

PH-EITI 1st MSG MEETING
9:30 AM January 29, 2013
MLR Conference Room, Boncodin Hall
DBM, Malacañang, Manila

Attendees:

Secretary Elisea Gozun	Focal Person for EITI/ Office of the Presidential Adviser for Climate Change (OPACC)
Engr. Romualdo Aguilos	Mines and Geosciences Bureau—Department of Environment and Natural Resources (MGB-DENR)
Trinidad Rodriguez	Department of Finance (DOF)
Ismael U. Ocampo	Department of Energy (DOE)
Guillermo Ansay	DOE
Michael Juan	Union of Local Authorities of the Philippines (ULAP)
Cielo Magno	Bantay Kita
Prof. Maria Aurora Teresita W. Tabada	Visayas State University
Ronald Allan A. Barnacha	Philippine Rural Reconstruction Movement (PRRM)/ North Luzon
Roldan Gonzales	GITIB/ Mindanao
Gerard Brimo	Nickel Asia Corporation (NAC)/ Chamber of Mines of the Philippines (COMP)
Clarence Pimentel	CTP Construction and Mining Corporation
Atty. Casiana N. Dalangin	CTP Construction and Mining Corporation
Sabino L. Santos	Chevron Malampaya
Kiril Caral	Shell Philippines Exploration BV (SPEX)/ Petroleum Association of the Philippines (PAP)
Abigail Ocate	Secretariat
Babes Ancheta	Secretariat
Michelle Baguilat	Secretariat

1. Call to Order:

Secretary Gozun, focal person for PH-EITI called the meeting to order and requested the MSG members present to introduce themselves.

She informed the body that from the time the national workshop was convened, together with Gerry Brimo, she had a meeting with the board of the Petroleum Association of the Philippines (PAP) and that PAP already arrived at a decision to join the EITI. That was the reason she said for the presence of the representatives of the oil and gas company in the first MSG meeting.

The Chair then proceeded with the proposed agenda which was adopted. She pointed out that the outputs of the national workshop will be reviewed and considered in the discussion of the two main agenda namely the finalization Terms of Reference (ToR) and the Draft Work Plan.

2. Terms of Reference (ToR)

The comments or inputs on the Term of Reference from the three sectors, the CSO, business, and government during the national workshop were presented in matrix format to facilitate the discussions. These outputs had been circulated via electronic mail to the MSG members five days prior to the scheduled first MSG meeting. The secretariat also distributed physical copies of the ToR inputs to the attendees before the MSG meeting.

The body proceeded to discuss comments of the respective sectors to the draft ToR.

Section III: The Multi-Stake Holder Group: PH-EITI MSG

- 2.1. On the suggestion from the CSO in the national workshop that the PH-EITI be independent from the government.

Sec. Gozun said that this was already clarified during the National Workshop that the EITI globally is led by government.

- 2.2. On decisions of the MSG being binding to all, everyone agreed that it should be so.

- 2.3 On the government suggestion to include in the ToR the discussion of all small scale mining issues, Mr. Allan Barnacha from PRRM commented that this should be in the data base of the Provincial Local Government Unit (PLGU). Sec. Gozun said the status right now, majority of small scale miners are illegal and consequently, there is a lack of data on small scale mining in the country – how many there are, what they are mining and their production, income, taxes and fees paid if any, etc. . She added that there is a specific Technical Working Group in the MICC led by DILG that is looking to put the issue on small scale mining to order starting off with the creation and activation of PMRBs in 20 provinces and the identification and declaration of Minahang Bayan areas. Mr. Roldan Gonzales proposed and the body agreed that this can be placed in the work plan (where it actually already included) instead of the TOR.

- 2.4 On the Government suggestion to discuss Expenditure Transparency (IP royalties, LGU share, earmarking and other special shares), Ms. Cielo Magno proposed that the expenditure transparency can be placed in the future agenda of EITI explaining that this needs legislation. The body approved the proposal of Ms. Magno to include the drafting of legislation in terms of eventual expenditure tracking in the Work Plan.
- 2.5 On the Government suggestion to include discussion of Local Revenues in terms of what fees/taxes to collect; how much; and how are these used, the Chair noted that the collection of fees and taxes and how much will be collected is covered by the EITI Report. Ms. Cielo Magno questioned if the discussion of local revenues be placed in the ToR. It was agreed that in terms what fees and how much shall be collected by local governments be covered by the Materiality Study and the scope of reporting template and not in the ToR.
- 2.6 On the need for uniformity in the application of rules and processes, discussion of relationship of EITI with ancestral domain, and discussion of peace and order, the Chair noted that as explained during the National Workshop, these issues are not really within the scope of the MSG. However, she suggested that if needed be, these can be referred to the concerned TWG of the MICC. Ms. Cielo Magno proposed for the MSG to have some recommendatory power to whatever agency would be responsible for a specific issue raised which the MSG agreed to discuss. Sec. Gozun noted this is already provided for in the existing draft ToR.
- 2.7 On the need to define the relationship of the MSG with the EITI TWG and MICC specifically a.) EITI TWG to provide technical assistance and inputs to the MSG b.) The TWG should also be multi-stake holder c.) Chair should have co-chair from the industry and CSO, Sec. Gozun explained that the technical assistance is really the role of the TWG. Mr. Gerard Brimo of the Chamber of Mines and president of Nickel Asia inquired on the composition of the TWG and clarified if they are part of the MICC. In response, Sec. Gozun said the TWG is part of the MICC and that it is presently composed of the operating units of the different concerned government agencies such as BIR, BOC, BLGF, NEDA, DOE, and PMS. It was agreed that the TWG provide technical assistance to the MSG and that it should also be a multi-stakeholder. Its present Membership will thus be expanded to include business and civil society.

Mr. Brimo noted the third recommendation from the CSO to have co-chairs from industry and CSO be provided in the ToR but suggested that the MSG decide to do this at some point in the future when the MSG sees such a need. The body approved this together with a recommendation from Ms. Magno to include the structure and the rules of the MSG

Sec. Gozun shared the comments from Mr. Philip Chan of World Bank and Wouter Bisterbos from the International EITI Secretariat that what is lacking in the present draft ToR is the governance mechanism for the MSG. She added that in the EITI general guidelines, the EITI

MSG may adopt internal guidelines to govern its operation and that this will be included in the ToR.

Following this discussion, it was resolved that the structure and rules of governance of the MSG will be included in the Terms of Reference.

- 2.8 On the recommendation from the government sector to include in the ToR penalties for companies that are non-compliant, Mr. Brimo sought clarification whether the participation of the companies in the EITI is voluntary or mandatory. Engr. Romualdo Aguilos of the DENR-MGB stated that under the 1995 Mining Act, companies are required to report their data. Sec. Gozun said that if government has decided to be part of EITI, should it be necessary, the concerned government agency can issue regulations to require companies that it is regulating to participate.

Cielo Magno shared a clarification she made with the CSO's at the international board and also the international secretariat regarding voluntary or mandatory. She said that while applying for EITI is voluntary, once the country decides to sign up and is accepted, then it is the responsibility of the government to make sure that everyone participates. Noting that it is mandatory for companies to report the data, Mr. Brimo asked if maybe the MGB could issue such an order.

Secretary Gozun noted that if no such regulation exists yet, then both the DENR and DOE can issue the said regulation. She committed to discuss this matter with DENR Secretary Paje. She clarified though that it is not the role of the MSG to impose penalties. Rather, this function rests with the government department that regulates their respective sectors.

- 2.9 On the recommendation from the government sector to include in the function of the MSG the establishment and management of a revenue-linked database. Ms. Cielo Magno proposed that this database be under the Department of Finance and noted that this is already incorporated in the Work Plan. This was approved by the MSG.
- 2.10 The MSG agreed to include the determination of materiality and the setting of the reporting template as part of its function.

Section V: Roles of the Members of the MSG

- 2.11 On common roles for all stakeholders

Ms. Cielo Magno reported that the CSOs had identified common roles with respect to all sectors, government, business, and CSO. She proposed the following six common roles for all multi-stakeholders which the MSG adopted:

- Ensure an open and transparent functioning of PH-EITI
- Address confidentiality concerns in implementing EITI

- Communicate and provide linkages and facilitate dialogue with the different organizations and groups regarding related issues
- Help determine parameters of EITI implementation
- Be involved in communicating updates and results to their respective constituencies and to the general public
- Implement capacity building and other knowledge exchange activities for those less familiar with EITI and its processes

Ms. Magno continued with the proposal for the distinct role for the government, CSO, and business which the MSG approved with some modifications noted below

2.12. Distinct Roles of the Government:

- Provide political leadership and support such as creating a unit which will provide secretariat and technical support to Philippines EITI
- Ensure the full participation of national government agencies and local government units in the implementation of EITI and creation of an enabling policy environment for the same
- Ensure the full participation of extractive companies and civil society
- Provide a legal basis for implementation of EITI as well as identify and address legal barriers and regulations that block the proper implementation of EITI
- Release details of government revenues in a level of detail to be agreed upon by the MSG

Mr. Roldan Gonzales, executive director of GITIB Mindanao suggested the inclusion to ensure full participation of the CSO and business in their respective sector roles. The board agreed that the clause “ensure full participation” will also be included in the respective roles of CSO and the business sector.

2.13 Distinct Role of CSO Representatives

- Communicate and consult widely with the diverse set of stakeholders including those outside the steering group and build capacities on EITI
- Ensure full participation of CSOs
- Monitor the disclosures done by the government and extractive companies

Mr. Brimo suggested that the 2nd role include the word relevant before the word CSO instead of merely CSO. The MSG approved this.

2.14 Distinct Role of Business Representatives:

- Help ensure the full participation of extractive companies
- Disclose payments to government, IPs and other stakeholders

Mr. Brimo requested that they be given a week for the business sector to look at what may be added in their role.

- 2.15 On the CSO suggestion to include NCIP in the MSG, Mr. Roldan Gonzales said that the NCIP should be more on the board since the 35 mining companies are operating in IP areas. Cielo Magno said there is value in engaging the NCIP citing that in Compostella, it is actually the NCIP director who is championing the EITI. Secretary Gozun agreed that there is value in engaging the NCIP considering a big chunk of the mining operations are in IP areas. This is the reason why they are in the MICC. However, she said that a lot of the NCIP concerns like the FPIC fall beyond the scope of EITI. She added that should there be issues that need to be discussed with NCIP, that there is nothing that can stop the MSG from inviting the NCIP. Inclusion of the NCIP in the MSG would also mean an addition of representatives for the other stakeholders which would mean a total of 18 members of the MSG. The body agreed to just invite the NCIP to its meeting if and when their presence is needed.

Section VI of the ToR: TERMS of the Members of the PH-EITI MSG

- 2.16 A number of suggestions came up especially with consideration to ensuring continuity of the MSG and substantial discussion followed. Sec. Gozun pointed out that since the MSG wants to ensure continuity, the MSG does not want a complete change of membership since institutional memory will be lost. Ms. Cielo Magno proposed the representatives to the MSG should serve for at least one reporting cycle adding that it will also serve as motivation to finish the report. The body agreed to this and thus peg the term of the initial MSG reps to 3 years.

Ms. Tabada suggested that the sector decides who will sit for 3 years, 2 years, and 1 year and that at least one representative from the original MSG from each sector should stay to preserve institutional memory. Mr. Sabino Santos of Chevron suggested that there should at least be three years for the representatives to serve and thereafter, the sectors will choose who will sit for four, five and then six years.

Secretary Gozun noted that in consideration of the differing terms of office to 3, 2 and 1 years, if the person replacing the one year term representative will come in serving for only a year also, then there will also be no continuity. She proposed and the body agreed that given the agreed objective of ensuring continuity and institutional memory, the body allow the secretariat to work out the exact formulation of this section.

MSG Meetings and Decision Making

2.17 Secretary Gozun shared the suggestion of Mr. Philip Chan and Mr. Wouter Biesterbos, that the governance of the MSG be elaborated in the ToR. This includes who will chair the MSG meetings, how often the MSG will meet, including how decisions are made.

To respond to this, the secretariat had drafted some recommendations which include the following:

- a) that the chair will call the meeting;
- b) that notices will be sent by the secretariat a minimum of one week before the set date;
- c) that the secretariat document the meetings and that minutes or highlights of the meetings will be circulated one week after the meeting and the MSG be given one week to give comments and that no comment received will be considered approval;
- d) that a simple majority will be enough to establish a quorum meaning that since there are 15 members of the MSG, 8 members present already constitutes the majority and the meeting can proceed; and,
- e) that decision making of the MSG will be based on consensus.

The MSG approved the all the above mentioned recommendations.

3. On the finalization of the work plan

Objective 2:

The board agreed that the inclusion of the small scale mining as dealt with earlier in the discussion of the ToR is not the function of the MSG.

Objective 3:

The board agreed to merge the activity 3.1 and 3.2 which entails the formal creation of the PH-EITI and the creation of the EITI Secretariat.

On the comment of the CSO that the national government should fund EITI, Secretary Gozun affirmed the government is funding the EITI except that there are some expenditures that cannot be covered by government thereby prompting the need to seek grants from development partners. Sec. Gozun also noted that the earmarking portions of the tax collected can only happen if there is legislation given the existing one fund policy. On the comment from the CSO that the MSG forms a lobby group to go to Senate for funds, the body agreed that this is not part of the MSG function.

There was also a suggestion from the business that while the MSG should support legislation to remove barriers to EITI implementation, we must ensure that the legislated mechanism does not become an added bureaucratic layer to be imposed on industries. Secretary Gozun said whatever legislation that will be drafted will pass through the MSG before it is endorsed.

Objective 3.5

The body agreed to change the title of the activity to “addressing barriers to implementation and institutionalizing of EITI”. On the hiring consultants, Ms. Cielo Magno expressed the need to augment the present secretariat housed under the office of Secretary Gozun. With the freeze on hiring because of the election ban, it was noted that the hiring of contractuels can be resorted to March 29.

On the CSO recommendation to pass a bill institutionalizing EITI at the national level, Ms. Cielo Magno explained that this was raised because of the concern that the continuity of EITi may be at risk if that discretion is left solely to the President.

Another suggestion by the CSO is for provinces to issue resolutions institutionalizing EITI. Sec.Gozun said while we are encouraging this, the MSG focus now should be to generate first EITI Report. The body agreed to this priority.

There was also discussion to support the passage of Freedom of Information in relation to EITI. The body agreed to encourage and support the passage of Freedom of Information (FOI) Bill.

Objective 3.6

The MSG agreed that the pilot areas for the implementation of EITI at the sub-national level be voluntary wherein the MSG will encourage and support those who come forward as opposed to MSG selecting the pilot areas. The body also noted that the number of pilot areas for the EITI sub-national be not limited to the five suggested pilot areas or the 35 mining areas considering the agreement made earlier that it should be voluntary. Further, there was agreement that the TWG in the MSG will work with all stake holders in moving forward the implementation of EITI in the sub-national level as long as it is voluntary and that there is agreement among all the local stake holders.

Objective 4: Preparation in Implementing and Monitoring PH-EITI

Objective 4.1

There was a suggestion from the CSO during the National workshop for actual disclosure of documents used in the MSG (both hard and soft copy). The body agreed that these will be placed in the website.

On the suggestion of the business sector to cover small scale mining with emphasis on the need to distinguish legal from illegal mining, Secretary Gozun noted that as earlier discussed this is not the role of the MSG.

There was also a suggestion from the business sector to improve and upgrade the government database. As agreed earlier, this is the role of the Department of Finance and that it is included in the Work Plan.

Meanwhile CTP Mining President Clarence Pimentel expressed support to the EITI and asked for elaboration on the benefits of the EITI for mining companies. Ms. Cielo Magno said the EITI has become a global standard and seal of good housekeeping. Mr. Brimo also said that the EITI works in favor of the company explaining that there will be a mechanism to inform the public at large of what companies pay and that the government agencies will report what it receives from the extractive industries. Secretary Gozun also said the scope is really just find out how much companies are paying the government and how much is the government collections. It has nothing to do with requirements and since decisions are based on consensus, the companies have a voice.

Objective 5: Audit/Reconcile Report and Revenue Flows between Philippine Government and Extractive Industries

Ms. Cielo clarified that the CSO recommendation to be involved in the validation actually refers to the reconciliation of reports of payments from business and collections by government. This was approved by the body. On the government sector input that there needs clarification on what reconciliation entails and the setting of standards for reconciliation, Sec Gozun said that PH-EITI will simply adopt the standards for reconciliation already being used by the 37 EITI participating countries. What it will cover will be spelled out in the TOR for the reconciler which will be approved by the MSG.

OBJECTIVE 6: Communicate, Build Knowledge, and Engage Citizens in the PH-EITI Program

In terms of translation of EITI data, the board agreed to translate the EITI Report into five languages namely Cebuano, Ilocano, Ilonggo, Tagalog, and Bicolano.

Ms. Cielo Magno said the reach out to small scale miners can be incorporated in the sub-national EITI and that it will be discussed by the TWG.

GENERAL COMMENTS:

The MSG approved the following general comments:

- the issuance of EO to include statement of support, creation of PH-EITI, MSG, TWG, and EITI secretariat.
- the inclusion of a status column in the Work Plan
- the provision of a detailed breakdown of the budget when necessary
- the harmonization with PPEI Work Plan. Secretary Gozun informed the group that PPEI Work Plan for 2013 is focused on capacity building of DENR and DILG and the other one is for the 4 pilot areas of the government.
- that regular implementation status reports be provided in the website

Secretary Gozun shared the general comment received from Mr. Philip Chan and Mr. Wouter Biesterbos that the Work Plan lacks measurable outcome or measurable indicators. She said this will need to be fleshed out in the Work Plan. The secretariat can work on this first and send it out the draft to the MSG for review and comments.

4. Other matters

On the Time Table for submission of the PH-EITI Application:

Secretary Gozun noted the target for the submission of the application may be pushed back. She informed the MSG that the President called for a meeting to clarify some details about EITI last January 17, 2013. However at that time, she was unable to attend since there was also the ongoing CSO Congress and the EITI briefing with the local government units. She also said it would be good to set the next MSG meeting after the meeting with President Aquino. She also informed the group that the International EITI Board will meet in the 3rd week of February and that we were originally targeting submission of the Philippine application before the said meeting. We have since been informed that the Board considers applications even outside of their board meeting.

Further, she also mentioned that whether we are accepted by the EITI Board or not, the government is committed to improving transparency and accountability of revenues from extractive industries.

On the need for an EO for EITI Philippines:

As discussed during the National Workshop, an EO on EITI implementation in the Philippines will be sought.

On the Reporting Template/ Materiality:

Secretary Gozun said that the government agencies have already been asked to give copies of what reports they currently receive and what other data they require. While this is being done, the study on materiality should start as soon as possible. All these will guide the MSG in determining the final EITI reporting template.

Once the draft ToR for the Materiality Study is sent by Mr. Philip Chan, it will be circulated to the MSG. The Chair expressed hope to get funding from World Bank for the Materiality study. She noted that the budget for the operations of EITI which should include support for the travel and accommodations of the CSO representatives in the MSG needs to be prepared.

On the Statement of Commitment:

The Chair asked those who have not signed the statement yet to sign it. She mentioned the statement of commitment will be a good material to post and be make known.

5. Next steps

- The secretariat will draft the Memorandum of Understanding (MOU) for all the representatives of the MSG to sign. The MOU will reflect the substance in the ToR. It is targeted that the Draft MOU will be sent out by Friday, February 1, 2013 to the MSG. As agreed MSG members will have a week to send back their comments to the secretariat.

- Given the requirement that government reports to be included in the EITI Report are audited, the Chair will arrange a meeting with the Commission on Audit to request for the prioritization of auditing for the concerned government agencies and if possible, the creation of a special task force within COA to do this.

- To complete the Documentation for the application of EITI.
 - For the Chamber of Mines of the Philippines to submit their revised resolution on their representatives to the MSG following the participation of the oil and gas in PH-EITI.

 - For the Petroleum Association of the Philippines (PAP) to submit their board resolution designating their representatives (regular and alternate) to the MSG. Resolution from ULAP designating permanent and alternate.

 - For Board meetings including attendance sheet are likewise to be submitted.

 - For the submission of the Resolution from ULAP designating their permanent and alternate representatives to the MSG

 - For other government agencies in the MSG that have not yet designated their permanent and alternate representative to be reminded to do so.

The next MSG meeting is tentatively scheduled in the 3rd or 4th week of February. The body agreed to have the meeting on either Thursday or Friday of the week.

6. Closing

Secretary Gozun thanked everyone for their active participation. There having no further matters to discuss, the meeting was adjourned at 12:20 pm