

48th Multi-Stakeholder Group (MSG) Meeting

8 December 2017 | 9:00 AM – 1:00 PM

Mayfair Room, Midas Hotel, Pasay City

Attendees:

Government

Undersecretary Bayani Agabin	Department of Finance (DOF)
Ms. Febe Lim	DOF
Engr. Romualdo Aguilos	Department of Environment and Natural Resources - Mines and Geosciences Bureau (DENR-MGB)
Mr. Rhizzalyn Bautista	Department of the Interior and Local Government (DILG)- PPEI Project
Mr. Arvi Miguel	DILG-PPEI Project
Ms. Miriam Padua	Union of Local Authorities of the Philippines (ULAP)

Industry

Atty. Ronald Recidoro	Chamber of Mines of the Philippines (COMP)
Mr. Anthony Ferrer	Petroleum Association of the Philippines (PAP)/ Galoc Production Company
Atty. Francis Joseph Ballesteros, Jr.	Philex Mining Corporation
Mr. Bradley Norman	Oceana Gold Philippines, Inc.
Atty. Joan Cattiling	Oceana Gold Philippines, Inc.

Civil Society Organization (CSO)

Engr. Maria Rosario Aynon Gonzales	Palawan State University
Mr. Buenaventura Maata, Jr.	Philippine Grassroots Engagement in Rural Development Foundation, Inc. (PhilGrassroots-ERDF)
Ms. Maria Kristina Pimentel	Bantay Kita – Publish What You Pay Philippines
Mr. Augusto Blanco, Jr.	Mandaya Tribe, Compostela Valley
Mr. Ronald Allan Barnacha	Philippine Rural Reconstruction Movement (PRRM)
Ms. Maria Aurora Teresita Tabada	Visayas State University (VSU)
Ms. Merian Mani	Marinduque State University
Ms. Starjoan Villanueva	Alternative Forum for Research in Mindanao, Inc. (AFRIM)

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Independent Administrator

Mr. Ian Oliver Teodoro	Isla Lipana- PWC
Ms. Corina Molina	Isla Lipana- PWC
Ms. Linnet Chan	Isla Lipana- PWC
Mr. Edralin Enriquez	Isla Lipana- PWC

Resource Person

Atty. Francis Acero	National Privacy Commission
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PH-EITI Secretariat

Atty. Maria Karla Espinosa	Secretariat
Ms. Abigail Ocate	Secretariat
Ms. Mary Ann Rodolfo	Secretariat
Ms. Joy Saquing	Secretariat
Mr. Ryan Justin Dael	Secretariat
Ms. Johna Paula Manzano	Secretariat
Mr. Jaime Miguel	Secretariat
Mr. Ricardo Evora	Secretariat
Ms. Angelina Alba	Secretariat
Ms. Rhoda Aranco	Secretariat
Ma. Rowena Raymundo	Documenter

Agenda:

- Approval of the Minutes of the 47th MSG Meeting
- Matters arising from previous MSG Meetings
- Main Business
 - Updates and progress report on the 4th Country Report
 - Discussion on first draft of the 4th Report
 - Presentation on the Data Privacy Act
 - Priority PH-EITI Activities until Q1 2018
- Other Matters
 - Updates on current and upcoming activities
 - Setting of next MSG meeting

1. Call to Order

The 48th PH-EITI Multi-Stakeholder Group (MSG) meeting was chaired by Department of Finance (DOF) Undersecretary Bayani Agabin, Focal Person of the PH-EITI. There being a quorum, the meeting was called to order at 9:20 AM.

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After the proposed agenda for the meeting was presented, the Chair asked if there were other items the body would like to add. An industry representative made a motion to include the substitute bill to House Bill (HB) 4116, saying that there is a need to discuss the matter because the substitute bill makes certain changes to HB 4116 which has already been discussed and officially commented on by the MSG. There was a motion to approve the inclusion of the said item in the agenda and it was duly seconded.

Before proceeding to the main business, the Chair acknowledged and congratulated OceanaGold (Philippines), Inc. (OGPI) and Rio Tuba Nickel Mining Corporation (RTNMC) for winning in the first ASEAN Mineral Awards, with OGPI bagging *Best Practice in Minerals Processing* and RTNMC, *Best in Practice in Minerals Mining*.

2. Approval of the Minutes of the 47th MSG meeting

The Chair gave the MSG members one week to go through the draft minutes and send their comments to the secretariat. If no comments are received after a week, the document will be deemed approved.

3. Matters arising from previous MSG meetings

- *Offer of Timor Leste to conduct a training for the MSG on the Sovereign Wealth Fund (SWF)/Petroleum Fund process –*

The secretariat reported that the last action taken on this was the preparation of a draft activity proposal with an estimate budgetary requirement of P640,000.00. This was presented during the last meeting, after which the secretariat was instructed to provide a list of activities scheduled from present until the first quarter of 2018 to help MSG members decide whether or not to include the SWF training as part of the 2018 work plan.

The secretariat noted that there are not many experts on this topic in the region yet, and that conducting a training will entail bringing in resource persons from abroad.

The secretariat proceeded to present the priority activities targeted for completion until the first quarter of 2018:

- Workshop for and approval of the 4th Report – December 2017. Considering that the deadline for submission and publication of the Report is December 31, a special MSG meeting will be scheduled in December for the MSG to discuss and approve the final report. It was noted that holding both a regular and a special

1 MSG meeting in December has been the practice.

- 2
- 3 ○ Production of IEC materials on the 4th Report – January 2018. This refers to the
- 4 information, education, and communication materials to be used for the
- 5 activities of the following year, including the executive summary of the report,
- 6 popular versions, brochures, etc.
- 7
- 8 ○ Report analysis workshop (deep dive) – January to February 2018. As earlier
- 9 agreed by the MSG, this would be a training activity where the members will get
- 10 to study and understand/appreciate the data in the Report to capacitate them
- 11 before the Report is disseminated to stakeholders and the public.
- 12
- 13 ○ Drafting and approval of the 2018 Work Plan – February to March 2018.
- 14
- 15 ○ National Conference/launching of the 4th Report – March 2018.
- 16

17 In addition, the following activities are part of the 2017 Work Plan but have not been

18 implemented due to certain constraints:

- 19
- 20 ○ TWG meeting on the online reporting tool for companies
- 21 ○ Technical workshop on SWF
- 22 ○ Measuring public awareness of EITI
- 23

24 The Chair commented that the work plan is apparently full already. He asked if the last

25 three activities can be pushed to the 2nd quarter of 2018, noting that the priority is to

26 accomplish the activities presented earlier. He suggested discussing the three pending

27 activities during the drafting and approval of the 2018 Work Plan, which is slated in

28 February to March 2018.

29

30 The Chair asked if there is value in doing the technical workshop on SWF now, because if

31 there is none, the body can just decide to defer it. He observed that the activity does not

32 seem to be a priority, since it has been pending since 2013.

33

34 A CSO representative reacted by saying that the activity is a priority precisely because it

35 has always been included in the Matters Arising and discussed every MSG meeting.

36 However, considering that the 1st quarter of 2018 is already full, this can be pushed to

37 the 2nd quarter. According to her, the MSG decided that it is an important activity; hence,

38 as long as the budget is there, the activity should push through.

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40 An industry representative supported the idea to hold the activity some time in the 2nd

41 quarter of the year.

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According to the secretariat, they would need official instruction from the MSG that this activity will be made part of the 2018 work plan. It can fall under capacity building activities, but if the MSG is contemplating other capacity building activities, then the SWF workshop will be competing with these other activities for resources.

The Chair opined that the Timor Leste offer is not a good one since the cost is high. He suggested scrapping it from the Matters Arising and just scheduling an SWF workshop as a capacity building exercise. There was a motion to adopt the suggestion of the Chair, and it was duly seconded.

For the other two items, i.e., TWG meeting on the online reporting tool for companies and measuring public awareness of EITI, there was a motion to move the activities to the 2nd quarter of 2018, and it was seconded.

- *Online reporting tool for companies*

The secretariat reported that they have provided the MSG with the draft TOR, but no comments have been received so far. As reported during the last meeting, there is a plan to convene a TWG meeting or consultation with the industry representatives who will be the primary users of the tool.

- *Measuring public awareness of EITI*

Having been instructed to calendar this activity in the 2nd quarter of 2018, the secretariat just reported that, based on earlier instructions, they have contacted survey-taking organizations such as SWS and Nielsen to know the requirements for it. The secretariat said that they can defer reporting on the details if this is not yet a priority at this time. The Chair concurred, considering that this item has been pushed to a later schedule.

- *Introducing PH-EITI to new Department of Environment and Natural Resources (DENR) Secretary*

The secretariat reported that they have yet to receive a response to the letter request for a courtesy meeting that they sent to the office of the DENR Secretary way back in June. They reported, however, that they were able to get in touch with DENR Assistant Secretary Nonita Caguioa who has been helping them secure an appointment with Undersecretary Rodolfo Garcia instead. Undersecretary Garcia has indicated interest to meet with PH-EITI the following week, but no date has been fixed yet.

Upon query from the Chair as to the nature of the requested meeting, the secretariat

1 responded that it would be a courtesy call, a briefing about PH-EITI, and, if possible, a
2 discussion on the implementation of DAO 2017-07 mandating mining contractors to
3 participate in EITI. The DAO was issued by the former DENR Secretary but has not been
4 implemented or enforced. The MSG agreed that it should be discussed with the new
5 Secretary.

6
7 Another matter that can be discussed during the meeting is renewing or strengthening
8 the commitment of DENR in participating in EITI. It was noted that while MGB is always
9 present as represented by Engr. Aguilos, the MSG has expressed that they would like to
10 see DENR – not just MGB – to be more visible in the MSG meetings. The Chair queried if
11 DENR should still send a representative even if there is already one from MGB. The
12 secretariat explained that while MGB has been delegated the task to represent DENR, the
13 official MSG member is DENR as an agency.

14
15 A CSO representative suggested that the secretariat also follow up, through DENR, on the
16 pending commitments of MGB. While there are ongoing initiatives to update reporting
17 mechanisms, MGB can also provide a timeline so that the MSG would know when to
18 expect the deliverables.

19
20 An industry representative suggested to request a similar audience with the DOE
21 Secretary. He asked if the same thing done by DENR can be asked of DOE, i.e., to require
22 coal companies to participate in EITI and submit reports.

23
24 Another industry representative noted that there are also issues pertaining to DILG,
25 particularly on downloading of LGU shares; hence, a request for audience with the DILG
26 Secretary may also be in order. This was seconded by a CSO representative who
27 commented that it would be good to get DILG on board if the body wants to push for
28 subnational implementation of EITI.

29
30 The Chair summed up the action points for this matter: wait for confirmation of meeting
31 with DENR, request for a courtesy meeting with the DOE Secretary with the objective of
32 providing briefing on PH-EITI and broaching the subject of DOE possibly issuing an
33 administrative order similar to DAO 2017-07, and request for a courtesy meeting with the
34 new DILG Secretary as well.

35 36 **4. Updates and progress report on the 4th Country Report**

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38 The presentation of PH-EITI's independent administrator (IA) included relevant
39 information on the scope and coverage based on final results, the reconciliation results,
40 shares in national wealth, outstanding items, and recommendations. The full
41 presentation is attached to this minutes as **Annex A**.

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2 *a) Reconciliation results – METALLIC MINING*
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4 The IA reported that the total reconciled amount for 2015 reached PHP6.2 billion or
5 102% of government reported collections, while for 2016, the amount reached PHP6.5
6 billion or 100% of government reported collections. The variances found for both years
7 are due mainly to the absence of schedules and supporting documents. This is true for all
8 reporting government agencies.
9

10 For BIR, the reconciled amounts for both 2015 and 2016 are almost similar at PHP4.2
11 billion. For 2015, the biggest variance came mostly from Berong Nickel Corporation and
12 Carmen Copper Corporation. For 2016, companies who did not submit reporting
13 templates included CTP Construction & Mining Corporation, Ore Asia Mining &
14 Development Corporation, and PMDC.
15

16 For BOC, the IA noted small variance post-reconciliation, PHP16 million for 2015 and PHP
17 33 million for 2016. Ore Asia Mining and Adnama Mining Resources both did not submit
18 reporting templates. The IA noted that Adnama is one of the non-participating
19 companies for this year's exercise. For 2016, the biggest chunk of variance post-
20 reconciliation is from Philsaga.
21

22 For MGB, the IA reported that they were able to reconcile PHP1 billion or 94% of
23 government reported collections for 2015 and PHP 922 million or 83% of government
24 reported collections for 2016.
25

26 For the LGUs, the schedules and supporting documents still need to be provided by the
27 companies and verified/reconciled by the IA.
28

29 For NCIP, the IA noted that for 2015 they were able to reconcile PHP120 million against
30 the PHP321 million reported by the companies. They have not completed the walk
31 through with NCIP, as no communications have been received from the Commission.
32 They informed that despite the assistance of the secretariat assisted in following up NCIP
33 and communicating at the regional level, only Region 4 has provided data so far.
34

35 The IA reiterated that, as reported during the last MSG meeting, what was done for NCIP
36 was to validate from the perspective of the participating entities, since NCIP has not
37 provided the documents.
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39 What ensued was a discussion on how the IA extracted and processed data for NCIP and
40 options on how to address the issue of not getting the appropriate and sufficient
41 information from the Commission.

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A CSO representative queried on what steps can be taken to ensure that NCIP reports are gathered. It was noted that while the Commission is not the recipient of the proceeds, it is their mandate to monitor the IP royalty payments.

Another CSO representative asked the IA what methodology was employed in getting the data from NCIP and if there was analysis on the data gathered. He noted that the primary work of NCIP is to monitor but it seems they are not doing their function. He stressed that the findings should be carefully reviewed and validated, considering that the variance is too big.

The IA responded that for NCIP, the same process done for all other government agencies was employed. The process involved providing the reporting template to the government agency at the central office level. It was expected that the central office would be collecting the data/information from their regional offices. The IA noted that the monitoring of IP royalty has been a persistent issue/observation in the past reports; thus, the recurrent recommendation for NCIP.

A CSO representative commented that data gathering from NCIP should be done differently from those of other government entities, considering there is a known recurring problem based on previous reports. There should have been a special methodology or system of getting data from the Commission.

According to the IA, during the conduct of the 2016 roadshows, they, together with the secretariat, assisted and capacitated the agencies on how to comply with EITI requirements. NCIP commitment was for the main office to gather information from their regional offices. This claim was confirmed by the secretariat who has been assisting the IA in following up with NCIP.

An industry representative expressed frustration, considering that this is already the 4th Report and the same problem still exists. The NCIP central office is still expected and made to fill out and submit the template even when it is apparent that the system does not work effectively. He suggested exploring other options like getting another entity to fill out the template or going down to the regional level for the data.

The IA commented that this may be good but may not be cost efficient.

The industry representative underscored the need to analyze what and where the problem is. If the problem is with the regional offices, then perhaps relevant authorities can be asked to compel the regional offices to report to central.

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2 Another CSO representative supported the idea of the IA going to the ground,
3 considering that previous efforts apparently have not worked. He believes this is part
4 of the work of the IA, not of the NCIP central office or of the secretariat. The IA
5 reacted that this is actually not part of their scope of work. Further, assuming this is
6 done, it can give the impression that NCIP not doing its function is being tolerated.

7
8 The Chair directed the body to focus on the issue which is about PH-EITI not getting
9 the reports from NCIP. He asked if the data being requested is even available,
10 because if it is not, then everything is a futile exercise. He asked about the data PH-
11 EITI is going after. If it is the reports, then the body needs to know where NCIP gets
12 the reports. If they are from the IPs, the body needs to know if IPs are required to
13 report to NCIP.

14
15 The secretariat remarked that IP data should be shared and submitted to the NCIP
16 regional office. The Chair then said that this is what should be asked of NCIP, to
17 provide the data submitted by IPs.

18
19 The secretariat added that NCIP itself is involved in the processes. They sign on the
20 MOA and they also sign off payments to the IPO. This was validated by the IP CSO
21 representative who disclosed that based on their own experience in Compostela
22 Valley, royalty payments for IPs are coursed through the NCIP. Therefore, there
23 should be complete record of royalty payments given to IP. He supported the
24 suggestion of going down the regional level to get the data.

25
26 The Chair asked if there is still time to get the data, assuming it is available, and then
27 revise the report. The IA responded in the negative but noted that an addendum can
28 be issued later, like in January. The Chair then concluded that it would be useless to
29 do the exercise at this time. He suggested instead, that the body go through the
30 report as it is. Then during the deep dive, issues must be identified. He instructed the
31 secretariat to take note of the NCIP issues and submit recommendations on how to
32 improve the data gathering.

33
34 The Chair further asked if the TOR of the IA includes going to the regional offices to
35 gather data. The IA responded that there are no specific or detailed provisions on
36 this. The secretariat was then instructed to take note that if a decision is made that
37 the IA goes to the regional offices, then this should be included in the TOR. He
38 encouraged everyone to treat this as a learning exercise and make appropriate
39 recommendations so that the process will be improved next year.

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41 The IA then proceeded to continue their report.

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2 For funds actual expenditures, the IA was able to reconcile PHP1.7 billion or 106% of
3 government reported collections in 2015 and the same value for 2016. The reason for the
4 variance post reconciliation is similarly the absence of schedules and supporting
5 documents.

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7 *b) Reconciliation Results – NON-METALLIC MINING*
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9 The IA explained that their report still lacks reconciled amounts, as they have yet to
10 receive the necessary data, because most companies have not submitted BIR waivers yet.
11 This is true particularly for BIR, BOC, and Funds Actual Expenditures.

12
13 For the LGUs, the IA reported having reconciled PHP8.5 million or 42% of government
14 reported payments in 2015, and zero in 2016, similarly due to absence of schedules and
15 supporting documents.

16
17 According to the IA, they can extend the submission of schedules and supporting
18 documents for another week for these non-metallic mining companies, considering this is
19 their first year of joining the project.

20
21 *c) Reconciliation Results – OIL AND GAS (OG)*
22

23 The IA reported that for the OG sector there is no variance post reconciliation.

24
25 For BIR, the total reconciled amount reached PHP7.6 billion for 2015 and PHP7.2 billion in
26 2016 – fully reconciled with government reported payments for both years. This is
27 similarly true for DOE, with reconciled amount of PHP13.3 billion for both 2015 and 2016.

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29 *d) Reconciliation Results – COAL*
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31 The IA apprised that they have not received the reporting template of Semirara. They,
32 however, showed in their presentation some indication of payments made by Semirara in
33 the form of taxes and other fees paid by companies to BOC and LGU.

34
35 The secretariat queried if the IA has followed up on Semirara’s prior representation that
36 they would be deciding on their participation in EITI. The IA responded that they have
37 followed up on this several times but received no response.

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39 The Chair suggested that all issues, including Semirara and improvements in data
40 gathering, be discussed during the deep dive analysis/workshop. This was noted by the
41 secretariat.

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e) Share in National Wealth

The IA explained that the process is to reconcile the DBM reported amounts with those of the LGUs. The IA reported that, as of date, the total reconciled amount is PHP348 million or only 28% of reported DBM releases for 2015. For 2016, it is PHP426 million or 30% of reported DBM releases for the said year.

The IA informed that they have actually shared the reconciliation results with both DBM and LGUs, but feedback from these agencies has been very low. Thus, there still remain a number of variances to be resolved.

On the disaggregation of the data and identification of the specific dates of releases, the IA reported that it is much easier now with the new ENRDMT system, because LGUs are now able to report the specific dates and details of the Notice of Cash Allocation (NCA).

The IA noted that in 2016, there was a significant increase in shares releases as compared to the figures reported in 2014. They observed that it is now much easier to reconcile the data. An issue is that sometimes the LGU reports a receipt, but there is no corresponding amount in the DBM template, or vice-versa. According to the IA, sometimes the difference comes from the timing of collections and reporting by the government agency and LGUs. DBM releases sometimes consist of more than two years or a number of years.

Upon inquiry of the secretariat on the process of arriving at the total reconciled amount, the IA explained that this refers to the amount reported by LGUs as collected. For instance, there is a P100,000 collected in 2015 as per LGU template. The IA trace that same amount in the DBM reporting template. However, it is possible that the P100,000 in the DBM template may pertain not only to 2015 reporting but also for other years. But since the amounts perfectly match, the IA had to consider this as reconciled.

The IA pointed out that each collecting agency has its own challenges, since the agencies have different timing and process of issuing certifications. In the issuance process, there is a gap of some two to three years. It is not that they are inconsistent, but each agency has its own protocols that are supposedly harmonized but are really not.

On another note, a CSO representative expressed worry that when the report is completed, there might be many missing tables because they pushed for two years coverage. The IA shared that based on the data they have gathered so far, all tables for metallic are almost complete for 2015 and 2016, except for the variances. For the non-metallic, no information can be presented yet because of absence of schedules.

1 Another matter raised by the same CSO representative is on the contextual information
2 part of the report. She wanted to know who from the IA writes it, observing that there
3 were so many errors in grammar and sentence construction. The IA reported that they
4 have hired a technical writer.

5
6 The secretariat reminded the IA that the draft to be presented to the MSG must have
7 already been written by a technical writer. Otherwise, it would be the secretariat and the
8 MSG who would bear the burden of proofreading instead of being able to focus on the
9 substance of the report.

10
11 *f) Outstanding Items – contextual information*

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13 For the contextual information, the IA reported that they are still waiting for certain
14 information/documents from DOE, DBM, MGB, PSA, and MICC. The IA reminded the
15 body that the initial draft of the contextual information has already been shared to the
16 MSG and that they have received comments and review notes already.

17
18 *g) Outstanding Items – reconciliation*

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20 The IA apprised that they still have to chase the BIR for the 2015 and 2016 aggregated
21 data. In addition, they are waiting for data from other government agencies such as DOE,
22 LGUs, MGB, NCIP, PPA, DBM, and BTr.

23
24 *h) Recommendations*

25
26 The IA reported the following for the current year observations and recommendations:

- 27
- 28 • For the LGU/BTr/DBM to explore the possibility of automating the certification of the
amount of shares in national wealth just to harmonize the process
 - 29 • For MGB to monitor assignment of MPSAs (i.e., Leyte Ironsand)
- 30

31 The MGB representative provided some clarification on Leyte Ironsand, noting that it
32 has no identity yet, as confirmed by MGB's Mining Tenement Management Division.
33 He informed that Leyte Ironsand has an agreement with Strongbuilt, but this is not
34 approved yet. Hence, MGB officially wrote the PH-EITI secretariat that the company
35 should be excluded from the list of participating companies.

36
37 The IA said that they have excluded Strongbuilt based on the recommendation of
38 MGB. This is also because they have not reported any production data, and upon
39 checking the company's financial data, they do not have reported sales as well.

40
41 The IA also noted that based on the representation made by Leyte Ironsand during

1 their walkthrough discussion, for 2015, it was really them that operated the MPSA of
2 Strongbuilt. In 2016, they exited that operating agreement, and Strongbuilt
3 continued the operation of the MPSA.
4

5 Addressing the Chair's query, the IA said that the recommendations are directed to the
6 concerned government entities. The Chair raised the earlier discussion on NCIP recurring
7 issues and corresponding recommendations for the Commission. He said there must be a
8 different way to address the issues and asked as to whose responsibility this should be.
9 The IA answered that it should be the MSG's. The Chair said that the MSG should
10 schedule one meeting to discuss all those recommendations.
11

12 The secretariat shared that in previous years, the practice was to request the MICC
13 leadership to issue a directive for implementing agencies to provide updates on actions
14 they have taken on the MSG recommendations. While the MSG and secretariat do follow
15 up on this, the body who would have better authority to follow up on the agencies would
16 be the MICC as well as the agencies' respective leaders, some of whom are part of the
17 MSG. In the case of NCIP, it is part of the MICC but not part of the MSG.
18

19 The secretariat noted that the MSG, as a multi stakeholder body, can still call on NCIP to
20 "shape up". NCIP was part of the initial list of TWG members of PH-EITI. The secretariat
21 has been engaging them in the past years, so that a working relationship with them has
22 already been established. This year may have been specially challenging for the
23 organization, which may account for their being "more unresponsive" than usual.
24

25 The Chair said that considering the MSG is already pressed for time, the action point is
26 for the MSG to decide on whether or not to close the reconciliation process based on the
27 numbers that have been presented by the IA. He asked if there is motion to close the
28 reconciliation process.
29

30 According to the IA, they can still accommodate some agencies/entities who are slated to
31 submit their schedules and supporting documents the following week, like PMDC and
32 others. Upon query from the Chair, the IA assured that finalization of the report and
33 uploading of the report by December 31 will not be delayed, even if these submissions
34 are accommodated. However, they clarified that the extension of the reconciliation is
35 only until Monday (Dec 11) or Tuesday (Dec 12). The IA is targeting to provide the semi-
36 final reconciled amounts by Tuesday (Dec 12) or Wednesday (Dec 13).
37

38 Closing the reconciliation process by end of business hours on December 11 means that
39 there will be no more additional or new participating entities henceforth. The secretariat
40 committed to assist in following up on the supporting schedules and documents. The
41 Chair led a motion to close the reconciliation process, and the body supported it.

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2 **5. Discussion of first draft of the 4th Report**
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4 According to the secretariat, Chapter 1 of the draft has been disseminated two weeks
5 ago, and some of the members have submitted comments already.
6

7 The Chair asked up to what date the IA will be open to receive comments and how they
8 would resolve conflicting remarks if any. The secretariat said that the comments will be
9 made available to the entire group so that everyone would know each other's
10 observations, then a special MSG meeting will be held to discuss all the comments and
11 finalize and approve the report.
12

13 Upon query from a CSO representative, the IA said that the semi-final report would be
14 circulated the following week. The Chair emphasized that the document should pass
15 through the technical writer before it is circulated to the body.
16

17 According to the Chair, every report has to tell a story. For the benefit of someone new
18 to PH-EITI, he asked what story does the PH-EITI Report convey?
19

20 The secretariat explained that the report comes in two parts – the contextual information
21 and the reconciliation report. The first provides updated general information about the
22 extractive industries, including the legal framework, while the second is meant to surface
23 variances or discrepancies between company payments and government receipts. The
24 report also presents what the MSG recommends based on the findings and reconciliation
25 results. The story it tells is one of disclosing and monitoring data and making them
26 accessible, thereby giving the public a view of how transparent the extractive industry is.
27

28 The Chair remarked that the story is too general. He opined that, based on the
29 discussions, the report seems to tell the story that mining companies report everything
30 and it is the government that is having problems with getting the data. He asked the
31 body if this is the story that will be relayed by the report.
32

33 According to the secretariat, the report has largely been a data resource for stakeholders
34 without any particular story or position being adopted or taken by the MSG, except to
35 push for more transparency and improvement in data disclosure. The objective is to
36 empower readers and stakeholders by making data available.
37

38 A CSO representative added that one can look at the report as a consensus building
39 process, where the three sectors come up with a list of recommendations addressed to
40 specific agencies. The report is used as an opening conversation to extract policy gaps
41 and generate policy recommendations.

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Moving on, the Chair reiterated the following deadlines to observe:

- Submission of additional information – December 11;
- Report to be submitted by the IA and to be circulated to the MSG (for review within a week) – December 15;
- Special MSG meeting to discuss the comments – to be determined.

6. Substitute Bill to HB4116

To give a brief background, the secretariat related that there are pending bills to institutionalize PH-EITI, one in the House (HB 4116) and one in the Senate (SB 1125). Only HB4116 has moved so far. The House Committee on Natural Resources (HCNR) has conducted a TWG meeting on the bill wherein MSG members participated.

The MSG has already agreed and approved comments on the bills during the 44th MSG meeting. The MSG’s comments or position paper was officially transmitted by the Secretary of Finance to the HCNR back in July 2017. After the first TWG meeting was held, the HCNR came out with a draft substitute bill, which is scheduled for discussion by the TWG on December 12.

The secretariat furnished the body with a matrix of the provisions of HB 4116, the draft substitute bill, relevant MSG comments, and remarks on how the two bills compare.

The secretariat noted that after reviewing the draft substitute bill, the main difference is the absence of a penalty provision. There are also comments given during the TWG meeting that were not incorporated in the substitute bill, like the suggestion to include “service contract” and “coal operating contract” in the definition of terms.

A CSO representative remarked that during previous discussions of the MSG, they recommended the inclusion of an additional sector, the Indigenous Peoples (IPs), in the MSG composition (Section 12, HB 4116), but this is not reflected in the substitute bill.

The same CSO representative articulated that they have persistently pushed for a separate seat for IPs considering its unique position, which is different from CSOs. In fact, if NCIP refuses to participate in the future, then the MSG can turn directly to IPs for the reporting and reconciliation process of EITI. It will also increase their accountability to their stakeholders.

The secretariat pointed out that what the Committee did in this case was to entirely replace Section 12 of HB 4116 with the counterpart provision in EO 147, in effect bringing back the status quo. The secretariat said that the action point now is for the MSG to take

1 the chance to have the substitute bill amended, if necessary, and agree on the
2 submission of supplemental comments on the bill.

3
4 An industry representative raised the question of whether IPs are organized enough to
5 select a representative from among themselves to sit in the MSG. The CSO-IP
6 representative articulated that in all places where IPs are present, IP organizations have
7 existing structures and organized processes. He said that they have been doing some
8 national assemblies for IPs and this can be used as platform to select someone who can
9 represent the constituency in the MSG.

10
11 The Chair asked if CSOs can already represent the interest of the IPs. A CSO
12 representative responded that, currently, the CSO sector has given one of their seats in
13 the MSG for IP representation. IPs, as pointed out earlier, are unique in the sense that
14 they are direct beneficiaries of the mining operations. Their interests are very different
15 from that of CSOs; hence, IPs should get a separate seat in the MSG.

16
17 Another CSO representative said that it is important to have IPs get a co-equal seat in the
18 MSG. The NCIP may be unable to properly represent the interests of the IPs from the IP
19 perspective.

20
21 The Chair pointed out that if NCIP is represented in the MSG and is involved in the
22 process, perhaps they would understand. He suggested that the body consider including
23 NCIP as one of the five agencies in the government sector and an IP representative as
24 one of the five in the CSO sector. The Chair named the government sector composition as
25 follows: DOF, DENR, DOE, NCIP, ULAP. ULAP is there, as the MSG may need cooperation
26 and support from local government authorities.

27
28 One CSO representative suggested having DILG as member and ULAP as alternate.
29 However, according to the Chair, ULAP is different from DILG in the same manner that IP
30 is different from NCIP.

31
32 Another CSO representative commented that there appears to be some confusion, as
33 ULAP sometimes represents government and sometimes CSO. She asked if it would be
34 better to have DILG or ULAP represent local governments.

35
36 The Chair responded that it is up to the government sector to sort out this matter. He
37 moved on to the CSO sector. He asked if there is good representation in the CSOs and
38 how to determine if there is such.

39
40 A CSO representative explained that CSOs have published selection process and criteria.
41 The process includes application by a CSO member and evaluation and review of the

1 application by a Selection Committee. Everything is put forward in a national conference
2 where the candidates are presented and members get to vote.

3
4 To manage the discussion, the Chair reiterated his earlier suggestion to give MSG
5 members some more time to review the document. He noted that the comments should
6 be limited to the new items introduced by the substitute bill. The deadline for submission
7 of comments was set on Monday, December 11. It was noted that the deadline for
8 submission to the HCNR is December 12.

9
10 Common positions/comments will be summarized and submitted. Conflicting comments
11 will not be submitted. The recourse is for the sector to attend the TWG meeting and
12 present its position there.

13
14 The secretariat reiterated that the main provision that would need the MSG's comments
15 is the penal provision. The body was also reminded that the MSG has already agreed on
16 general comments on the penal provision (of HB 4116), and unless it wants to change its
17 position, then the original comments remain. This is what will be communicated to the
18 HCNR on December 12.

19 20 **7. Presentation on the Data Privacy Act**

21
22 A resource person (RP) from the National Privacy Commission (NPC), Atty. Francis Acero,
23 Complaints and Investigation Division Chief, gave a short seminar on the Data Privacy Act
24 (DPA) before the MSG.

25
26 As an introduction to the presentation, the secretariat said that the NPC was invited in
27 line with PH-EITI's Beneficial Ownership (BO) Roadmap. The scoping study conducted in
28 line with the roadmap indicates that the DPA appears to be the biggest barrier/challenge
29 to BO disclosure. Hence, the MSG deemed it appropriate to engage the NPC to provide
30 an orientation on the law.

31
32 Having been informed of the MSG's low level of awareness of the DPA, the RP proceeded
33 with his presentation on the salient and relevant features of the law. The full
34 presentation is attached to this report as **Annex B**.

35
36 The points discussed by the RP included the following:

- 37
38
- The world's most valuable commodity today is data.
 - Data is not just data. One has to learn how to extract it and how to use it to be able
39
40
41 to arrive at certain decisions. Since decisions are made out of data and evidence, one

1 is now in a position to make correct choices.

- 2
- 3 • Data processing refers to the life cycle of data starting from collection, then storage,
4 usage, sharing, archiving, and deletion. The RP defined each stage in the life cycle by
5 citing practical examples of how data/information are collected, stored, used,
6 shared, archived, and deleted. According to the RP, the management of such cycle is
7 covered by the DPA.
8
- 9 • Data protection and data privacy laws look at how to keep information moving
10 within the system while ensuring that data is secure and used only for the stated
11 purposes.
12
- 13 • When one talks about data privacy, one necessarily talks about the data subject
14 which refers to any natural person whose information is processed. A juridical
15 person like a corporation or partnership has no data privacy right. The reason is
16 because a juridical person does not get humiliated or embarrassed.
17
- 18 • Personal information is any information or set of data from which the identity of an
19 individual can be directly ascertained by one who is holding the information. The RP
20 went on to discuss sensitive personal information and its different kinds and
21 categories (e.g., race, ethnic origin, marital status, age, color, health, education;
22 information issued by government agencies like social security number, health
23 records, etc.)
24
- 25 • The point of the NPC is to regulate the processing of data and everything that has to
26 do with data. When one looks at how data should be regulated, NPC is guided by
27 three principles: transparency, legitimate purpose, and proportionality.
28
- 29 • The DPA has several sections that provide information on the following: definition
30 and general provisions, powers and functions of the NPC, rights of data subjects and
31 obligations of personal information controllers (PIC) and processors, provisions
32 specific to government agencies and penalties.
33
- 34 • As regulator, the NPC monitors and ensures the country's compliance with
35 international standards set for data protection. As watchdog, it ensures compliance
36 of PIC and compels any entity to abide by its orders or take action on matters
37 affecting data privacy. As a quasi-judicial body, it receives complaints, initiates
38 investigations, and facilitates settlement of disputes.
39
- 40 • Of the cases and investigations the NPC has had, most are on unauthorized
41 processing (40%), security of personal information (32%), and violation of data

1 subject rights (13%).

- 2
- 3 • Consent is very specific under the DPA. The data subject has to agree to the
- 4 collection and processing of his/her personal information and he/she must be aware
- 5 of the purpose, nature, and extent of the processing to be done.
- 6
- 7 • The RP talked about the cases and conditions where personal information and
- 8 sensitive personal information can be processed, citing situational examples.
- 9
- 10 • The RP presented different measures to protect data, which were taken from
- 11 Circular 1601 which deals with data processing in government. The measures
- 12 discussed were in the areas of storage, agency access to personal data, and transfer
- 13 and disposal of personal data. The NPC is currently going to different sectors to have
- 14 them determine their own industry-wide codes. The RP expressed interest to talk to
- 15 PH-EITI on the possibility of it taking the lead in formulating privacy codes for the
- 16 extractive industries in the Philippines.
- 17
- 18 • The rights of the data subject include the right: to be informed, to object, to access,
- 19 to correct/rectify, to block/remove, to data portability, to file a complaint, and to be
- 20 indemnified.
- 21
- 22 • The RP briefly discussed the 5-step guide to compliance with the DPA, to wit: (i)
- 23 appointment of a data protection officer (DPO); (ii) conduct of a privacy impact
- 24 assessment; (iii) creation of a privacy management program; (iv) implementation of
- 25 the privacy and data protection measures; and (v) regular exercise of breach
- 26 reporting procedure.
- 27

28 Below are highlights of the open forum that followed the RP's presentation:

- 29
- 30 • The Chair asked if the secretariat needs a DPO. The RP responded that anyone who
- 31 handles more than 250 employees or one who has record of at least 1000 individuals
- 32 would need a DPO. He said that it is possible that one may not need a DPO, but it
- 33 does not mean exemption from complying with the DPA provision. It just means that
- 34 whoever is the head will function as the DPO.
- 35
- 36 • The Chair asked if PH-EITI needs to adopt a data protection program/system,
- 37 considering it is into processing of information supplied by mining companies and
- 38 government agencies. According to the RP, if the information relates to personal
- 39 information, then PH-EITI would need one. He advised that it would be ideal to
- 40 conduct data inventory and ascertain what personal information is there.
- 41
- 42 • The Chair welcomed the RP's offer to help. He asked if the secretariat can have a one-

1 on-one meeting with the RP to explain in more detail what PH-EITI does and to
2 determine if there is a need to comply with all the action points outlined in the RP's
3 presentation. The secretariat will then be asked to echo the discussion with the RP to
4 the MSG to enlighten the members on what needs to be done at the MSG level. The
5 RP underscored the importance of the individual extractive industry companies
6 coming up with data protection standards.

- 7
- 8 • The Chair asked, assuming PH-EITI is covered by the law, as to who would be liable,
9 the secretariat or the MSG. According to the RP, the members of the MSG would be
10 liable, particularly the Chair. However, the Chair can avoid liability if there is proof that
11 when the data was processed, concern for the safety and protection of privacy and
12 security was shown at the top level.

- 13
- 14 • The Chair asked if psychological records are considered sensitive information and if it
15 can be processed without consent. The RP explained that if the person's psychological
16 records are identified as essential or important in evaluating employee job
17 performance, then it can be processed without consent. However, if the psychological
18 records are mined just because it may come in handy at some future time, that cannot
19 be considered essential.

- 20
- 21 • The secretariat asked the RP, being the head of NPC's complaints and investigation
22 division, if he has encountered any case where what is being complained about is not
23 about personal information.

24

25 According to the RP, when people complain about privacy, it is always about personal
26 information being improperly disclosed.

- 27
- 28 • The secretariat asked about exemptions from the DPA. The RP said that NPC does not
29 give blanket exemptions because of the person; exemptions can be granted based on
30 the purpose of the processing. For instance, for BPOs, if the processing is in
31 accordance with the law of a foreign jurisdiction, and data was collected from
32 residents of that jurisdiction in accordance with their law, then that is okay.

- 33
- 34 • An industry representative disclosed that in the coming years, PH-EITI intends to
35 publicly disclose the beneficial owners of mining companies and politically exposed
36 persons. For example, for Company A, the names of the top 100 stockholders are
37 disclosed. What liabilities/problems does the PH-EITI MSG potentially face?

38

39 According to the RP, if one would notice the current GIS form, there is no more TIN, no
40 more address. This is one way to skin a cat. If it is just the names, then it is ok. There
41 would be no problem if the beneficial owner is a corporation or a partnership. The

1 only time PH-EITI may run afoul of the DPA is when the beneficial owner is already a
2 person/individual.

3
4 However, PH-EITI can make ethical standards where companies bind themselves to
5 disclose these information. Then it can fall under letter c of *Processing Personal*
6 *Information*: “(c) The processing is necessary for compliance with a legal obligation to
7 which the personal information controller is subject”.

- 8
9 • The industry representative queried about the business card rule. According to the RP,
10 the business card rule applies when you want to test the boundaries of the law --
11 Under *Processing Sensitive Personal Information*: “(d) The processing is necessary to
12 achieve the lawful and non-commercial objectives of public organizations and their
13 associations”.

14
15 **8. Other Matters**

16
17 The special MSG meeting was scheduled on 21 December 2017.

18
19 With no other matters raised, the 48th MSG meeting was concluded at 01:10 in the
20 afternoon.