

**Philippine Extractive Industries Transparency Initiative  
77TH MULTI-STAKEHOLDER GROUP MEETING**

18 March 2022, Friday | 9:00 AM - 11:30 AM | Google Meet

**Minutes of Meeting****Attendees**

<b>Government</b>	
1. OIC - Usec. Valery Joy Brion	Department of Finance (DOF)
2. Ms. Febe Lim	DOF
3. Ms. Charmaine Bagacay-Odicta	DOF
4. Ms. Christine Masigan	DOF
5. Engr. Romualdo Aguilos	Department of Environment and Natural Resources - Mines and Geosciences Bureau (DENR-MGB)
6. Ms. Angela Barrientos	Department of the Interior and Local Government

<b>Industry</b>	
1. Atty. Ronald Rex Recidoro	Chamber of Mines of the Philippines (COMP)
2. Atty. Joan Adaci-Cattiling	OceanaGold (Philippines), Inc.
3. Atty. Odette Javier	Lepanto Consolidated Mining Company
5. Mr. Edgar Benedict C. Cutiongco	NPG Pty Ltd

<b>Civil Society</b>	
1. Mr. Vincent Lazatin	Bantay Kita - Publish What You Pay Philippines (BK)
2. Ms. Angelica Dacanay	BK
3. Mr. Chito Trillanes	Social Action Center - Ecology Desk, Diocese

	of Tandag, Surigao del Sur
4. Dr. Glenn Pajares	Sectoral Transparency Alliance on Natural Resource Governance in Cebu, Inc. (STANCe)
5. Prof. Ladylyn Mangada	University of the Philippines - Tacloban
6. Dr. Nelson Cuaresma	Concerned Advocates Saving Terrestrial and Marine Ecosystems (COASTLINE), Inc.

<b>PH-EITI Secretariat</b>
1. Mr. Eastword Manlises
2. Ms. Mary Ann Rodolfo
3. Ms. Mary Jane Baldago
4. Ms. Anna Leigh Anillo
5. Ms. Zoe Jimenez
6. Ms. Katherine Dennise Domingo
7. Ms. Rhea Mae Bagacay
8. Mr. Albert San Diego
10. Ms. Rhoda Aranco
12. Ms. Andrea Denise Samson
13. Mr. Kian Ferrer
14. Ms. Dannica Rose Aquino

## Agenda

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## Proceedings

### I. Call to order

DOF OIC - Undersecretary Valery Joy Brion chaired the meeting. There being a quorum, the meeting was called to order at 9:10 AM.

### II. Approval of the agenda of the 77th meeting

The Chair sought the approval of the agenda.

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 76th meeting

The minutes of the 76th meeting was circulated to the MSG on March 10, 2022. The Chair gave the members more time 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

NO.	ITEM	ACTION	IN CHARGE	STATUS	REMARKS
<b>From the 76th MSG Meeting - February 18, 2022</b>					
<b>76.1</b>	Presentation of the 2021 Validation corrective actions to the MSG and creation of an action plan to address the same	Will be discussed under main business	Secretariat	<b>For discussion</b>	
<b>76.2</b>	Referral to MGB of issues raised on the mining and alleged tree cutting activities of Marcventures Mining and Development Corporation	Referral letter sent to MGB on March 18, 2022	Secretariat	<b>For follow up</b>	

<b>76.3</b>	Clarification on the basis of the 2% threshold to determine materiality of companies and revenue streams covered in EITI reporting	For information	Secretariat	<b>For information</b>	
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### Materiality threshold

The Secretariat explained that the materiality threshold is used to determine which revenue streams and extractive projects should be covered by the annual PH-EITI country report.

Since it started producing country reports, the PH-EITI has always used 2% as the test of materiality. This was set and approved by the MSG upon the recommendation of the independent administrator (IA).

The IA benchmarked its recommendation against the Securities and Exchange Commission’s (SEC) prescribed threshold for testing the materiality of omissions or misstatements of transactions, amounts, or accounts in company disclosures within financial statements.

Under the SEC Revised Securities Regulation Code (SRC) Rule 68, disclosure deficiency, inconsistency, or misstatements in financial statements shall be considered material if they represent 10% or more of the total of related accounts or transactions. For issuers of securities to the public and public companies as identified in specific sections of the SRC, the test to be used shall be 5%. The nature, not just the size, of omissions or misstatements may also be the determining factor for the materiality of such omissions or misstatements.

In the case of PH-EITI country reports, the 5% test was used to determine which projects and revenue streams are considered material. However, applying this threshold resulted in the non-inclusion of some revenue streams that the MSG deems material or significant by nature. As a resolution, the IA recommended lowering the threshold to 2%.

Determining the materiality of projects and revenue streams is done per industry sector and the 2% threshold is applied to the total government revenue of the specific industry sector, as reported by the collecting government agencies.

## V. Main Business

### 1. Validation corrective actions

#### a. Action plan

The Secretariat recapped the EITI Board's decision on the Philippines' progress in meeting EITI requirements. On February 17, 2022, the EITI Board decided that the Philippines achieved an overall "moderate progress" (80/100) in implementing the EITI. The Board had a consensus on the individual requirements, including an assessment of "partly met" for Requirement 1.3 on civil society engagement. However, there was no consensus on the consequence of Validation. The Board imposed corrective actions for 10 requirements that were assessed as only mostly or partly met. The progress in addressing these corrective actions for Requirements 1.1 and 1.3 will be reviewed at the 54th EITI Board meeting in October 2022.

A civil society representative opined that the EITI Board's decision is a deferred suspension, pending PH-EITI's immediate action on recommendations around Requirement 1.3. The same civil society representative requested that the statement of the CSO members of the EITI Board regarding the decision be annexed to this minutes (see page 16).

The Secretariat clarified that the decision was not a deferred suspension, but rather a decision resulting from lack of consensus on the consequence of Validation.

The Secretariat then presented the proposed action plan to address the 2021 EITI Validation corrective actions (Annex B). There are 10 corrective actions: two (2) corrective actions for stakeholder engagement requirements (government engagement and civil society engagement), and eight (8) for transparency and technical requirements.

The Secretariat explained that the corrective actions for Requirements 1.1 and 1.3 may need policy reforms, or significant action steps from the MSG or the member agencies of the MSG. Implementation of these two (2) corrective actions will be reviewed in October 2022. Given the limited time, the Secretariat advised that addressing these two corrective actions be the priority of the MSG.

The corrective actions for Requirements 2.2 (contract and license allocations), 2.3 (register of licenses), 2.4 (contracts), 2.5 (beneficial ownership), 2.6 (state participation), 4.1 (comprehensive disclosure of taxes and revenues), 4.6 (subnational payments), and 5.2 (subnational transfers) can be addressed in the regular reporting and only requires improvements in the disclosures. Workshops or walkthroughs with concerned agencies can be done for these requirements to improve reporting.

In relation to the first corrective action, stating that the government should exert all possible efforts to ensure comprehensive engagement in EITI implementation, the

Chair asked whether the country will be assessed by the MSG's efforts or by the end result. The Secretariat opined that the language used in the corrective action pertains to "efforts exerted". The MSG should substantiate efforts to address the corrective actions and improve EITI implementation.

An industry representative commented that the proposed action steps for Requirement 1.1 are largely dependent on the passage of the proposed amendments to EO No. 147, s. 2013. He asked what it would mean for the country should the government fail to issue the amendments. He also pointed out that if efforts exerted would be considered in the assessment of progress, the MSG should submit a description of its consistent engagement with the DOE.

The same industry representative also pointed out that most corrective actions are dependent on workshops with relevant government agencies, which may not lead to the desired output or outcome. He suggested adding in the draft action plan a column to indicate the desired output or outcome.

The same industry representative suggested clearing the proposed action steps with the civil society representatives to ensure that the MSG will have a unified plan for addressing concerns and gaps, and a unified report by the time the Board reviews the country's progress in implementing the corrective actions.

Commenting on the proposed action steps for Requirement 1.1, a civil society representative said that the MSG has been exerting efforts to engage Semirara Mining and Power Corporation (SMPC) for many years now. He surmised that the EITI Board was only using diplomatic language in its decision to avoid interpretations that the EITI Board is encroaching on the Philippines' sovereignty. He opined that the EITI Board is pushing for the SMPC to finally participate in the EITI process ahead of the October review of progress in implementing corrective actions. The civil society representative said that the MSG should put pressure on DOE to come to a resolution regarding this issue. In response, the Secretariat shared that there was a discussion during the 70th meeting in June 2022, where the MSG considered not including the coal sector in EITI reporting. The Secretariat said that the MSG may reopen that discussion if it finds it necessary.

The Secretariat asked the MSG members to suggest specific action steps if they think the proposed workshops will not suffice.

A civil society representative said that the MSG should earnestly engage SMPC, and should not stop with just sending letters. The representative said that the MSG might want to meet with SMPC's top executives.

The Secretariat discussed the corrective action for requirement 1.3 and the proposed action steps for this requirement.

Commenting on the proposed action steps, the Chair shared that an Anti Red Tagging Bill was filed in March 2021 but did not progress. The Chair also agrees that

Requirement 1.3 is very lengthy and contains words that need clarifications. She also added that it has a lot of mandates that are probably beyond the scope of EITI implementation and what the MSG can actually do.

A civil society representative shared that it has been observed in past discussions that roadshows need reformatting. The roadshows can be redesigned like a forum to enable better participation of stakeholders. The suggestion is to pattern it after MSG meetings where reports are presented, issues are identified, and participants are encouraged to provide feedback.

The Chair suggested that the stakeholder engagement activities be patterned after DOF's Sulong Pilipinas, where key stakeholders gather to agree actionable recommendations for improving governance of the sector. She said that it would be useful to hold events that lead towards specific and desired outcomes.

Commenting on the corrective action for Requirement 1.3, a civil society representative suggested consulting the Commission on Human Rights on the definition of red-tagging. He expressed apprehension on the open publication of organizations registered with Bantay Kita precisely because of an environment where red-tagging happens. He said it would be dangerous and reckless to expose these organizations to risks of being red-tagged.

An industry representative said that the first step is asking civil society representatives to assess if the proposed action steps are sufficient to address their concerns, as outlined in the shadow report. He added that some of the action items are beyond the mandates and competence of the MSG, for instance, the conduct of human rights seminars.

The same industry representative opined that the corrective actions sound arrogant, making it appear that the Philippines has no existing mechanisms on monitoring civic engagement. He suggested pushing back on some of these statements.

The same industry representative added that some of the action steps are ambitious and would require so much work to operationalize.

On conducting information, education, and communication campaigns (IECs) with law enforcement agencies, the same industry representative said that these agencies might already have existing mechanisms to monitor human rights activities. Rather than the PH-EITI conducting the IECs, it would be better to engage these agencies which might be more credible to implement the proposed action steps.

The same industry representative said that while the PH-EITI means well, the multi-stakeholder initiative must remember its core identity and that is as a fiscal transparency initiative in the extractives.



The same representative further suggested investigating the cases that were stated in the shadow report. He suggests an independent investigation where the MSG may also be able to talk to the concerned people.

On issuing a statement of support on the Anti Red Tagging Bill, the industry representative recommended reviewing the bill first and getting the MSG invited to a related committee hearing before issuing a position paper. He opined that while the matter of human rights is connected to resource governance and other subjects, the context and premise of current discussions is EITI as an extractive transparency organization venturing to address the issue of red-tagging. He said it is a question of propriety, competence, capacity, and ultimately probable effectiveness in what PH-EITI wants to do.

A civil society representative opined that issues on human rights cannot be separated from EITI. He said that the civil society is not against mining companies. Civil society organizations must be treated fairly. Government agencies and extractive industries might be targeting them for being vocal about issues they see on the ground but they will continue expressing their views on civic engagement. He called for the improvement of engagement with civil society stakeholders and requested the Department of the Interior and Local Government to come in since the agency has power over the national police. He also suggested engaging the Commission on Human Rights in relation to conducting investigations.

Another civil society representative said that one of the very first steps that should be done is issuing an MSG statement with regard to the EITI Board decision. He said that a statement will build public confidence in the MSG. He suggested including in the statement expression of support to the corrective actions. The civil society representative agreed that it is necessary to engage security forces to prevent actions that infringe on the safe space for civic engagement.

Another civil society representative shared his experience from a watershed and biodiversity perspective. He said that their group saw violations in mining areas in their communities but the local government units overseeing these areas are not paying attention to their reports and complaints. He lamented the degradation of local biodiversity and said that this is among reasons they joined the PH-EITI.

Another civil society representative shared that while PH-EITI is primarily an extractive industries transparency and accountability initiative, a big part of EITI is creating a safe space for dialogue among extractives stakeholders. To sustain this safe space, it is necessary for the MSG to take up issues on human, civil and political rights, especially to the extent that these issues directly impact civil society's ability to freely and openly engage in the EITI process. He added that in an ideal world, where the government actively upholds human, political and civil rights of all its citizens, the PH-EITI would not have to take up such issues. The same representative suggested having a separate MSG meeting to discuss the corrective action for Requirement 1.3.

The same civil society representative agrees with one of the industry representative's statements, that primarily, PH-EITI is a financial transparency initiative, and as a body, the MSG doesn't have expertise on human, political or civil rights. Unfortunately, because of the current national context, the MSG needs to develop competence in this area. He said he would rather that the MSG focus on fiscal transparency, and that infringement on human, political and civil rights not be an issue. Unfortunately, the national situation requires all stakeholders to develop a certain level of competence in human, political, and civil rights.

The Secretariat noted all the comments and proposed to pause the discussion on the action plan due to time limitations. The Secretariat recommended that the MSG review and provide comments on the corrective actions for the eight technical requirements online or in the next meeting.

The Chair instructed the Secretariat to recirculate the reference materials, including the draft resolution on stakeholder engagement.

The MSG also agreed to delete two proposed action items to address the corrective action for Requirement 1.3. These are the suggestions to publish the names of organizations registered with BK, and the conduct of IEC activities on human rights among law enforcement agencies.

b. TWG on stakeholder engagement

In view of the pending approval of the proposed action plan to address the Validation corrective actions, the presentation and approval of the proposed resolution creating a permanent working group on stakeholder engagement, which is one of the proposed action steps, was deferred.

2. *Updates from the TWG on EO147 amendments*

a. Draft EO amending EO No. 147, s. 2013

The TWG was created on 1 March 2022 to craft and recommend amendments to the composition and roles of the MSG.

There have been three meeting to date:

March 1	Initial meeting
March 9	Write-shop
March 16	Finalization of the draft executive order for endorsement to the MSG

The TWG was chaired by Atty. Ron Recidoro (COMP) with Ms. Charm Odicta (DOF) as vice chair.

Members of the TWG included representatives from the Department of Finance, Department of Budget and Management, Department of Energy, Department of the Interior and Local Government, National Commission on Indigenous Peoples, Union of Local Authorities of the Philippines, Cement Manufacturing Association of the Philippines, Eastern Rizal Miners Association, Chamber of Mines of the Philippines, Petroleum Association of the Philippines, and Bantay Kita.

Using a comparative matrix, the Secretariat discussed the proposed amendments to EO147. The proposed amendments also tried to address EITI's requirement on systematic disclosure, and the 2021 EITI Validation corrective actions.

Commenting on the provision mandating the participation of operating extractive projects, an industry representative said that oil and gas companies doing exploration or development work should not be included in the coverage. Only upstream petroleum companies with production should only be covered. He also suggested leaving it to the Department of Energy to impose penalties for non-participation.

Commenting on the provision on MSG composition, a government representative suggested removing the phrase "chosen by the MICC" in the qualifier or criteria for determining which government agencies should be part of the MSG. The representative said that the phrase would require the MSG to always seek the MICC's approval each time there would be changes in the composition of the MSG.

Concurring with the preceding comment, the Chair said that the MICC was in the original executive order as the relevant government agencies that should form part of the MSG were not yet identified before. The idea of the proposed amendment is to only expand the composition of an already existing MSG to include another relevant agency.

An industry representative said that the reason for involving the MICC is to give the MSG weight within the cabinet. If the MICC is taken out, he asks who then will appoint or change the composition of the government constituency. He opines that someone of significant cabinet weight should make the appointments.

The same industry representative added that he is operating on the assumption that the MSG has a degree of contact with the MICC. He thought it would be easy to coordinate with the MICC if there is a need to modify the MSG's composition. He suggested increasing contact with the MICC rather than moving away from the inter-agency body.

The Chair said that she will take up the matter with Undersecretary Bayani Agabin, who also represents the Department of Finance in MICC meetings, and then report back to the MSG.

The MSG approved the draft EO amending EO 147, s. 2013 subject to the implementation of members' comments and inputs.

The Secretariat noted the approval and explained that next steps involve the preparation of a memo for the Secretary of Finance, requesting the review and endorsement of the draft EO to the President.

### *3. TWG on beneficial ownership transparency*

The Secretariat provided the following recap of MSG agreements and rationale for the proposed creation of a technical working group on beneficial ownership transparency.

- On June 29, 2021, the Philippines committed to implement the Opening Extractives programme.
- On November 26, 2021, the Philippines launched an Opening Extractives engagement plan, and among the action steps is the creation of a technical working group for improved beneficial ownership transparency implementation in the extractives.
- On January 14, 2022, during the 75th meeting, the MSG suggested including in the annual work plan the creation of a TWG for BOT implementation.

The Secretariat presented the draft resolution on beneficial ownership transparency and shared that the Securities and Exchange Commission and the National Privacy Commission were consulted in the process of drafting the resolution.

An industry representative said that it is an excellent idea to make permanent working groups. He suggested creating other working groups on special concerns, stakeholder engagement, IP concerns, integrity initiatives, contract transparency, petroleum and energy resources, and governance and oversight, to address issues highlighted by the Validation Committee.

The Secretariat welcomed the suggestion of the industry representative but raised concern on the composition of the working groups, as it is usually the same MSG members that are being assigned to be part and head these working groups. Attending the meetings of these working groups would also mean additional work for the MSG.

The Chair tasked the Secretariat to review the suggestion on the creation of new committees or permanent working groups. The Secretariat noted the instruction and said that it will identify which committees are permanent and which ones are ad hoc.

The MSG approved the resolution on TWG on beneficial ownership transparency.

#### 4. Country reports

##### a. Update on the 2020 Report

###### Chapter 1 - Contextual information

The consultant submitted a second draft on February 18, 2022. The Secretariat found several areas for improvement and prepared a matrix of comments for submission to the consultant. The Secretariat is also proposing a separate MSG meeting for the review and approval of the report.

###### Chapter 2 - Data reconciliation

The independent administrator submitted a rough draft on February 21, 2022, but a larger part of the reconciliation process is still ongoing and awaiting pending data requested from the Bureau of Internal Revenue and other agencies. The independent administrator flagged a possible further delay which will affect the schedule of the 2022 National Conference.

###### Chapter 3 - Small-scale mining study

The consultant conducted interviews with representatives of the provincial and municipal environment and natural resources offices of the following local government units:

- Aroroy, Masbate on Feb 23
- Mountain Province on Feb 24
- Itogon, Benguet on March 8

The consultant, through the Secretariat, also met with the Artisanal Gold Council (Philippines) to explore options in reaching out to several small scale miners.

The Secretariat received an invitation from Itogon, Benguet to meet SSM groups in their municipality.

##### b. Draft TOR for the 2021 Report IA

The Secretariat recapped the following agreements of the MSG in relation to the FY 2021 Report:

- The report will be produced using the flexible approach to EITI reporting.
- The reconciliation process will be retained.
- The contextual information shall be written by the Secretariat and published directly on the PH-EITI website and not as a textbook type report.
- The report will be named after the fiscal year covered instead of an ordinal number to reduce confusion as to the data contained in a specific report.

As for the coverage of the report, the Secretariat proposed to include all operating metallic and nonmetallic mines, all material oil, gas, and coal projects, and all material revenue streams.

Materiality shall be determined using 2% of the total government collection per industry as threshold.

The Secretariat will circulate online the draft terms of reference for the independent administrator.

The MSG approved the Secretariat’s proposed coverage of the 2021 Report.

<b>VI. Summary of agreements</b>	<b>Responsibility center</b>
The Secretariat will include in the minutes of the meeting the rationale behind the 2% materiality threshold.	Secretariat
The proposed publication of BK member organizations and the conduct of IEC activities on human rights shall be removed from the proposed action steps to address the corrective action on Requirement 1.3.  The Secretariat will have a workshop with the civil society representatives to refine recommended actions for Requirement 1.3 before submitting the action steps to the MSG for approval.  The Secretariat will include columns on the desired output and outcomes of the actions steps in the proposed action plan.	Secretariat
The MSG approved the TWG on BO.	MSG
The MSG approved the draft EO amending EO 147, s. 2013, subject to new comments and inputs of the members.	Secretariat
The Secretariat will propose the creation of other working groups or committees and identify which ones will be permanent or ad hoc.	Secretariat
The Secretariat will circulate the draft TOR for the independent administrator for the FY 2021 PH-EITI Report.	Secretariat

## **VII. Setting of the next meeting**

The Secretariat proposed that the 78th MSG meeting be held on April 22, 2022 (Friday). The MSG approved the proposed schedule. The Secretariat will explore the possibility of organizing a hybrid meeting.

### **VIII. Adjournment**

With no other matters to be discussed, the meeting was adjourned at 12:08 pm.

## **Annex A**

### *Statement by the Civil Society Constituency of the EITI Board regarding the Validation of the Philippines*

As civil society representatives on the Extractive Industries Transparency Initiative (EITI) International Board, we are deeply concerned that the EITI Board refuses to enforce rules in the EITI Standard that were developed specifically to safeguard civic space.

The Philippines was validated in April 2021. A report submitted by local civil society involved in EITI outlined serious civic space issues in the natural resource governance sector. These findings are in line with wider reports of intimidation, harassment of, and violence against civil society organisations and individuals, up to and including ‘red-tagging,’ or arbitrary extra-judicial killing of civil society activists.

On the 16th and 17th February 2022, the EITI Board met to consider the validation results of the Philippines for a 2nd time. The EITI Board found that there have been serious breaches of the EITI Protocol on participation of civil society, and therefore found that EITI Requirement 1.3 on civil society engagement was only partly met. In such circumstances, Article 5 of Chapter 4 of the EITI Standard mandates that the EITI Board suspend the country as a safeguard mechanism.

The existence of this safeguard mechanism in the EITI Standard is no mistake, and no accident. That language was agreed to by all constituencies, and it exists specifically because transparency alone – without adequate civic space to freely discuss and use the results of transparency – does NOT result in accountability or better governance. Without such basic civic space safeguards in place, EITI becomes little better than a box-ticking exercise, as opposed to fulfilling its principal mission as an accountability mechanism.

However, despite the significance of the breaches identified in the Philippines, the EITI Board did not reach a consensus on the enforcement of this safeguard mechanism in accordance with the EITI Standard. The other constituencies of the EITI Board not only sought to carve out an exception for the Philippines – thereby disregarding the EITI’s own rules – but blocked attempts by the civil society constituency to hold the Philippines to account by suspending them in accordance with the ordinary rules of the EITI.

As civil society representatives, we were shocked and dismayed that the EITI Board would – over our strenuous objections – flout the initiative’s own rules on an issue as serious as civic space. By recognising the serious restrictions on civil society in the Philippines but lacking the conviction to suspend the country, the EITI also missed an opportunity to send a message to governments across the world that such harassment and attacks will not be tolerated within EITI. We continue to hold firm in our position that the safeguards meant to protect civil society engaged in natural resource governance, as enshrined in the EITI Standard, should be enforced.

The Board’s lack of action sets a dangerous precedent and will result in other governments arguing that they too should avoid suspension even when serious breaches of the civil



society protocol have occurred. We reiterate the point we made behind closed doors, many times: the Philippines should be suspended, anything less puts the legitimacy of EITI at stake.

*Mr Cesar Gamboa, Executive Director, Derecho, Ambiente y Recursos naturales, Perú*

*Mr Óscar Pineda (Alternate), Project on Organizing Development Education and Research (PODER), Mexico*

*Mr Brice Mackosso, Commission Justice et Paix, Republic of Congo*

*Mr Mtwalo Msoni (Alternate), Global Tax Advisor- ActionAid Nigeria*

*Ms Cielo Magno, Bantay Kita/PWYP Philippines; Associate Professor University of the Philippines*

*Ms Diana El Kaissy (Alternate), Advisory board member at the Lebanese Oil and Gas Initiative-LOGI, Lebanon*

*Mr Oleksiy Orlovsky, International Renaissance Foundation, Ukraine*

*Ms Mariya Lobacheva (Alternate), Executive Director, Echo – Public Association, Kazakhstan*

*Ms Erica Westenberg, Director of Governance Programs, Natural Resource Governance Institute (NRGI)*

*Mr Simon Taylor (Alternate), Co-founder and Director, Global Witness*

*Source:*

*<https://www.pwyp.org/pwyp-news/statement-by-the-civil-society-constituency-of-the-eiti-board-regarding-the-validation-of-the-philippines/>*

## Annex B

### Proposed action plan to address the 2021 EITI Validation corrective actions

Corrective actions		Proposed action steps
<p><b>CA1.1</b> In accordance with Requirement 1.1, the government should exert all possible efforts to <b>ensure comprehensive engagement in EITI implementation by all companies making material payments to the government</b>, including companies like Semirara Mining and Power Corporation in the coal sector. <b>The Department of Energy is expected to engage with the EITI on a senior level and to ensure consistent and comprehensive disclosures regarding the oil, gas and coal sectors.</b></p>	<p><b>CA1.1-1</b></p>	<p>Inclusion of provisions on systematic disclosure and the mandatory participation of oil, gas, and coal companies in EITI reporting in the proposed amendments to EO No. 147 (2013)</p>
	<p><b>CA1.1-2</b></p>	<p>Conduct of an executive briefing with DOE senior officials regarding the related corrective actions</p>
	<p><b>CA1.1-3</b></p>	<p>Conduct of a one-on-one workshop with DOE on the systematic disclosure of oil, gas, coal revenue, production, export, and licenses data, among others</p>
<p><b>CA1.3</b> In accordance with Requirement 1.3, <b>the Government of the Philippines is required to ensure that there are no obstacles to civil society participation in the EITI process*</b>, including expressing views related to natural resource governance. The government must refrain from actions which result in narrowing or restricting public debate in relation to implementation of the EITI. <b>The government should ensure that there are no obstacles for civil society to organise EITI-related activities</b>, such as events and meetings. The government should ensure that the implementation of laws and regulatory policies, such as the 2020 Anti-Terrorism Act and the enhanced system of registration and monitoring of non-profit organizations, does not result in the violation or curtailment of civil society's fundamental rights and freedoms, by undertaking due consultation, review, and reform. <b>Extractive companies engaged in the EITI process are encouraged to express their support for civil society's freedom of expression and operation</b>, also when engaging with local government officials. <b>The government should ensure that the MSG establishes a working group with representation from all constituencies on the MSG to develop an action plan and implement a monitoring mechanism to ensure that these corrective actions are met.</b> The working group should also include representatives from civil society organizations impacted by breaches of the EITI Protocol: Participation of civil society.</p>	<p><b>CA1.3-1</b></p>	<p>Creation of a permanent working group on stakeholder engagement with representatives from the DILG, DENR, DOE, DOJ, NCIP, ULAP, CHR, AFP, PNP, industry, and civil society</p>
	<p><b>CA1.3-2</b></p>	<p>Development of a reporting, monitoring, and feedback mechanism for issues related to the extractives, the EITI process, and the annual country report*</p> <p>*Check with the DILG if there is already a system in place *Agencies involved include the DILG, MGB, NCIP, and ULAP</p>
	<p><b>CA1.3-3</b></p>	<p>Discussion and agreement on the definition of the following: - EITI-related activities - Obstacles to participation - Regular reporting</p>
	<p><b>CA1.3-4</b></p>	<p><del>Publication of the names of registered BK member organizations on the PH-EITI website as reference for counter checking or verification of civil society organizations with activities related to the extractives and the EITI</del></p>
	<p><b>CA1.3-5</b></p>	<p><del>Conduct of information, education, and communication (IEC) activities on human rights for communities, companies, and law enforcement agencies</del></p>
	<p><b>CA1.3-6</b></p>	<p><del>PH-EITI and DILG outreach to case studies cited in the BK shadow report</del></p>

<p>The working group is expected to monitor the following through reports from various agencies involved in the EITI process.</p>	<p><b>CA1.3-7</b></p>	<p>MSG review of existing government policies on CSO engagement to identify potentially restrictive rules and regulations</p>
<p><b>The Department of the Interior and Local Government (DILG) should monitor, in consultation with impacted civil society organizations, the environment for civil society engagement in all aspects of the EITI process, including at the subnational level.</b> In its role as MSG member with oversight over local authorities including law enforcement agencies, the DILG should ensure that there are no obstacles to civil society participation in the EITI process, reporting back to the MSG at regular six-month intervals.</p> <p>Drawing on their multi-stakeholder forums, <b>the Mines and Geosciences Bureau (MGB), the National Commission on Indigenous Peoples (NCIP), and the Union of Local Authorities of the Philippines (ULAP) should regularly report to the MSG on civil society's participation in existing public consultation and participation mechanisms related to extractive industry governance.</b></p> <p>The MSG should document civil society participation in subnational EITI activities including regional implementation, outreach and dissemination events. <b>The MSG may wish to engage with relevant human rights organizations such as the Commission on Human Rights, Social Action Centres and non-governmental organizations in its monitoring.</b> In accordance with the EITI protocol: Participation of civil society, civil society MSG members are encouraged to bring any ad hoc restrictions that could constitute a breach of the protocol to the attention of the MSG. The MSG is expected to document how it addresses these concerns, including referral to the EITI Board in serious cases that have not been resolved through the MSG.</p> <p>The government is required to undertake measures to prevent civil society actors from being red- tagged for expressing views related to extractive industry governance. In the event that civil society actors engaged in the EITI process experience threats or harassment in the course of their work on the EITI process, the government is expected to provide accessible, urgent, and effective remedies to protect these actors and their freedom of expression. The government is required to ensure that any</p>	<p><b>CA1.3-8</b></p>	<p>Conduct of consultation and feedback session re implementation of ATA and other policies that impact civic engagement</p>
	<p><b>CA1.3-9</b></p>	<p>Inclusion of a provision on civil society engagement in EO 147 amendment</p>
	<p><b>CA1.3-1 0</b></p>	<p>Inclusion of government and industry public expression of support to civic engagement in PH-EITI outreach activities</p>
	<p><b>CA1.3-1 1</b></p>	<p><a href="#">Issuance of a position paper supporting the Anti red-tagging bill (SB 2121 by Drilon)</a></p>
	<p><b>CA1.3-1 2</b></p>	<p>Engagement of the DOJ* as member of the working group on stakeholder engagement</p> <p>* The DOJ could provide possible legal opinion on matters concerning stakeholder engagement as well as assistance to civil society members that are being red-tagged</p>

<p>existing restrictions affecting civil society's engagement in the EITI process, including as a result of the red-tagging, be lifted as a matter of urgency. The government, in collaboration with the MSG, should consider practical solutions for ensuring that civil society can engage in the EITI process freely in all regions of the country.</p> <p><i>*In accordance with the EITI Protocol: Participation of civil society, references to the 'EITI process' include activities related to preparing for EITI sign-up; MSG meetings; CSO constituency side-meetings on EITI, including interactions with MSG representatives; producing EITI Reports; producing materials or conducting analysis on EITI Reports; expressing views related to EITI activities; and expressing views related to natural resource governance.</i></p>		
<p><i>In accordance with Requirement 2.2.a.i-ii, the Philippines should ensure that information on the process for awarding and transferring licenses and contracts in the mining, coal, oil and gas sectors is publicly accessible, including the detailed technical and financial criteria assessed and any weighting applied to the criteria. A clear list of all licenses and contracts awarded or transferred in the mining, coal, oil and gas sectors should be publicly available on an annual basis, including any transfers of participating interests in contracted parties in accordance with Requirement 2.2.a.iii. The Philippines should use its EITI to conduct an annual review of any material deviations from the applicable legal and regulatory framework governing license transfers and awards, in accordance with Requirement 2.2.a.iv. In cases where contracts have been awarded through competitive bidding, the full list of bidders should be publicly disclosed in accordance with Requirement 2.2.c. The Philippines may wish to expand its use of EITI reporting to assess the efficiency of license and contract awards and transfers, with a view to providing input to policy-making and public debate on license management, a topic of high public interest in the country.</i></p>	<p><b>CA2.2-1</b></p>	<p><i>Review of PH-EITI country reports for any policy or rules for awarding and transferring licenses and contracts in the mining, coal, oil and gas sectors</i></p>
	<p><b>CA2.2-2</b></p>	<p><i>Consultation with DOE and MGB to check updates on policies for awards and transfers of licenses and contracts, and identify challenges in disclosing required data and information</i></p>
	<p><b>CA2.2-3</b></p>	<p><i>Publication of the latest policies and regulations for awarding and transferring licenses and contracts in the mining, coal, oil and gas sectors on the PH-EITI website</i></p>
	<p><b>CA2.2-4</b></p>	<p><i>Conduct of a workshop with DOE on the disclosure of licenses and contracts</i></p>
	<p><b>CA2.2-5</b></p>	<p><i>Inclusion of a provision on the systematic disclosure of license and contract information in the proposed amendments to EO 147</i></p>

<p><b>CA2.3</b></p> <p><i>In accordance with Requirement 2.3.b, the Philippines should maintain a publicly available register or cadastre system(s) with timely and comprehensive information regarding each of the licenses pertaining to companies within the agreed scope of EITI implementation. Where such registers or cadastres do not exist or are incomplete, any gaps in the publicly available information should be disclosed and efforts strengthen these systems documented, in accordance with Requirement 2.3.c. It is expected that the Philippines maintain a license register or cadastre that includes information about licenses held by all entities, including companies and individuals or groups that are outside the agreed scope of EITI implementation.</i></p>	<p><b>CA2.3-1</b></p> <p><i>Inclusion of a provision on the systematic disclosure of full and open copies of mining, oil, gas, and coal licenses in the proposed amendments to EO 147</i></p>
	<p><b>CA2.3-2</b></p> <p><i>Conduct of workshop on compliance with Requirement 2.3 with MBG and DOE</i></p>
<p><b>CA2.4</b></p> <p><i>In accordance with Requirement 2.4, the Philippines should ensure that any contracts and licenses in the extractive industries, including in the coal, oil and gas sectors, that are granted, entered into or amended from 1 January 2021 are publicly disclosed in their entirety. If all licenses have standard stipulations as mandated by law and there are no deviations from such provisions in practice, the onus is on the Philippines to substantiate such claims. In accordance with Requirement 2.4.c.ii, the Philippines is required to publish a list of all active contracts and licenses, indicating which are publicly available and which are not. In accordance with Requirement 2.4.c.iii, the Philippines should publish an explanation for any deviations between disclosure practices and legislative or government policy requirements concerning the disclosure of contracts and licenses. The Philippines is encouraged to publicly disclose all contracts awarded by PMDC for mining on mineral reservations, and is required to disclose any new such contracts awarded or amended from 2021 onwards, given that these contracts include different fiscal terms to conventional mining contracts.</i></p>	<p><b>CA2.4-1</b></p> <p><i>Review of gaps identified in the final Validation report</i></p>
	<p><b>CA2.4-2</b></p> <p><i>Conduct of workshop with MGB, DOE, PNOC-EC, and PMDC on contract disclosure, pursuant to EITI Requirement 2.4</i></p>

<p><b>CA2.5</b></p> <p><i>In accordance with Requirement 2.5 and to prepare for the second phase of Validation of Requirement 2.5 from January 2022 onwards, the Philippines is required to establish an enabling legal environment for the public disclosure of beneficial ownership information and to publicly disclose the legal and beneficial owners of all companies holding or applying for extractive licenses and contracts. Information about the identity of the beneficial owner should include the name of the beneficial owner, the nationality, and the country of residence, as well as identifying any politically exposed persons, in accordance with Requirement 2.5.d. Publicly listed companies, including wholly-owned subsidiaries of companies listed on stock exchanges outside of the Philippines, are required to disclose the name of the stock exchange and include a link to the stock exchange filings where they are listed, in accordance with Requirement 2.5.f.iii. The Philippines could consider expanding beneficial ownership disclosures to other segments of the extractive industries value chain, for instance from extractive-industry service providers.</i></p>	<p><b>CA2.5-1</b></p> <p><i>Creation of a TWG on beneficial ownership transparency that will support the MSG in: (i) improving compliance with Requirement 2.5; (ii) addressing gaps in implementation; and (iii) implementing the Opening Extractives engagement plan for the Philippines</i></p>
	<p><b>CA2.5-2</b></p> <p><i>Inclusion of a provision on the mandatory public disclosure of beneficial ownership data in the draft amendments to EO 147</i></p>
	<p><b>CA2.5-3</b></p> <p><i>Conduct of a consultation with the SEC and NPC to discuss data privacy concerns on the public disclosure of extractive companies' beneficial ownership (BO) data.</i></p>
<p><b>CA2.6</b></p> <p><i>In accordance with Requirement 2.6.a.ii, the Philippines should disclose details regarding the terms attached to PNOEC's interests in extractives companies and projects, including its level of responsibility for covering expenses at various phases of the project cycle (e.g. full-paid equity, free equity or carried interest). In accordance with Requirement 2.6.a.i, the Philippines should ensure public disclosure of the prevailing rules and practices regarding the financial relationship between the government and SOEs, including disclosures of third-party equity financing of SOEs. Where the government or SOE(s) have provided loans or loan guarantees to mining, oil and gas companies or projects, details on these transactions should be disclosed, including loan tenor and terms (i.e., repayment schedule and interest rate) in accordance with Requirement 2.6.a.ii.</i></p>	<p><b>CA2.6-1</b></p> <p><i>Conduct of a one-on-one workshop with PNOEC on compliance with Requirement 2.6</i></p>

<p><b>CA4.1</b></p> <p><i>In accordance with Requirement 4.1.b-c, the Philippines should ensure that the materiality decisions related to the scope of disclosures of company payments and government revenues are publicly disclosed, with reference to the size of the sub-sectors, revenue streams and companies relative to total government revenues from the extractive industries. Where it is not possible to secure confirmation that all payments and revenues whose omission or misstatement could significantly affect the comprehensiveness of the disclosures have been included in the scope of disclosures, due to taxpayer confidentiality constraints, appropriate assurances from relevant government entities such as the Bureau of Internal Revenue (BIR) should be secured and published either as part of the MSG's materiality discussions or after the completion of data collection, confirming that the MSG's materiality decisions did not omit any material payments and revenues. In accordance with Requirement 4.1.d, the Philippines should ensure that all extractive companies making material payments to the government comprehensively disclose these payments in accordance with the agreed scope. In accordance with Requirement 4.1.d, the government is additionally required to provide aggregate information about the amount of total revenues received from each of the benefit streams agreed in the scope of EITI implementation, including revenues that fall below agreed materiality thresholds. Where this data is not available, the Independent Administrator should draw on any relevant data and estimates from other sources in order to provide a comprehensive account of the total government revenues.</i></p>	<p><b>CA4.1-1</b></p>	<p><i>Conduct of a one-on-one workshop with the BIR and the independent administrator to improve compliance with Requirement 4.1</i></p>
<p><b>CA4.6</b></p> <p><i>In accordance with Requirement 4.6, the Philippines should ensure that all direct subnational payments collected by subnational government entities, where considered material by the MSG, are comprehensively and reliably disclosed to the public.</i></p>	<p><b>CA4.6-1</b></p>	<p><i>Conduct a meeting with the Bureau of Local Government Finance</i></p>

<p><b>CA5.2</b></p> <p><i>In accordance with Requirement 5.2.a, the Philippines should ensure public disclosure of all subnational transfers of extractive revenues, including all extractive revenues regardless of the materiality of companies from which the revenues are collected. These disclosures should include the transfer amount calculated in accordance with the relevant revenue-sharing formula and the actual amount that was transferred between the central government and each relevant subnational entity entitled to receive subnational transfers of extractive revenues in the year(s) under review. The Philippines may wish to undertake a comprehensive scoping of all local government units entitled to receive subnational transfers (shares of national wealth) from mineral taxes and from royalties on mineral reservations, to ensure that PH-EITI disclosures of subnational transfers are comprehensive of all transfers of extractive revenues to local governments.</i></p>	<p><b>CA5.2-1</b></p>	<p><i>Conduct a workshop with DBM on compliance with Requirement 5.2</i></p>
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