



CSO Assessment of the EITI Validation Report of the Philippines

Bantay Kita (Publish What You Pay Philippines)

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1. Executive Summary

This CSO Validation Report Assessment is a response to the two assessments done by the EITI International Secretariat and the Adam Smith International Independent Validator. Bantay Kita agrees that the country implementation of EITI has met some requirements while barely doing so in other requirements.

We acknowledge the International Secretariat's comprehensive review. However, we propose that levels of progress for four (4) requirements be downgraded.

We agree with the Independent Validator's recommendation to downgrade the levels of progress for four (4) requirements, while we suggest that another be downgraded.

2. Comments on the International Secretariat's Initial Assessment

While the International Secretariat's Assessment is comprehensive, we disagree with the assessment on key points.

- Standard 1.1 (government engagement)
 - This should be downgraded to meaningful progress. The standard requires that government appoint to the MSG senior individuals with the "authority and freedom to coordinate action on the EITI". We acknowledge that the Department of Interior and Local Government, the Bureau of Internal Revenue, as well as the Union of Local Authorities of the Philippines have appointed individuals with the necessary credentials. The key agencies as far as the EITI implementation is concerned includes the Department of Finance (DoF), the Mines and Geoscience Bureau (MGB), and the Department of Energy (DoE). Two of these three agencies, namely, the DOF and DOE have director-level, senior official MSG representatives for both its full and alternate members. The attendance of the DOE representative, among others, covered by the validation period has been intermittent. Beyond attendance, freedom to coordinate action is imperative. The implications on outcomes and impact is far-reaching which is further discussed in the following comments.

- Standard 2.4 (policy on contract disclosure)
 - Though the contracts as published are technically complete, the MSG had agreed to disclose auxiliary rights – timber rights, water rights, rights to possess explosives, easement right, entry into private lands and concessionaires, granted to mining companies which has long been requested by CSOs.ⁱ These have yet to be disclosed. As such we do not see this progress as going beyond the requirement.

- Standard 5.1 (distribution of revenues)
 - We disagree that PH-EITI Implementation went beyond the standard and should be downgraded to meaningful progress wherein “significant elements of the requirement are being implemented and the broader objective of the requirement is being fulfilled.”
 - The National Commission on Indigenous Peoples (NCIP) recorded consistently high variances. The International Secretariat’s assessment rationalizes that the discrepancies is explained by the nature of the indigenous peoples (IPs) royalty being private transactions. These royalties are not collected by the NCIP but they are **party** to the memorandum of agreements (MoAs) signed by the IPs and mining companies. This is clearly stipulated under the lawⁱⁱ. The NCIP has the sole duty to monitor, validate, and account for the IP royalty figures. The NCIP recorded a variance of 38.6% in the third country report, 22.2% in the second report, and 153.4% in the first report. As of the third country report, the NCIP has only so far conducted a consultation workshop for piloting a monitoring tool for IP Royaltiesⁱⁱⁱ.
 - Both assessments also failed to account for the share of the Mines and Geosciences Bureau from distribution of the 5% mineral royalties even when it is disclosed in the report^{iv}.

- Standard 5.3 Revenue Management and Expenditure
 - This should be downgraded to “satisfactory. The report has clearly provided information on the processes of revenue allocation and earmarking of subnational transfers. This was clearly demonstrated in the International Secretariat’s Assessment. The report has yet to disclose how subnational governments are spending the funds for “ensuring accountability and efficiency in their use.” During in-country interviews, LGUs and national government agencies also mentioned the challenges and needs required to disclose how earmarked funds are spent^v. This is not beyond the requirement.
 - The Standard also states that there be “timely information from the government that will further public understanding and debate around issues of revenue sustainability and resource dependence. This may include the

assumptions underpinning forthcoming years in the budget cycle and relating to projected production, commodity prices and revenue forecasts arising from the extractive industries and the proportion of future fiscal revenues expected to come from the extractive sector.” There is no mention of such in the report and whether subnational governments are given such information by national government agencies with one LGU representative interviewed raising the issue of the transfers being “small and unreliable”^{vi}.

3. Comments on the Independent Validator’s Initial Assessment

- On EITI Progress
 - The assessment mentioned monitoring of small-scale mining. The EITI implementation has yet to monitor small-scale mining. The PH- EITI has so far conducted a scoping study^{vii} and put forward recommendations to the Mines and Geosciences Bureau.

- On Requirement 4.1 (comprehensive disclosure of taxes and revenues)
 - We agree that the assessment be downgraded to meaningful progress. This is due to gaps in reporting among targeted companies and government entities.
 - It was agreed by the Multi-Stakeholder Group to remove the materiality and to include all companies in the report process. This was duly recognized and affirmed by the Chair during the 40th MSG Meeting^{viii}. All companies need to be considered in reconciliation. Materiality of revenue aside, only thirty-one (31) of the forty-six (46) targeted mining companies participated; five (5) of the eleven (11) among oil and gas companies^{ix}. Semirara Mining and Power Corporation (SMPC), the sole target coal company did not participate.
 - SMPC had sales of Php 16.3 billion during fiscal year 2014. This is 25% of sales of **all** participating oil and gas companies and 15% of sales of **all** participating mining companies^x. The municipality of Caluya where SMPC operates disclosed to have received Php 261 million while the province of Antique disclosed a receipt of Php 244 million^{xi}. Their combined share from nationally-collected taxes from coal comes close to the share from excise tax of **all** local government units where metallic mining operates which amounts to an estimated Php 720 million^{xii}. SMPC is material company with material revenue streams and the DoE failed to make the company participate after three country reports.

- Standard 5.2 Subnational Transfers
 - We agree with the downgrade of the Standard 5.2 to meaningful progress. Local Government Units (LGUs) have recorded high variances particularly on the last two reports. LGUs’ direct collections recorded a variance of 17.7% in

the third report, 14.3% in the second report, and 4.7% in the first report. In terms of share from the national wealth, LGUs also disclosed to have received 1,070,703,438 while the national government through the Department of Budget and Management disclosed to have downloaded shares worth Php 692,044,485 causing a variance of Php (378,681,712)^{xiii} - clear manifestation of gaps in revenue allocation reporting. This is not beyond the requirement.

- On Requirement 6.1 (social expenditures)
 - We agree with the downgrade of social expenditure requirement to meaningful progress. Beyond the materiality issue, quarterly monitoring reports for social development and management programs (SDMPs) remain to be incomplete. Monitoring reports include how the social funds are spent. Monitoring is done by the multi-partite monitoring team (MMT) which is multi-stakeholder in nature. Of the 31 participating companies, only 23 has SDMP monitoring reports. The 23 companies should have at least 92 monitoring reports submitted to the EITI by the MGB. Only 34 monitoring reports were submitted^{xiv}. Monitoring reports are of value to all stakeholders to ensure funds are spent for the genuine development of impacted communities.

- On Requirement 7.1 (public debate)
 - We agree with the downgrade. EITI reports remain technical and overwhelming. Infographics were made available for easier context but it was only during the first report when translated primers were produced. Dissemination of information remain exclusive to traditional political centers i.e., Metro Manila, Cebu, Davao, and not in far-flung areas where impacted communities are. This is mostly done during the PH-EITI Local Government Unit Roadshows where majority of the participants are local government with only ten (10) slots allotted for civil society organizations. We acknowledge that the financial limitations and insecurity presented by the change in administration constrained the Secretariat from furthering its efforts in this aspect. Moreover, MSG members are also expected to conduct their own dissemination activities.

- On Requirement 7.4 (review the outcomes and impact of implementation)
 - This should be downgraded to meaningful progress. The lack of government commitment under Standard 1.1 is clearly manifested in the actions taken against recommendations to key agencies. As of the third report, recommendations made to the DoE from the first and second reports have **no updates**^{xv}. Three successive reports saw nonparticipation of the coal sector which is under DoE's jurisdiction. Recommendations to the Department

of Environment and Natural Resources represented by MGB are all **on-progress**^{xvi}.

- The Independent Validator's comment on the issue of “whether those not serving on the MSG were engaged to provide input on the annual progress report” needs to be qualified. Bantay Kita is a national coalition which consults with its 81 members and 64 network affiliates, as well as other CSOs, IP groups, and concerned stakeholders who are non-BK members in providing inputs into the EITI Process. BK's 2016 National Conference^{xvii} was attended by 137 individuals – 70% are CSO and IP representatives. Of the four organizations represented by the newly selected CSO MSG members, only one is a BK member, one is a network affiliate, and the two others are neither of the two.
- Of the 101 activities^{xviii} that Bantay Kita attended in 2016, BK presented in 66 activities that are not necessarily organized by BK as shown in table below. BK has a very wide reach locally, nationally, and internationally.

	Organize	Support	Present	Attend
National	9	12	22	56
Subnational	14	7	24	29
International	0	0	16	16
				101

4. Recommendations

- On Standard 1.1 (government commitment)
 - We urge government to ensure representatives to the MSG are of senior level as required by the Standard; that they attend consistently; and have the authority to coordinate EITI action.
- On Standard 4.1 (comprehensiveness)
 - We look forward to the inclusion of nonmetallic mining companies, small-scale mining operators, and Semirara Mining Power Corporation in the next reports. More sectors in the reporting process will mean more information supporting current policy reforms of government.
- On Standard 5.1 (revenue allocation)
 - NCIP needs to ensure effective roll-out of the Royalty Monitoring Tool and fulfilment of its role as a party to MoAs between mining companies and IPs.
 - MGB should also be able to disclose in the next reports how it spends its share from mineral royalties it being considered a revenue allocation from mining proceeds of government.

- On Standard 5.2 (subnational transfers)
 - The EITI needs continue supporting and feeding inputs into the current policy reforms in transfer of subnational transfers. These initiatives are currently ongoing in Congress.

- On Standard 5.3 (revenue management and expenditure)
 - We look forward to the data generated by the Bureau of Local Government Finance's Environmental and Natural Resource Data Management Tool in the next reports to track funds and expenditures by LGUs. Audit reports by the Commission on Audit may also be included in reports.
 - LGUs should also be given information on mining revenue forecasting as suggested in the Standard for them to have better planning of their shares from national wealth. This may be provided by the Mines and Geosciences Bureau. Capacity-building on fiscal modeling of mining projects would also be of value to LGUs.

- On Requirement 6.1 (social expenditures)
 - The EITI should follow-up on MGB's online submission tool for monitoring reports to ensure complete and timely disclosure of monitoring reports. Standard reporting on SDMP has also been recommended in previous reports. We look forward to this being demonstrated.

- On Requirement 7.1 (public debate)
 - We look forward to primers and materials that speak the language of impacted communities. The EITI should also continue support to outreach activities beyond traditional political centers to ensure dissemination of information is effective. We urge the body to push for the institutionalization of EITI that would assure support, sustain efforts, and further gains.

- On Requirement 7.4
 - To come up with a mechanism to measure access to EITI disclosures using data including analytics of EITI website and online platforms the online reporting mechanisms set up by government agencies i.e., Environment and Natural Resources Data Management Tool of the Bureau of Local Government Finance. This is to assess effectiveness and impact of these tools on governance.

ⁱ From the “2016 PH-EITI Country Report”, under section titled “Message from Bantay Kita”, p 10. Link to the report: < <https://ph-eiti.org/document/EITI-Report/Third-Country-Report/Third%20PH-EITI%20Report.pdf> >

ⁱⁱ From “Part III, Section 8 of the Implementing Rules and Regulations of Republic Act No. 8371 otherwise known as the Indigenous People’s Rights Act of 1997”, p 17. Link to the policy: < <http://www.wipo.int/edocs/lexdocs/laws/en/ph/ph083en.pdf>>

ⁱⁱⁱ From the “2016 PH-EITI Country Report”, under section titled “MSG recommendation and assessment of progress”, p 290. Link to the report: < <https://ph-eiti.org/document/EITI-Report/Third-Country-Report/Third%20PH-EITI%20Report.pdf> >

^{iv} From the “2016 PH-EITI Country Report”, under section titled “Discrepancies”, p 277. Link to the report: < <https://ph-eiti.org/document/EITI-Report/Third-Country-Report/Third%20PH-EITI%20Report.pdf> >

^v From the “Validation of the Philippines: Report on initial data collection and stakeholder consultation”, p 92.

^{vi} From the “Validation of the Philippines: Report on initial data collection and stakeholder consultation”, p 92.

^{vii} From the “2015 PH-EITI Country Report Contextual Information Volume”, under section titled “Small-Scale Metallic Mining in the Philippines: A Scoping Study”, p 109. Link to the report: < https://ph-eiti.org/document/EITI-Report/Second-Country-Report/Volume-II_of_the_PH-EITI_Country-Report_2015.pdf >

^{viii} From the “Minutes of the the PH-EITI 40th MSG Meeting”, under section titled “TOR of the IA and Writer of Contextual Information for the 4th Country Report”, p 11.

^{ix} From the “2016 PH-EITI Country Report”, under section titled “Scope of the Report”, p 253-255. Link to the report: < <https://ph-eiti.org/document/EITI-Report/Third-Country-Report/Third%20PH-EITI%20Report.pdf> >

x From the "2016 PH-EITI Country Report", under section titled "Executive Summary", p 145. Link to the report: < <https://ph-eiti.org/document/EITI-Report/Third-Country-Report/Third%20PH-EITI%20Report.pdf> >

xi From the "2016 PH-EITI Country Report", under section titled "LGU in Focus", p 238. Link to the report: < <https://ph-eiti.org/document/EITI-Report/Third-Country-Report/Third%20PH-EITI%20Report.pdf> >

xii Estimated using the formula derived from the Local Government Code of 1991 which provides 40% of nationally collected taxes from mining to local governments hosting the operations. Using reconciled excise tax figures from the "2016 PH-EITI Country Report", under section titled "Executive Summary", p 146. Link to the report: < <https://ph-eiti.org/document/EITI-Report/Third-Country-Report/Third%20PH-EITI%20Report.pdf> >

xiii From the "2016 PH-EITI Country Report", under section titled "LGUs in Focus", p 231-238. Link to the report: < <https://ph-eiti.org/document/EITI-Report/Third-Country-Report/Third%20PH-EITI%20Report.pdf> >

xiv From the "2016 PH-EITI Country Report", under section titled "Others", p 137. Link to the report: < <https://ph-eiti.org/document/EITI-Report/Third-Country-Report/Third%20PH-EITI%20Report.pdf> >

xv From the "2016 PH-EITI Country Report", under section titled "MSG recommendation and assessment of progress", p 291. Link to the report: < <https://ph-eiti.org/document/EITI-Report/Third-Country-Report/Third%20PH-EITI%20Report.pdf> >

xvi From the "2016 PH-EITI Country Report", under section titled "MSG recommendation and assessment of progress", p 290. Link to the report: < <https://ph-eiti.org/document/EITI-Report/Third-Country-Report/Third%20PH-EITI%20Report.pdf> >

xvii From "Bantay Kita Annual Report 2016", p 5-6. Link to the report: <http://www.bantaykita.ph/uploads/2/9/9/2/29922649/bantay_kita_accomplishment_report_2016_-_for_eiti.pdf >

xviii From "Bantay Kita Annual Report 2016", p 6-13. Link to the report: <http://www.bantaykita.ph/uploads/2/9/9/2/29922649/bantay_kita_accomplishment_report_2016_-_for_eiti.pdf >