

51st Multi-stakeholder Group Meeting

10 May 2018 | 9:00 AM – 12:00 NN

CFMO Conference Room, Department of Finance

Roxas Boulevard, Manila

Attendees:

Government

Asec. Maria 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. Maricor Ann Cauton	Union of Local Authorities of the Philippines (ULAP)

Industry

Mr. Gerard Brimo	Chamber of Mines of the Philippines (COMP)/ Nickel Asia Corporation
Atty. Ronald Rex Recidoro	COMP
Mr. Bradley Norman	OceanaGold Philippines, Inc. (OGPI)
Mr. Anthony Ferrer	Petroleum Association of the Philippines (PAP)/Galoc Production Company
Atty. Francis Joseph Ballesteros, Jr.	Philex Mining Corporation

Civil Society Organization (CSO)

Mr. Chadwick Llanos	United Sibonga Residents for Environmental Protection and Development (USREPD)
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
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)

Guest presenter: EITI International Secretariat

1 Atty. Gay Ordenes
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3 **PH-EITI Secretariat**
4 Atty. Maria Karla Espinosa
5 Ms. Mary Ann Rodolfo
6 Ms. Joylin Saquing
7 Mr. Marco Zaplan
8 Ms. Roselyn Salagan
9 Mr. Ryan Justin Dael
10 Mr. Eastword Manlises
11 Mr. Jaime Miguel
12 Ms. Angelina Alba
13 Ms. Rhoda Aranco
14 Ms. Rhea Bagacay
15 Mr. Ricardo Evora

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18 **Agenda:**

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- 20 • Approval of the Minutes of the 50th MSG Meeting
21 • Matters arising from previous MSG Meetings
22 • Main Business
23 ○ National Conference 2018: Recap Presentation and Report
24 ○ Report on Beneficial Ownership Session during PH Open Government Partnership
25 (OGP) Week
26 ○ Mainstreaming EITI
27 ○ Updates on production of 5th Report
28 ○ Updates on implementation of DENR Administrative Order No. 2017-07
29 • Other Matters
30 ○ ATM letter to PH-EITI on civic space
31 ○ Updates on ongoing/pending projects (PH-EITI-PPI media fellowship, online reporting
32 tool) and upcoming activities (Data Dive, Roadshow)
33 ○ Report on PH-EITI financial operations
34 ○ Setting of next MSG meeting

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37 **1. Call to Order**

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39 The 51st MSG meeting was chaired by DOF Assistant Secretary Ma. Teresa Habitan. There
40 being a quorum, the meeting was called to order at 9:25 AM.

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42 **2. Approval of the Minutes of the 50th MSG meeting**

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The Chair asked if there were comments received on the minutes of the last meeting held on March 9, 2017. The secretariat informed that the said minutes was circulated just on the day of the meeting and apologized for the same.

The Chair said that, instead of the usual one week for comments, members will be given ten (10) days to review and give their comments on the 50th meeting minutes. If no comments are received by the end of the period, the minutes will be deemed approved.

3. Matters arising from previous MSG meetings

As to requesting for a meeting with the Secretaries of DOE and DILG, the secretariat informed that draft letters for the Chair’s signature have been prepared and that they have been coordinating with contact persons in these offices to secure the most realistic dates for the meetings.

As regards meeting with the National Privacy Commission (NPC) to determine what PH-EITI needs to do to comply with the Data Privacy Act (DPA) in the context of beneficial ownership (BO) disclosure, the secretariat said that they have not met with any NPC representative after the NPC gave a talk about the DPA in a past MSG meeting. Instead, they have used the opportunities afforded by the Open Government Partnership (OGP) initiative, of which PH-EITI is a part, to provide a forum for discussing BO disclosure. The secretariat reported that in the then ongoing Philippine OGP (PH-OGP) Week, there has been a session on BO4 disclosure co-organized by PH-EITI and in which MSG members participated. Perhaps largely because it is the DBM who heads PH-OGP, the Securities and Exchange Commission (SEC), a critical agency for BO disclosure, was also successfully invited to participate in the session. Moreover, it was fortunate that Atty. Gay Ordenes of the EITI international secretariat was in the country and was able to facilitate the BO session.

Before proceeding to the main business, the Chair acknowledged the presence of Atty. Ordenes who is also former PH-EITI National Coordinator.

4. National Conference 2018: Recap Presentation and Report

The secretariat presented a short 10-minute video recapping the recently concluded National Conference. The Chair remarked that it was a wonderful video and encouraged everyone to do even better next year.

In addition to the video, the secretariat also presented a report on the conference highlights and participant statistics and feedback.

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A total of 351 guests attended the conference. The largest showing came from the civil society organization (CSO) sector constituting 24% of the total, followed by national government agencies (including Congress) at 19.4%, the industry at 18%, local government units (LGUs) at 12%, students at 12%, and media at 11.4%. Other attendees included international partners such as USAID/DAI and the World Bank.

The national government agencies consisted of 68 delegates from 15 agencies, namely DOF, DOE, DENR, DILG, DENR-MGB central and regional offices, BLGF, BIR, DBM, NCIP, BOC, PPA, SEC, Senate Economic Planning Office (SEPO), Senate Tax Study and Research Office (STSRO), Congressional Policy and Budget Research Department (CPBRD).

As to LGUs, there were 10 from Luzon, four (4) from Visayas, and 13 from Mindanao. Eleven (11) local chief executives graced the national event. They were the Governor of Benguet and the Mayors of Tuba, Sison, Candelaria, Sofronio Espanola, Narra, Aroroy, McArthur, Surigao City, Cagadianao, and Tagana-an.

There were 63 attendees from the industry (21 from metallic mining, 4 from non-metallic mining, and 5 from oil and gas), 13 of whom are company heads. It was reported that even those who did not participate in the Fourth Report, mostly companies from Zambales, also attended.

Of the 351 guests, 82 were from CSOs, 42 were students, 40 were from media, and 12 were from PH-EITI's development partners.

Comments and reactions gathered from 129 returned feedback forms were also presented. With a 36.75% response rate and a majority of the respondents coming from civil society (CSO 31% ; academe 29.5%), the National Conference obtained *excellent* and *very good* ratings overall in the following areas: content of the conference, quality of speakers, quality of discussion for each session, structure and format, and logistics.

The secretariat also reported on the success of two conference side events, the National CSO Conference and Action Planning Workshop on Transparency and Accountability Initiatives in the Extractive Industry conducted on April 16-17, 2018 in partnership with Bantay Kita, and the 1st National Resource Governance Student Conference held on April 19, 2018 in partnership with COMP and PAP.

The Student Conference was participated in by 42 university student leaders from 12 universities and colleges from extractives-relevant regions across the country and from various fields of study, including Mining, Metallurgy, Geology, Petroleum Engineering, Environmental Science, Economics, Public Administration, Social Work and Community

1 Development, Political Science, and Information and Communications Technology.

2
3 The participating universities/colleges included the following:

- 4 • Saint Louis University - Baguio
- 5 • Nueva Vizcaya State University
- 6 • Adamson University
- 7 • San Beda College
- 8 • Palawan State University
- 9 • Mindanao State University - Iligan
- 10 • St. Paul University of Surigao
- 11 • Caraga State University
- 12 • UP Cebu
- 13 • UP National Institute of Geological Sciences (NIGS)
- 14 • UP College of Engineering
- 15 • UP College of Social Sciences & Philosophy

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17 After the presentation, an industry representative made a comment regarding the Q&A
18 or open forum portion of the National Conference program. He asked if there could be a
19 way whereby participants who intend to ask questions addressed to a specific company
20 can already signify their intention beforehand, perhaps during the registration process, to
21 ensure that proper representatives of the company in question will be present to
22 respond.

23
24 The industry representative said that this is not to limit the questions that would be
25 posed but to allow companies to ensure that they have present representatives who can
26 address the questions. Otherwise, the Q&A will not work and will even leave a negative
27 picture of the company, which is not fair.

28
29 A CSO representative added that they received feedback that it would be better if there
30 were more time for the Q&A, as the same provides a chance for people from province to
31 be able to speak with representatives from leaders in government and in extractive
32 companies.

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34 Another CSO representative mentioned a downloadable software application that, when
35 used, allows questions to be asked even at the beginning of a conference and they will be
36 directed to the person for whom they are intended. The app can be opened anytime and
37 questions can be answered anytime, even after the conference, which addresses the fact
38 that there is no sufficient time for Q&A during the conference. Thus, if everyone were
39 digitally connected, it would be easy to ask and answer questions.

40
41 Still another CSO representative suggested that the questions be compiled and then

1 answered, if appropriate, during the roadshows.

3 **5. Report on Beneficial Ownership Session during PH-OGP Week**

5 To provide a brief background, the secretariat recalled that the MSG had determined that
6 there be a TWG regarding the beneficial ownership (BO) disclosure roadmap to discuss
7 how to move it forward. The secretariat was then prompted to engage certain key
8 government agencies such as the NPC, SEC, and even the PCOO which handles FOI.

10 Given the challenge of getting all the relevant agencies to sit down together with the
11 TWG, the secretariat explored the OGP framework as an alternative venue, since,
12 through Bantay Kita, the matter of BO has been integrated in the broader agenda and
13 program of open government. During the ongoing PH-OGP week, the secretariat was able
14 to obtain a three-hour session for a BO discussion, where the target agencies could be
15 engaged within the OGP framework, but there was enough flexibility and freedom to
16 discuss BO disclosure in the context of EITI.

18 The secretariat then reported on the BO session, which was facilitated by Atty. Gay
19 Ordenes. The objectives were to identify what details must be disclosed regarding
20 beneficial owners of extractive industries in the country, to develop a reporting template
21 with clear guidance to companies, and to agree on data assurance procedures.
22 Participants were from national government agencies, LGUs, industry, and CSOs, and
23 included MSG members. The workshop consisted in the participants being grouped
24 according to their sectors – government, industry and CSOs – to review and comment on
25 EITI International’s suggested BO declaration form.

27 The secretariat asked if the MSG members would like the secretariat to discuss in detail
28 the technical issues in BO disclosure that were surfaced in the workshop. Many of the
29 issues pertained to legal and practical barriers or difficulties that have already been
30 identified in the BO scoping study commissioned by PH-EITI.

32 The take-away from the session, according to the secretariat, was that the SEC
33 apparently has broader BO disclosure initiatives based primarily on the Financial Action
34 Task Force for Money Laundering (FATF). Representations from SEC Asst. Director Oliver
35 Leonardo indicated that PH-EITI may be able to engage the SEC on BO disclosure in the
36 extractive sector, since the country is scheduled to be assessed against standards,
37 including transparency in BO, in November of this year.

39 The workshop participants gave some comments and recommendations, such as
40 exploring the issuance by SEC of a circular or policy that would simply require BO to be
41 part of the regular reporting of companies. However, there is a difference between

1 getting the information reported by companies and actually making the same
2 information publicly available. According to the secretariat, they were able to at least
3 identify possible entry points to engaging the SEC for integration of PH-EITI's BO agenda.
4 The secretariat also noted that, surprisingly, data privacy did not come out as an issue
5 during the discussion.

6
7 The secretariat said that, moving forward, they intend to continue engaging the SEC, and
8 that they have expressed PH-EITI's interest to be engaged by SEC in its own BO
9 transparency initiatives as well. The secretariat will likewise monitor what SEC will do in
10 line with the FATF assessment in November as an entry point for EITI.

11
12 After the secretariat's report, the Chair asked about the status and timeline of the BO
13 Roadmap. The secretariat informed that, as of date, the scoping study has been
14 completed and the MSG has already agreed on a definition for beneficial ownership,
15 essentially adopting the Securities Regulation Code (SRC) definition, and published the
16 same in the 4th Report. For 2018, per the BO Roadmap, PH-EITI should have a champion
17 for BO transparency, reporting templates, and pilot testing of the templates (2-3
18 companies and relevant agencies).

19
20 Upon the Chair's query as to what "champion" means, the secretariat responded that it is
21 someone who is in a position to sponsor or advocate for the BO agenda. A CSO
22 representative recalled that in an international EITI BO conference in Jakarta in October
23 2017, SEC Director Aquino, who served as a resource person in one of the
24 workshop/breakout sessions, expressed commitment to work with EITI on BO, even
25 offering SEC's technical expertise on the matter.

26
27 The Chair then instructed the secretariat to push for a meeting with Director Aquino and
28 make clear the intention of making him PH-EITI's BO disclosure champion. The Chair
29 believes that even just one press release from SEC that they are championing BO
30 transparency and that they will consider using the EITI template would be a big step.

31 32 **6. Mainstreaming EITI**

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34 Atty. Gay Ordenes gave a presentation and led the discussion on EITI mainstreaming or
35 systematic disclosure. According to her, it simply means that, instead of EITI producing
36 reports every year, the current government and company platforms will now be used to
37 disclose EITI data. With mainstreaming, there would be no more need to go through the
38 whole process of procuring an independent administrator and publishing a report.

39
40 Atty. Ordenes informed that during the EITI Board meeting in Oslo in February 2018, it
41 was decided that the default expectation from implementing countries right now will be

1 to move towards systematic disclosure. The advantage of this is that the country/MSG
2 can now do away with the very costly and time-consuming process of publishing an EITI
3 report. The time can be spent on other things like data analysis or policy
4 recommendations and reforms instead.

5
6 The idea is that transparency should be an integral part of how government manages the
7 extractive sector. Also, mainstreaming or systematic disclosure would enable more up-to-
8 date information. If one would look at the current data being disclosed, there are existing
9 databases that provide very recent data. The MGB website, for example, gives data as
10 recent as from the 1st quarter of 2018. So, if the information is already out there, there is
11 no point in producing an EITI report with older data.

12
13 Atty. Ordenes showed examples of countries already doing mainstreaming (e.g., Norway,
14 Kazakhstan, etc.). Data/information on extractives are already uploaded in their
15 websites. Hence, information that are already reflected in their websites are no longer
16 included in their EITI reports which have, thus, become shorter. She told the MSG that, if
17 they want to know more about how other countries are doing it, they can refer to
18 feasibility studies for Kazakhstan, Kyrgyzstan, and Norway which are all accessible from
19 the EITI website.

20
21 Atty. Ordenes emphasized that systematic disclosure can be partial; it does not have to
22 be immediate for all requirements. She mentioned that the secretariat is doing a
23 mapping exercise to identify what is already being disclosed by companies and
24 government, which can be where mainstream reporting can start.

25
26 The MSG was encouraged to work closely with the reporting agencies to make sure that
27 the level of disaggregation that they are using is compliant with the level that is required
28 by EITI standards.

29
30 Atty. Ordenes also showed a screenshot of the OceanaGold company website which
31 provides very recent information on production, revenues, etc., even graphs. She said
32 that other companies are likely doing the same thing. She reiterated, though, that the
33 level of detail or granularity of data is something that has to be agreed upon with the
34 companies.

35
36 Atty. Ordenes cited the Board's February decision: "The board reaffirms that
37 implementing countries are expected to take steps to integrate EITI implementation in
38 companies' and governments' systems." The word "expected" means that, compared to
39 before where the expectation is to publish a report, the expectation now is to
40 mainstream it; and if a country is not doing this, it has to explain to the board.

1 Atty. Ordenes said that in mainstreaming, the data will not be reconciled anymore, but a
2 good data quality assurance procedure must first be established. She noted that in the
3 case of the Philippines, based on the reports, the overall discrepancy, except for NCIP, is
4 minimal at about 3%. This implies that there should be a reconciliation report for the
5 NCIP part. However, it will not make sense to perform reconciliation for companies who
6 have their financial statements audited according to international standards as well as for
7 government agencies who are audited by COA based on international standards. This
8 may be why, year after year, the discrepancy in these sectors is small. In addition, there
9 seems to be no “exciting story” out of the reconciliation exercise, as it is usually just
10 about timing, cash versus accrual, etc.

11
12 Atty. Ordenes said that there is no fixed period for mainstreaming, because the Board
13 recognizes that countries have different contexts. Hopefully, the Philippines can
14 transition to a fully mainstreamed approach within 3 to 5 years.

15
16 Atty. Ordenes also said that the MSG should consider the opportunities and priorities,
17 identify the low-hanging fruits, identify the challenges, and, most importantly, determine
18 the MSG’s role in the mainstreamed approach which is the issue in most countries.
19 According to Atty. Ordenes, in some countries, they think the MSG will no longer have
20 any role; but this should not be a concern, as mainstreaming will, in fact, give more time
21 for the MSG to talk about more interesting issues.

22
23 On the issue of lack or unreliability of Internet facilities in provinces, which makes access
24 to the reports a problem, Atty. Ordenes said that the MSG can still publish a summary
25 report, if only to highlight the important facts; and roadshows can still be done.

26
27 Atty. Ordenes then presented the next steps that the Board expects MSGs to do for 2018:

- 28
29 • **To orient work plan towards systematic disclosure.** Work plans may need to be
30 revised to include activities related to mainstreaming. The activities would include
31 results of mapping exercise that is being done by the national secretariat.
32
33 • **To secure funding support, particularly for agencies that are not so advanced when**
34 **it comes to updating their data.** The Board has been discussing this with
35 international donors, and if revision in work plans would require funding, there is
36 high possibility that donors like WB, ADB and JICA would be willing to provide
37 support. EITI International also committed to help in identifying other sources of
38 funding and technical assistance, if needed.
39

- 1 • There would be **implications for outreach, MSG role, and open data policies**. In the
2 case of PH-EITI, Atty. Ordenes thinks that this will not be a problem. The MSG roles
3 may be redefined, but this just has to be reflected in the TOR or MOU for the MSG.
4

5 Atty. Ordenes disclosed that in the coming weeks, the International Secretariat may
6 announce a mainstreaming commitment tracker. The countries will be asked to give
7 certain commitments, for example, a commitment to fully mainstream new license
8 registry. The EITI Chair will give awards for progress in mainstreaming during the global
9 conference next year.

10
11 Common challenges:

- 12 • **Lack of technical capacities**. Atty. Ordenes thinks that this will not be a problem for
13 the Philippines. At the minimum, excel files would be sufficient as long as data are
14 uploaded in open format.
- 15 • **Resistance to open data**. Atty. Ordenes shared that many of companies' reports are
16 still in pdf form. All they have to do is upload the corresponding excel file that
17 supports the figures in the annual reports.
- 18 • **Non-disclosure rules**. Where this exists, e.g. confidentiality provisions, EITI reports
19 and the website can be used as interim platforms while seeking regulatory changes.
20 As this may take long, the use of BIR waivers and the usual processes will still have to
21 be gone through until such time that the legal obstacles are addressed or tax codes
22 are revised.
23

24 Atty. Ordenes concluded her presentation with questions for discussion and
25 consideration of the MSG: (i) What is the realistic timetable for PH-EITI to move towards
26 mainstreaming or systematic disclosure? (ii) What would be the role of MSG? (iii) What
27 are the low-hanging fruits at this point?
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29 The Chair commented that the questions are interesting but there was not enough time
30 to discuss them because they need thorough review. She said that one thing very
31 significant at this point is the institutionalization of EITI reporting, so that EITI is shielded
32 from political machinations and future political changes.
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34 On the NCIP being the usual cause of significant variance, the Chair opined that NCIP
35 might have to think of another way of monitoring what it is that it is supposed to
36 monitor. It is difficult to say that NCIP is really subjected to reconciliation when it neither
37 collects nor receives the money. Unfortunately, NCIP is lumped together with other
38 collecting agencies even if it is not a collecting agency. MSG needs to find a different way
39 of referring to NCIP and to the discrepancy between what NCIP renders and what the
40 companies report. She said that there is a need to sort out what the real issues are with
41 NCIP in order to find the right solutions. PH-EITI is not here to say that NCIP is not doing

1 its job; rather, it wants NCIP to be able to do its job and to find ways for it to do its job
2 better.

3
4 A CSO representative articulated his reservations about mainstreaming, saying that in the
5 context of transparency and accountability, the discovery of variances, however small, is
6 very important, because it is data in itself. In the absence of the EITI report, it cannot be
7 determined exactly what the difference between government reporting and industry
8 reporting is. If this is the case, it might be better not to do it (mainstreaming) at all. He
9 also mentioned that it would be difficult to predict what is going to happen when PH-EITI
10 mainstreams. He worries that if PH-EITI goes for systematic disclosure, no one will
11 control or regulate the mainstreaming process. He suggested doing nothing for now,
12 although he acknowledged that it is good that people are talking about mainstreaming.

13
14 It was also pointed out that other implementing countries are complaining about why
15 mainstreaming has to be done when they are still catching up with the countries who are
16 already doing reports. Why is there a need to go fast and leave behind other countries
17 who are still at the early stages of implementation.

18
19 The Chair recognized the reasonableness of the arguments raised. She said that just
20 because PH-EITI is going towards mainstreaming does not mean it will follow the
21 Norwegian way. That is why the initial task for the secretariat is to do the mapping. What
22 is required of PH-EITI is to look at this as something that has to be accomplished
23 sometime in the future, whether near, intermediate, or distant future.

24
25 The Chair shared that her main reason for personally wanting to mainstream is to
26 institutionalize, to ensure the sustainability of reporting as EITI standards require. The
27 transparency, the openness of the data will be maintained even without the MSG
28 focusing on the reports. She explained that reports will still be done, but it will go beyond
29 simple reporting of variances. There will be more analysis, which is more important,
30 especially on the part of government -- what kind of policies still need to be done, what
31 reforms still need to be pushed for, what kind of advocacies must be presented, where
32 stakeholders would need to put their stakes on.

33
34 The Chair further clarified that systematic disclosure will not be done immediately such
35 that the 2018 report will already be mainstreamed. She proposed that a TWG be formed
36 to work on this concern and to allay the fears of some MSG members that we might be
37 led to let go of EITI victories already gained.

38
39 There would certainly be further engagement at the LGU level. EITI has opened up so
40 many avenues for LGUs' information and understanding of the limits of resources and
41 what can be done with them. These will not be wasted. In fact, the objective of

1 mainstreaming is really to foster their foundation, that is, more LGU engagement and
2 capacity building.

3
4 Atty. Ordenes added that if there is an MSG in the world that would be a good model for
5 mainstreaming, it would be the MSG in the Philippines, because the PH-EITI MSG is highly
6 capable of discussing policy reforms.

7
8 A CSO representative commented that NCIP may not be a collecting agency but it is still a
9 monitoring agency with an important role to play. She opined that PH-EITI can help NCIP
10 if the agency would admit that there are gaps and want some help in the area of capacity
11 building and in their appreciation of what their role in the extractives is. Since the actual
12 recipients of the proceeds are IP communities, it should be the role of the IP community
13 to report what they receive. There is a need, more particularly, to build capacities within
14 IP communities for them to report, because they are accountable for the proceeds they
15 receive from extractive companies.

16
17 On another note, the same CSO representative said that they are still pushing for the
18 institutionalization of EITI. Still, cognizant of the many challenges and uncertainties, she
19 commented that the best way is to remain seamless and to work on what they currently
20 have.

21
22 Another CSO representative opined that one of the major functions of the MSG under a
23 mainstreamed EITI would be to identify the steps or procedures to be followed to ensure
24 integrity of data and accountability of the companies. She was of the position that there
25 still has to be a report but not the kind currently produced. She suggested that there be a
26 closer look and more in-depth discussion of issues and identification of MSG focus. This
27 way, the MSG will remain relevant and able to push the boundaries.

28
29 An industry representative moved for the formation of a TWG that would discuss the
30 details of mainstreaming, considering that this will be a major thing for PH EITI and that
31 there will be a lot of issues accompanying the transition. The motion was seconded.

32
33 The secretariat summarized the points discussed about mainstreaming:

- 34 - The MSG will be doing very specific identification of activities towards
35 mainstreaming, and the TWG will have a first go at it. The first of these activities is
36 the mapping.
- 37 - There would be a revision of the work plan which had already been approved in
38 principle by the MSG.
- 39
40 - There could be possible revision of the MSG's fundamental documents, i.e., the MOU,
41 the TOR; and

1 - PH-EITI's mainstreaming commitments should be identified.

3 7. Updates on production of 5th Report

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5 The secretariat reported that the three TORs – for the independent administrator (IA),
6 contextual information writer, and online reporting tool consultant – have been finalized.
7 Those for the contextual information and online reporting tool have already been posted
8 online in PhilGEPS. To date, there have been received two proposals for the contextual
9 information. For the online reporting tool, the prospective consultant has reaffirmed its
10 commitment to the deadlines, particularly to the target launching on June 29, 2018. This
11 would immediately be followed by data collection during the roadshow period in July and
12 August.

13
14 For the IA, the secretariat informed that a pre-bidding conference has been conducted.
15 The procurement milestones have been calendared, with October 31, 2018 still being the
16 targeted date of publication. While there is some delay in the procurement, progress is
17 still positive. By June 8, 2018, in time for the 52nd MSG meeting, the secretariat hopes to
18 have the templates and scoping finalized and approved by the MSG so that these can
19 already be incorporated in the online tool.

20
21 The secretariat also mentioned that another firm, Moore Stephens, has expressed
22 interest to bid for the IA contract this year. The firm handles the reconciliation report of
23 many EITI implementing countries. The Chair asked as to why the show of interest just
24 now, and the secretariat surmised that it is possibly because PH-EITI has already been
25 found compliant.

26
27 Upon request by a CSO representative for updates on the PH-EITI contracts portal, the
28 secretariat informed the body that the Department of Information & Communications
29 Technology (DICT) has expressed interest to help in the hosting of the portal in
30 **govcloud.ph**. Hopefully, by June 29, the target launch of the online reporting tool, the
31 contracts portal can also be re-launched. It may also have to be rebranded, considering
32 that the portal will have information other than contracts.

33
34 A government representative commented that while the date of publication of the 5th
35 Report has already been targeted at October 31, the scope of the report has yet to be
36 determined and finalized.

37
38 The secretariat responded by bringing up the idea of convening a small TWG (where all
39 sectors are represented) to discuss the scope and templates for the 5th Report, so that
40 preliminary technical work can already be done and the output of the TWG can just be
41 reported to the MSG for approval or ratification in the next meeting.

1
2 **8. Updates on implementation of DENR Administrative Order No. 2017-07**
3

4 According to the secretariat, the matter has been extensively discussed during the last
5 meeting as reflected in pages 14 to 17 of the minutes of the last meeting, and most of
6 the people who participated in that discussion are also in attendance in the present
7 meeting.
8

9 The main concern regarding implementation of the DAO is the MSG's need to be
10 informed about the consequences of the process so far. It was recalled that during the
11 last meeting, it was reported that the MGB as well as the EMB issued show cause orders
12 to non-participating companies. Consequently, some of these companies tried to comply
13 by belatedly submitting waivers and reporting templates. The secretariat asked to be
14 guided as to how to move forward, considering the directions that MGB or DENR is taking
15 as to implementation.
16

17 The following questions were posed: Has the agency counted as compliance the belated
18 submission of templates and waivers? If that is the case, would this be something like a
19 "first-run" experience or policy, or will this be sustained, effectively sending a signal that
20 belated compliance is still compliance?
21

22 The government representative from MGB explained that there has been some
23 ambiguity on the DAO possibly because the penalty clause says, "until such time that the
24 said contractor has complied with the PH-EITI requirements". The companies who
25 submitted waivers and reporting templates may then be considered to have been given
26 time to comply and later complied with the disclosure requirement. For those with
27 pending compliance, the penalty clause will still be imposed.
28

29 It was reported that the EMB also took action by giving non-participating companies
30 notice of adverse finding (NAF) regarding this. Two companies, CTP and Cambayas,
31 received copies of the show cause letters from EMB.
32

33 The Chair commented that based on the wording, the DAO does not seem to define
34 compliance rigorously. It would appear that belated submission of EITI requirements can
35 be considered enough compliance, and any sanctions will be lifted thereafter. This is
36 quite unclear unless it is just for the first/transition year.
37

38 It appears that the way for companies to get the sanction lifted is to submit something,
39 but they were penalized for something that they, in fact, did *not* do in the past; yet it
40 does not incentivize them to do something to avoid the sanctions for succeeding reports.

1 What is ideal is that the application of the sanction will make it mandatory for them to
2 submit *timely* reports.

3
4 The secretariat gave a summary of the discussion on the matter during the last meeting
5 where some practical recommendations were given by MSG members. It was noted,
6 however, that it would still hinge on how the MGB or DENR would reckon compliance or
7 non-compliance. One of the recommendations was: During a reporting cycle, PH-EITI
8 would send letters to targeted or scoped companies to request them to accomplish the
9 reporting template (whether electronically or on paper). The letter would have a clear
10 indication that the deadline for submission will be a reckoning date for determining non-
11 compliance. MGB would be copy-furnished in the letter.

12
13 However, during that last meeting, MGB was of the opinion that determination of non-
14 compliance can only be made after the report gets published.

15
16 The secretariat asked if MGB would like to reconsider this interpretation.

17
18 The MGB representative confirmed that, indeed, the only time they can identify non-
19 compliant companies is after publication of the report. However, he recalled that during
20 the last meeting, it was agreed that the MSG will meet with MGB to discuss this matter.

21
22 A CSO representative commented that the statement “until such time that the said
23 contractor has complied with the PH-EITI requirements” suggests that there is no specific
24 period for compliance. It does not say that the contractor will be sanctioned if, for
25 instance, they write a letter requesting for extension of submission.

26
27 The same CSO representative asked the industry if, during the drafting of the DAO, there
28 was ever a discussion as to the period for compliance. An industry representative replied
29 that the DAO is poorly worded and that is precisely the problem.

30
31 The MGB representative further pointed out that while the DAO refers to mining
32 *contractors*, it is actually intended for *operators*. Mining contractors and operators are
33 different.

34
35 The Chair said that everyone agrees that the wording of the DAO is not very clear. It does
36 not help in monitoring compliance.

37
38 A CSO representative suggested that the letter to be sent to companies should indicate
39 the cut-off date for submission and state that beyond such date, submissions will no
40 longer be accepted. Thus, as far as PH-EITI as end-user is concerned, the reckoning dates

1 would be clear and final. The Chair commented that this can only be given as an input to
2 possible guidelines, as the DENR-MGB has the final say on how to interpret compliance.

3
4 The MGB representative pointed out that the process, at least, assures that the
5 companies who have responded to the show cause letters will participate in the next
6 reporting cycle. He also shared that most of the companies who did not participate last
7 year were suspended, although MGB did tell these companies that suspension does not
8 exempt them from complying with the DAO.

9
10 The secretariat recalled the issue on the need for implementing rules and regulations
11 (IRR) or guidelines, although MGB has declared the same to be unnecessary.

12
13 While PH-EITI would not want to unduly intervene in the prerogative of regulatory
14 agencies, it would greatly matter to PH-EITI if this can be discussed and addressed during
15 the meeting with MGB, since PH-EITI is bound to observe strict deadlines yet would not
16 want companies penalized because of unclear rules.

17
18 An industry representative commented that, looking forward, if PH-EITI is to mainstream
19 reporting, there must be a clear definition of compliance, considering that reporting
20 would already be dispersed among several agencies by then. For instance, will
21 submission to BIR constitute compliance even if there is no submission to other
22 units/agencies?

23
24 The secretariat asked if, perhaps, an ad hoc set of rules can be considered, if only to have
25 clear guidance for the 5th reporting cycle.

26
27 The Chair asked if the DAO covers only metallic mining. The MGB representative
28 responded that they sent show cause letters only to metallic and non-metallic
29 companies. It may appear that oil and gas and coal companies are not required to comply
30 with the DAO. The Chair said that there might come a time when somebody will question
31 why there are different standards, one for mining and another for oil and gas, or why
32 there are stricter rules for the mining sector while oil and gas and coal seem favored. The
33 Chair asked for the DOE representative's comments or reaction.

34
35 At this juncture, the DOE representative requested for a copy of DAO 2017-07. The Chair
36 instructed that DOE be furnished a copy of the same.

37
38 An industry representative commented that this is the reason why they wanted to have
39 an audience with the DOE Secretary, i.e., to raise the possibility of DOE issuing a similar
40 or even much better DAO. He noted, though, that if an EITI bill is passed into law, then all
41 these DAOs become superseded.

1
2 The Chair remarked that what they want to avoid is a situation where PH-EITI will be
3 hailed to court for violating the equal protection clause.
4

5 A CSO representative pointed out that while MGB does not cover coal, the EMB does,
6 since the latter issues the ECC. She expressed hope that EMB will also issue a notice of
7 adverse finding (NAF) to SMPC. The MGB representative said that they forwarded the list
8 of non-participating companies to the EMB Director for appropriate action. MGB noted
9 that EMB sent NAFs (where MGB is copy-furnished) only to two companies, Citinickel and
10 Cambayas. SMPC was not sent a NAF.
11

12 The Chair summarized the action points as regards DAO 2017-07:

- 13 - MGB was requested to inquire from EMB what action it has taken on SMPC.
 - 14 - The secretariat was instructed to provide DOE with a copy of the DAO.
 - 15 - The DOE representative was requested if they can help facilitate the setting of a
16 meeting with the DOE Secretary.
- 17

18 **9. Other Matters**

19

- 20 • ATM letter to PH-EITI on civic space
21

22 The secretariat provided a brief background on the matter. The letter from Alyansa Tigil
23 Mina (ATM) was also signed by members of the BK Board and was emailed to DOF
24 Undersecretary Agabin and Assistant Secretary Habitan, PH-EITI focal person and
25 alternate focal person, respectively. The secretariat's general email address was copied
26 as well. Upon instruction from the focal persons, the matter was included in the agenda
27 of the present meeting.
28

29 The letter basically requests PH-EITI for an assessment of an apparent assault on civic
30 space. It is unclear if the request was made in the context of EITI implementation or has
31 a broader objective. The secretariat said that perhaps the CSO representatives involved
32 in the sending of the letter can elaborate on the matter.
33

34 A CSO representative explained that the action requested in the letter would be: (i) an
35 acknowledgement that the situation described is a reality, and (ii) the possibility of
36 having the case referred to the relevant institution, like the Commission on Human
37 Rights (CHR), recognizing that EITI may not be the proper body for this matter.
38

39 The CSO representative went on to share that the challenges of reaching out to
40 communities have been discussed within the CSO network. She cited the situation in
41 Mindanao where movement has been impeded by issues like "terrorist branding" and

1 the ongoing martial law. They have had instances where their IP communities would
2 rather not meet in their area where they used to meet. In the north, there are numerous
3 checkpoints before one can get to the sites. These checkpoints, they sense, are targeted
4 at those primarily working with communities. It was also mentioned that CHR is
5 currently reviewing and putting together a National Action Plan on Business and Human
6 Rights, where one of the issues is human rights in mining sites and impacted
7 communities.

8
9 An industry representative expressly put on record the industry's strong resentment
10 against the apparent implication that mining may have a role to play in the issue laid out
11 in the letter. He said that the statement in the letter which says that "*half of the large-*
12 *scale metallic mines operate in this area*" is totally false. This is typical of what ATM
13 does, and he does not mind being quoted since he has had a number of encounters with
14 the group for many years already. He felt that putting it in the letter and addressing it to
15 PH-EITI is simply implicating extractives in the crime. He believes that this is something
16 that PH-EITI should not get involved in. The issue should be dealt with by the relevant
17 authority. He also said that everyone is concerned about civic space, everyone knows
18 what democracy is, and no one would want to put a limitation to any of it.

19
20 The Chair said that the decision the MSG members have to make is a very challenging
21 one. The issue is very contentious. She said that this is something that the MSG has, for
22 the most part, gotten over during the initial period of EITI. She encouraged the MSG
23 members to consider what is it about EITI that they value and why is it valuable, and,
24 further, what are the limits of the current EITI mandate. The fact that there are acts of
25 violence happening around should be recognized, but there are certainly limits to what
26 PH-EITI can do.

27
28 The Chair said that PH-EITI needs to draft a letter that acknowledges the issues being
29 raised, but it should also explain the role of EITI and its current mandate. She said that
30 there are larger issues involved, which, she believes, are eating away at the edges of
31 democracy.

32
33 The Chair said that one of the major contributions of EITI so far is the strengthening of
34 the democratic process and civic space, which should be protected and not restricted.
35 She also underscored the need to safeguard the open dialogue that already exists within
36 the MSG, citing the fact that members can listen to each other and can acknowledge the
37 common issues that face the sector.

38
39 A CSO representative from the IP sector recalled a 2017 report from Alex Gordy of the
40 EITI International Secretariat, where the death of one supposed environmentalist in
41 Compostela Valley was mentioned. He said that he personally knew the guy to be an

1 anti-mining activist but he never thought of him as an environmentalist, simply because
2 the guy operated the largest hydrolicking facility in one of the barangays in Compostela
3 Valley. Two years before he died, farmers were already complaining that the rice fields
4 were silted due to the operations of the hydrolicking facility. However, when he died, he
5 was portrayed as an environmentalist, and it was sad to see former DENR Sec. Lopez
6 attending his wake. The IP representative sought pardon from the members, but he
7 wonders why people seem to have a very gloomy outlook on Mindanao, when it is very
8 sunny there.

9
10 The point is that for every death of an IP, it does not necessarily mean that he died
11 because he was an activist or because he was an environmentalist. It depends upon
12 what his group portrays him to be. Sometimes, people use situations like this for
13 propaganda. Every death is a sad thing, but people have to maintain an open mind as to
14 the real cause of the demise and must not be affected by the political undertones of the
15 issue. His stand is to condemn the death/violence but give time for the appropriate
16 agencies to investigate the cause of death. This should not immediately be linked to
17 political issues just to give some semblance of justice for the person who died.

18
19 The Chair opined that the comments of the IP representative were fair, because every
20 death that is not natural deserves justice, but linking it to anybody's agenda should be
21 discouraged and avoided to protect the credibility of EITI.

22
23 A CSO representative commented that there seems to be a mixing of issues on "civic
24 space". Civic space in the context of transparency and accountability in the extractive
25 industries is totally different from the particular issue raised in the letter. He thus
26 suggested that there be a clear definition of "civic space" in the said context. If civic
27 space is equated with participation, there is already visible CSO participation in the
28 extractive industries. But as to what extent is yet to be known because there is no
29 specific research data on this at present. What is clear is that if the issue raised in the
30 letter is mixed with political issues, and civic space is defined in the context of these
31 political issues, then it becomes a problem. His suggestion was to separate the issue
32 raised in the letter from EITI concerns. It can be dealt with separately in a different
33 avenue. But if MSG members want to participate in the discussion of issues, then results
34 found to be EITI-related can be discussed in the MSG.

35
36 An industry representative expressed full concurrence with the statements of the CSO
37 representative. He also brought to the fore one of the core principles of EITI, which is to
38 have a civil society that is free, independent, and untethered in its review of what EITI
39 does. If the ATM letter alleges that there is an assault on civic space, and if PH-EITI really
40 needs to look into it, then he would go with the CSO representative's suggestion to put it
41 into perspective, to limit it to what EITI is doing and what the CSOs' roles are. Should it

1 be found that there is any restriction or assault of civic space within the EITI framework,
2 then maybe PH-EITI should really be doing something about it.

3
4 The secretariat recapitulated the points made and asked if they would be accurately
5 summarized as follows:

- 6 - The response to the ATM letter will include a statement that it is not within the
7 mandate of the MSG to take action on the specific request/s as contained in the
8 letter.
- 9 - There will also be a statement on civic space particularly in the context of EITI. There
10 will be mention of the state of civic space vis-à-vis the untethered exercise of civil
11 society's right to participate in this context.

12
13 The Chair reminded the secretariat to add the points raised by the IP representative.

14
15 A government representative from ULAP suggested that the response may be started
16 with text to this effect: "While the MSG is empathetic to the death..., we need to clarify
17 the limits of our mandate.... "

18
19 A CSO representative suggested the use of words such as "acknowledge receipt",
20 "empathize", "it is not within the mandate of EITI", and "refer the issue to a relevant
21 agency, whether CHR or other agency," just so that there is an action point.

22
23 The secretariat expressed reservations about referring the matter to a particular agency
24 because it may be tantamount to an unwarranted legal conclusion. PH-EITI is not in the
25 position to determine jurisdiction over the matter at hand.

26
27 An industry representative directed a query to the CSO representatives: How would you
28 define civic space in the context of EITI?

29
30 A CSO representative responded with the following statements: "Within the EITI MSG,
31 we really feel that this is a safe space to discuss, and there is really no issue at all. The
32 level of discourse and maturity of relationships are quite high. It is very clear that we can
33 safely discuss and express our thoughts and there is some sort of agreement to focus on
34 constructive engagements. There is common agreement, though unwritten, that if we
35 do have opposing views or ideas, we can take the discussion elsewhere. The issue is
36 when we go down to the community. We cannot say that this is a common feeling that
37 everybody has, but for CSO, we feel the challenges and difficulty when we go down to
38 the community level, where we reach out to people, explaining how EITI has been
39 helpful as a platform for information, what they can learn from it, and how they can use
40 it to push for more reforms."

1 According to the CSO representative, at the community level, there is palpable fear to
2 assemble and to associate. This is the general feeling and this takes a toll and impact on
3 the work of the coalition. The challenge lies more in the hesitation of people to
4 participate due to fear.

5
6 The Chair said that at the back of her mind, she is wishing and hoping that the PH-EITI
7 MSG does not become an isolated case. She said she aspires for the same kind of
8 openness and transparency to occupy much bigger spaces, but she also acknowledged
9 that, sometimes, the environment or circumstance does not favor such transparency
10 and openness. Nevertheless, what the MSG can do is to nurture what they have and
11 then move slowly but relentlessly towards engaging more, to make sure that people
12 understand why it is necessary and more helpful to welcome adverse opinion or opinion
13 that is different from yours.

14
15 Another CSO representative said that what ATM is asking PH-EITI is to conduct or initiate
16 an assessment of the assault on civic space. He suggested that the body could just
17 simply recognize that and say, “We sympathize with you, but we cannot do the
18 assessment”. It seems that the condition of civic space from their perspective is different
19 from the EITI context.

20
21 Another CSO representative opined that the context of the issue on civic space in the
22 letter may lie in the redress of grievances and the people cannot articulate them, or
23 when they do articulate, it is taken against them. When people say that they do not
24 want to get involved and they do not want to talk, it is a matter of concern. If such a
25 situation exists, how can EITI make sure that information can be asked of them if
26 needed? How can it be ensured that community people benefit from what EITI would
27 like to impart to them?

28
29 Yet another CSO representative shared some points for consideration of the body: First,
30 companies have facilitated, one way or another, to make the work of CSOs easier. This
31 has to be recognized, as it exemplifies the value of working in EITI. Second, when he
32 went to conduct an assessment on EJK and civic spaces, one of the respondents said that
33 perhaps violence is not yet felt, but the murkiness of the information being given them is
34 an important aspect of shrinking civic spaces. Thus, EITI, particularly the work of CSOs on
35 transparent data disclosure, is very important because it gave them verifiable tools to be
36 able to combat misinformation. EITI is supposed to contribute to the clarity of
37 information that helps people maintain civic spaces and do sound decisionmaking.

38
39 The Chair agreed with the statements made and thought that these should be part of
40 the response. She believes that EITI can help protect and widen civic space through the
41 data and information that it makes available to the public. The EITI mandate of ensuring

1 that right information reaches the community is something that will help prevent the
2 narrowing of civic space.

3
4 With all the inputs given, the Chair said that a letter response can now be drafted.

- 5
6 • Updates on ongoing/pending projects (PH-EITI-PPI media fellowship, online
7 reporting tool) and upcoming activities (Data Dive, Roadshow)

8
9 In the interest of time, the secretariat informed that these are not critical information,
10 so if the body would like to forego discussion on the updates, the secretariat can just
11 email them.

12
13 The Chair instructed the secretariat to just email the updates. However, she asked about
14 the media fellowship. According to the secretariat, it is not yet finished, because not all
15 the stories have been published. The secretariat said that they are monitoring the
16 progress of the publication and they will share all the stories with the MSG once
17 available.

- 18
19 • Report on PH-EITI financial operations

20
21 The summary report indicated that the funds are still okay. The secretariat explained
22 that the reason why this is included in the agenda is that the World Bank (WB) grant is
23 ending this year, and the WB recommended that the matter be flagged to the MSG for
24 the body to perhaps consider creating a TWG or ad hoc committee to talk about
25 sustainability of funding for the initiative.

26
27 It was assured that there are still enough funds for the year's activities. The secretariat
28 also informed that they have taken action towards transferring or incorporating that
29 part of the budget that is funded by the WB to the PH-EITI budget proposal for 2019
30 under the DOF budget.

31
32 Before moving to the last item in the agenda, the secretariat presented a video tribute to
33 the outgoing MSG members.

- 34
35 • Setting of next MSG meeting

36
37 The next (52nd) meeting was set for June 8, 2018. The secretariat distributed to the MSG
38 members a provisional schedule as a quick reference for upcoming PH-EITI activities.

39
40 With no other matters raised, the 51st MSG meeting was adjourned at 12:20 PM.