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43rd Multi-Stakeholder Group Meeting

June 16, 2017 | 9:00 AM - 12:00 NN
Le Salon I, New World Manila Bay Hotel

Attendees:

Government

Asst. Sec. Ma. Teresa Habitan	Department of Finance (DOF)
Ms. Febe Lim	DOF
Engr. Romualdo Aguilos	Department of Environment and Natural Resources -Mines and Geosciences Bureau (DENR-MGB)
Dir. Araceli Soluta	Department of Energy (DOE)
Ms. Thelma Cerdena	DOE
Mr. Alain Raymundo	Department of Interior and Local Government – Philippine Poverty Environment Initiative (DILG- PPEI)
Ms. Crystal Eunice dela Cruz	Union of Local Authorities of the Philippines (ULAP)
Ms. Hannah Eunice Estaña	ULAP

Industry

Mr. Jose Leviste, Jr.	OceanaGold (Philippines), Inc./ Chamber of Mines of the Philippines (COMP)
Atty. Ronald Recidoro	COMP
Atty. Francis Ballesteros	Philex Mining Corporation

Civil Society Organization (CSO)

Ms. Starjoan Villanueva	Alternate Forum for Research in Mindanao (AFRIM)
Mr. Chadwick Llanos	United Sibonga Residents for Environmental Protection and Development (USREP-D)
Dr. Merian Mani	Marinduque State College
Mr. Buenaventura Maata, Jr.	Philippine Grassroots Engagement in Rural Development Foundation, Inc. (PhilGrassroots- ERDF)
Mr. Augusto Blanco, Jr.	Indigenous Peoples (IP) Representative, Mandaya Tribe, Compostela Valley

Resource Persons

Dr. Ernesto Ordoñez	Cement Manufacturers' Association of the Philippines (CEMAP)
Ms. Annie Dee	Teresa Marble Corporation
Mr. Renato Baja	Holcim Mining and Development Corporation

1	Observers	
2	Mr. Marco Zaplan	Bantay Kita
3	Ms. Aida Riza Buhia	Galoc Production Company
4	Mr. Gary Jovellanos	CEMAP
5	Mr. Ser Allain Pleyto	Teresa Marble Corporation
6	Mr. Dian Craw	Teresa Marble Corporation
7	Mr. Larry Garcia	Teresa Marble Corporation
8	Mr. Sandra Gozun	Teresa Marble Corporation
9	Atty. John Encarnacion	CEMEX Philippines
10	Atty. Yul Araya	Republic Cement and Building Materials, Inc.
11	Mr. Michael Cabalda	Holcim Mining and Development Corporation

12

13 **PH-EITI Secretariat**

14	Atty. Maria Karla Espinosa	Secretariat
15	Ms. Abigail Ocate	Secretariat
16	Ms. Joy Saquing	Secretariat
17	Ms. Lea Ivy Manzanero	Secretariat
18	Mr. Ryan Justin Dael	Secretariat
19		
20	Ms. Ma. Rowena Raymundo	External Documenter

21

22

23 **AGENDA:**

- 24 • Approval of the Minutes of the 42nd MSG meeting
- 25 • Matters arising from previous MSG meetings
- 26 • Main Business
 - 27 ○ Updates on PH Validation, Production of 4th Report
 - 28 ○ Approval of position paper on EITI Bills
 - 29 ○ Presentation of large-scale non-metallic mining sector:
 - 30 ▪ Cement
 - 31 ▪ Aggregates
 - 32 ▪ Marble
 - 33 ○ Draft Program for the 2017 Roadshow
- 34 • Other Matters
 - 35 ○ Highlights of 2017 National Conference
 - 36 ○ Setting of next MSG meeting

37

38 **1. Call to Order**

39

40 The 43rdPH-EITI Multi-Stakeholder Group (MSG) meeting was called to order at 9:36AM. DOF

41 Assistant Secretary Ma. Teresa Habitan, Alternate Focal Person of the PH-EITI, chaired and facilitated

42 the meeting.

43

44 The Chair announced some proposed changes in the order of items in the agenda. The secretariat

45 proposed that for the main business, after Updates on the Validation, the presentations of the

1 resource persons from the large scale non-metallic mining sector (LSNM) immediately follow in this
2 order: Marble, Aggregates, then Cement. There was a motion to approve the changes as well as the
3 agenda as a whole and it was duly seconded.

4 5 **2. Approval of the Minutes of the 42ndMSG meeting**

6
7 According to the secretariat, the minutes were circulated to the MSG a week ago, on 9 June 2017.

8
9 The secretariat reported that they received minor comments from an industry representative
10 regarding mention of her name in the minutes. To address the concern, the name will be replaced
11 with “an industry representative”.

12
13 The Chair proposed to give the members until the next Friday, 23 June 2017 to send their comments
14 on the minutes; should the secretariat not receive any comments by the said date, the minutes will
15 be deemed approved. There was a motion for approval and it was duly seconded.

16 17 **3. Matters arising from previous MSG meetings**

18 19 • *EITI Bill.*

20 The last action required of the secretariat was to draft a position paper to contain the comments
21 of the MSG. The draft was circulated on 11 June 2017 for the MSG’s review. The secretariat
22 reported that that they have received some comments which will be discussed as part of the
23 main agenda of the meeting.

24 25 • *IP representation in the MSG.*

26 Mr. Augusto Blanco of the Mandaya Tribe of Compostela Valley is already on board the MSG as
27 the interim (CSO) IP representative. There remains a pending item regarding an industry
28 representative who requested for time to check whether the IPs that their company has
29 engaged with had been included in the CSO consultations. Feedback is yet to be received from
30 the said industry representative.

31 32 • *Engagement of non-metallic mining sector.*

33 MSG instruction was to invite resource persons to give an overview of the non-metallic mining
34 sector. This will be done as part of the main business of the meeting. Representatives of the
35 Cement Manufacturers’ Association of the Philippines (CeMAP), namely, CeMAP president Dr.
36 Ernesto Ordoñez, Mr. Renato Baja (general manager and president, of Holcim Mining and
37 Development Corporation), and Ms. Annie Dee (president of Teresa Marble Corporation) were
38 acknowledged by the Chair.

39 40 • *Presentation on the oil and gas sector*

41 During the last MSG meeting, a CSO representative suggested -- and there was no objection --to
42 invite a resource person from the DOE to present an overview of the oil and gas sector for the
43 benefit of the new members. Considering the full agenda and limited time, the meeting cannot
44 accommodate another presentation (in addition to the presentations on the non-metallic
45 sector). Hence, briefing on Oil & Gas can be done in another MSG meeting.

- 1 • *Communicating the changes in the 3rd country report*
2 The draft advisory to aid the MSG in communicating to their respective constituencies the
3 changes in the 3rd Report, which is care of the secretariat and the independent administrator, is
4 still pending.
5

6 **4. Updates on PH Validation**

7

8 The secretariat informed the body that the initial Validation report (by the appointed Validator) has
9 not yet been transmitted to PH-EITI, but the International Secretariat was kind enough to provide an
10 advance copy of the initial assessment or the draft report on initial data collection and stakeholder
11 consultations done by the International Secretariat. This was to give the MSG ample time to read and
12 review the over-200-paged document.
13

14 Secretariat reported that they have received comments from some MSG members, which they are
15 already compiling. Secretariat encouraged other MSG members to respond or at least acknowledge
16 receipt of the advance copy.
17

18 The document contains generally positive feedback and indication that PH-EITI has made satisfactory
19 progress, although this is just an initial assessment. The Chair reminded and again encouraged MSG
20 members to submit written comments so that the secretariat can compile them.
21

22 **5. Presentation on large-scale non-metallic mining sector**

23

24 Dr. Ordoñez, CEMAP president gave the introduction and overview prior to the presentations of the
25 three non-metallic mining companies.
26

27 The first speaker talked about non-metallic and how it compares to metallic. An example is marble
28 which is a purely non-metallic and stand-alone commodity. Another example is called aggregates,
29 which is an aspect of non-metallic mining that is not stand-alone because it is an input to something
30 else. For example, aggregates are combined with cement to create concrete. On the other hand,
31 cement, which is also non-metallic, is partly mining and mostly manufacturing.
32

33 **A. MARBLE** (*Presenter: Ms. Annie G. Dee, President, Teresa Marble Corporation*)

34

35 Ms. Dee started her presentation (*presentation material is hereto attached as Annex 1*) by
36 noting that only one marble company operates under an MPSA issued by the DENR, and that
37 is Teresa Marble Group of Companies (TMGC). However, there are marble quarries, such as in
38 Romblon, that are operating under quarry permits issued by the local government.
39

40 Ms. Dee gave a picture of what the marble industry was like circa 1970-1990. In Bulacan, there
41 used to be 15 medium-to-large-scale companies that process marble slabs, 30 small-to-
42 medium-scale tiling plants, and about 40 quarry producers. In Romblon, there were over 100
43 micro-level processing plants, but data about the number of quarry producers are not certain.
44 This is just a rough recollection.

1 TMGC is located in Teresa, Rizal where they have a quarry and plant system since 1976. They
2 also have another operation in Cebu that started in 1986. In the 70s-90s, everybody else was in
3 Bulacan or Romblon, while TGMC was the only one in Rizal.

4
5 TMGC, like the others, started with the traditional method of production using the drilling and
6 splitting method, which is very difficult. It is easy when one is just starting, but it gets difficult
7 as one starts operating the main mountain. They forced themselves to rationalize their
8 quarrying method and they modernized. They were able to succeed because of three
9 important things: (1) government support; (2) stable tenement, because in 1996, they had a
10 lease contract which was converted into an MPSA; and (3) TGMC invested in training,
11 technology, capacity building, and infrastructure.

12
13 Ms. Dee said that while gold is gold and copper is copper, *marble is not marble*. The value of
14 marble has to be *created* by doing worldwide marketing and promotion, and even product
15 development.

16
17 Their biggest competitor used to be Europe, but now it is China. Importation is not their core
18 competency. They went global because when they were the only producers in the Philippines
19 before, people were killing each other with prices. It was also traditional in construction sites
20 where there is a boom-and-bust cycle. They cannot afford to be working 3 to 5 years, and then
21 stopping 2 to 3 years, and so on. It was good because it helped them improve the quality of
22 their deliverables.

23
24 They decided to come back to the Philippines because of the worldwide recession in
25 2009. They sold directly to hotels, commercial buildings, schools, hospitals, residential homes,
26 churches, and even indirectly to dealers/distributors. They adopted the "sell the whole cow"
27 strategy. They searched for alternative markets for their waste and there they discovered and
28 went into industrial powder. Eventually, this became bigger in volume compared to marble
29 because it had a steadier business. Their competitors for industrial powder are factories in
30 Bulacan.

31
32 Manpower-wise, there were ups and downs from 2010 to 2016. There have about 350
33 workers. As a company, they do their share and give back. They work with the community,
34 conduct regular medical/dental missions, and other CSR activities. They also get involved in
35 mining forest programs and greening programs.

36
37 In terms of annual extraction, if Philex extracted 9 to 11 million metric tonnes last year and an
38 aggregate/cement company will have 1-4 million metric tonnes a year, in marble/limestone
39 they have 0.11 million tonnes per year.

40
41 TMGC pays taxes to government agencies and local government units. In terms of national
42 taxes, they pay income tax, excise tax, customs duties, and value added tax. For local taxes,
43 they pay business tax, real property tax, community tax, occupational fees, registration fees,
44 permit fees, and withholding tax. Last year, they had about P300 million sales as a group, and
45 the taxes they paid as reported to MGB amounted to about P43 million.

1 TMGC complies with all the mandatory periodic reports required by the government. This
2 consists of a total of 28 different reports: 8 annual reports, 3 semi-annual reports, 10 quarterly
3 reports and 5 monthly reports, the 3-year work program and the 5-year social development
4 and management program. They have two teams doing these reports, especially for the MGB
5 reports.

6
7 Before she closed her presentation, Ms. Dee shared that TGMC entered the industry starting
8 with a 25-year lease contract that became an MPSA, while everybody else took the easier
9 route of just securing a quarry permit from the local government. Back then, the quarry
10 permit was good for 5 years, which already made the venture unstable and risky to invest in. It
11 became impossible when some local governments reduced it to one year, conceivably driving
12 out some industry players.

13
14 The Chair thanked Ms. Dee for a very informative presentation.

15
16 **B. AGGREGATES** (*Presenter: Mr. Renato A. Baja, General Manager and President, Holcim Mining*
17 *and Development Corporation*)

18
19 Mr. Baja introduced aggregates as among the top 5 commodities in the Philippines
20 (*presentation material is hereto attached as Annex 2*). He went on to present the outlook of
21 the industry considering various economic indicators available. According to Mr. Baja, they
22 consider the macroeconomic development, political situation, economical risks and
23 opportunities, and market development drivers as indicators of investment climate for
24 aggregates industry.

25
26 The demand for aggregates in the Philippines comes mainly from the country's infrastructure
27 projects. According to Mr. Baja, aside from the significantly-budgeted infrastructure projects
28 of the national government, a number of Public-Private Partnership (PPP) projects (power
29 plants, roads, bridges, dams, airports, railways systems) will also be implemented in the
30 coming years. This is a very strong indication that the aggregate industry will boom and
31 prosper.

32
33 In 2016, aggregates industry in the country is estimated at 157MT, with Luzon accounting for
34 65% of the total demand. In NCR, 21.56MT were used in medium-high rise buildings while
35 12.87MT were used mainly for infrastructures such as dams, civil works, subdivisions, and
36 piers in South Luzon. On the other hand, Central Luzon used 12.43MT for individual housing.

37
38 According to Mr. Baja, about 90% of aggregates are sourced from Rizal (Montalban and
39 Angono) but high demand comes from periphery areas of NCR (South Luzon and Central
40 Luzon) requiring transportation and hauling. Transportation expenses contributes to the high
41 cost of aggregates.

42
43 Shortage of aggregates is anticipated in the Northern and Southern part of Metro Manila due
44 to the depletion of reserves in some aggregate quarries and limited expansion of aggregate

1 suppliers. Mr. Baja noted that this is partly because regulations for securing sand and gravel
2 permit are more stringent.

3
4 Mr. Baja shared that in 2016, Lafarge Holcim Aggregates Inc. paid PHP14.15 million for SDMP,
5 PHP21.32 million for local taxes, PHP25.03 million for withholding taxes, and PHP106.74
6 million for national taxes.

7
8 Mr. Baja then proceeded with the list of mandatory reports which were similar with the list
9 presented by Ms. Dee of Teresa Marble Group of Companies.

10
11 He also identified areas of opportunity to address the concerns of the aggregates industry
12 such as:

- 13 • Opening of more aggregate quarries in strategic locations with close proximity to the
14 development areas;
- 15 • Simplified tax;
- 16 • Simplified government mandatory and regulatory reports, permits and licenses;
- 17 • Sustainable projects out of SDMP funds; and
- 18 • Strong collaboration between aggregate operators and the government.

19
20 **C. CEMENT** (*Presenter: Dr. Ernesto M. Ordoñez, President, CEMAP*)

21
22 Dr. Ordoñez provided a background of the cement industry (*presentation material is hereto*
23 *attached as Annex 3*). He mentioned that CEMAP has not been involved in EITI but expressed
24 their intent to voluntarily submit data so that other members of the industry would follow.

25
26 The Philippine cement industry is composed of eight companies with sixteen integrated plants
27 strategically located across the country. From 2007 to 2016, cement production has been
28 steadily increasing at 8%. According to Dr. Ordoñez, expansion plans are also underway.

29
30 It was shared that CEMAP received an award in 2016 from the Philippine Council of
31 Associations and Association Executives (PCA AE) under the Industry Development category.
32 CEMAP is the first and only Hall of Fame Awardee for sustainable development.

33
34 Dr. Ordoñez stated that even though cement is the world's most polluting industry, their
35 companies have outstanding practice/performance in the following areas: waste
36 management, optimal use of resources, health and safety, and corporate social responsibility.

37
38 Dr. Ordoñez went on to explain the process of manufacturing cement. The process starts by
39 getting limestone from the quarry, which will then be crushed and grinded before going to the
40 cement production process.

41
42 In terms of financial contribution to government, Dr. Ordoñez shared that their specific
43 contribution to GDP was not stated in the IMF Country Report. However, he noted that non-
44 metallic mining companies comprise 23% of the total mining industry.

1 Same with large-scale metallic mining companies, cement companies pay income tax, VAT,
2 excise tax, withholding tax, business tax, real property tax, other local taxes, documentary
3 stamp, royalty tax, SDMP contribution, and other funds covered by the Mining Act.

4 He also added that the cement industry share in taxes is higher (0.65%) compared to their
5 share in GDP (0.16%).

6
7 In closing, he reiterated the intent of CEMAP to join EITI.
8

9 After the presentations, the Chair explained that representatives of the non-metallic mining industry
10 were invited because the MSG has decided to include the sector in the 4th Country Report. As such,
11 the MSG wanted to be informed about the nature of the industry.
12

13 The Chair opened the floor for comments and questions.
14

15 **OPEN FORUM**

16
17 An industry representative requested that members of the MSG be given soft copies of the
18 presentations.
19

20 A CSO representative inquired if there are established Multi-Partite Monitoring Teams (MMTs) for
21 LSNM mining operations. The same representative also asked for the composition of these MMTs.
22

23 One of the presenter responded that MMTs for aggregates, marble, and cement are composed of
24 representatives from EMB, MGB, LGU (Barangay level), NGOs, and community members. It was
25 mentioned that LSNM mining companies are compliant with the MGB guidelines.
26

27 Another CSO representative stated that they were pleased to hear that the LSNM mining companies
28 represented in the meeting are willing to participate in the EITI process. The presenters were asked
29 if they could assist the MSG in identifying the key companies that should be covered in the next EITI
30 Report.
31

32 Dr. Ordoñez noted that Holcim Mining and Development Corporation covers 35% of the sector while
33 Republic Cement and Building Materials, Incorporated accounts for 25%. He then reiterated that
34 they are eager to participate in EITI.
35

36 A CSO representative stated that the MGB should have data on the sector since MMTs regularly
37 conduct site visits and submit reports to them. The same representative asked if there is a difference
38 in the monitoring system/mechanism and tools of the MMT for large-scale metallic and non-metallic
39 mining.
40

41 With regard to SDMP, the CSO representative recalled that one of the resource persons mentioned
42 that SDMP is being controlled by LGUs more than the company who gives the fund. The presenter
43 was asked to expound on this.
44

1 According to Mr. Baja, it is not that they don't have control over SDMP projects but there is a
2 process being administered by MGB. The list of SDMP projects has to be approved by the MGB.
3 However, in some cases, there are still changes in the implementation of SDMP even after MGB
4 approval. Mr. Baja stated that MGB is already working on this issue.

5 A representative from MGB explained that all SDMPs are being consulted with local stakeholders
6 and should be part of the local development plan of the LGUs. MGB monitors the implementation of
7 SDMP projects through the MMTs and their regional offices.

8

9 The MGB representative added that they have audits reports on SDMP implementation and that
10 mining companies submit semiannual SDMP reports to MGB. Companies should also inform MGB
11 regarding amendments in the implementation of their SDMP programs.

12

13 Dr. Ordoñez stated that having an MMT to monitor the SDMP is important since what was written in
14 paper might not be implemented. However, the process can still be improved.

15

16 An industry representative asked how committed the LSNM mining companies are to transparency
17 reporting. It was explained that EITI participation entails annual template submission disclosing
18 information such as production value, tax payments, and SDMP projects. The initiative also requires
19 participating companies to waive certain rights under the National Internal Revenue Code. Moving
20 forward, EITI will also be asking companies to disclose information like beneficial ownership which
21 may be sensitive and problematic for some entities.

22

23 The same representative asked what the MSG can do to enhance the involvement of LSNM mining
24 sector in the EITI process.

25

26 The Chair pointed out that completion of the reporting template is a tedious process and some
27 companies have issue with regard to submitting a waiver. However, the BIR waiver is necessary to
28 because disclosure of the companies will not be sufficient without the BIR data to reconcile with.

29

30 According to Ms. Dee, they understand that they have to take part in EITI but they requested that
31 Teresa Marble be given more time to prepare.

32

33 Mr. Baja stated that Holcim Philippines also needs more time before committing to participate in the
34 initiative because this needs to be discussed with their Board members.

35

36 Mr. Encarnacion of CEMEX Philippines noted that there is a DENR Department Order mandating
37 companies to participate in EITI and that non-compliance will result to suspension or permit
38 cancellation.

39

40 Dr. Ordoñez stated that CEMAP members are for transparency and want to commit to EITI.
41 However, there are information that their members cannot disclose in order to be competitive. Dr.
42 Ordoñez mentioned that the reporting template has to be reasonable.

43

44 The Chair noted that the reporting templates will be discussed in the afternoon.

1 With no further questions and comments, the representatives of the LSNM mining sector were
2 excused from the succeeding presentations.

3 4 **6. Approval of position paper on EITI Bills**

5
6 Upon resumption of the meeting, the Chair proceeded with the discussion of the draft position
7 paper prepared by the secretariat on the EITI bills filed in Congress. The secretariat refreshed the
8 MSG's memory on the background of the position paper, recounting that it arose from the
9 resolution of the MSG members to draft an EITI bill, which was superseded by a subsequent MSG
10 decision to just submit a position paper upon knowing that there were EITI bills already filed in
11 Congress. The secretariat said that the draft position paper contained comments only on particular
12 sections and provisions of the proposed bills where the MSG members had comments.

13
14 The secretariat went over each part of the position paper as drafted (*hereto attached as Annex 4*).
15 The first part is an introduction of the MSG whose mandate includes ensuring that there is sustained
16 political commitment for the initiative. The second paragraph reflects the general position that MSG
17 supports the proposed bills, consistent with the move towards institutionalization of PH-EITI.

18 19 **a) On Legal and Official Bases**

20
21 The position paper enumerates the legal bases for the MSG's stand in supporting the bill: the
22 Philippine Constitution, the Philippine Mining Act, EO 79, EO 147, and the recently issued DENR
23 Administrative Order (DAO)No. 2017-07. There is also mention of the Philippine Development
24 Plan (PDP) which lists as part of the legislative agenda for the fiscal sector the institutionalization
25 of EITI. Finally, there is reference to the open government partnership (OGP), another
26 international initiative where one of the Philippines' commitments is the institutionalization of
27 EITI.

28 29 **b) On Scope**

30
31 The secretariat noted that there is a difference between the Senate Bill (SB) and the House Bill
32 (HB) provisions on scope. The HB limits the scope of the proposed law to operating mines,
33 regardless of materiality, and covers only the mining, oil & gas, and coal sectors.

34
35 On the other hand, the SB provides a catch-all coverage provision, to wit: "*and other sectors as*
36 *the MSG may subsequently determine or deem necessary*".

37
38 The secretariat noted that in the draft position paper they put a general preference for the
39 broader version – the SB.

40
41 However, an industry representative believes that the scope of the bills may be problematic on
42 three points:

- 43
44 1. Leaving the future coverage of EITI reporting to the sole discretion of future MSGs may be
45 interpreted as undue delegation of legislative powers.

1 2. On the other hand, selective enumeration may lead to legal challenge for violation of the
2 equal protection clause. Other sectors may be left out of the enumeration, which may give
3 these other sectors an excuse not to participate in the future.

4
5 3. Referring to the HB, the industry representative commented that scope should not be
6 limited only to FTAA and MPSA of the large-scale mining sector, noting that the HB does not
7 seem to consider the small-scale sector. He said that other natural resource agreements for
8 other extractive industries (EI) like logging, coal, energy, and fishing sectors should be looked
9 into as well.

10
11 The secretariat, to address the foregoing concerns, suggested providing a definition for EI that is
12 a little more specific than that provided in the bills, which read: *“Extractive Industries refer to*
13 *mining, oil, gas and coal sectors and all other sectors that require the extraction of non-*
14 *renewable natural resources for commercial use”*.

15
16 The Chair asked if the body can offer any other definition.

17
18 The industry representative mentioned the Constitution’s definition of what natural resources
19 are, but that it may be too broad as it will include lands of the public domain, flora and fauna,
20 and even all sources of potential energy.

21
22 According to the industry representative, what he would like to see is a specific enumeration of
23 the extractive sectors which are already being extracted now.

24
25 A CSO representative said that there are two things that need to be clarified: First, the legal
26 definition, or what is accepted by law; and second, the operational definition. In the case of EITI,
27 EI can be defined more by an operational definition at this time.

28
29 A government representative opined that since PH-EITI is subscribed to EITI International, then
30 the standard definition issued by EITI International should be used.

31
32 The secretariat said that the draft position paper proposes to go with the SB version that says
33 that the Act shall apply to all EI and government agencies at the national and local level in the
34 country, which provides a general statement of the scope, followed by an enumeration of the
35 sectors covered with a catch-all provision giving discretion to the MSG to determine other
36 sectors that will be deemed necessary to be subsequently included.

37
38 The Chair opined that the SB version is actually simpler.

39
40 A CSO representative expressed concurrence with the earlier suggestion of the government
41 representative to first look at the original objective of the international EITI, how it defines EI,
42 before proceeding with the discussion.

43
44 Another CSO representative reminded the body that the MSG had already agreed before that
45 everything will be included, since the overarching framework is natural resource governance.

1 She also pointed out that the MSG has supported the creation of a national wealth fund for
2 future generations. She thus expressed agreement with the SB provision.

3
4 The Chair pointed out that in other countries EITI already covers sectors beyond mining, such as
5 forestry and water. Keeping things as simple as possible and then authorizing the MSG to
6 determine the scope in the future will allow flexibility. It may not be this generation of MSG
7 members, but future MSGs should be allowed to do that. At the end of the day, the intention is
8 to cover as many EI and natural resources as possible.

9
10 To allay concerns over the bills' impact on present PH-EITI operations, the secretariat said that
11 even if the bill is passed soon, its provisions will not automatically be applied to the scope of the
12 next report. The provision on scope in bills/laws is often very general; it usually just states the
13 universe of the area/s that the law will apply to. In relation to this, the secretariat asked if there
14 are any other comments on the definition of EI, which is *item c* under the Definition of Terms
15 (*page 1 of Annex 5*).

16
17 The Chair asked for clarification on the use of "non-renewable" in the definition of EI, if this
18 means that EI would then not cover (renewable) resources such as solar, wind, hydro,
19 geothermal, etc. Some members commented that "non-renewable" means that the resource is
20 finite. The Chair then expressed agreement with the definition.

21
22 There was a suggestion to replace the term "non-renewable" with "finite" in the definition of EI.

23
24 According to one CSO representative, the underpinning idea is sustainable development. In the
25 case of fisheries, for instance, there is already aquaculture because under the natural method, it
26 is already depleted; it is still non-renewable in the sense that it touches on competing uses for
27 natural resources.

28
29 For clarity in the progress of the discussion, the secretariat gave a quick summary of the
30 agreements reached so far:

- 31 • On the scope, adopt the SB version.
- 32 • On the definition of EI, drop the term "non-renewable" as qualifier of "natural resources".

33
34 The secretariat drew attention to another provision on the scope. Both SB and HB enumerated
35 three areas to be covered: revenue transparency, contract transparency, and accessibility of
36 data (which refers to open data). All of these are already covered and being done by PH-EITI.

37
38 The secretariat pointed out that the draft position paper includes a suggestion to add *beneficial*
39 *ownership transparency* and *mainstreaming transparency* to the provision on scope, based on
40 MSG agreements reached in previous meetings.

41
42 An industry representative commented that the MSG has yet to agree on inclusion of beneficial
43 ownership (BO), as the PH-EITI BO roadmap has yet to be implemented.

1 A CSO representative lamented that while the MSG is already moving forward with the BO
2 roadmap, it is a common knowledge that the beneficial owners of extractive companies include
3 the legislators themselves.

4
5 Another CSO representative pointed out that in the context of EITI, BO reporting is mandatory
6 by year 2020, so that there is no choice but to disclose BO, as it is what the EITI Standard
7 requires, even if it is difficult.

8
9 An industry representative commented that should the bill be made to include a provision on
10 BO, no one would be able to provide details or information about it during deliberation of the
11 bill. He reiterated that it may be better not to include BO in the proposed bill because the MSG
12 has no answer to the possible questions yet.

13
14 The Chair acknowledged the dilemma of whether or not to propose the inclusion of BO reporting
15 in the bill.

16
17 The secretariat pointed out that there is a provision in the SB that can cover BO reporting even if
18 it's not expressly included in the scope. It reads: *"The annual report to be prepared, submitted
19 and published by the PH-EITI shall comply with the international standards of EITI and include
20 additional reporting requirements as agreed upon by the PH-EITI MSG."* Considering that the
21 international standards of EITI include BO reporting, the body agreed not to suggest express
22 inclusion of BO reporting in the scope anymore.

23
24 The secretariat asked the body if they would have the same stand regarding including
25 mainstreaming transparency in the scope. The body likewise agreed not to include
26 mainstreaming anymore.

27 28 **c) On Organizational Structure**

29
30 PH-EITI generally supports the adoption of a multi-sectoral governance structure in accordance
31 with the EITI Standard. It was observed, however, that in both versions of the bill, there is no
32 statement of the MSG's powers and functions of the MSG. It was proposed that the MSG's
33 powers and functions as stated in EO 147 be recommended for addition to the bill.

34
35 An industry representative pointed out two more things:

- 36
37 1. On the stated objectives of the bill (*page 1 of Annex 5*), the pertinent provision says that EITI will
38 ensure that the proceeds from natural resources are judiciously utilized for the benefit of all
39 Filipinos. This, he said, is not really captured by the EITI reports, and its being part of the bill's
40 objectives may send the wrong notion that EITI is some kind of silver bullet, which it is not.

41
42 The Chair commented that with this objective, EITI may also be usurping the functions of other
43 agencies. She suggested that "mainstreaming transparency" be incorporated in the objectives
44 instead. The body agreed with the suggestion.

1 On the other hand, the secretariat commented that the statement of general objectives may be
2 harmless, since such objectives are usually stated in a lofty or aspirational manner without
3 significant implications for how the law will be implemented. The body agreed to maintain the
4 wording of the bills, with the additional objective suggested by the Chair.
5

- 6 2. On the provision on monitoring of payments (*page 3 of Annex 5*), the industry representative
7 said that this seems to mandate that PH-EITI closely monitor the payment and utilization of
8 taxes.
9

10 The Chair remarked that the provision gives a wrong interpretation of the role of EITI. The
11 secretariat asked if the body is in agreement as to suggesting to have the whole section deleted.
12

13 The IA noted that for the Report, they ask companies and LGUs regarding the taxes paid and
14 their utilization, because these are included in the reporting templates. The IA thus asked
15 clarification from the MSG if this constituted the monitoring that the MSG is considering to have
16 deleted from the bill.
17

18 The Chair responded that the MSG just captures the information and brings them out in the
19 open only for disclosure purposes, while monitoring is a regulatory function that the MSG does
20 not have. The MSG is not a regulatory entity.
21

22 A CSO representative suggested to drop the statement, “[N]ational and local governments are
23 required to report on how the proceeds from mining and other EI was utilized”, and just retain
24 the portion, “[A]ll fiscal payments and mandatory expenditures by contractors shall be disclosed
25 to the PH-EITI MSG for the production of the annual EITI report”, which reflects the actual PH-EITI
26 mandate.
27

28 Another CSO (IP) representative proposed to retain the line, “[N]ational and local governments
29 are required to report...”, sharing that in Compostela Valley, they are pushing for the creation of
30 a special account for funds coming from EI. This is because the LGU share in national wealth
31 usually becomes part of the general fund, and, as such, becomes impossible or difficult to
32 monitor when disbursed.
33

34 On this point, the government representative from DILG-PPEI shared that there has been
35 created a TWG on ENR revenue management and PH-EITI is one of its members. The main
36 purpose of the TWG is to fast track or facilitate the immediate release of LGU shares in national
37 wealth from the extraction of the country’s natural resources.
38

39 It was also noted that in the PH-EITI reporting templates for LGUs, through the Environment and
40 Natural Resources Data Management Tool (ENRDMT), LGUs are asked to report the shares they
41 get from EI as well as how they utilize these funds. This is because under the Local Government
42 Code, the 40% LGU share in national wealth should be used to finance local development and
43 livelihood projects.
44

1 The secretariat added that in the first ENR TWG meeting, which they attended, there was a
2 suggestion on the creation of a separate/special account for EI, as the issue of commingling of
3 funds has been well recognized. At present, even if LGUs want to account for the utilization of
4 funds from EI, they cannot do so because the funds are commingled.

5
6 In a draft joint memorandum circular initiated by DBM, DILG has proposed that it be specifically
7 stated that shares from national wealth should have a special account, separate from the
8 general fund, so that it would be easier to monitor utilization of the funds for local development
9 and livelihood projects for the benefit of the communities where the EI is located.

10
11 The secretariat asked the body if they are amenable to the proposed wording: *“Utilization of*
12 *shares in national wealth which are subject of special accounts shall be reported to PH-EITI”*. The
13 CSO (IP) representative found the proposed wording sufficient to address the concerns he stated
14 and said that it would serve as a big encouragement to LGUs.

15
16 The agreements on the provision on Monitoring of Payments (*page 3 of Annex 5*) were
17 summarized as follows:

- 18 • The first sentence of the provision will be deleted.
- 19 • The second sentence will be retained but will now read as: *“All fiscal payments and*
20 *mandatory expenditures by contractors shall be disclosed to the PH EITI MSG for*
21 *reconciliation for the production of the annual EITI report”*.
- 22 • The last sentence will be rephrased as: *“Utilization of shares in national wealth which are*
23 *subject of special accounts shall be reported to PH-EITI.”*
- 24 • The title of the provision will be changed to: *“Disclosure and reconciliation of payments”*.

25
26 Going back to the matter of the Organizational Structure:

- 27 • On the MSG powers and functions, the pertinent provision in EO 147 (Section 5) will be
28 included in the paper as a suggestion/recommendation.

29
30 Both the SB and the HB do not provide for even general qualifications for the appointment of
31 the MSG Chair. The SB version just indicates the required level (Cabinet level), while the HB
32 version just says that the Chair will be appointed by the President.

33
34 The suggestion of the secretariat is to recommend putting in the general qualification that the
35 appointee should have expertise in a field relevant to natural resource governance.

36
37 The Chair asked if the body would have any objection to DOF being indicated as Chair of MSG.
38 The body replied in the negative.

39
40 A CSO representative asked if there is a provision on the term of the MSG Chair, and the
41 secretariat responded that there is none.

42
43 On the composition of the MSG, both bills provide for multi-sectoral (government, industry, CSO,
44 IP) membership but do not seem to provide for equal representation of the sectors or a definite
45 number of members.

1 The composition of the existing MSG was revisited and it was recalled that EO 147 specified only
2 the DOF and ULAP (to represent the LGUs) as Chair and member, respectively, while the rest of
3 the government agencies (DENR, DOE, DILG) were identified by MICC resolution.

- 4
- 5 • The body then agreed that, for the time being, they will just recommend that DOF be
6 specified as ex-officio Chair of the MSG.
- 7

8 It was pointed out that one of the MSG's current challenges is the inability to expand MSG
9 membership beyond the number provided in EO147. However, there are several factors to think
10 about when considering expanding the membership, such as: (i) budget – the more the
11 members, the greater the expense; (ii) difficulty for the government sector to identify who else
12 to include as members; (iii) how the industry vote would be counted – e.g., when the non-
13 metallic or other industry sector is already included as part of industry, would their and the
14 metallic vote just be counted as one?

- 15
- 16 • Hence, the body just agreed to stick to the status quo, which is five (5) representatives per
17 sector, with each sector getting one vote.
- 18
- 19 • The secretariat raised the comment regarding regular and annual meetings, noting that the
20 SB unnecessarily distinguished between the two. The body agreed to keep the comment as
21 already written in the draft position paper.
- 22

23 **d) *On Enabling Disclosure***

24

25 The secretariat explained that this part of the draft position paper expresses support for the
26 bills' provisions on exemption from confidentiality clauses, as consistent with the MSG's
27 mandate to seek removal of barriers to EITI implementation. It was noted, however, that the
28 language of the SB is broader as it includes confidentiality clauses other than those in the Tax
29 Code and Omnibus Investments Code.

30

31 An industry representative has expressed preference for a tighter rather than broader
32 exemption provision. He suggested that the exemption from confidentiality clauses be written
33 such that the waiver of confidentiality would extend only to the BIR and the DTI-BOI, and cover
34 only financial information on taxes paid.

35

36 The industry representative said that companies are not comfortable with giving blanket waiver,
37 explaining that this stance is borne out of concern over the lack of control over future standards.

38

39 The industry representative also pointed out that the taxpayer's right to confidentiality is found
40 not only in Section 270 but also elsewhere in the Tax Code. Section 20 of the Tax Code, for
41 instance, provides that the Commissioner cannot disclose income tax returns to Congress unless
42 the taxpayer gives consent in writing. He thus suggested that the exemption provision be re-
43 written to exactly state the specific documents/information over which confidentiality will be
44 waived. He further noted that Section 270 provides only for liabilities of BIR employees for
45 disclosing trade secrets, which is actually not the confidentiality that the group contemplates.

1 The secretariat said that in the revised draft they will propose alternative language that is similar
2 to the HB version but includes an exhaustive enumeration of what will be waived confidentiality
3 over, still going for maximum possible disclosure using the BIR template as basis.
4

5 ***e) On Enforcement Mechanisms***
6

7 The general position stated in the draft position paper is that the MSG does not object to the
8 imposition of penalties for violation of or non-compliance with the Act, but it is recommended
9 that there be consultation with the business sector as they will be the most affected by the
10 provision.
11

12 The secretariat discussed the comments earlier sent by an industry representative, as they go
13 into the fundamental issue on whether participation in EITI should be mandatory or voluntary.
14 At the outset, the secretariat explained that when they drafted the position paper, they were
15 under the assumption that there had already been MSG consensus on pushing for EITI
16 participation to be mandatory as part of EITI institutionalization. Hence, they asked the body for
17 clarification or confirmation, considering the comments given by the industry representative.
18

19 The industry representative stated, for the record, that if their sector were asked, they would
20 say that they prefer that EITI remain voluntary. The industry would want to preserve the spirit of
21 volunteerism in the initiative. Nevertheless, they recognize that there are companies that are
22 not inclined to volunteer, to address which, incentives may be considered. He requested,
23 though, that if the policy will resort to penalties, let the penalty not be suspension. He cited how
24 far EITI has come, with three reports having been completed, and noted the minimal variance
25 found in the reconciliation reports. Thus, he said, even if some companies choose not to
26 participate, the chances of them affecting the variance is slim to none.
27

28 The industry representative also said that suspending the mining company for not reporting
29 impacts, not the company president, but the employees and the communities that depend on
30 the mine. Suspension should therefore be an option of last resort. Fines can be imposed for the
31 1st to 3rd instance of violation, after which suspension can be meted out. Or suspension can be
32 slapped only if there is prima facie evidence that fraud was committed.
33

34 The Chair agreed that suspension or closure should not be used too much as a common penalty,
35 as this would trivialize many actions that should really be penalized.
36

37 Upon a query from a CSO representative, the secretariat replied that PH-EITI can only make
38 suggestions about penalties. As currently worded, both bills leave it to the regulatory agencies to
39 impose the penalties.
40

41 The secretariat informed that they included in the draft position paper that it may also be good
42 if the reporting requirements would be integrated in the reportorial requirements of agencies,
43 so that if there are violations or non-compliance, similar penalties, based on the agencies' rules
44 and regulations, would be imposed. This can be an alternative to suggesting a schedule of
45 penalties or a definition of offenses.

1 The body agreed on the suggestion that penalties should be graduated and commensurate to
2 the violation.

3
4 The industry representative further suggested that there be appropriate penalties also for LGUs
5 who do not report; for the IA in cases where it colludes with any sector; and for any sector that
6 colludes with another sector, for that matter.

7
8 The DENR-MGB representative reminded the body that the recently issued DAO already has
9 penalty provisions.

10
11 **f) On Funding** (page 4 of Annex 5)

12
13 The secretariat read out the proposed provision on funding: “...Provided that the said amount
14 shall be equivalent to 1-2% of the gross proceeds of the sectors covered by and within the scope
15 of PH-EITI...”. An industry representative requested for clarification on this provision, considering
16 that if “1-2% of the gross proceeds” means 1 to 2% of gross output, it would already amount to
17 the entire excise tax receipts from the sector and would therefore be unreasonable.

18
19 The secretariat said that they will seek clarification on this and ask about the basis for the
20 proposed rate.

21
22 **6. Draft Program for the 2017 Roadshow**

23
24 The secretariat informed the body that the presentation on the Roadshow would be rather long, and
25 in the interest of time, it was suggested that it be deferred and included in the agenda of the next
26 meeting. The motion was moved and seconded.

27
28 **7. Other Matters**

- 29
30
 - Due to time constraints, the highlights of the 2017 National Conference will just be presented
31 another time.
 - Setting of next MSG meeting

32
33
34
35 The next MSG meeting was scheduled on the 2nd Friday of the next month, or on 14 July 2017.
36 The LGU roadshow will follow soon after the next meeting, with the first leg expected to
37 commence in the last week of July. It can be expected that all matters that need MSG approval
38 would have to be presented in the July meeting. The other option is for MSG members to give
39 their approval, as needed, through email.

- 40
41
 - Others

42
43 a. The secretariat informed the body that in the coming days they will be asking for MSG
44 approval of the Annual Progress Report (APR) which is due for publication and submission to
45 the International Secretariat by 1 July 2017. The secretariat targets the APR to be circulated
46 for MSG comments by June 23 or 24.

1 The secretariat reiterated the request for inputs from the sectors. They reported that they
2 have received inputs from the CSO sector and the MGB, but they have yet to receive inputs
3 from the others.
4

5 b. The DENR-MGB representative raised two concerns:
6

7 1. DENR received a letter from a certain Engr. Calanog, who attended the PH-EITI National
8 Conference in May, requesting for a response to his query regarding DAO No. 2017-07.
9 He has reportedly been using social media for his rants.
10

11 The secretariat informed that the same person also sent them an email, copy furnished
12 the International Secretariat; and that they have responded to it by pointing out that
13 there is sufficient basis for the issuance of the DAO and that its regularity as an
14 administrative issuance has been publicly upheld by the MGB.
15

16 2. DENR also received a letter from Bantay Kita introducing the coalition as a member of
17 PH-EITI and requesting for a courtesy meeting with the newly-appointed Secretary Roy
18 Cimatu. The letter was endorsed to MGB. The MGB representative suggested that the
19 MSG as a whole, instead of BK on its own, request a meeting with the new Secretary to
20 introduce PH-EITI.
21

22 The secretariat suggested referring the letter to the MSG, so this can be included in the next
23 MSG meeting agenda.
24

25 With no other matters discussed, the 43rd MSG meeting was adjourned at 1:02 in the afternoon.