparency Initiative

The EITI was launched in 2002 and since then has been endorsed by 27 countries across the world. The EITI is a multi-stakeholder initiative which aims to increase transparency and accountability through two mechanisms:

- The publication of all material payments made by extractives companies to government, and of all material revenues received by government from those companies. These figures should:
 - a. Come from all companies operating in a country;
 - b. Be audited to international standards if they have not already been; and
 - c. Be reconciled by an independent organization.
- The involvement of local civil society groups in the design, management, and monitoring of the Initiative.

A multi-donor trust fund, administered by the Oil, Gas, and Mining Policy Division of the World Bank provides technical assistance and funding to countries implementing the Initiative. More details on the Initiative can be found at www.eitransparency.org

3. Project phasing

In Phase 1 of the study a World Bank mission consisting of Charles Husband (Lead Mining Specialist) and Sefton Darby (EITI Consultant) will visit Lusaka and Kitwe in May to meet with a variety of stakeholders.

In Phase 2 of the study, Dr Mwaka Chulu (Copperbelt University School of Business) will carry out stakeholder interviews in Lusaka, Ndola, Kitwe, Chambeshi, Chibuluma and Chingola during July.

In Phase 3 of the study, Sefton Darby will carry out further desk research and draft the report during August.

The draft scoping study will be presented to the Government of Zambia in September.

4. Report content

The final report will provide information on the following:

- The background and requirements of implementing the EITI, including the experience of other extractives-rich countries in Africa which are implementing the Initiative;
- The nature and scope of the extractive resources and industries in Zambia;
- Details of what kinds of payments are made by those companies to which levels (i.e. national and sub-national) and agencies of the Government of Zambia, and how the level of payment is determined;
- What process exists for the auditing of companies and of government agencies involved in the extractive industries;
- What requirements, if any, already exist for the disclosure of payment and / or revenue data by companies and government agencies.
- What barriers exist to the disclosure, audit, or reconciliation of payment and revenue data;
- Which stakeholders who would likely need to be involved in implementation of the EITI.
- Details of what key issues which stakeholders believe will need to be addressed in order for EITI to be successfully implemented;
- Details of the resources which would be required to implement the Initiative, as well as potential sources of such resources;
- What benefits would be gained from EITI implementation, and whether those benefits are perceived by stakeholders as being significant enough to make EITI implementation worthwhile; and
- If the scoping study determines that EITI implementation would be useful, then it should make recommendations as to how the process could be started, the road map to be followed and who should be involved in it.

5. Funding

The cost of the consultancy will be covered by the EITI Multi-Donor Trust Fund, administered by the World Bank.

6. Scoping study team

The work will be overseen by:

Patricia Palale, Public Sector Management Specialist
World Bank Lusaka Office
email: ppalale@worldbank.org

Sefton Darby, EITI Consultant (who was the lead author of the scoping report),
Oil, Gas, and Mining Policy Division, World Bank
email: sdarby@worldbank.org

Charles Husband, Lead Mining Specialist
Oil, Gas, and Mining Policy Division, World Bank
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ANNEX C – A SUMMARY OF THE EITI VALIDATION PROCESS AND INDICATORS

SUMMARY NOTES BASED ON EITI VALIDATION GUIDE ⁶ / ISSUED UNDER EITI BOARD AUSPICES

IMPORTANT CAVEAT: This is a summary of the Validation Guide and the related validation indicators. It is important to read the Validation Guide and indicators and the assessment tables in full, as this summary has been prepared for ease of readers use, not as official literature on this topic.

The EITI Validation Process

The EITI Conference of October 2006 endorsed an external, independent validation mechanism, whereby all EITI countries will need to undergo (and bear the cost of) a such a validation periodically - at least every two years. At the time of writing, the first few groups of EITI countries were still in the planning phase of launching their first EITI validations.

The agreed EITI validation process consists of a prescribed methodology and set of indicators which is contained in the EITI Validation Guide published under the auspices of the EITI Board. Below is a brief description of the validation process, while a summary of the validation indicators is shown in the chapter Attachment below).

The purpose of the validation process is to :

- i. To provide, for countries which are in the process of implementing EITI but which have not yet fully implemented, a measure of progress in implementation.
- ii. To provide, for countries which have fully implemented EITI, an independent assessment of whether that countries EITI process is compliant with the EITI Principles and Criteria – or not.

This process is intended to provide successful EITI implementers with an independent assessment that those countries have met an internationally agreed standard on transparency and accountability through the EITI process.

⁶ For details of the EITI Validation Guide see: <http://www.eitransparency.org/document/validationguide>

Based on the validation methodology, there are intended to be two categories of EITI countries:

- i. Candidate countries are those which have signed up to implement the EITI but which have not yet finished a full round of EITI reporting. In order to be acknowledged as an EITI Candidate Country, the government needs to fulfill at the least the following first four validation indicators:
 - a. Issue an unequivocal public statement of its intention to implement EITI.
 - b. Commit to working with civil society and companies on EITI implementation.
 - c. Appoint a senior individual to lead on EITI implementation.
 - d. Have a fully costed work plan which has been published and made widely available. The work plan should contain measurable targets, a timetable for implementation, and assessment of capacity constraints.
- ii. Compliant countries are those which have fully implemented EITI. They have met all the indicators in the validation guide, including the publication and distribution of an EITI report.

The intent of the validation process is thus to allow a clear distinction between those countries which have endorsed the EITI and are in the process of implementing the EITI (at least the first four EITI validation indicators listed above) - and those countries which have fully implemented EITI in line with EITI Criteria and have been validated as such.

Mechanics of EITI validation

At date of writing, it is intended for validation is carried out by a country and its multi-stakeholder steering group by choosing from an approved set of professional firms which have been pre-screened by the International EITI Secretariat. The intent is for countries to contract one of these firms directly (and pay their cost) to carry out a validation process using the standard set out in the Validation Guide. The validating firm will review all of the key steps and documents in a country's EITI process (e.g. work plan; EITI reports) and will meet with all key stakeholders involved in EITI implementation in that country. The validation firms will also review the degree of involvement of companies and civil society in an EITI process.

The Validation Guide indicates that the validating firm is meant to prepare draft copies of their validation reports which contain a report on progress and an overall assessment of compliance or otherwise with the Validation Guide indicators. These drafts are to be provided to government and the country's multi-stakeholder steering group, and the EITI

Board and, once revised and/or any disputes in interpretation resolved, the validation report should be published in the country concerned, and will also be made available on the international EITI website. The Validation Guide further states that where the Validator recommends de-listing (of a country from EITI), the EITI Board will have to make a decision.

Finally the Validation Guide encourages countries to undergo validation process regularly, at least every two years or more often. It also encourages countries to think about the validation indicators at the very start of an EITI program, because they provide a clear standard for EITI implementation and an efficient way to map a EITI work plan around the different validation indicators of the Validation Guide to ensure good compliance with the Validation Guide.

EITI Validation Indicators

The EITI Validation Guide sets out indicators of progress to be assessed by a validation which are summarized below (those marked with an asterisk (*) have a detailed indicator assessment table provided in the EITI Validation Guide):

Sign Up

1. Has the government issued an unequivocal public statement of its intention to implement EITI?
2. Has the government committed to work with civil society and companies on EITI implementation?
3. Has the government appointed a senior individual to lead on EITI implementation?
4. Has a fully costed work plan been published and made widely available, containing measurable targets, a timetable for implementation and an assessment of capacity constraint (government, private sector and civil society)?*

Preparation

5. Has the government established a multi-stakeholder group to oversee EITI implementation?*
6. Is civil society engaged in the process?*
7. Are companies engaged in the process?*
8. Did the government remove any obstacles to EITI implementation?*
9. Have reporting templates been agreed?*
10. Is the multi-stakeholder committee content with the organization appointed to reconcile figures?*
11. Has the government ensured that all companies will report?*
12. Has the government ensured that company reports are based on audited accounts to international standards?*
13. Has the government ensured that government reports are based on audited accounts to international standards?*

Disclosure

14. Were all material oil, gas and mining payments by companies to government (“payments”) disclosed to the organization contracted to reconcile figures and produce the EITI report?
15. Were all material oil, gas and mining revenues received by the government (“revenues”) disclosed to the organization contracted to reconcile figures and produce the EITI report?
16. Was the multi-stakeholder group content that the organization contracted to reconcile the company and government figures did so satisfactorily?
17. Did the EITI report identify discrepancies and make recommendations for actions to be taken?

Dissemination

18. Was the EITI report made publicly available in a way that way:
 - publicly accessible,
 - comprehensive, and
 - comprehensible?*

Company validation

How have oil, gas, and mining companies supported EITI implementation?*

Review

What steps have been taken to act on lessons learnt, address discrepancies and ensure EITI implementation is sustainable?*

ANNEX D – EXAMPLE OF COUNTRY-LEVEL EITI STAKEHOLDER GOVERNANCE STRUCTURE

