

PH-EITI 31st MSG MEETING
9:00 AM- 12:00 PM | March 11, 2016
Waling-Waling Room, Orchid Garden Suits
Manila

Attendees:

9	Asst. Sec. Ma. Teresa S. Habitan	Department of Finance (DOF)
10	Febe J. Lim	DOF
11	Engr. Romualdo Aguilos	Mines and Geosciences Bureau—Department of Environment and Natural Resources (MGB-DENR)
12		
13	Analynsia C. Alarde	Bureau of Internal Revenue (BIR)
14	Yolanda Luna	BIR
15	Dir. Ismael U. Ocampo	Department of Energy (DOE)
16	Benjamin Mortos	DOE
17	Dir. Anna Liza Bonagua	Department of the Interior and Local Government (DILG)
18		
19	Prof. Jay Batongbacal	University of the Philippines (UP) College of Law
20	Ronald Allan A. Barnacha	Philippine Rural Reconstruction Movement (PRRM)/ North Luzon
21		
22	Prof. Maria Aurora Teresita W. Tabada	Visayas State University
23	Dr. Merian C. Mani	Romblon Ecumenical Forum Against Mining (REFAM)/ Romblon State University
24		
25	Starjoan Villanueva	Alternate Forum for Research in Mindanao (AFRIM)
26	Chadwick Llanos	Cebu Alliance for Safe and Sustainable Development (CASSE)
27		
28	Gina Tumlos	Bantay Kita
29	Nelia Halcon	Chamber of Mines of the Philippines (COMP)
30	Ronald S. Recidoro	COMP
31	Sebastian Quiniones	Petroleum Association of the Philippines (PAP)/ Shell Exploration BV
32		
33	Atty. Maria Karla Espinosa	Secretariat
34	Abigail D. Ocate	Secretariat
35	Mary Ann Rodolfo	Secretariat
36	Joy Saquing	Secretariat
37	Marikit Soliman	Secretariat
38	Angelita Galano	Secretariat
39	Roselyn Salagan	Secretariat
40	Irene Fernandez	Secretariat

1 Ryan Dael Secretariat
2 Denise Domingo Secretariat
3 Rhea Bagacay Secretariat
4
5

6 AGENDA:

- 7 • Minutes 30th MSG meeting
 - 8 • Matters arising from previous MSG meetings
 - 9 • Final approval of the 2016 work plan
 - 10 • TOR of the IA and the consultant for contextual information
 - 11 • Scope of the 2016 PH-EITI report
 - 12 • Inclusion of Congress and NCIP in the MSG
 - 13 • Other Matters
- 14
15

16 **1. Call to Order**

17
18 1.1. The Philippine Extractive Industries Transparency Initiative (PH-EITI) Multi-Stakeholder Group (MSG)
19 meeting was called to order at 9:08 AM.

20
21 1.2. The proposed agenda was presented and subsequently approved by the body.
22

23 **2. Minutes of the 30th MSG meeting**

24
25 2.1. It was noted that the minutes of the 30th MSG meeting was circulated to the members of the MSG.
26 The Secretariat shared that they received comments from a Civil Society Organization (CSO)
27 representative.
28

29 2.2. The Secretariat stated that they will again circulate the minutes after incorporating the comments
30 received from the CSOs.
31

32 **3. Matters Arising**

33
34 3.1. *Establishment and management of a revenue-linked database:* The Secretariat mentioned that this
35 matter is still ongoing. A representative of the Department of Finance (DOF) informed the body that the
36 Bureau of Local Government Finance (BLGF) has drafted a Department Order in relation to the Local
37 Government Unit (LGU) online reporting tool. However, the Department Order is still pending with the
38 Legal Affairs Office of the DOF. Additional updates on this matter will be discussed in the next MSG
39 meeting.
40

1 3.2. *Offer of Timor Leste to conduct a training for the PH-EITI MSG on the Petroleum Fund process:* An
2 industry representative suggested to delete this from the list of “Matters Arising”.

3

4 3.3. The Chair asked an industry representative to draft the concept note on this. A question was then
5 raised if the MSG needs a training on Petroleum Fund process.

6

7 3.4. In case the training would push through, the Secretariat said that PH-EITI will cover the travel costs
8 of either the MSG members who will travel to Timor Leste or the representatives from Timor Leste who
9 will come to the country to conduct the training.

10

11 3.5. An industry representative explained that the Petroleum Fund is basically the sovereign fund or the
12 Fund 151. The industry representative reiterated the question on whether the MSG needs training on
13 the Petroleum Fund.

14

15 The Chair suggested to note that this matter is still for discussion of the MSG.

16

17 3.6. *Secretariat Institutionalization:* The Secretariat shared that this matter is still pending at the Office
18 of Director Jen Tan of the DOF. The Chair said that pending items regarding this matter will be followed
19 up with the Human Resources of the DOF.

20

21 3.7. The Chair added that the Secretariat needs to also follow up with the Department of Budget and
22 Management (DBM) on this matter.

23

24 3.8. *Draft EITI Bill:* The Chair reminded the body on the need to hire a consultant who will draft the EITI
25 Bill. A CSO representative shared that during the last Technical Working Group (TWG) meeting, the
26 members agreed on certain provisions. The same representative noted that there was a suggestion in
27 Congress to either include EITI in the Mining Fiscal Regime Bill or make a separate bill on EITI.

28

29 The Chair suggested that the TWG reconvene and prepare another draft to be circulated to the MSG.

30

31 3.9. A CSO representative recalled that there was a Congress hearing mentioning EITI Bill. The same
32 representative suggested to request for the minutes of the said hearing.

33

34 3.10. *Selection process for MSG members:* The Secretariat shared that the only pending item is the
35 selection process for Government. The body was informed that the selection guidelines for government
36 still needs to be approved by other agencies.

37

38 3.11. It was mentioned that the Chamber of Mines of the Philippines (COMP), the Petroleum Association
39 of the Philippines (PAP) and the CSO have submitted their selection guidelines.

40

41 3.12. *Board of Investments (BOI) and Bureau of Internal Revenue (BIR) Incentives:* The Secretariat shared
42 that there is a pending request for information from the Ways and Means Committee. BOI submitted a

1 cost-benefit analysis upon the request of the Committee, which has some information on the sector's
2 availment of incentives particularly Income Tax Holiday but this is on a per sector basis and not on a per
3 company basis. Historically, the data received by DOF has always been on a per sector basis, which is not
4 likely to change any time soon. The most that can be gathered from the BOI would be on a per sector
5 basis. The Chair asked the body if they would be interested in the sectoral data for the extractive
6 industry. The Secretariat said that a copy of the cost-benefit analysis submitted to the Congress will be
7 shared with the MSG.

8
9 3.13. *Proposed amendment to the Local Government Code (LGC)*: The Secretariat shared that the
10 pending matter is the hiring of a consultant, since a TWG has already been created.

11
12 3.14. The Chair asked a representative from the Department of the Interior and Local Government to
13 provide an update regarding discussions on LGC amendments.

14
15 3.15. The Department of the Interior and Local Government (DILG) representative shared that they
16 recently held stakeholder consultations, with assistance from the Asian Development Bank (ADB),
17 regarding the financial aspects/provisions of the LGC and proposed amendments to the same.

18
19 3.16. The DILG representative suggested for the group to come up with a "campaign banner" under
20 which the LGC should be reviewed or proposed to be amended. The Chair asked the body which part of
21 the LGC should be changed. The DILG representative answered that the issues that had been identified
22 related to revenue sharing, the situs of taxation or the 70%-30% sharing between the LGU hosting the
23 principal office and that hosting the project site, and claiming the LGU's 40% share in national wealth.

24
25 3.17. The DILG representative also shared that there is a related but broader ADB-funded project on LGC
26 amendment currently being implemented which may be an opportunity the PH-EITI can ride on.

27
28 3.18. A question was raised as to whether the hiring of a consultant is covered by the election ban. The
29 Chair responded that the hiring of a consultant will not be affected. A CSO representative commented
30 that the consultant should be ready with proposals by the time the next Congress takes office. The Chair
31 suggested that the TWG should focus on defining the changes the MSG wants to be reflected. The Chair
32 reiterated the suggestion to ride on the opportunity presented by the ADB-funded project.

33
34 3.19. The DILG representative shared that the report on the ADB-funded project had already been
35 completed and that DILG had begun working on the advocacy for the proposed amendments, including
36 conducting consultations. She mentioned that the report does not contain a study specifically on LGU
37 share in national wealth.

38
39 3.20. The Chair asked the DILG representative about which LGC provisions the LGUs wanted to be
40 amended from the consultations conducted. The DILG representative responded that LGUs identified
41 those provisions related to their share in the Internal Revenue Allotment (IRA).

1 3.21. A CSO representative suggested to take a look at the reports already produced in terms of the
2 changes the LGUs proposed, and then assess how these relate to or affect the MSG's proposals and the
3 results of MSG's consultations with LGUs.
4

5 3.22. The DILG representative mentioned that the hiring of a consultant is critical in putting together the
6 proposal, in balancing the proposed changes to be made. The Chair also stressed the need for the TWG
7 (on LGC amendment) to come up with Terms of Reference (TOR) for the consultant. The Chair said that
8 the TOR should be prepared and presented by the next MSG Meeting.
9

10 3.23. *Mines and Geosciences Bureau (MGB) Regional Directors should be convened:* A government
11 representative shared that the tentative schedule for this activity will be April 2016.
12

13 3.24. *Non-metallic Mining Associations and their engagement with EITI:* The Secretariat mentioned that
14 representatives of non-metallic associations were invited to the national conference and launching of
15 the 2nd report.
16

17 3.25. The Chair instructed the Secretariat to start engaging Large Scale Non-Metallic (LSNM) mining
18 companies. Specifically, prepare a list of LSNM mining companies and invite them to a meeting with PH-
19 EITI. The objective of the said meeting is to brief the companies on EITI and present the findings of the
20 scoping study on LSNM industry.
21

22 3.26. An industry representative asked if the amounts indicated in the said scoping study are material.
23 The Chair responded that the scoping study did not cover the financial aspect of the LSNM industry.
24

25 3.27. A CSO representative recalled that the consultant for the scoping study also communicated with
26 the regional directors of MGB. The same representative mentioned that data from MGB regional offices
27 were not yet part of the findings that was presented in the previous MSG meeting. The CSO
28 representative suggested that the scoping study consultant be asked to make a presentation on this
29 subject.
30

31 3.28. *LGU Roadshows:* The Secretariat mentioned that the documentation of the outcome of the 2015
32 LGU roadshows, which was included in the second report, is still subject to further evaluation of the
33 MSG. It was noted that MSG comments on the documentation will be considered in planning the 2016
34 LGU roadshows.
35

36 To see if there are changes in the issues raised as well as in the perception of the LGUs, a CSO
37 representative suggested that a comparative assessment of the 2015 and 2016 LGU roadshows be
38 made. A CSO representative recommended that this matter be discussed in future MSG meetings.
39

40 3.29. *Updates on the process of downloading of LGU shares:* The body was informed that the status of
41 the implementation of DBM's action plan on downloading LGU shares is still being followed up.

1 3.30. *Revenue management at the local level:* The Secretariat mentioned that a training on revenue
2 management at the local level is included in the work plan.
3

4 3.31. With regard to the training for local chief executives and other local government officials, a CSO
5 representative suggested coordinating with the Local Government Academy and the National College of
6 Public Administration and Governance of the University of the Philippines.
7

8 The Chair agreed to the suggestion of the CSO representative.
9

10 3.32. *Online reporting tool:* The Secretariat mentioned that the development of an online reporting tool
11 for companies is included in the work plan.
12

13 3.33. *Reporting analysis for the second report:* The Secretariat shared that the workshop on report
14 analysis is also part of the work plan.
15

16 3.34. *Communications training and EITI trainings for media:* The Secretariat mentioned that these
17 activities are included in the work plan.
18

19 3.35. *Measuring public's awareness of EITI:* It was reported that the development of a mechanism to
20 measure EITI awareness is included in the work plan.
21

22 3.36. *Uploading of documents in the website:* The Chair commented that this matter is considered
23 "implemented" because the website is being maintained and regularly updated.
24

25 3.37. A CSO representative asked if there is a mechanism to determine who visits the website including
26 the areas where these web visitors are coming from to monitor if the uploaded documents are being
27 utilized. The Secretariat said that this information can be provided.
28

29 3.38. The Chair also mentioned that official PH-EITI photos are uploaded in Facebook and in the PH-EITI
30 website. The Chair requested the Secretariat to provide captions for the pictures in order to provide
31 context for the viewers.
32

33 3.39. A CSO representative asked if the Memorandum of Agreements (MOAs) from the National
34 Commission on Indigenous Peoples (NCIP) have been uploaded in the website.
35

36 The Secretariat explained that NCIP provided copies of the MOAs to the MSG but did they did not want
37 these to be made available online.
38

39 3.40. Another CSO representative also asked if the Environmental Compliance Certificates are included
40 in the list of documents to be uploaded.
41

1 The Secretariat responded that only Environmental Impact Statement documents are included in the list
2 and will be uploaded online. The CSO representative further asked if the “no-go zone maps” are
3 included in the list for uploading. The CSO recalled that Executive Order No. 79 mandates the production
4 of no-go zone maps. The Secretariat answered that these maps can be requested from the Mining
5 Industry Coordinating Council.

6
7 3.41. Another CSO representative suggested to conduct a distribution activity for the EITI Report to
8 inform relevant stakeholders and enable them to utilize EITI data. The Chair asked the body for their
9 proposed distribution list in addition to what the Secretariat has, including members of Congress,
10 government agencies concerned, academe, LGUs, etc. Another CSO representative stressed the need to
11 provide the academe and research institutions with copies of the EITI Report.

12
13 3.42. A CSO representative asked for clarification whether the NCIP MOAs mentioned earlier refer to the
14 MOAs included in the first report or to additional MOAs the NCIP was able to obtain. The Secretariat
15 responded that this refers to MOAs included in the first report.

16
17 3.43. A CSO representative stressed that NCIP is legally mandated to disclose the MOAs because these
18 are public documents, which is a matter of public interest. Thus, NCIP needs to be reminded of the
19 implications of their refusal to make MOAs publicly available. The Chair affirmed that NCIP has the
20 responsibility to disclose the MOA, but pointed out that it might not be their culture to do so. The Chair
21 acknowledged NCIP’s effort to share the MOAs with the MSG and encouraged the body to extend the
22 courtesy to the NCIP by notifying them that this is a step the MSG is going to take in the future.

23
24 3.44. The Chair also emphasized the need to be practical in the production of the next report. This
25 means making the third EITI report less dense and user-friendly while maintaining its
26 comprehensiveness. This would also minimize the difficulty of distributing hardcopies of the report. The
27 Chair also added to consider other avenues for distributing the report. The Chair asked the Secretariat
28 for the actual number of hardcopies of the first and second EITI reports. The Secretariat responded that
29 360 hardcopies of the second EITI report under the USAID fund were produced and 700 hardcopies of
30 the first EITI report were made.

31
32 3.45. A CSO representative suggested that instead of producing a single hardcopy of the report, it may
33 be produced based on the three major regions (Luzon, Visayas and Mindanao) or per company, to
34 reduce its volume and weight. The Secretariat explained that the annexes made the second report
35 voluminous.

36
37 3.46. *Tax Incentives Management Act (TIMTA)*: The Secretariat shared that DOF technical staff involved
38 in the drafting of the TIMTA implementing rules and regulations (IRR) are already conducting a series of
39 consultations with concerned agencies. The Secretariat also informed the body that MSG inputs to the
40 IRR may be of little use, since there is an inherent limitation in the data that the TIMTA process will
41 generate in that it allows only for disclosure of data on a per sector basis and by type of tax. Company-
42 level data would only come from registered business entities to be submitted to their investment

1 promotion agency (IPA), then from the IPA to BIR and BOC, then from BIR and BOC to DOF. Company-
2 level data are submitted only up to the level of BIR; thereafter, BIR is bound by the confidentiality clause
3 under the tax code. DOF will receive only per sector and per type of tax data.
4

5 **4. Final approval of the 2016 work plan**

6

7 4.1. The Secretariat suggested to first discuss the 2016 work plan before the TOR of the IA. It was
8 explained that there are provisions in the TOR that would involve reference to the work plan. In
9 addition, the Secretariat noted that the MSG needs to decide on the objectives of EITI implementation
10 because these will also be incorporated in the TOR.
11

12 The Secretariat recalled that there is a pending discussion on the fifth objective in the work plan.
13

14 4.2. The Chair recalled that during the previous MSG meeting, the industry representatives were asked
15 to review the fifth objective and determine whether this should be amended.
16

17 4.3. According to an industry representative, the challenge is to determine how the activities under the
18 5th objective translates to strengthening the business environment.
19

20 4.4. A CSO representative commented that the current activities in the work plan are in line with the 5th
21 objective. However, it will take years for the MSG to determine whether the EITI process actually
22 strengthened the business environment.
23

24 4.5. The same representative suggested that the MSG look into auxiliary jobs or businesses that
25 developed because of investments in mining. According to the CSO representative, the MSG should
26 capture how the mining industry contributed to the local economy.
27

28 4.6. The Chair added that it is important to have baseline information in order to measure the impact of
29 EITI in strengthening the business environment.
30

31 4.7. According to the Chair, the framework within which the business sector is operating should be
32 determined. The MSG should know if the PH-EITI process is changing the framework so that businesses
33 can have more efficient operations.
34

35 4.8. One member of the MSG explained that from the perspective of the industry sector, EITI is just one
36 part of the venn diagram of an industry. For example, it was shared that the oil and gas companies are
37 working with the Department of Energy (DOE) on an Executive Order that will hopefully coordinate all
38 the different agencies in making oil and gas exploration in the country a little less problematic. It was
39 mentioned that EITI would help the industry in terms of showing to the CSOs that they are following the
40 law and that they are transparent about their revenues but it does not impact the way companies do
41 business.

1 4.9. A CSO representative mentioned that the original proponents of EITI have certain assumptions
2 about transparency and how it relates to business. It was suggested that the MSG review this concept of
3 EITI and determine how can this be translated in the Philippine context.
4

5 With regard to the 5th objective, the same representative stated that the MSG needs to determine how
6 the stakeholders can make use of the EITI generated information and translate it into reform activities.
7

8 4.10. Another CSO representative commented that in determining the impact of EITI implementation,
9 the MSG would need more quantitative data. For example, the MSG needs to be able to quantify ease of
10 doing business.
11

12 4.11. An industry representative expressed that one of the accomplishments of EITI is validating the fact
13 that large-taxpayers are really paying their taxes. However, it was noted that the for the industry sector,
14 strengthening of the business environment is being affected by the existing moratorium on the approval
15 of mining tenements, which will not be lifted unless there is a new fiscal regime on mining.
16

17 4.12. According to the same representative, there is also an issue with regard to the transfer of LGU
18 shares and this is the reason why LGUs are adverse on the mining industry.
19

20 4.13. The industry representative expressed that the MSG needs to improve on communicating the data
21 of the report to policy makers, local communities and LGUs. It was explained that companies would
22 want to show that they pay taxes and that they also help government in providing basic services in far
23 flung areas, acting as catalyst to rural development.
24

25 4.14. Another industry representative commented that the current template of the MSG and the way
26 the report is being done, does not directly address the 5th objective. To achieve the 5th objective, the
27 same representative stated that the MSG needs to determine the metrics that will help improve the
28 business environment. It was shared that there is already a metric for measuring ease of doing business.
29

30 4.15. It was then suggested to include a chapter in the report on ease of doing business, specific to
31 mining as well as oil and gas sectors.
32

33 4.16. Another industry representative suggested to also include survey reports like Fraser Institute
34 Survey of Mining Companies to show how the Philippines ranks with other countries in terms of inviting
35 investments in the mining industry.
36

37 4.17. The Secretariat recalled that there was a previous proposal to measure the impact of PH-EITI in the
38 industry. However, there was a comment that this activity may not be relevant because EITI has no
39 impact on the business environment.
40

41 4.18. The Secretariat clarified whether the MSG still wants to revise the 5th objective.

1 4.19. An Industry representative suggested to retain the 5th objective and just add more activities. The
2 same representative added that the MSG can work with the National Competitiveness Council in the
3 conduct of survey on mining.

4
5 4.20. A CSO representative mentioned that the MSG also need to recognize that some companies are
6 enjoying tax holidays. It was mentioned that in the analysis of the CSOs, the mining industry is only
7 contributing less than 0.45% to national wealth.

8
9 4.21. The representative added that it is the role of the government to provide basic social services to
10 the communities in far flung areas. According to the CSO representative, while they recognize that
11 companies contribute to rural development, projects of the companies were done to also support their
12 operations.

13
14 4.22. The Chair agreed that it is the responsibility of the government, not only national government but
15 also LGUs, to provide basic services to communities, but also acknowledged the fact that mining
16 activities act as catalyst to rural development. According to the Chair, this is one of the reasons why the
17 MSG wants to develop a methodology on revenue management. Once the MSG has identified how
18 much of the national wealth are being transferred to the LGUs, the next step is to determine how the
19 LGUs are using their share.

20
21 4.23. A CSO representative noted that the same thing also needs to be done with the IP royalties. It was
22 mentioned that the work of the IA should not only include reconciliation of payments but also finding
23 out if the IP royalties were received and how it was used.

24
25 4.24. Another CSO representative agreed to retain the 5th objective in the work plan and add more
26 activities. The same representative suggested two activities: 1) revision of the reporting template to be
27 able to extract data that would be relevant in determining ease of doing business and the state of
28 business environment; 2) translating the data into a policy or a reform activity.

29
30 In addition, the CSO representative mentioned that most of the activities are disseminating the findings
31 of the report. According to the same representative, there should be activities on how to use the data to
32 encourage reform in the government in order to strengthen the business environment.

33
34 4.25. The Chair mentioned that the MSG has provided more than sufficient direction on how to address
35 the questions on the 5th objective. The Chair explained that the 5th objective will be retained but
36 activities that will allow the MSG to measure ease of doing business will be added in the work plan. The
37 information that will be gathered will then be used to direct how policy advocacy can be done to
38 improve the business environment.

39
40 4.26. The Secretariat mentioned that the comments will be incorporated in the work plan and the
41 revised work plan will be circulated through email.

42

1 **5. TOR of the IA and the consultant for contextual information**

2
3 5.1. The body was informed that the International Secretariat released in July 2015 a new template for
4 the TOR of the IA. However, it was mentioned that this template TOR was not used in hiring the IA for
5 the 2nd report.

6
7 5.2. The Secretariat noted that in the new standard TOR, there is an annex 1 on statement of materiality
8 which assumes that prior to procuring the services of an IA, the MSG has already decided what revenue
9 streams and companies are material. But since the MSG has already decided that it is the IA's
10 responsibility to propose materiality to the body, the Secretariat pointed out that annex 1 of the new
11 standard TOR will not be applicable.

12
13 5.3. According to the Secretariat, the difference between the old and new TOR were mostly changes in
14 form. It was shared that there is no essential change with regard to the content of the TOR.

15
16 5.4. The Secretariat explained that the IA's draft TOR for producing the 2016 EITI report was based on
17 the TOR used last year. In addition, it was mentioned that changes in the new standard TOR were also
18 incorporated as well as the previous agreement of the MSG to engage a separate consultant for the
19 contextual information.

20
21 5.5. The draft TOR was presented to the body (the presentation material is attached as Annex A).

22
23 5.6. It was shared that nothing was substantially changed on the first part of the TOR, which is the
24 background information on EITI.

25
26 5.7. However, the Secretariat noted that the statement "it has a robust yet flexible methodology for
27 disclosing and reconciling company payments and government revenues in implementing countries"
28 was not included in the new standard TOR.

29
30 5.8. The Secretariat suggested to delete the said statement to conform with the language of the newer
31 standard.

32
33 5.9. As for the two core components of EITI implementation, it was mentioned that the phrase "the
34 figures are reconciled by an Independent Administrator, and published in annual EITI reports" was
35 changed to "the figures are reconciled by an Independent Administrator, and published annually" and
36 the clause "in accordance with the EITI Standard" was added.

37
38 5.10. The Secretariat then noted that on page 3, "can" in the phrase "the EITI process can be used to
39 complement, assess, and improve existing reporting and auditing systems" was changed to "should".

40
41 The Chair commented that the MSG should have more engagement with COA.

1 5.11. The Secretariat explained that the objectives in the work plan were incorporated in the section on
2 EITI Implementation in the Philippines. It was reiterated that the body agreed to retain the 5th objective
3 but the activities will be revised.
4

5 5.12. Aside from format changes, it was mentioned that certain information like the year when the
6 pertinent executive orders (EO 79 and EO 147) were issued was added in the succeeding paragraphs.
7 The Secretariat also shared that they changed the references to the reporting year covered by the draft
8 TOR.
9

10 It was noted, however, that the essence of the background statement in the old TOR was retained.
11

12 5.13. In relation to this, the Secretariat shared that the 2016 EITI Standard was adopted at the Global
13 Conference in Lima. The body was informed that according to the International Secretariat, the new
14 Standard should already be applied in producing the 3rd report.
15

16 5.14. The Secretariat stated that they still need to study the new Standard but the International
17 Secretariat informed them that there is a certain section on license allocation which might need to be
18 incorporated in the TOR.
19

20 5.15. In addition, it was mentioned that there are new provisions on beneficial ownership in the 2016
21 Standard which is for implementation in year 2020.
22

23 5.16. The Secretariat then noted that they may have to refer to the 2016 EITI Standard in finalizing the
24 TOR of the IA.
25

26 5.17. As for the section on the objectives of the assignment, the Secretariat stated that they only
27 updated the reporting year that will be covered by the TOR.
28

29 5.18. The Secretariat also reminded the body that there is a pending discussion on whether the 3rd
30 report should cover both 2014 and 2015 data.
31

32 5.19. The Chair commented that there is no need to do a double reporting since the MSG already
33 decided to do an annual publication of the report.
34

35 5.20. A CSO representative asked how many companies submitted their 2014 data. The same
36 representative stated that the IA should inform the MSG whether the 2014 data provided by the
37 reporting entities were complete.
38

39 5.21. The Secretariat recalled that in the last MSG meeting, the IA reported that for government
40 agencies, only PPA and BOC did not submit 2014 data. As for the companies, it was noted that only Shell
41 Philippines Exploration B.V. and Nickel Asia Corporation submitted 2014 data.
42

1 5.22. With regard to the coverage of the 3rd report, the Chair suggested to include only 2014 data.

2

3 The body agreed.

4

5 5.23. On the scope of services, tasks and expected deliverables, the Secretariat shared that they deleted
6 the contextual information from the task of the IA. It was noted, however, that there will still be
7 provisions in succeeding sections that are related to the contextual information.

8

9 5.24. A CSO representative suggested that the IA be asked to go beyond reconciliation of figures. The
10 same representative explained that for example, the IA can use the data after reconciliation to check
11 whether the royalties received by the IPs based on the MOAs are really correct.

12

13 5.25. Another representative of the CSOs elaborated that the proposed additional task of the IA would
14 be double checking if what was paid is actually what was mandated under the law. The same
15 representative mentioned that the data on taxes paid to the national and local government, LGU shares
16 and SDMP expenses can be correlated with the data on what was required to be paid and transferred.

17

18 5.26. As for the IP royalties, the CSO representative explained that the IA can correlate the disclosure of
19 the companies with what was stated in the MOA in order to determine whether the IPs are receiving
20 what they are supposed to receive.

21

22 5.27. Another CSO representative noted that the challenge would be correlating royalty payments that
23 are in kind. However, it was mentioned that in-kind payments can be captured from the template.

24

25 The same representative suggested that the reported in-kind payments of the companies be compared
26 with the types of payment described in the MOA. The IA will then be able to determine if there are
27 problematic royalty transfers.

28

29 5.28. In addition, the Chair stated that the MSG will be able to show the actual contribution of
30 companies to IPs, both in cash and in kind.

31

32 5.29. One member of the MSG inquired whether the CSOs can ask the IP leaders to disclose how much
33 they are getting from the companies.

34

35 5.30. A CSO representative responded in the affirmative. The same representative shared that the CSOs
36 are actually teaching the IPs how to compute for their 1% share.

37

38 5.31. Another CSO representative stated that some IPs do not want the NCIP to have any involvement
39 with how they should spend their royalty share. The same representative suggested developing a
40 template on how the royalty can be used for the advantage of the IPs.

41

1 5.32. In relation to this, it was mentioned that the CSOs are proposing to add two IP representatives to
2 the MSG.
3

4 5.33. On page 7, the Secretariat shared that they added paragraph 1.9 which was lifted, but slightly
5 modified, from the TOR for the first country report. Since a separate consultant will be doing the
6 contextual information, the Secretariat added in the TOR that the IA should prepare a work plan and
7 work with the MSG to agree on the procedures for incorporating contextual and other non-revenue
8 information in the EITI Report. It was also stated that the procedures should ensure that information is
9 clearly sourced and attributed.
10

11 5.34. According to the Secretariat, the details of the contextual information to be incorporated in the
12 report were enumerated in Annex 1.
13

14 5.35. The body was informed that a separate TOR for the contextual information consultant is being
15 developed. The Secretariat stated that the draft TOR will be circulated to the members of the MSG via
16 email.
17

18 5.36. The Secretariat noted that phase 3 and phase 4 of the IA's TOR may need to be modified in order
19 to incorporate earlier comments on expanding the scope of work of the IA.
20

21 5.37. On page 9, it was mentioned that items 4.7 and 4.8 of the old TOR were deleted because these
22 pertain to the report on contextual information. The Secretariat explained that these deleted
23 paragraphs will be incorporated in the TOR for the contextual information consultant.
24

25 5.38. On the other hand, the Secretariat pointed out that they added a provision on page 10 stating that
26 the IA should work in coordination with the consultant tasked to write the contextual information to
27 make sure that their findings and conclusions are consistent.
28

29 5.39. With regard to the qualification requirements, the Secretariat shared that they deleted the
30 paragraph on assigning or hiring of a senior economist. The Secretariat explained that the task of the
31 economist is to do an analysis of the contribution of the extractive industries to the economy which is
32 part of the contextual information. This item will be added as one of the tasks of the consultant for
33 contextual information.
34

35 5.40. The Secretariat noted that the last paragraph under qualification requirements was also deleted
36 since it pertains to contextual information.
37

38 5.41. As for the section on reporting requirements and time schedule for deliverables, the Secretariat
39 stated that they updated the dates considering the period for procurement.
40

41 5.42. The body was informed that the contents of the contextual information were retained in Annex 1.
42 However, the source of the contextual information was updated.

1 5.43. The Secretariat explained that the IA will draw all contextual information from the output of a
2 separate consultant, except for the information on small scale mining which will be drawn from the
3 existing scoping study on this subject.
4

5 5.44. A suggestion to include subnational EITI as part of the contextual information of the 3rd report was
6 raised by a CSO representative.
7

8 The Chair asked the CSO representative to elaborate on the suggestion.
9

10 5.45. According to the CSO representative, the creation of subnational EITI multi stakeholder councils
11 was already raised in previous MSG meetings.
12

13 5.46. The Chair recalled that pilot studies on subnational EITI implementation were already conducted.
14

15 5.47. A CSO representative commented that the MSG should add the framework for subnational
16 implementation in the 3rd report as well as the results of the pilot study.
17

18 5.48. A CSO representative stated that the discussion on subnational implementation can have a
19 separate section in the report. The same member explained that the section on subnational EITI will be
20 more on sharing the work that the MSG has been doing in relation to subnational implementation, what
21 has been accomplished and what was the outcome. In addition, it was mentioned that the possible next
22 steps of the MSG can also be included.
23

24 5.49. A CSO representative clarified that the MSG only has a scoping study on small-scale mining and not
25 on subnational implementation. According to the same representative, what they want to see in the
26 contextual information is a chapter on subnational EITI framework that would also answer the following
27 questions: Are the local monitoring teams operational? Who are the current members of these teams?
28 Is there a subnational fund?
29

30 5.50. Another CSO representative asked if the MSG would want to create a TWG for the subnational EITI
31 chapter in the report. The body was informed that Dr. Cielo Magno volunteered to be a part of the said
32 TWG.
33

34 5.51. The Chair agreed to form a TWG on subnational EITI implementation.
35

36 5.52. A representative of MGB commented that the pilot studies conducted only covered small-scale
37 mining activities and not large-scale operations.
38

39 5.53. According to the Chair, what will be included in the contextual information is the current state of
40 subnational implementation in the country.
41

1 5.54. The Secretariat stated that the comments and inputs of the MSG members will be incorporated in
2 the draft TOR for the contextual information.

3
4 5.55. The body approved in principle the draft TOR of the IA and the work plan subject to revisions as
5 discussed during the meeting.

6
7 5.56. According to the Secretariat, the revised TOR for the IA and the work plan will be circulated to the
8 MSG by Tuesday next week. It was mentioned that the members of the MSG can still give inputs on or
9 before Monday.

10 11 **6. Scope of the 2016 PH-EITI Report**

12
13 6.1. According to the Secretariat, the issue on whether the third report will cover both 2014 and 2015
14 data has already been settled earlier in the meeting.

15
16 6.2. As for the inclusion of LSNM mining, it was noted that the Secretariat is still waiting for the
17 comments of the MSG on the LSNM scoping study.

18
19 6.3. A CSO representative suggested that the consultant be asked to present the findings of the scoping
20 study in order for the MSG to have a more complete picture of the industry. The same representative
21 expressed that this will also guide the discussion of the body on how to include the LSNM in the next
22 report.

23
24 6.4. An Industry representative commented that the scoping study does not cover the financial aspect of
25 the LSNM industry. According to the representative, because the material companies were not
26 identified in the scoping study, the MSG will not be able to determine what companies should be
27 included on the report.

28
29 6.5. The same representative added that more work needs to be done in order for the MSG to answer
30 the following questions: What is the total impact of the LSNM industry? Who are the material players?
31 How can the MSG get them involved?

32
33 6.6. An industry representative shared that the scoping study consultant had difficulty communicating
34 with the Cement Manufacturers Association of the Philippines (CEMAP). It was mentioned that
35 cooperation of material companies needs to be ensured.

36
37 6.7. A CSO representative also shared that the consultant was able to talk with the regional directors of
38 MGB as well as some people from the community regarding LSNM industry. However, it was not clear to
39 the body how the data from the regional directors have been compiled by the consultant.

40
41 6.8. For the information of the body, it was shared that there is a separate division in the Large Tax
42 Payers Service in Bureau of Internal Revenue (BIR) that is in charge of the cement companies. A BIR

1 representative stated that the said office has available data but only on companies that are considered
2 as large taxpayer.

3
4 6.9. The Chair noted the comments and stated that a lot of ground work needs to be done before the
5 MSG can decide on the inclusion of the LSNM industry in the report.

6
7 6.10. The Chair inquired whether the LSNM sector only includes cement companies.

8
9 6.11. It was clarified that large quarries, sand and gravel, limestone and marble are also included in the
10 LSNM industry.

11
12 6.12. A representative of MGB shared that the Philippines has 55 LSNM companies. The same
13 representative suggested to consult the companies first if they are willing to participate in the PH-EITI
14 process.

15
16 6.13. The Chair commented that MGB's definition of LSNM might be different from the definition of BIR.
17 According to the Chair, this needs to be studied first to be able to formulate the work plan activities for
18 the future inclusion of LSNM sector in the PH-EITI report.

19
20 6.14. A CSO representative asked if the LSNM industry will not be included in the report in case the MSG
21 will not be able to engage the companies.

22
23 6.15. The Chair explained that the LSNM sector can initially be included in the contextual information.

24
25 6.16. According to the Chair, the willingness of the companies to participate needs to be examined first
26 before the MSG makes any commitment to include the sector in the report.

27
28 6.17. The Chair stressed that the inclusion of the LSNM industry in the EITI report would still depend on
29 the conclusion that the MSG would draw from the reports and studies of the consultants.

30 31 **7. Inclusion of Congress and NCIP in the MSG**

32 33 **• Inclusion of NCIP**

34
35 7.1. The Chair asked the body if NCIP will be part of the government sector representatives in the MSG.

36
37 7.2. The Secretariat mentioned that the inclusion of NCIP in the MSG can be done through MICC action.

38
39 7.3. The Chair then inquired if the MICC as an institution will continue beyond June 30, 2016.

40
41 7.4. The Secretariat stated that the MICC was created pursuant to EO 79, while its power to identify the
42 members of the MSG was provided under EO 147.

1 7.5. The Chair asked if the body thinks it is necessary to have NCIP as an integral member of the MSG.
2

3 7.6. The Chair stated that the decision of the MSG regarding the inclusion of NCIP does not have to be
4 made during the meeting.
5

6 • **Inclusion of Congress**
7

8 7.7. The Chair shared that the inclusion of Congress in the MSG was discussed because the MSG is
9 planning to have an EITI law.
10

11 7.8. A CSO representative suggested to also defer the discussion on the inclusion of Congress.
12

13 **8. Other Matters**
14

15 **MSG inputs to TIMTA Implementing Rules and Regulations (IRR)**
16

17 8.1. Based on the earlier discussion on this subject as part of matters arising, the Secretariat suggested
18 to modify the phrasing of the pertinent activity in the work plan and just state it in terms of establishing
19 a coordination mechanism or information sharing in relation to TIMTA implementation.
20

21 8.2. The Chair noted the action and mentioned the body will wait for the circulation of the draft.
22

23 **Insights from the Global Conference**
24

25 8.3. A video showing the highlights of the Global Conference in Lima was presented to the body.
26

27 8.4. The Chair then asked for insights on the Global Conference from the MSG members who attended
28 the event.
29

30 8.5. An industry representative commented that the Stakeholder Forum at the end of the program did
31 not have much impact, and questioned its relevance.
32

33 8.6. The Chair commented that it might be because the program was designed when there were still few
34 EITI implementing countries, which is no longer the case at present.
35

36 8.7. The Chair brought up the matter of the issue with CSO nominations to the EITI International Board,
37 which happened in Lima. It was pointed out that although it is an internal issue, it may have an impact
38 on how EITI is governed.
39

40 8.8. Representatives from CSOs who participated in the global conference gave accounts of what
41 happened in Lima.

1 8.9. The Chair commented that the other sectors were surprised about what happened because they
2 really did not know what the issue was.
3

4 8.10. A CSO representative stated that Publish What You Pay (PWYP) has a set of agreed upon rules at
5 the international level. PWYP was given the authority by the EITI International Secretariat to conduct the
6 selection process and nominate the CSO representatives to the Board. The established process is as
7 inclusive as it can be, that is why when it was not followed by the International Secretariat there were
8 violent reactions from the CSO sector. It was a demand to the commitment to the values that the EITI is
9 supposed to be upholding. The representative mentioned that leadership is really important, in which
10 there were some shortcomings on part of the International Secretariat.
11

12 8.11. A CSO representative said that dealing with counterparts abroad, the MSG should not be easily
13 swayed by the internal politics and dynamics of the CSO sector, and potentially the government or
14 industry sector. The group needs to be conscious that it is protecting the integrity and process of the
15 Philippine MSG.
16

17 8.12. The Chair said that the concern is with the integrity of the process of nomination. It is an issue on
18 governance which is really problematic especially because the number of EITI implementing countries is
19 increasing. The International Secretariat should be held to an even higher standard of governance.
20

21 8.13. A CSO representative agreed and stated there was a violation of the nomination process by the
22 international secretariat. On the other hand, the CSO sector mishandled the issue as well. It could have
23 been a lot more productive and useful had a different strategy was taken.
24

25 8.14. Another CSO representative stated that it will be very helpful if the rules are laid down for all
26 sectors, but especially for civil society. It needs to be clear why there are umbrella organizations such as
27 Bantay Kita that oversees the NGOs doing work on EITI in the Philippines.
28

29 8.15. Another CSO representative commented that the kind of dialogue happening in the Philippine
30 MSG is productive. The sectors need to keep talking with each other to avoid suspecting one another.
31

32 8.16. Another CSO representative mentioned that PWYP asked to have more Filipinos members because
33 they are seen to be good in mediation and negotiations.
34

35 8.17. Another CSO representative announced to the group that Starjoan Villanueva was chosen a
36 member of the PWYP Global Council representing the Asia Pacific region. The same CSO representative
37 asked the group to congratulate her.
38

1 **Proposal to Discuss Outputs from the National Conference**

2
3 8.18. The Secretariat mentioned that outputs from the breakout session from the National Conference
4 were summarized. There were issues identified and recommendations made, as per the documenter's
5 report. The Secretariat mentioned that the body may be interested in including these in the MSG
6 recommendations or additions to the report.

7
8 8.19. The Chair reiterated that the documentation contains a summary of all the outputs of the
9 conference and asked the MSG members to review it, so that later on the group can sift through the list
10 to find out what can be placed in the Third Country Report or to the proposed activities. The Chair also
11 mentioned that it didn't need to be discussed that day.

12
13 8.20. An industry representative mentioned, in relation to the output of the National Conference, that
14 they want to verify the 17% computation from Bantay Kita. The representative stated that they are
15 validating it and asked if Mr. Brimo can be given an opportunity to present their findings from a study on
16 tax burden for mining companies covered in the 2015 report. The representative also stated that it
17 would be a good opportunity for all stakeholders to agree on the figures to serve as basis for statements
18 moving forward.

19
20 8.21. The Chair agreed to have the industry presentation in the next MSG meeting so that the MSG can
21 learn more about and compare the methodology and assumptions of both computations.

22
23 **Financial report**

24
25 8.22. The Grants and Contracts Specialist of the Secretariat first asked those who participated in the
26 Global Conference in Lima to complete the requirements for reimbursement.

27
28 8.23. The Secretariat then reported that the DBM gave 17.85 Million Pesos to PH-EITI. Tables on the PH-
29 EITI expenditures were flashed on the screen.

30
31 8.24. The Secretariat reported that the counterpart of the Government of the Philippines (GOP) in the
32 National Conference was PHP407,000.00 and PHP5.6 Million for the Global Conference. The Global
33 Conference was supposed to be funded by the World Bank but GOP funds were used since the WB
34 funding has not arrived yet.

35
36 8.25. The Chair inquired as to when the WB grant will be released.

37
38 8.26. The Secretariat mentioned that there is a meeting with Nat Adams of the World Bank later in the
39 day, where he will be giving updates on the grant. However, there was no assurance that the grant is on
40 its way.

1 8.27. An industry representative brought up the offer of Mr. Brimo to have an MSG meeting in the
2 Taganito site in Surigao.

3

4 The Chair took note of the offer.

5

6 **ADJOURNMENT**

7

8 There being no other matters to discuss, the meeting was adjourned at 12:15 PM.



Philippine EITI 2016 Report

Terms of Reference for Independent Administrator

Terms of Reference

Independent Administrator for the 2015 EITI Report, Republic of the Philippines

Approved by the PH-EITI MSG on _____

1. Background

The Extractive Industries Transparency Initiative (EITI) is a global standard that promotes transparency and accountability in the oil, gas and mining sectors.

EITI implementation has two core components:

- **Transparency:** oil, gas and mining companies disclose their payments to the government, and the government discloses its receipts. The figures are reconciled by an Independent Administrator, and published annually alongside contextual and other information about the extractive industries in accordance with the EITI Standard.
- **Accountability:** a multi-stakeholder group (MSG) with representatives from government, companies and civil society is established to oversee the process and communicate the findings of the EITI Report, and promote the integration of EITI into broader transparency efforts in that country.

The EITI Standard encourages MSGs to explore innovative approaches to extending EITI implementation to increase the comprehensiveness of EITI reporting and public understanding of revenues and encourage high standards of transparency and accountability in public life, government operations and in business.

The requirements for implementing countries are set out in the EITI Standard¹. Additional information is available via www.eiti.org.

It is a requirement that the MSG approves the terms of reference for the Independent Administrator (requirement 5.2), drawing on the objectives and agreed scope of the EITI as set out in the workplan. The MSG's deliberations on these matters should be in accordance with the MSG's internal governance rules and procedures (see requirement 1.3g). The EITI requires an inclusive decision-making process throughout implementation, with each constituency being treated as a partner.

It is a requirement that the Independent Administrator is perceived by the MSG to be credible, trustworthy and technically competent (Requirement 5.1). The multi-stakeholder group and Independent Administrator should address any concerns regarding conflicts of interest. The Independent Administrator's report will be submitted to the MSG for approval and made publicly available in accordance with Requirement 6.

These terms of reference include "agreed upon procedures" for EITI reporting (see section 4) in accordance

¹<http://eiti.org/document/standard>

with EITI Requirement 5.2. The international EITI Board has developed these procedures to promote greater consistency and reliability in EITI reporting. The EITI process should be used to complement, assess, and improve existing reporting and auditing systems. The Board recommends that the process relies as much as possible on existing procedures and institutions, so that the EITI process draws on, complements and critically evaluates existing data collection and auditing systems. In this way, the EITI process has the potential to generate important recommendations to strengthen other oversight systems.

EITI Implementation in the Philippines

The Philippines was admitted as a candidate country by the EITI International Board on May 22, 2013. This coincided with the adoption of the 2013 EITI standard, thus necessitating a revision of the country's work plan. Pursuant to the requirement of the new standard, and after a series of consultations with stakeholders, the Philippine MSG formulated the following objectives for EITI implementation that are linked to EITI principles and reflective of national priorities for the extractive industries:

1. Show direct and indirect contribution of extractives to the economy
2. Improve public understanding of the management of natural resources and public availability of data
3. Strengthen national resource management / strengthen government systems
4. Create opportunities for dialogue and constructive engagement in natural resource management in order to build trust and reduce conflict among stakeholders
5. Strengthen business environment and increase investments

The legal basis for EITI implementation in the country is found in Executive Order No. 79 (2012) which states the Philippines' commitment to participate in the EITI process and tasks the Mining Industry Coordinating Council (MICC) to adopt measures for the institutionalization of EITI in the country. Subsequent to this, Executive Order No. 147 (2013) was issued by President Aquino formally creating Philippine EITI.

The EITI process in the Philippines is governed by a multi stakeholder group composed of representatives from the government, namely the Department of Finance (in which the PH-EITI secretariat is lodged), Department of Environment and Natural Resources, Department of Energy, Department of the Interior and Local Government, and Union of Local Authorities of the Philippines. The civil society is mainly represented by Bantay Kita Philippines, a broad coalition of civil society organizations advocating transparency and accountability. The extractive industries are represented by the Petroleum Association of the Philippines, The Chamber of Mines Philippines, and an elected representative from non-chamber members.

The key activities that will be undertaken by the MSG to implement the initiative in the country are as follows: 1. Institutionalization of PH-EITI; 2. Capacity-building activities; 3. Outreach and forums with stakeholders; 4. Policy recommendations; 5. Publication and dissemination of EITI report; 6. Communications plan, reference materials and knowledge products; and 7. Information systems.

Commented [m1]: Under discussion

Commented [m2]: Not provided in EO 79. Deletion suggested.

In December 2014, PH-EITI submitted its first report to the EITI International Secretariat. In February 2016, the second report was launched. This TOR is for the third report which is expected to draw from the recommendations arising from the second report.

The PH-EITI work plan may be accessed at www.ph-eiti.org

2. Objectives of the assignment

On behalf of the Philippine government and PH-EITI MSG, the Department of Finance seeks a competent and credible firm, free from conflicts of interest, to provide Independent Administrator services in accordance with the EITI Standard. The objective of the assignment is to:

1. Produce an EITI Report for 2015 (covering data for 2014) in accordance with the EITI Standard and section 3 below.
2. Perform other related tasks outlined in this Terms of Reference necessary for the production of the EITI report for 2016.
3. Perform data collection for payments made in 2015.

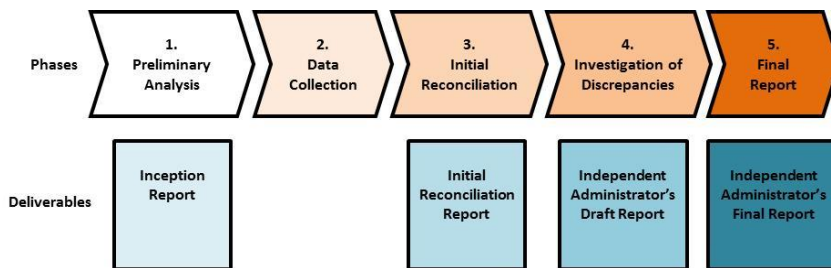
Commented [m3]: Double reporting under consideration/discussion

Commented [m4]: Will change depending on the decision on double reporting

3. Scope of services, tasks and expected deliverables

3.1. The work of the Independent Administrator has five phases (see figure 1). The Independent Administrator’s responsibilities in each phase are elaborated below.

Figure 1 – Overview of the EITI Reporting process and deliverables



Phase 1 – Preliminary analysis and inception report

Objective: The purpose of the inception phase is to confirm that the scope of the EITI reporting process has been clearly defined, including the reporting templates, data collection procedures, and the schedule for publishing the EITI Report. It is imperative that the scope of EITI reporting is clearly defined, in line with the EITI Standard and with the MSG’s agreed objectives and expectations for the EITI process. The findings

from the first phase should be documented in an inception report (see below). The Independent Administrator is expected to undertake the following tasks:

1.1 The Independent Administrator should prepare a detailed outline of the report which shall be approved by the MSG. It should also submit for the MSG's approval a work plan indicating its approach and methodology in producing the following outputs:

a.

Reconciliation report

1.2 The Independent Administrator should review whether the revenue streams covered in the 2015 report should be amended for the **2016 EITI Report**. In case of amendments, the IA shall provide an explanation for the same. The inception report should clearly indicate the MSG's decisions on:

- The definition of materiality and thresholds, and the resulting revenue streams to be included in accordance with Requirement 4.1(b).
- The sale of the state's share of production or other revenues collected in-kind in accordance with Requirement 4.1(c).
- The coverage of infrastructure provisions and barter arrangements in accordance with Requirement 4.1(d).
- The coverage of social expenditure in accordance with Requirement 4.1(e).
- The coverage of transportation revenues in accordance with Requirement 4.1(f)
- The level and type of disaggregation of the EITI Report in accordance with Requirement 5.2(e).
- In instances when any of the revenue streams required by the EITI Standard are not applicable in the Philippines context, the IA must explicitly state so in the report.

1.3 The Independent Administrator should review **the companies and government entities that are required to report as defined by the MSG in its 2015 report (Annex A) in accordance with EITI Requirement 4.2**. In case of changes from the previous report as to reporting entities covered, the IA shall provide an explanation for the same. The inception report should:

- Identify and list the companies that make material payments to the state and will be required to report in accordance with Requirement 4.2(a).
- Identify and list the government entities that receive material payments and will be required to report in accordance with Requirement 4.2(a).
- Identify any barriers to full government disclosure of total revenues received from each of the benefit streams agreed in the scope of the EITI report, including revenues that fall below agreed materiality thresholds (Requirement 4.2(b)).
- Confirm the MSG's position on disclosure and reconciliation of payments to and from state-owned enterprises in accordance with Requirement 4.2(c)

- Confirm the MSG's position of the materiality and inclusion of sub-national payments in accordance with Requirement 4.2(d).
- Confirm the MSG's position on the materiality and inclusion of sub-national transfers in accordance with Requirement 4.2(e).

1.4 REPORTING TEMPLATE:

The Independent Administrator shall:

- Review the template for the 2015 report and make recommendations for improvement
- Together with the MSG, draft and finalize a reporting template identifying all revenue streams and information that should be provided by the reporting entities for the EITI report.
- Develop guidelines for completing reporting templates

1.5 The Independent Administrator should provide advice to the MSG in examining **the audit and assurance procedures in companies and government entities participating in the EITI reporting process** in accordance with Requirement 5.2(b). This includes examining the relevant laws and regulations, any reforms that are planned or underway, and whether these procedures are in line with international standards.

1.6 The Independent Administrator should provide advice to the MSG **on what information the MSG should require to be provided to the Independent Administrator by the participating companies and government entities to assure the credibility of the data** in accordance with Requirement 5.2(c). The Independent Administrator should then employ his /her professional judgement to determine the extent to which reliance can be placed on the existing controls and audit frameworks of the companies and governments. The Independent Administrator should document the options considered and the rationale for the assurances to be provided. Where deemed necessary by the Independent Administrator and the MSG, assurances may include:

- Requesting sign-off from a senior company or government official from each reporting entity attesting that the completed reporting form is a complete and accurate record.
- Requesting a confirmation letter from the companies' external auditor that confirms that the information they have submitted is comprehensive and consistent with their audited financial statements. The MSG may wish to phase in any such procedure so that the confirmation letter may be integrated into the usual work programme of the company's auditor. Where some companies are not required by law to have an external auditor and therefore cannot provide such assurance, this should be clearly identified, and any reforms that are planned or underway should be noted".
- Where relevant and practicable, requesting that government reporting entities obtain a certification of the accuracy of the government's disclosures from their external auditor or equivalent.

The Independent Administrator should exercise judgement and apply appropriate international

professional standards² in developing a procedure that provide a sufficient basis for a comprehensive and reliable EITI Report.

- 1.7 The Independent Administrator should provide advice to the MSG on **agreeing appropriate provisions relating to safeguarding confidential information.**
- 1.8 The Independent Administrator shall present to the MSG which data from the 2015 report on contextual information should be updated.
- 1.9 The Independent Administrator should prepare a work plan and work with the MSG to agree on the procedures for incorporating contextual and other non-revenue information in the EITI Report. The procedures should ensure that information is clearly sourced and attributed. The contextual information to be incorporated in the Report in accordance with Requirement 3 is detailed in Annex 1 hereof.

The Independent Administrator should document the results from the inception phase in an **inception report** for consideration by the MSG addressing points 1.1 – 1.9 above. Where necessary the inception report should highlight any unresolved issues or potential barriers to effective implementation, and possible remedies for consideration by the MSG. The inception report should be submitted to the MSG one week before its presentation to the body.

Phase 2 – Data collection

- 2.1 The Independent Administrator shall distribute the reporting templates and collect the completed forms and associated supporting documentation, as well as any other information requested to be collected by the MSG, directly from the participating reporting entities. The MSG, assisted by the National Secretariat, shall provide contact details for the reporting entities and assist the Independent Administrator in ensuring that all reporting entities participate fully.
- 2.2 The Independent Administrator shall ensure that the request for data includes appropriate guidance to the reporting entities, and on where to seek additional information and support.
- 2.3 The Independent Administrator shall contact the reporting entities directly to clarify any information gaps or discrepancies.
- 2.4 The Independent Administrator shall obtain any additional information from the extractive companies and government agencies necessary to carry out the reconciliation, including requesting any other data not included in the reporting template and documents in support of the information provided in the template.
- 2.5 The Independent Administrator shall demonstrate to the reporting entities how to properly fill in reporting templates.
- 2.6 The Independent Administrator should make sure that templates are completely filled up by reporting entities and must employ all measures to ensure that each entity submits complete information.

² For example, ISA 505 relative to external confirmations; ISA 530 relative to audit sampling; ISA 500 relative to audit evidence; ISRS 44000 relative to the engagement to perform agreed-upon procedures regarding financial information and 4410 relative to compilation engagements.

Phase 3 – Initial reconciliation and initial reconciliation report

- 3.1 The Independent Administrator should compile a database with the data provided by the reporting entities and ensure access by the MSG to such database.
- 3.2 The Independent Administrator should comprehensively reconcile the information disclosed by the reporting entities, identifying any discrepancies (including offsetting discrepancies) in accordance with the agreed scope. The Independent Administrator shall discuss with the MSG further actions it should take in explaining the discrepancies.
- 3.3 The Independent Administrator should prepare an initial reconciliation report based on the reported (unadjusted) data for consideration by the MSG in accordance with the agreed scope. The said report, together with the narrative of the updated contextual information shall be submitted to the MSG one week before the presentation of findings to the MSG.
- 3.4 Should the MSG wish, the Independent Administrator shall recommend an acceptable margin of error in determining which discrepancies should be further investigated. Where this has been agreed, the Independent Administrator should identify any discrepancies above the agreed margin of error established at X% of total revenues.

Phase 4 – Investigation of discrepancies and draft Independent Administrator’s Report (contextual information and reconciliation)

- 4.1 The Independent Administrator shall directly contact the reporting entities in seeking to clarify any discrepancies in the reported data.
- 4.2 The Independent Administrator shall prepare a draft Independent Administrator’s Report that comprehensively reconciles the information disclosed by the reporting entities, identifying any discrepancies and the explanation for the same, and reports on contextual and other information requested by the MSG.
- 4.3 The draft Independent Administrator’s report should:
 - a) describe the methodology adopted for the reconciliation of company payments and government revenues, and demonstrate the application of international professional standards.
 - b) include a description of each revenue stream, related materiality definitions and thresholds (Requirement 4.1).
 - c) include an assessment from the Independent Administrator on the comprehensiveness and reliability of the data presented, including an informative summary of the work performed by the Independent Administrator and the limitations of the assessment provided. The Independent Administrator should assess the process of data collection of the companies and the agencies and report on the reliability of data collection and validity and accuracy of the data.
 - d) Based on the government’s disclosure of total revenues as per Requirement 4.2(b), indicate the coverage of the reconciliation exercise.
 - e) include an assessment of whether all companies and government entities within the agreed scope of the EITI reporting process provided the requested information. Any gaps or weaknesses in reporting to the Independent Administrator must be disclosed in the EITI Report, including naming any entities that failed to comply with the agreed procedures, and an assessment of whether this is likely to have had material impact on the comprehensiveness of the report (Requirement 5.3(d)). In cases where companies do not sign the BIR waivers or refuse to participate in the reporting process, the reconciliation report should contain unilateral reporting by government agencies.
 - f) document whether the participating companies and government entities had their financial statements audited in the financial year(s) covered by the EITI Report. Any gaps or weaknesses must be disclosed. Where audited financial statements are publicly available, it is recommended that the EITI Report advisereaders on how to access this information (Requirement 5.3(e)).

- g) Include a discussion on the flow of revenue streams and how transfers are facilitated between the different levels of government offices.
 - h) The Independent Administrator should provide an in-depth analysis of the data generated by the report, not just on the contribution to the economy but also the accuracy and consistency of the numbers based on existing laws and regulations. It should determine whether the figures are in compliance with the law.
- 4.4 The Independent Administrator should make recommendations for strengthening the reporting process in the future, citing problems encountered in the process and methods to address them. It shall also include recommendations regarding audit practices and reforms needed to bring them in line with international standards.
- 4.5 The Independent Administrator is encouraged to make recommendations on strengthening the template Terms of Reference for Independent Administrator services in accordance with the EITI Standard for the attention of the EITI Board.
- 4.6 The Independent Administrator shall include a Discussion on the reporting cycles of the reporting entities and availability dates of data.
- 4.7 The Independent Administrator should work in coordination with the consultant tasked to write the contextual information to make sure that their findings and conclusions are consistent.
- 4.8 A draft narrative of all findings for this phase shall be submitted to the MSG one week before the presentation of the findings to the MSG.

Phase 5 – Final Independent Administrator’s report

- 5.1 The final report should contain all the comments of the MSG from the draft report, making sure that all concerns raised by the reporting entities have been sufficiently addressed before the final report is submitted.
- 5.2 The Independent Administrator should produce electronic data files that can be published together with the final Report. For this purpose, the Independent Administrator should encode the data from the templates and the companies’ financial statements from the SEC into the dataset that can be analyzed using statistical software. A codebook should accompany such data set.
- 5.3 The Independent Administrator should provide machine readable files and/or code or tag EITI Reports and data files
- 5.4 Following approval by the MSG, the Independent Administrator is mandated to submit summary data from the EITI Report electronically to the International Secretariat according to the standardised reporting format available from the International Secretariat (Requirement 5.3(b).
- 5.5 Independent Administrator will publish/make public their final report only upon the instruction of the MSG. The MSG will endorse the report prior to its publication. Where stakeholders other than the Independent Administrator wish to include additional comments in, or opinions on, the EITI Report, the authorship should be clearly indicated.
- 5.6 The Independent Administrator shall propose a scope for the next EITI report.
- 5.7 The Independent Administrator shall assist the MSG in giving trainings to reporting government agencies, extractive companies and CSOs in connection with the reconciliation process.

- 5.8 The Independent Administrator shall include an assessment of how the findings of the Independent Administrator in the previous report have been addressed by the MSG and how the recommendations have been carried out.
- 5.9 The Independent Administrator shall submit its final report to the MSG two weeks before the findings are presented to the MSG.

Phase 6-- Post-publication

- 6.1 The Independent Administrator shall provide assistance in the translation into local dialects of the EITI reports (both for the popular and official version) and give final approval for the same.
- 6.2 The Independent Administrator shall conduct a report analysis workshop with the MSG members and key stakeholders immediately after the publication of the report.
- 6.3 The Independent Administrator shall turn over to the PH-EITI Secretariat all documents and data gathered in connection with the production of the report.

4. Qualification requirements for Independent Administrators

The reconciliation of company payments and government revenues must be undertaken by an Independent Administrator applying international professional standards (requirement 5.1). It is a requirement that the Independent Administrator is perceived by the MSG to be credible, trustworthy and technically competent. Bidders must follow (and show how they will apply) the appropriate professional standards for the reconciliation / agreed-upon-procedures work in preparing their report.

The Independent Administrator will need to demonstrate:

- Expertise and experience in the oil, gas and mining sectors in the Philippines as shown by previous engagements.
- Expertise in accounting, auditing and financial analysis.
- A track record in similar work. Previous experience in EITI reporting is not required, but would be advantageous.
- Working knowledge of legal, regulatory and fiscal legislation applicable to the extractive industries.
- Affiliation with an internationally recognised audit firm that has experience in preparing EITI or similar reports in extractive and financial sectors.

At the minimum, the firm must be able to provide a support staff of certified public accountants in good standing with the following qualifications:

- One partner with experience of 15 years in auditing and accounting and must be familiar with public accounting and finance;
- One senior associate with 8 years of experience in auditing and accounting;

- 2 junior associates with 2 years of experience in auditing and accounting.

The firm must have a senior writer and editor who will make sure that the report is well written, comprehensible, coherent, and that there are no conflicting data in the entire document.

Submission must include proof of relevant qualifications for key staffs.

- The Independent Administrator must have no conflict of interest as determined by the MSG. In order to ensure the quality and independence of the exercise, Independent Administrators are required in their proposal to disclose any actual or potential conflicts of interest. The bidder must submit a sworn statement of lack of conflict of interest (Annex V), indicating the nature of work performed for a previous client in the extractive industry and the measures they intend to adopt to ensure impartiality.
- The IA must have already provided services in large-scale projects of similar nature or magnitude.

5. Reporting requirements and time schedule for deliverables

The period for the assignment is from April 15, 2015 to December 2016. The proposed schedule is set out below:

ACTIVITY/DELIVERABLES	DEADLINE	MSG APPROVAL
Signing of contract	April 8, 2016	
Phase 1: Workplan, Report Outline, Inception Report, Reporting Template	May 2, 2016	May 6, 2016
Phase 2: Data Collection	May-June 2016	
Phase 3: Initial Reconciliation Report (unadjusted data) and Incorporated Contextual Information	July 31, 2016	September 2, 2016
Phase 4: Investigation of Discrepancies and Draft Reconciliation Report	August 30, 2016	September 2, 2016
Phase 5: Final report	October 3, 2016	November 4, 2016
Phase 6: Post-publication	January 2017	

The schedule of payments shall be as follows:



15% upon contract signing

20% following delivery of the inception report

20% following delivery of the draft of first EITI report

20% following MSG approval and publication of the EITI report

25% following the launching of the final EITI report at a national conference

6. Client's input and counterpart personnel

The IA shall coordinate with and report to the National Secretariat on a day-to-day basis on all relevant matters pertaining to the implementation of the Project. The Head of the Secretariat will be the Consultant's contact person in the course of implementation of the Project.

Support to be provided by PH-EITI

The PH-EITI Secretariat will provide the IA with the following support:

- i) Coordinate with the members of the PH-EITI MSG;
- ii) Coordinate with reporting entities to facilitate the IA's work; and
- iii) Provide relevant reference materials and information on EITI

Annex 1 – Data Sheet on scope of services

Based on scoping reports the MSG proposes the following scope for the EITI:

1. Contextual Information

The Independent Administrator is tasked with incorporating the following contextual information in accordance with EITI Requirement 3.

Contextual information to be provided in the EITI Report	Commentary on work to be undertaken by the Independent Administrator
A description of the legal framework and fiscal regime governing the extractive industries (Requirement 3.2), in particular laws relevant to the information disclosed in the EITI report.	To be drawn from output of consultant for contextual information
An overview of the extractive industries, including any significant exploration activities (Requirement 3.3)	To be drawn from output of consultant for contextual information
Where available, information about the contribution of the extractive industries to the economy for the fiscal year covered by the EITI Report (Requirement 3.4)	To be drawn from output of consultant for contextual information
Production data for the fiscal year covered by the EITI Report (Requirement 3.5)	To be drawn from output of consultant for contextual information
Information regarding state participation in the extractive industries (Requirement 3.6) ³	To be drawn from output of consultant for contextual information
Distribution of revenues from the extractive industries (Requirement 3.7);	To be drawn from output of consultant for contextual information
Any further information requested by the MSG on revenue management and expenditures (Requirement 3.8)	To be drawn from output of consultant for contextual information
Information on the licencing process and register (Requirement 3.9) ⁴ and the allocation of licenses (Requirement 3.10) ⁵	To be drawn from output of consultant for contextual information
Any information requested by the MSG on beneficial ownership (Requirement 3.11) ⁶	To be drawn from output of consultant for contextual information

Contextual information to be provided in the EITI Report	Commentary on work to be undertaken by the Independent Administrator
Any information requested by the MSG on contracts (Requirement 3.12) ⁷	To be drawn from output of consultant for contextual information
Contextual information on the two sites selected by the MSG to report on small scale mining	To be drawn from scoping study on small-scale mining
Contextual information on the extractive industries in ARMM	To be drawn from output of consultant for contextual information

2. The taxes and revenues to be covered in the EITI Report (Requirement 4.1)

Benefit stream	Commentary on work to be undertaken by the Independent Administrator
Payments to DENR and MGB	Subject to the scope and materiality agreed upon by the MSG
Payments to BIR	Subject to the scope and materiality agreed upon by the MSG
Payments to local government units (direct and indirect/subnational transfers)	Subject to the scope and materiality agreed upon by the MSG. Reconciliation of payments to local government should cover the following: <ol style="list-style-type: none"> 1. Revenue Collection: Direct payments by companies reconciled with collection of subnational governments 2. Revenue distribution process: Revenue transfers from central to subnational government compared against applicable laws on what they should be getting 3. Revenue distribution cash flow: Revenue transfers from central to subnational reconciled with subnational governments' receipts
Royalties	Subject to the scope and materiality agreed upon by the MSG
Payments to Department of Energy	Subject to the scope and materiality agreed upon by the MSG
Payments to BOC	Subject to the scope and materiality agreed upon by the MSG
IP Royalties	Subject to the scope and materiality agreed upon by the MSG
Social expenditures	Subject to the scope and materiality agreed upon by the MSG This information should include large scale metallic

Benefit stream	Commentary on work to be undertaken by the Independent Administrator
	mining companies and oil and gas companies with social expenditures whether or not they are included in Annex 1
Sale of state's share of production or other revenues collected in kind	Subject to the scope and materiality agreed upon by the MSG
Infrastructure provisions and barter arrangements	Subject to the scope and materiality agreed upon by the MSG
Transportation expenses	Subject to the scope and materiality agreed upon by the MSG
Total revenues (in aggregate) received by the government from each benefit stream including revenues that fall below agreed materiality thresholds (See Requirement 4.2.b)	
Incentives availed of by the extractive companies	
Special funds created and earmarked for specific purposes under existing laws and regulations governing the extractive industries	The current status of special funds and assessment of compliance with existing laws on the administration and management of funds should be provided by the IA.
The materiality and inclusion of sub-national payments (Requirement 4.2(d)) ⁸	
The disclosure and reconciliation of payments to and from state-owned enterprises (Requirement 4.2(c)) ⁹	
The materiality and inclusion of sub-national transfers in accordance with Requirement 4.2(e)) ¹⁰	
Payments collected from the two sites selected by the MSG to report on small scale mining	
Payments collected from extractive operations in ARMM	

⁸ Add reference to Guidance Note

⁹ Add reference to Guidance Note

¹⁰ Add reference to Guidance Note

3. List of reporting entities (companies and government agencies) (Requirement 4.2)

See attached list of mining, oil and gas companies (Annexes 3 and 4)

Government agencies

1. DENR-Mines and Geosciences Bureau
2. Bureau of Internal Revenue
3. Local government units with mining, oil and gas operations in their localities.
4. Department of Energy
5. Bureau of Customs
6. National Commission on Indigenous Peoples
7. State owned enterprises (PNOC and PMDC)
8. Department of Budget and Management
9. Commission on Audit
10. Bureau of Treasury
11. Philippine Ports Authority



Annex 2 – Supporting documentation

Documentation on governance arrangements and tax policies in the extractive industries, including relevant legislation & regulations

- [...]
- [...]
- [...]

EITI work plans & other documents

- [...]
- [...]
- [...]

Findings from preliminary scoping work

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