Philippine Extractive Industries Transparency Initiative
68TH MULTI-STAKEHOLDER GROUP MEETING
16 April 2021, Friday | 9:00 AM - 12:00 NN | Google Meet

Minutes of Meeting

Attendees

Government	
Asec. Ma. Teresa S. Habitan	Department of Finance
Ms. Charmaine Bagacay-Odicta	Department of Finance
Ms. Febe J. Lim	Department of Finance
Engr. Romualdo Aguilos	Department of Environment and Natural Resources - Mines and Geosciences Bureau (DENR-MGB)

Industry	
1. Atty. Ronald Rex Recidoro	Chamber of Mines of the Philippines (COMP)
2. Atty. Francis Joseph Ballesteros, Jr.	Philex Mining Corp.
3. Atty. Odette Javier	Lepanto Consolidated Mining Co.
4. Atty. Maria Eleonor Santiago	Atlas Mining
5. Engr. Rolando Paulino, Jr.	Shell Petroleum Exploration B.V.

Civil society	
Mr. Vincent Lazatin	Bantay Kita
Ms. Angelica Dacanay	Bantay Kita
Dr. Buenaventura Maata, Jr.	Philippine Grassroots Engagement in Rural Development Foundation, Inc.
Dr. Glenn Pajares	Sectoral Transparency Alliance on Natural Resource Governance in Cebu, Inc. (STANCe)

Mr. Chito Trillanes	Social Action Center - Ecology Desk, Diocese of Tandag, Surigao del Sur
Mr. Nelson Cuaresma, PhD	Concerned Advocates Saving Terrestrial & Marine Ecosystem (COASTLINE) Inc.
Ms. Aniceta Baltar	Concerned Citizens of Abra for Good Governance

| **Guest** | |
| Ms. Pamela Grafilo | Consultant, Mainstreaming feasibility study |

| **PH-EITI Secretariat** |
| 1. Mr. Eastword D. Manlises |
| 2. Ms. Mary Ann D. Rodolfo |
| 3. Ms. Mary Jane I. Baldago |
| 4. Ms. Anna Leigh V. Anillo |
| 5. Ms. Zoe R. Jimenez |
| 6. Ms. Katherine Dennise M. Domingo |
| 7. Ms. Rhea Mae G. Bagacay |

Agenda

Proceedings

I. Call to order

DOF Assistant Secretary Ma. Teresa Habitan chaired the meeting. There being a quorum, the meeting was called to order at 9:07 AM.

II. Approval of the agenda of the 68th meeting

The Chair sought for the approval of the agenda.

A civil society representative motioned for the inclusion of the discussion of the newly-issued Executive Order No. 130, series of 2021 in the agenda.

The Chair suggested that the item be included under Other Matters.

A civil society representative motioned for the approval of the agenda. The motion was seconded and the agenda was approved.

III. Approval of the minutes of the 67th and March 23rd meetings

The Chair asked the Secretariat when the minutes of meetings were circulated.

The Secretariat said that the minutes were sent two weeks before the 68th meeting.

The Chair gave the members another week to peruse the minutes and send comments or corrections, if any. If no comment is received, the minutes will be deemed approved.

IV. Matters arising from previous meetings

The Secretariat shared updates on the following matters arising from previous meetings.

NO.	ITEM	ACTION	IN CHARGE	STATUS	REMARKS
	Completed				
	Ongoing				
	Not yet started				
	Abandoned				
From a Special MSG Meeting - 23 March 2021					
SM - 2021.03.23.1	Coal contracts	The Secretariat to coordinate with the DOE to address the lack of coal contracts in the PH-EITI Contracts Portal.	Secretariat	(red)	
SM - 2021.03.23.2	Contract annexes	The Secretariat to coordinate with the MGB to finalize the list of annexes to be published along with the mining contract.	Secretariat	(red)	
SM - 2021.03.23.3	Exploration contracts or permits	The Secretariat to follow up with the MGB and the DOE on their actions to recommendations pertaining to the disclosure of information on mining, oil, gas, and coal exploration contracts and/or permits.	Secretariat	(red)	
SM - 2021.03.23.4	Theory of Change	The Secretariat to propose the inclusion of the discussion of PH-EITI's theory of change in the agenda of one of the next MSG meetings; the Secretariat is also to consider looking for samples of theory of change in the extractives sector.	Secretariat	(red)	
SM - 2021.03.23.5	Representation of non-associated mines in the MSG	The Secretariat to propose the inclusion of the discussion of non-associated mines representation in the MSG in the agenda of one of the next meetings.	Secretariat	(green)	The matter was included in the agenda of the 68th meeting.
From the 67th MSG Meeting - 12 March 2021					
67.1	BARMM engagement	The PH-EITI to make a presentation before the National Government–Bangsamoro Government Intergovernmental Relations Body (IGRB) in its March 19 meeting to orient the Bangsamoro Government on the EITI process following the President's instruction to the DOF Secretary to monitor the	Chair, Secretariat	(red)	The March 19 meeting of the IGRB was postponed as the DOF Secretary, who sits as co-chair of the IGRB, had to prioritize another meeting on the same schedule.

			rehabilitation efforts in mined-out areas in Tawi-Tawi.		🟥	
67.2	Extractives Beneficial Ownership Registry	Following the MSG's decision/agreement in its 66th meeting, the Secretariat to create a extractives BO register where the BO information of extractive projects that consented to publication will be published in open format.	Secretariat		🟩	The BO register has been established and is currently accessible at https://pheiti.dof.gov.ph/boregistry/.
67.3	Roundtable discussion on gender	The Secretariat to update the MSG about the new schedule for the planned roundtable discussion on gender/women.	Secretariat		🟩	The Secretariat proposes that the RTD be rescheduled in the last week of May to allow time for TWG meeting/s and preparations prior to the activity.
67.4	Contract Transparency and Process	The Secretariat to arrange a TWG to discuss contract transparency requirements including information on the processes in the award, transfer, and/or amendment of mining, oil, and gas contracts.	Secretariat		🟩	The matter was already discussed in a special MSG meeting on March 23, 2021.
67.5	Subnationalization	The MSG to discuss subnationalization in a future meeting; the Secretariat to propose the inclusion of the matter in the agenda of a future MSG meeting.	MSG, Secretariat		🟩	The matter was included in the agenda of the 68th meeting.
67.6	Subnational Transfers	The Secretariat to coordinate with the DBM and BLGF to seek further clarification on the process of allocating LGU shares in national wealth and explore ways of improving timeliness of transfer and reporting.	Secretariat		🟥	
67.7	Annual Progress Reports	The Secretariat to publish the progress reports for July 1, 2018 to December 31, 2019, and January 1 to December 31, 2020.	Secretariat		🟩	The annual progress reports have been published and are currently accessible at https://pheiti.dof.gov.ph/annual-progress-reports/.

The Secretariat further shared that a copy of the aforementioned matters is posted on the PH-EITI website and is publicly accessible like the minutes of MSG meetings. If the MSG wishes to check on the status of any item, the members may click on https://pheiti.dof.gov.ph/msg-decisions-and-matters-arising/. A record of MSG decisions is also posted on the same webpage.

V.   Main business

1. Validation updates

<u>Submission updates</u>

The Secretariat shared that the final copy of the Validation templates was sent to the MSG on March 29 for final comments and approval. The deadline for comments and approval was set on March 31. The Secretariat said it did not receive any further comment on the templates, but received categorical approvals or confirmation from some of the members. On April 1, the Secretariat submitted the dossier, updated copy of the 6th Report, and the Validation templates to the International Secretariat (IS). Prior to the submission of the aforementioned, the Bantay Kita (BK) also submitted a separate shadow report on civic space in the Philippines, entitled, "[A Rising Tide](#)", providing critical information for the Validation team to consider in its assessment of the Philippines' progress. The research assessed the situation of the civic space in the Philippines from the period January 2017 to March 2021, using the [EITI Validation framework on civil society engagement](#). A copy of the shadow report was also circulated to the members of the MSG. On the week of April 5, the Secretariat started sending invitations and following up on confirmations of stakeholders targeted to participate in the stakeholder consultations.

On the week of April 12, the consultations began. Some of the following group of stakeholders have already been consulted:

- Civil society MSG members
- Non-MSG members of Bantay Kita
- IP/local groups
- COMP MSG members
- Non-metallic and non-associated mines
- Asec. Ma. Teresa Habitan
- DENR and MGB
- DOE

<u>Pre-work process</u>

The following is a summary of pre-work activities conducted by the MSG and the Secretariat prior to the Validation:

- February 8 - MSG pre-Validation meeting (on the new Validation model and templates)
- February 15-25 - MSG and Secretariat write-shop
- February 24 - Pre-Validation consultation with civil society stakeholders
- February 26 - MSG pre-Validation workshop
- March 10 - PH-EITI and COA meeting on technical gaps
- March 11 - EITI and PMDC meeting on technical gaps
- March 11 - EITI and PNOC-EC meeting on technical gaps
- March 15 - PH-EITI and DOE meeting on technical gaps

- March 15 - PH-EITI and EITI IS meeting on SE and OI templates
- March 16 - EITI and Sixth PH-EITI Report consultants meeting on technical gaps
- March 16 - PH-EITI and MGB meeting on technical gaps
- March 18 - PH-EITI and EITI IS meeting on the Validation dossier and consultation schedule
- March 23 - Special MSG Meeting on technical gaps

The meetings enumerated were necessary to properly accomplish the Validation templates.

Preliminary comments on the Transparency template

The Validation team has communicated their preliminary comments on the Transparency template and they're expecting the responses to be submitted by April 23. The said comments and list of questions have been shared to the MSG.

The Secretariat sought the MSG's comments or inputs about the entire pre-work process, and how similar activities in the future could be improved.

A civil society representative expressed interest in knowing the comments of the Validation team on the Transparency template. She requested that the comments be presented to the MSG.

The Chair said that the Validation team had a long list of additional questions sent via email. She requested the Secretariat to resend the email so the MSG can have another look.

The Secretariat said that the list shared with the MSG includes specific questions for some implementing agencies and questions directed to the MSG and Secretariat. The Secretariat briefly presented the questions on the Transparency template. The Validation team has not yet submitted any questions or comments on the other Validation templates - the Stakeholder Engagement and Outcomes and Impact templates.

There are questions about the work plan. The Secretariat shared that it had a short meeting with the Validation team in the same week as the 68th meeting, and it already clarified some information about the work plan. There are also questions on state participation, pertaining specifically to the participation of PMDC, PNOC, and PNOC-EC. The Validation team is still checking if another round of meetings should be scheduled with the GOCCs. There are questions on comprehensiveness, pertaining to the materiality threshold and the MSG's criteria or parameters for deciding which companies and revenue streams are included in the reconciliation. There are also some concerns about the completeness of the data, since some companies were not able to fully disclose tax payments.

There are sets of questions about SOEs, subnational payments, disaggregation of data, and data quality. For the questions on quasi-fiscal expenditures, the Secretariat shared that in the special MSG meeting on March 23, the MSG confirmed that there were no quasi-fiscal expenditures for the period under review (FY 2018), rendering the requirement not applicable to the Philippines. However, the Validation team still has follow-up questions and would like to confirm whether the MSG has considered all forms of expenditures by the SOEs. There are also questions about the extractive industry's contribution to the economy.

The Secretariat said that the plan is to transfer the questions into a Google Sheet so responses to each question could be properly recorded in matrix. The matrix will also be shared to the MSG for inputs. The consultants for the 6th Report will also be requested to assist the secretariat in responding to the questions.

The Secretariat explained that the list of questions are preliminary, which means that the Validation team is still reviewing all the submissions, and that they will submit to the MSG an initial report with additional comments and questions. The MSG will be requested to respond to the comments. Between now and then, the PH-EITI can still implement some enhancements or improvements in EITI implementation. The Validation team said that they will consider such quick fixes or improvements in implementation in the final report. This means that should the PH-EITI have a pending requirement which was not accomplished prior to the commencement of the Validation, but was accomplished during the consultations or review, the Validation team will still consider such in the assessment of progress. The Secretariat will send the list of questions in a Google Sheet so the MSG can also provide inputs.

An industry representative asked whether the Validation team wants to talk directly with the PNOC-EC or via PAP. The Secretariat said that that can be proposed to the Validation team. The IS already had a meeting with the PMDC and PNOC-EC in March 2021. They already clarified some items or points, and information shared in those meetings suggests that the revenues of PNOC-EC and PMDC for FY 2018 are not material. Thus, the specific requirement on SOE transactions appears not applicable for the fiscal year under review. The Validation team, however, still has questions regarding the matter.

The Chair shared that she finds the Validation team unusually focused on the GOCCs. It appears that they do not believe that in the Philippines, the SOEs are not significantly participating or material players in the extractives industry.

The Secretariat surmised that it may be because SOE transparency is one of the EITI International's priorities for this year. The Chair said that she is aware of the priorities of the EITI International, but it does not mean that for every country, it is the same priority.

A government representative asked for clarification on the email sent by the Secretariat regarding the possible questions for the Validation. He asked if these are the same questions or comments on the Transparency template. The Secretariat explained that some of the questions already appeared in the gaps analysis matrices

that were sent to the agencies. Some of the questions are the same with those in the Transparency template, but the Validation team has some clarifications on the responses submitted. It is just a matter of explanation or elaboration of the responses, which is something that the MGB and DENR could clarify in the consultation with the Validation team.

Following BK's submission of a separate report on civic space, and considering some significant findings, the secretariat proposed that the MSG have a separate discussion on the key findings and recommendations of the said report. A copy of the report has been circulated to the MSG. The secretariat will also propose its inclusion in the agenda of the next meeting.

2. *Update on the production of the 7th Report*

The production of the 7th Report was divided into two phases due to administrative delays. The first phase was completed in December 2020. The TORs for the second phase of the 7th Report had been submitted for processing in November 2020. The processing took about four months before the TORs were approved. The contracts for all four chapters of the report will have an engagement period of April to June 2021. Thus, the 7th Report is expected to be published by the end of June or early July. There are four (4) consultants for the 7th Report, each working on one chapter: Contextual Information, Reconciliation, Industry Outlook, and Thematic Report on SDMP.

The consultants presented their initial findings and updates for the first phase during the 64th MSG meeting in December 2020. The comments gathered from the MSG in the said meeting and the online comment period have been communicated to the consultants.

The MSG has decided during the 66th meeting that the publication of extractives beneficial ownership information for the Seventh and Eight PH-EITI Reports will remain voluntary through the execution of company waiver and consent to publication. The Secretariat will pursue the compliance of companies that partially complied with the BO disclosure exercise for the 6th Report, and will reach out once more to companies that already categorically declined requests for publication for the 7th Report.

The Secretariat sought comments on updates and plans presented, and requested updates from the MGB and DOE on the explanation for nonparticipation of some companies in the 7th Report. The DOF has written the MGB a letter requesting the enforcement of the DAO 2017-07 on mining companies that did not participate in the Seventh PH-EITI Report. Likewise, a letter was sent to the DOE requesting an explanation for the nonparticipation of a few oil, gas, and coal companies targeted in the Report.

A government representative said that the MGB is evaluating the companies listed as nonparticipating to the PH-EITI and the cause for nonparticipation. He explained that

the nonparticipating companies are under suspension, exploration, and under care and maintenance. Despite that, according to the Mining Tenements Management Division that was consulted, the division will write to these companies to request for a show-cause and explanation of their nonparticipation.

The Secretariat will get in touch with the DOE regarding the request for the oil, gas, and coal companies' explanation for their nonparticipation.

3. *Update on mainstreaming initiatives*

Mainstreaming feasibility study

Ms. Pamela Grafilo, consultant for the mainstreaming feasibility study, presented the study's initial findings which still require validation and additional research. The study used the EITI mainstreaming assessment tool to review the disclosure of EITI data using the 2019 Standard. The consultant said that out of the 16 EITI data requirements which the country is reporting on, only one is mainstreamed, nine are partially mainstreamed, and six need improvement.

Among the initial findings presented was that data privacy law prevents most government implementing agencies from publicly disclosing extractives data which is one of the major reasons why available data within agencies do not get published.

The consultant expounded on other findings related to revenue collection and allocation where she noted that the challenge would be the coordination among several collecting agencies (BIR, BOC, MGB, PPA). The consultant also presented a summary of preliminary findings on data disclosures of MGB, DOE, and NCIP. She then presented the initial recommendations to include the following:

a. Develop clear objectives and approach to mainstreaming;
b. Develop a mainstreaming roadmap;
c. Enact and implement enabling policies;
d. Utilize existing online platforms of PH-EITI;
e. Revisit the roles of the MSG and the secretariat;
f. Design and conduct capacity-building among stakeholders.

The consultant discussed the ways forward which calls for the validation of initial findings, discussion and consensus on the country's mainstreaming approach, and finalization of the mainstreaming roadmap as well as the study itself.

In response to the presentation, the Chair stated that while the PH-EITI is ahead in other aspects of mainstreaming, the initiative has still quite a long way to go to achieve full-scale implementation.

A civil society representative added that political will of stakeholders to disclose data is an important factor which implies the need for PH-EITI's outreach activities in relation to localization/subnationalization efforts. He said that it is important for

PH-EITI to be known and appreciated on the ground. He also sees that having a political will can help address the issues on the lack of budget and personnel dedicated for mainstreaming activities. He raised the capability of some implementers in maintaining a website which would entail additional logistical requirements. The representative emphasized the need for an enabling policy to compel people on the ground to disclose quality and timely data. Lastly, he underlined the importance of implementing mainstreaming not just at the national but also at the local level.

An industry representative highlighted three key aspects in mainstreaming that he noted from the presentation -- people, IT infrastructure, and buy-in/support from organizations -- all of which would require monetary resources. He further explained that these should be among the considerations of the MSG. He expressed that with the ongoing pandemic, companies are challenged and mainstreaming will be a difficult step for them to go through, and thus call for practical ways towards data disclosure.

A civil society representative sought clarifications as to the "what, who, and how" of the mainstreaming initiative. He pointed out that there is no framework on the entire mainstreaming process and it is unclear who shall lead the implementation. The representative said that the international EITI, the national, and subnational PH-EITI should come together and clearly discuss how mainstreaming will be implemented.

Another civil society representative appreciated that the MSG now has a concrete view of what mainstreaming is all about, how it is being done, and the challenges that come with it. She reiterated a fellow civil society representative's concern for the lack of mainstreaming framework. She said that the utilization of data or the impact of data use should also be considered in the framework. Mainstreaming initiative would be irrelevant and would have a big gap if it does not contribute to efforts to transform and empower communities. She recommended another study that would look into the varied capability of stakeholders to access and disclose data, specifically those who do not have access to the internet. According to her, some ways forward would be to tap CSOs or mobilize government agencies. She shared that there are already success stories on how different groups and communities had access to information and utilized it in their decision-making.

Another civil society representative said that the DENR - Biodiversity Management Bureau should also be involved in the mainstreaming initiative since some of the mining operations are in key biodiversity or even protected areas. He said that if the MSG wants comprehensive mining operations data, BMB should be encouraged or required to participate in the EITI process.

An industry representative said that the presentation on mainstreaming was an eye-opener and got him very concerned about the fast-approaching 2022 deadline of the initiative. He wanted to be clarified on the mainstreaming progress and status. He emphasized that unless clear steps are taken by the government and the EITI, mainstreaming cannot be done in five years' time. He also said that the industry has already expressed their concern on mainstreaming which is the decentralization of

data. Since agencies will just have to publish their own data, there will be no central authority to gather and make sense of these data. The representative still sees the importance of publishing an annual country report. He recalled that the IS said that the MSG will not be constrained by any model that the IS will provide and that in fact there is still no model. Each country will have to come up with their own mainstreaming model. The industry decided early on that their mainstreaming model will be a mix of self-application and EITI reporting where annual validation exercise will still be done. The representative proposed a counterpart study that would focus on the private sector. This is because he is concerned if mining companies can do mainstream reporting in a manner that will pass the standards of the EITI International. According to him, COMP conducted an informal survey last year and found out that only 19 (less than 50%) out of the 43 mining companies have a website. He reiterated that there's a lot of "heavy-lifting" that has to be done to be able to accomplish mainstreaming on time.

The consultant acknowledged and expressed her appreciation for the comments and suggestions of the MSG members. She stated that the next conversations on mainstreaming approach or model would really be critical.

The Chair said that the PH-EITI mainstreaming model should be tailor-fitted to the Philippines and not be patterned after Norway, since the country is not in that category resource- and capacity-wise.

The Secretariat responded to the concern about the mainstreaming framework by confirming that the EITI International does not really have a framework on the initiative and that there is no prescription on how each country should implement mainstreaming. The requirement is that the same EITI data being published in country reports must be disclosed in a systematic manner. The Secretariat said that there are already initial agreements within the MSG as to how the mainstreaming model of the Philippines will look like.

A copy of the presentation on the updates on and initial findings of the mainstreaming feasibility study is annexed (Annex I) to this document. Narrative on the initial findings can also be accessed here.

New TORs for the MSG, Secretariat, and IA

One of the items on the possible mainstreaming roadmap is the review of the TORs of the MSG, Secretariat, and independent administrator (IA). The Secretariat recalled that during the MSG's 59th meeting, the body agreed to a set of milestones for EITI mainstreaming. One of the milestones is the review and amendment of the roles and responsibilities of the MSG and the Secretariat. The MSG specifically agreed that the Philippine model of mainstreaming shall maintain the MSG and redefine its functions. Prior to this the MSG and EITI implementing agencies participated in a January 2019 mainstreaming workshop facilitated by the International Secretariat, where the following actions were identified to facilitate the revision of the MSG's role and functions:

1. Amendment of EO 147
2. Memorandum of agreement between and among implementing agencies (DOF [BIR, BOC, BTr, BLGF], DENR [MGB, EMB], DOE, SEC)
3. Issuance of appropriate administrative orders/circulars

The mainstreaming workshop also elicited recommendations to enhance the function of the MSG for it to be instrumental in addressing issues from the ground, perform more solutions-oriented tasks, make EITI data and information more understandable, and initiate more innovations in extractives transparency and resource governance.

The revision of the TORs for the MSG, Secretariat, and IA is also included as a specific deliverable under the DOF's OGP commitment, which completion has a deadline of August 31, 2022.

The Secretariat opined that the initial findings of the study did a good job in verifying the diagnostics that the Secretariat did in 2019 where findings claimed that the Philippines already has plenty of mainstreamed data.

The Secretariat recommended that a TWG be formed and convened to deliberate possible TOR for the MSG, Secretariat, and IA. The TWG is suggested to include one industry representative, one CSO representative, and one representative from each EITI implementing agencies that are not represented in the MSG. The Secretariat further recommended the inclusion of new members to represent non-metallic mines, non-associated mines, and small-scale mines. The NCIP is also suggested to be included as one of the agencies represented in the MSG. Civil society representation is also suggested to be expanded to include either an additional IP representative or a labor union representative.

The Chair clarified and reiterated the implementing agencies proposed to be included in the TWG; these are the DBM, BIR, BOC, BLGF (or more representation from LGUs), and PPA.

A civil society representative suggested including the NCIP in the TWG.

The Secretariat was then instructed to convene the TWG and start the discussion on the revision of the TORs.

4. *8th Report - Approach, Scope, TORs*

Approach

The 8th Report is part of the work plan of the MSG for 2021, which means that two country reports are expected to be published within the year. The Secretariat explained that the reason for including the 8th Report in the work plan is to keep the lag in reporting to only one year and for the data published to remain timely and relevant, considering the impact of the COVID-19 pandemic.

In a special meeting on November 9, 2020, the MSG expressed inclination to adopt either a flexible or alternative approach in producing its 8th or FY 2020 report. The Secretariat explained that the flexible approach does not require reconciliation and may rely on unilateral disclosures. The same approach was adopted for the 7th Report. The MSG, however, still opted to retain the reconciliation process. It is flexible because the MSG can do away with reconciliation, but it also does not prevent the MSG from reconciling data, especially if resources allow it. It also requires forward looking element/s, similar to the Industry Outlook chapter of the 7th Report. For the 8th Report, it could be included in the Contextual Information chapter. The EITI International has released a model TOR for flexible EITI reporting, which the Secretariat has shared with the MSG via Google documents. The EITI reporting could be undertaken either by national secretariats or consultants.

On the other hand, alternative reporting shall be based on collating and analysing systematically disclosed data. Reporting will consider a wide range of context and conditions, encouraging MSGs to become active agents in using data to undertake analysis, influence decision makers and direct information to a wider set of users.

The reason the Secretariat requested the discussion of mainstreaming to come in first was to establish that, based on the definition of alternative reporting, the Philippines may not be ready for such an approach because it requires the analysis of systematically disclosed data. As reported by the consultant for the mainstreaming feasibility study, the Philippines only has one systematically disclosed data, and this pertains to mining, oil, and gas contracts. Although the MSG can do a deeper analysis of the data and information published in the Contracts Portal, it wouldn't cover the remaining and major requirements of the 2019 EITI Standard. Therefore, the Secretariat recommended that the MSG still adopt a flexible approach to reporting for the 8th Report.

Scope

The Secretariat recommended continuing with the use of the 2% materiality threshold in determining which revenue streams will be reconciled and which oil & gas companies are considered material.

Pursuant to the DENR DAO No. 2017-07, all metallic mines will still be covered. With non-metallic mines engagement being an MSG priority for 2021, the secretariat recommended the further expansion of scope of reporting to cover non-metallic mines with at least 0.5% contribution to the total production value of the sector. For the 7th Report, the MSG agreed to cover non-metallic mines with at least 1% contribution to the total production value of the sector, which resulted in the coverage of the top 25 non-metallic mines. Should non-metallic mines with 0.5% contribution to the total production value of the sector be covered for the 8th Report, it is estimated that this will result in the coverage of 30 or about half of all non-metallic mines, representing about 90% of the sector's total production value.

With small-scale mines (SSM) engagement being an MSG priority for 2021, the Secretariat recommended doing a follow-up to the pilot SSM reporting in 2018, by

covering at least five duly registered SSMs in a thematic report. The Secretariat is also looking into revising the reporting template according to the findings of the previous report, implementing it with at least five SSMs, and including it in the 8th Report as a thematic report.

The Secretariat requested the MSG's agreement on and authorization of the aforementioned recommendations and suggested criteria in determining the SSMs that will be covered in the report.

TORs

The Secretariat has drafted TORs for the consultancy service requirements of the 8th Report. The drafts will be circulated to the MSG in the coming weeks for comments and approval. The target is to submit the TORs for procurement processing before the next MSG meeting in May.

A civil society representative asked if the gender data disclosure as well as the beneficial ownership data disclosure will no longer be included in the reporting, since these were not mentioned in the scope of the report.

The Secretariat clarified that beneficial ownership data will still be collected for both the 7th and 8th Reports. For the 7th Report, the Secretariat aims to pursue the compliance of companies that partially complied with the BO disclosure exercise for the 6th Report, and will reach out once more to companies that already categorically declined requests for publication for the 7th Report. For the 8th Report, BO disclosure for FY 2020 will be covered. The Secretariat will need to coordinate with the SEC in terms of BO data collection and publication. Publication of BO data remains prohibited under SEC MC No. 15, so the PH-EITI will have to request for publication separately with the companies.

As for the gender data, it will still be part of the reporting. For the 7th Report, the analysis of the comprehensive gender data collected through ORE has commenced. The Secretariat is in the process of preparing a matrix for the analysis of data. The same data collection will be done for the 8th Report, with some tweaks depending on the analysis of the consultant for the 7th Report, for improvement for the next reporting cycle.

An industry representative raised concern regarding the inclusion of SSM. He said that with the passage of RA 11256, the legitimate SSMs are exempted from payment of income tax and excise tax. His specific concern is that several nil figures might be collected from the SSMs. He explained that it might be better for the PH-EITI to just do a diagnostic analysis of the impact of RA 11256, to know the significant change it brought about, considering the exemption from taxes. Through the implementation of the said RA, it was hoped that the sale of gold to BSP would be improved. The representative thinks that it would be better to study the legal framework of SSM and how to gradually make all SSMs legitimate, rather than doing a reporting exercise with SSMs. Considering the possibility of collecting several nil figures, it could

mislead the public into thinking that nothing is happening in the SSM sector, when in fact they account for 50% of the country's gold production. He suggested that the aspect of SSM reporting be tweaked for the 8th Report.

The Chair agreed with some of the suggestions, and recalled that the real concern of the MSG about the SSM sector is more on issues on governance and the sector's adherence to environmental laws. The Chair proposed that should there be a reporting on SSMs, it will need to go beyond a reporting exercise on revenues because there is going to be none.

A government representative asked for clarification on the year covered by the 8th Report. The Secretariat said that the 8th Report will cover FY 2020. The government representative, then, expressed concurrence with the suggestion of the industry representative and the statement of the Chair regarding government revenue from the SSM sector. He suggested looking first into the formalization of the said sector or the *Minahang Bayan* areas. The MGB has not received any proper data collection yet from the SSM sector since some *Minahang Bayan* areas were just recently established and the MGB is still in the process of formalizing the sector on a maximum scale.

The Chair asked the members if there is an agreement on the scope of the 8th Report.

A civil society representative suggested pursuing collection of data on SSM production, as, while small-scale miners are exempt from paying income and excise taxes, it will still be necessary and helpful to know how much minerals are being extracted, particularly for gold. He also said that some local government units (LGUs) have their own tax ordinances. The report may also look into issues involving tax permits where names are changed. A report on SSM may also empower LGUs, which are experiencing confusion with nomenclatures and policies on tax exemptions.

The Chair clarified that the PH-EITI should still be able to obtain production data, specifically the production volume. The Chair asked the MGB if it collects such data.

A government representative explained that the existing SSMs operating outside the *Minahang Bayan* are considered informal/illegal, so the MGB cannot monitor the entire production of the sector. There are some SSMs in South Cotabato that provide data to the MGB, however, there are only a few SSM contractors. The LGU of South Cotabato is responsible for organizing the SSMs and they coordinate with the MGB for the data collection. However, for the other SSMs, the MGB remains unable to collect data.

An industry representative suggested that the PH-EITI touch base with the BSP so that PH-EITI can confirm production volumes from them and to see if they can provide data even for those SSMs which are considered illegal.
A civil society representative said that the country can get as much as 50% from the SSM sector. His only concern is that in the Zamboanga Peninsula, there are several

SSM activities which are not covered by the *Minahang Bayan*. There are groups that have applied to the *Minahang Bayan* of MGB Region IX, however it has been two years since they were waiting for the approval of their application. He addressed his concern to the MGB regarding the process of registering the SSMs in Zamboanga Peninsula, so that they can participate in the EITI process. He further mentioned that the SSM operators in Zamboanga Peninsula are the LGUs as well. He asked the MGB how this matter can be resolved.

A government representative explained that he is not completely familiar with the issues on and processes for the SSM sector. He also clarified that he is only able to touch base with the SSM operators who are part of the *Minahang Bayan*. There were SSM contracts issued before from LGUs which were not monitored by the MGB. It is stated in the MGB website that there are more than 2,000 SSMs. But even then, the MGB still needs to secure production data of the sector from the BSP. RA 7076 is also being amended to be able to monitor the SSMs, which is done through the establishment or formalization of the *Minahang Bayan*.

The Chair thinks that the issue is that there are pending applications for *Minahang Bayan* which have not been acted upon, hence the Chair asked who is responsible for approving the *Minahang Bayan* applications.

The same government representative explained that the evaluation of the applications are done in the MGB Central Office as endorsed by the Regional Offices. These applications are then endorsed to the DENR. After the DENR issues a clearance for the applications, the applications will be returned to the Regional Office for the establishment of *Minahang Bayan* and issuance of contracts.

The Chair asked how long the cycle of application should be. The same government representative said that the process is prolonged because of the incomplete submission of mandatory and other requirements. When the Central Office evaluates the applications, the requirements submitted are incomplete, so these are brought back to the Regional Office. He explained that the evaluation process for the *Minahang Bayan* is almost the same as with the large-scale mines.

The Chair asked if this process is covered by the Anti-Red Tape Act (ARTA). The government representative said that the process is not yet included in the ARTA; only the Exploration Permit is included in the ARTA.

The Chair asked how the process compares with the applications for a regular mine. The government representative said that there were some portions of the procedure that were removed, however as he mentioned earlier, the process is still almost the same as that of applying for a large-scale mine. This is the reason why there were some SSMs that complained about the process.

The Chair asked the representative whether the DENR-MGB is thinking of reviewing the process, since there is a reason why the concept of a *Minahang Bayan* was introduced in the first place. The Chair thinks that one of the underlying principles for that is the expediency of approval and implicit assumption that requirements were

supposed to be much simpler than the application for ordinary mining permits. A problem is supposedly being solved by the *Minahang Bayan* concept, which is to prevent the SSMs from operating illegally and outside of the ambit of government regulation. But if the government does not make it easy for the sector to come into the fold, then it defeats the purpose of having a *Minahang Bayan.* The Chair suggested that the DENR and MGB review the whole process and come back to the principles for why a *Minahang Bayan* exists, and evaluate whether it is still a viable option moving forward. The Chair thinks it is time to do such a review to determine if the procedures and outcomes have indeed reached the objective for creating a *Minahang Bayan*.

The government representative shared that the process has been streamlined such that the applications do not go to the DENR Secretary, but to a designated undersecretary, who has been given authority to sign the clearance for the establishment of a *Minahang Bayan*. The Chair asked if that has hastened the process. The government representative said that the process has been hastened, but he pointed out the problem that the minimum requirements, such as permission from the local government, are the same with the requirements for a large mining company. He further stated that the MGB has already reported to the Secretariat the updated list of *Minahang Bayan* areas that were declared. Part of the granting of permits is the provision of data by the SSMs.

The Chair said that it is a loss of opportunity for the PH-EITI to obtain data; the more *Minahang Bayan* in the country there is, the more PH-EITI can get a clear picture of the whole SSM sector in the Philippines.

The Secretariat has noted all the points raised by the Chair and MSG members for consideration in the proposed report on SSM.

5. *Subnationalization*

The Secretariat presented some highlights of previous MSG discussions of sub-nationalization over the years, emphasizing that no consensus was reach on this matter, particularly on the relationship between the national and sub-national MSG, the specific function of the sub-national MSG, the scope of reporting, and the quality of data that will be reported. The Secretariat also noted concerns on the delineation of work and functions among entities. The Secretariat recommends optimizing Bantay Kita's Project DATA in identifying best practices in implementing EITI at the subnational level.

The Chair recalled that in one of previous discussions of sub-nationalization, an issue was, apart from the relationship between national and subnational MSGs, how actions done or decisions made at the subnational level weill be treated--whether these will require a seal of approval or "imprimatur" from the national MSG, and how the subnational EITIs would relate to EITI International.

A civil society representative confirmed that Bantay Kita is working on sub-nationalization through Project DATA. The same representative also noted that the relationship between the national and subnational entities has yet to be established. In terms of LGUs creating subnational MSGs, the representative opined that LGUs have the autonomy to create an MSG on natural resource governance. If the name EITI will be used, however, there could be an issue on reputational risk.

Another civil society representative articulated that the advocacy and initiative should not be exclusive; rather the global standards should be localized. Although there is a need to adjust the standards to the situation and context at the ground level. The experience and issues at the local level could contribute to the input at the national level and even at the international level. The efforts at the national level could be complemented at the local level. The approach therefore should be holistic such that efforts at the local level should be aligned with that of the national level, just like the PH-OGP commitments of local CSOs. The representative sees no impediment in implementing sub-nationalization, and opined that it is important that sub-nationalization is done.

Another civil society representative noted that the logical way forward for EITI is to involve the local level, and listen to what is happening at this level.

Another civil society representative mentioned that sub-nationalization is a strategy of cascading at the community level and a means to generate concurrence.

Another civil society representative agreed that sub-nationalization can complement efforts at the national level. The representative suggested including sub-nationalization in PH-EITI's priorities in future work plans. The representative further suggested forming a technical working group (TWG) with diverse members to discuss the agenda within the next two (2) months, and present a concept note on how to implement sub-nationalization.

An industry representative noted it might be worthwhile to assess the status of sub-nationalization initiatives in Nueva Vizcaya and Davao De Oro (formerly Compostela Valley) way back in 2013. It was shared that the Provincial Government of Nueva Vizcaya made EITI mandatory by virtue of its environmental code. The province made a report at the provincial level, which could be seen as a duplication of work done at the national level. If sub-nationalization would be pursued, the role and issues that will be covered should be clear as it might raise expectations that all issues related to mining will be given solution at the sub-national level. The same representative reminded that EITI was initially conceived to promote fiscal transparency, and EITI is a platform for such discussion. The resources for sub-nationalization should also be determined.

The Chair noted the substantive inputs from the MSG, and tasked the Secretariat to form a TWG, and present a concept note in June on how to establish sub-national EITIs.

VI. Other matters

1. Schedule of outreach activities

The secretariat presented the proposed schedule of major stakeholder engagement activities for the 3rd and 4th Quarters of the year:

- a. National Conference *(launching of the 7th Report),* 29 July 2021
- b. PH-EITI Online Learning Extractives *(5 communities, focusing on communities which are not yet reach by EITI),* 23-27 August 2021
- c. Journalism Fellowship, 15 September 2021
- d. Extractive Transparency Week *(a series of thematic forum),* 22-26 November 2021

The concept note for the activities will be circulated by the Secretariat in the coming weeks.

2. EO No. 130, series of 2021

The Secretariat presented a matrix of changes included in EO 130 in relation to EO 79. The salient point is the lifting of the moratorium.

The MSG recommended a special discussion on EO 130 focusing on the underlying reasons for the changes. One civil society representative noted the immediacy of discussing the changes in order to create a stand on EO 130. There was also a suggestion to invite a resource person to shed light on the matter.

The Secretariat recommended having a one-hour discussion on EO 130 in the next MSG meeting to avoid requiring the members to attend several meetings within one month.

The Chair agreed that EO 130 will be the first agenda in the next MSG meeting.

VII. Setting of the next meeting

The next MSG meeting will be held on May 14.

VIII. Adjournment

With no other matters to be discussed, the meeting was adjourned at 12:10 pm.

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Feasibility Study: Mainstreaming EITI Data in the Philippines
PHASE 1: PRESENTATION OF INITIAL FINDINGS
10AM, 7 April 2021 / Virtual Meeting

Pamela A. Grafilo
Technical Consultant

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MEETING AGENDA

1 Presentation of Initial Findings: Phase 1 of the EITI Mainstreaming Feasibility Study in the Philippines

2 Discussion on the results of the feasibility study

3 Next Steps: Moving Forward with the Phase 2 of the Feasibility Study

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Background: Mainstreaming Feasibility Study

- Data required by the EITI Standard are normally collected and made public through EITI Reports

- In Feb 2018, the EITI Board agreed on a set of recommendations regarding encouraging systematic disclosure through routine and publicly available company and government reporting

- PH-EITI MSG has agreed to implement systematic disclosure and mainstreaming, and has integrated in its programs and work plan steps towards the same.

- Mainstreaming refers to the process for realising this goal, which may include interim measures, pilots, and other capacity building activities

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Objectives of the Study

Main Objective: Inform the PH-EITI and EITI implementing agencies how EITI can be systematically disclosed.

Specifically, the study aims to:

- Assess to what extent information that is required in the EITI Standard already made publicly available in governmental and corporate systems;

- Outline any barriers or gaps in timely, comprehensive and reliable disclosures, as well as technical or financial support needs;

- Document stakeholders' views and willingness to embed EITI processes and disclosures in governmental and corporate systems; and

- Propose a roadmap/work plan/action steps for embedding EITI disclosures and the process for future EITI implementation

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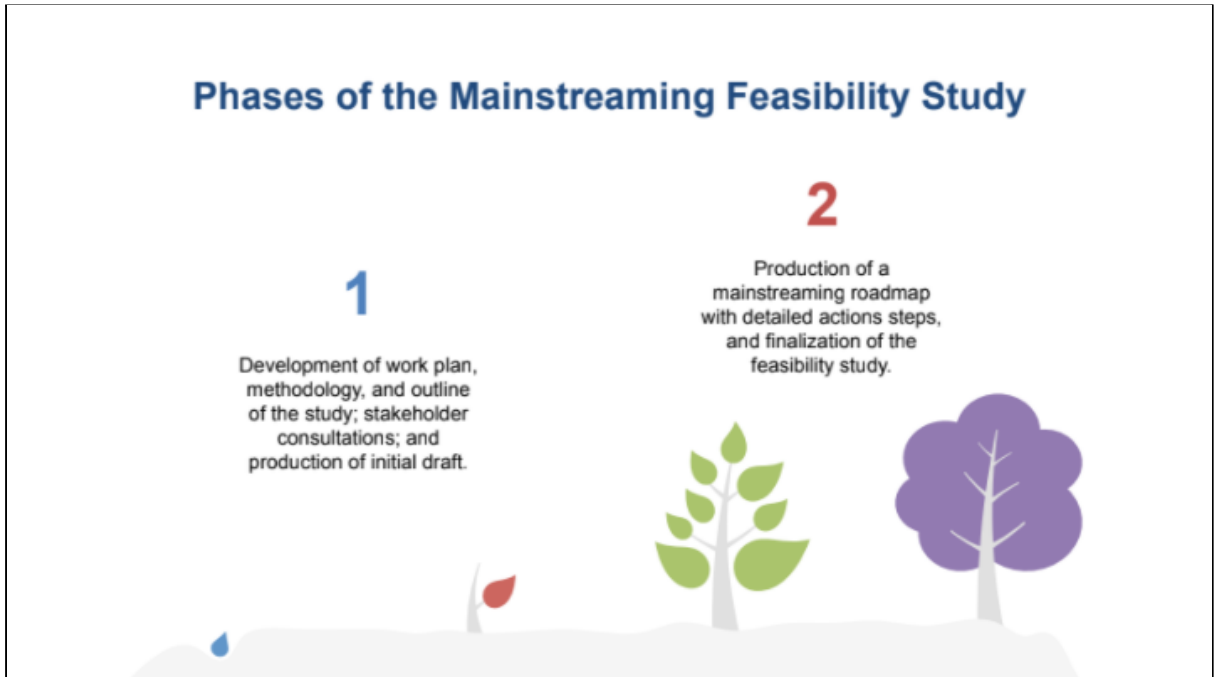
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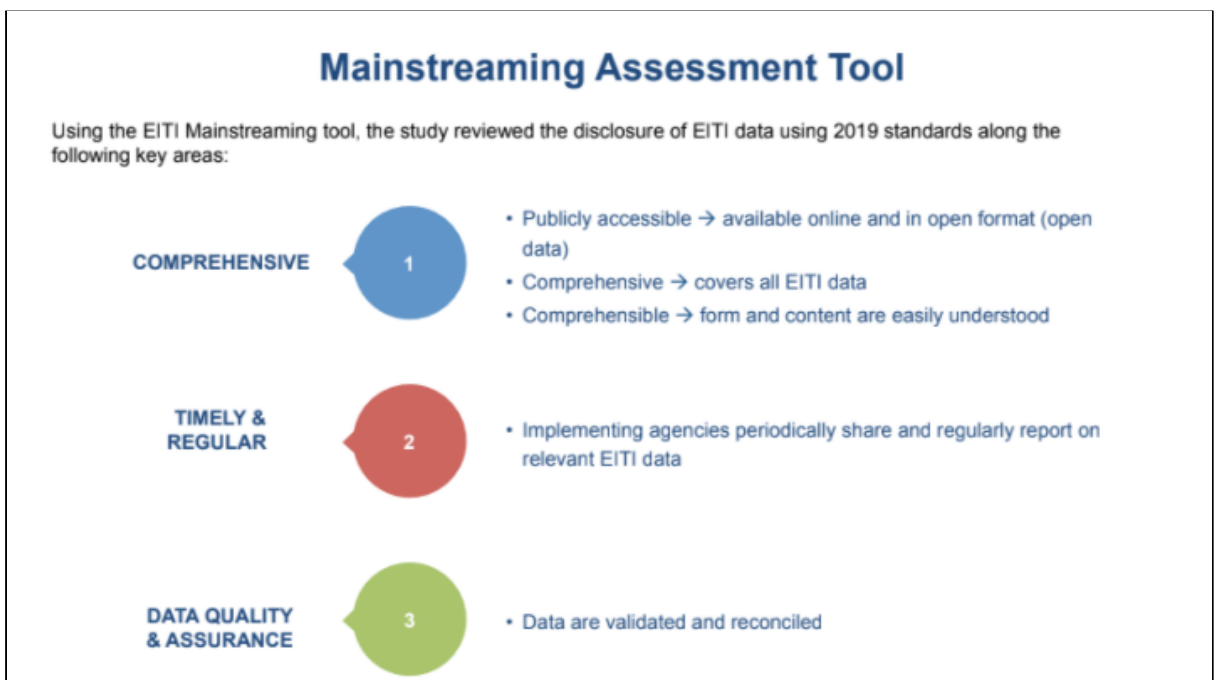
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Assessment of EITI Data Disclosure by Implementing Agency

Assessment	2019 EITI Data Requirements	Implementing Agencies
Mainstreamed (1)	2.4. Contracts (Mining)	PH-EITI / MGB
Partially Mainstreamed (9)	2.1. Legal framework and fiscal regime	MGB / EMB / DOE
	2.2. Contracts and license allocations	MGB / DOE
	3.1 Exploration	MGB / DOE
	3.2. Production	MGB / DOE
	3.3. Exports	MGB / DOE / BOC
	4.1. Comprehensive disclosure of taxes and revenue	BIR
	4.6. Subnational payments	BLGF / DBM
	5.2. Subnational transfers	BLGF / DBM / BIR
	6.3. Contribution of the extractive sector to the economy	MGB / PSA
Needs Improvement (6)	2.3. Register of Licenses	MGB / DOE
	2.5. Beneficial Ownership	SEC
	5.1. Distribution of extractive industry revenues	DBM
	5.3. Revenue management and expenditures	DBM / BIR
	6.1. Social and environmental expenditures by companies	MGB / NCIP / DOE
	6.4. Environmental impact of extractive activities	MGB / EMB / DOE

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Summary of Initial Findings

These are very preliminary and would require validation and additional research:

1. Data privacy law prevents most of government implementing agencies to publicly disclose extractives data.

2. On Revenue collection (4) and allocation (5):
   - Revenue collection is undertaken by several collecting agencies (BIR, BOC, MGB, PPA)
   - Revenue are centralized and validated / reconciled by Bureau Treasury
   - Received by DBM in lumpsum, data is not disaggregated per company or per revenue stream
   - Validated and reconciled data on revenue received by DBM are not timely
   - While DBM will be launching a portal on LGU share on national wealth, there is no centralized system to track and manage extractive related revenues, how they are allocated or spent
   - Guidelines in terms of processes and timelines between DBM, BoTr and BIR need to be fleshed out to ensure timely release of data on LGU share on national wealth
   - LGUs have limited information on their share on national wealth, thus are not able to predict their share for planning purposes.

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Summary of Initial Findings

3. MGB Preliminary Findings

- EO 79 and DAO 2017-07 – key policies that ushered in a lot of transparency mechanisms, particularly Section 14 of EO 79, improving the transparency, Section 15 rationale for having a central database/website

- MGB recognized the feedback that the website does not include many of the necessary information so there was another memorandum circular creating and enhancing the database (approved by former MGB Director, Leo Jasareno) that includes information on production, volume, license and permits and other information

- Each division has a focal person assigned but the royalty of the Mineral Division is not included because it is under Finance Division

- Royalty should and could be easily included in the data set that is being made available to the public

- Geo-hazard should be included and it is available but in it is in a different portal

- The contracts of metallic and non-metallic are submitted to EITI , but on a PDF file format

- MMT reports are NOT included in the circular, it is monitored by the region (again, it can be easily made available) and there is an e-file (in PDF)

- There is a need to have an enhancement of environmental data or reports using MMT report and EITI reporting template

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Summary of Initial Findings

3. MGB Preliminary Findings

- There are data available in EITI's ORE tool (e.g. EPEP)

- MGB has been planning to improve their website and database, wide area network, including developing one central database including the regional offices. Intention and plans have been existing for the past few years but it requires funding allocation

- The plan to expand the database, in coordination with DICT, can be included again in 2021 budget and hopefully gets an approval for 2022 implementation.

- However, it should be noted that budget is not the only issue. There is a need to get buy-in from higher level decision makers who are in a different bureaus and have the oversight functions on other required information and data transparency.

- There are data in the current database (e.g. EIS) that are not available but it could be made available upon request by EITI. User access has to be provided, upon request.

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Summary of Initial Findings

4. DOE Preliminary Findings

- DOE needs to have an effective policy impetus similar to what DENR MGB had in the form of EO 79 and DAO 2017-07 – key policies that lay the ground of transparency mandates, resources and mechanisms

- DOE has no policy impetus to make the information/standards more transparent and available to their stakeholders – effective participation and engagement needs higher level buy-in.

- Outstanding issues on 2016 standards are still being addressed, the 2019 enhanced EITI standards additional ushered in more data and information transparency that DOE needs to deliver against.

- Project-level transparency standards needs to be provided in a much easier and user-friendly access for its stakeholders

- The information and data on the website is heavier on the requirements of the government but inadequate on project-level EITI transparency standard

- Effective access to information for all stakeholders still need a lot of facilitation from MSG and EITI – mainstreaming is farther down the line. As it is, chasing for information and effective level of information granularity remains an issue.

- In most cases, project information are given in PDF format with just an indication of completion of requirements but no transparency on project level adherence to standards and requirements

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Summary of Initial Findings

5. NCIP Preliminary Findings

- Need to support the institutional capacity building of NCIP to strengthen the tracking and monitoring of royalty payments as well as the development of Community Royalty Development Plans (CRDP) and programs on the use of royalty payments to ensure that IP communities benefit from revenues derived from mining

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