



Open Government Partnership Independent Reporting Mechanism

Results Report: Malawi 2023-2025 Comments Received

Comment Received from Rachel Etter-Phoya (12 July 2023):

After a hiatus in Malawi on OGP, it is good to see the new commitments in the NAP. The continued commitment to improvements in the extractive industries is relevant given the renewed interest in minerals and increasing minerals prices in relation to projected increased demand for minerals necessary for non-carbon intensive technologies. Increasing oversight along the contracting cycle, including negotiations, is key and urgent. Three agreements are being (re)negotiated this year. One mining development agreement already been signed, with the support of law firms financed by one of the very same mining companies in negotiations.

In the new mining development agreement, fiscal terms remain intact as per the Taxation Amendment Act (2016), which is promising given previous experience with awarding tax incentives that resulted in revenue loss, but did not ultimately affect the company's decision to invest. However, there is also a highly unusual clause 27.3, which may result in revenue eroding tax incentives. It states that if other third-party large-scale mining licence holders enter agreements with government that include tax breaks and incentives then these will also apply to the company in the recently concluded agreement. This runs counter to best practice and may increase corruption risks in the negotiation of future agreements.