

7TH EITI BOARD MEETING, DOHA, 16 FEBRUARY 2009

Minutes

EITI International Secretariat Oslo, 5 March 2009

MINUTES OF THE 7TH EITI BOARD MEETING

Ritz Carlton Hotel, Doha, Qatar, 16 February 2009

Board Members

Chair

Dr Peter EIGEN

Implementing Countries

Prof Humphrey ASSISI ASOBIE, Chairman NEITI, Nigeria

Mr Kairat DJUMALIEV, Head, Energy and Mineral Resources Department, Kyrgyzstan

Mr Shahmar MOVSUMOV, Executive Director, State Oil Fund, Azerbaijan

Alt: **Mr Alfred BAGUEKA ASSOBO**, Head of EITI Technical Sec., Ministry of Economy and Finance, Cameroon

Mr Patrice OTHA, President of the EITI Interest Group, Gabon

Supporting Countries

Mr Stephen GALLOGLY, Director for International Energy and Commodity Policy, State Dep., United States

Alt: **Mr Julian EGAN**, Manager, Governance and Anti-corruption, AusAid, Australia

Dr Ulla MIKOTA, Deputy Director General, Ministry for Economic Cooperation and Development, Germany (substituting for **Ms Ingrid-Gabriele HOVEN**, Federal Ministry for Economic Cooperation and Development, Germany)

Alt: **H.E. Michel DOUCIN**, Ambassador, Ministry of Foreign and European Affairs, France

Mr Calum MILLER, DFID, United Kingdom (substituting for William Kingsmill)

Alt: **Ms Helga Fastrup ERVIK**, Assistant Director General, Ministry of Foreign Affairs, Norway (substituting for Kamilla Kolshus)

Civil Society Organisations

Mr Anton ARTEMYEV, Kazakhstan Revenue Watch

Alt: **Ms Radhika SARIN**, International Coordinator, Publish What You Pay

Mr Gavin HAYMAN, Global Witness

Mr Bennett FREEMAN, Board Member, Oxfam America/Oxfam International

Alt: **Mr Michel ROY**, International Advocacy Director, Secours Catholique

Ms Kalia MOLDOGAZIEVA, Director, Human Development Centre Tree of Life, Kyrgyzstan

Mr Christian MOUNZEO, Coordinator PWYP Congo/President Rencontre Pour la Paix et les Droits de l'Homme – Congo

Alt: **Mr Ingilab AHMADOV**, Director of the Public Finance Monitoring Centre - Baku, Azerbaijan

Companies including Investors

Mr Edward BICKHAM, Vice President External Affairs, Anglo American

Alt: **Mr Olivier LOUBIÈRE**, Corporate Business Ethics Advisor, AREVA

Dr John KELLY, Coordinator, Planning and Issues Upstream Public Affairs, ExxonMobil
 Alt: **Mr Stuart BROOKS**, Manager, International Relations, Chevron

Dr R. Anthony HODGE, President, International Council on Mining and Metals
Mr Mike WILKINSON, Vice President Sustainable Development, Shell

Alt: **Mr Jean-François LASSALLE**, Vice President of E&P Public Affairs, Total

Ms Karina LITVACK, Head of Governance & Socially Responsible Investment, F&C Asset Management
 Alt: **Ms Julie McDOWELL**, Head of Socially Responsible Investment, Standard Life Investments

Others

Observers

Mr Yerlen AKISHEV, EITI Consultant, World Bank

Ms Gro ANUNDSKAAS, Assistant Director General, Ministry of Petroleum & Energy, Norway

Mr Charlie ARNOTT, Senior Policy Advisor, Department of Foreign Affairs & International Trade, Canada

Mr Anton OP DE BEKE, Senior Economist, IMF

Ms Brigitte BOCOUM, Senior Mining Specialist, World Bank

Ms Diana CORBIN, World Bank

Mr Paulo DE SA, Manager, Oil Gas & Mining Dept., Policy Operations Unit, World Bank

Mr David DIAMOND, Co-Head of SRI Development, Allianz Global Investors, France

Mr Richard DION, Royal Dutch Shell

Ms Erica FERGUSON, Anti-Corruption Group, AusAid, Australia

Ms Katharina GUNSELMANN, GTZ, Germany

Mr Shaukant HASSAN, Senior Policy Advisor, Canadian International Development Agency

Mr Ron LYEN, Director International Affairs Division, Natural Resources Canada

Mr Geir LØKKEN, Ministry of Foreign Affairs, Norway

Mr Henk MAHIEU, General Counsellor, Dept. of Economic Issues, Ministry of Foreign Affairs, Belgium

Mr Adil MAMMADOV, State Oil Fund, Azerbaijan

H.E. Birgitta NYGREN, Ambassador, Ministry of Foreign Affairs, Sweden

Mr Erik Just OLSEN, Ministry of Petroleum and Energy, Norway

Mr Mark PEARSON, Director General, External Relations SPI, Natural Resources, Canada

Ms Donica POTTIE, Director, Department of Foreign Affairs and International Trade, Canada

Ms Vanessa POUGET, Energy Advisor, Ministry of Foreign and European Affairs, France

Mr Anwar RAVAT, Program Manager, EITI Program, World Bank

Mr Keith RUDDOCK, General Counsel, Exploration & Production, Royal Dutch Shell

Ms Rosemary STEVENSON, DFID, United Kingdom

Ms Susanne THIEL, GTZ Germany

Mr Somit VARMA, World Bank

Mr Dorian VASSE, Jr. Professional Officer, World Bank

Ms Bente WEISSER, Ministry of Foreign Affairs, Norway

Ms Gabriele ZÖLLER, Senior Advisor, Federal Ministry for Economic Cooperation and Development, Germany

EITI Secretariat

Dr Sam BARTLETT, Regional Director

Mr Tim BITTIGER, Regional Director

Mr Anders Tunold KRÅKENES, Communications Manager

Mr Jonas MOBERG, Head of Secretariat

Dr Francisco PARIS, Regional Director

Mr Jürgen REITMAIER, Senior Regional Advisor

Mr Eddie RICH, Deputy Head and Regional Director

Welcome and Introductions

The Chair opened the session by welcoming new members of the Board and thanking those that were leaving.

EITI Implementation and Outreach Progress Report (Board Paper 7-2)

Jonas Moberg introduced the implementation progress paper by highlighting the variances of challenges that still remain in the implementation process. Many countries in Francophone Africa remained especially difficult for both technical and political reasons. He noted that much of the effort and attention of the Secretariat had been focused on the Conference over the previous 4 months, but that the Conference had served as a milestone to generate considerable progress in many countries.

The report was broadly welcomed as an improvement but discussion again revolved around the balance between frank information and sensitivity. The Secretariat agreed to find ways through this report and other means to keep the Board better engaged and informed on the most challenging countries. It was also agreed that there was a need for more recommendations on corrective actions and plans (e.g. diplomatic action) for countries that appeared to be falling behind.

There was also some discussion about:

- including names of oil, gas and mining companies operating in each country; and
- those countries, such as Nigeria and Ghana, that are rich in oil and minerals but have only thus far implemented the EITI in one of those sectors. It was suggested that the scope of the EITI for validation purposes will depend on what was agreed by the multi-stakeholder group in those countries.

There was a specific discussion about the situation in Gabon. The Government of Gabon representative expressed the opinion that the concerns about Gabon's adherence to the EITI principles were not fair. He stated that civil society were partners in the process, and were free to act. He said that Marc Ona was arrested on a matter unrelated to EITI. In response, civil society expressed its disappointment about the arrest of Marc Ona and was not persuaded that this was for reasons not related to EITI. They felt that it was indicative of wider harassment. Civil society were also disappointed that Ona did not feel safe to travel to Doha and that there was no independent Gabonese civil society representation at the Conference. Others noted that lack of harassment was a fundamental principle of the EITI.

The Board accepted the Report, but noted:

- the need to recognise the independence and role of each group operating in EITI; and
- the need for the Secretariat to play different coordinating roles in each country.

Action

The **Secretariat** to engage the Board more systematically in their coordination of interventions in countries making slow progress and alert countries falling behind the validation deadline of all the support on offer.

The **Secretariat** to include a list of companies operating in each country in the report.

The **Validation Committee** to consider guidance on countries in which not all extractive sectors are covered.

Azerbaijan validation (Board Paper 7-3)

Sam Bartlett began by making some general comments on the role of the Validation Committee and the International Secretariat in the Validation process from initiation, to approval of the Terms of Reference and contract, to the recommendation to the Board on the final report. He emphasised the role of the Committee to deal with disagreements between stakeholders in the process on behalf of the Board.

Julie McDowell then introduced the Azerbaijan paper on behalf of the Committee. She noted the Committee's sense of excitement at recommending the first Validation Report for approval. She noted the strong commitment from all stakeholders in Azerbaijan: government, companies and civil society in completing a Validation over a year in advance of the deadline. She also explained the Validation Committee's awareness that the first Validation process would be viewed as setting precedent for other countries, which added and to the Committee's desire to make a thorough assessment. She outlined two points for note going forward:

- There had been no permanent multi-stakeholder group in place in Azerbaijan. The Validator had taken the view that sufficient arrangements for multi-stakeholder engagement had been put in place. The Committee, however, took the view that the EITI criteria require the establishment of a formal, permanent multi-stakeholder group. Since the Validator had visited Azerbaijan, the Government had committed to do this and the other corrective actions referred to in the Board paper. The Committee emphasised that the full and effective compliance with indicator 5 was necessary in all future Validations. The Board should invite the Azerbaijan MSG to provide an update to the Board at the meeting scheduled for Baku in September 2009.
- The Committee requested that countries give the Committee at least 6 weeks to review their Validation reports in order to allow time for countries to make corrections and to help them address issues before a recommendation was made to the Board. It was emphasised that this was intended to help countries rather than to add to their bureaucratic process.

The full wording of the recommendation of the validation Committee was as follows:

The EITI Board designates Azerbaijan as EITI compliant as of 16 February 2009. In accordance with previously agreed Validation guidelines:

- *Azerbaijan must be revalidated within 5 years (i.e. by 15 February 2014).*
- *Stakeholders in the process may call for a new Validation at any time within that period if they think the process needs reviewing.*
- *Where valid concerns exist that a country has become EITI Compliant, but its implementation of the EITI has subsequently fallen below the standard required for Compliance, then the Board reserves the right to require the country to undergo a new Validation or face delisting from the EITI.*

In reaching this decision, the Board acknowledged the prompt corrective measures that the Azerbaijan Government has adopted in relation to two specific areas of concern that the Validation Committee brought to its attention. These related to: 1) the establishment of a formal multi stakeholder group (MSG); and 2) the establishment of a workplan.

In particular, the Board notes that stakeholders in Azerbaijan have agreed to establish a formal multi-stakeholder group (MSG) that will oversee the development and execution of an EITI country work plan and implement the Validator's recommendations. The Board has issued its decision to confirm Azerbaijan EITI-compliant status in recognition of the Azerbaijan Government's commitment to establish a formal MSG within six months (by 15 August 2009) and to ensure that the Validator's recommendations are implemented in full. The board emphasizes that this arrangement has been granted in recognition of the Azerbaijan Government's early commitment and rapid progress, and that a departure from full and effective compliance with indicator 5 will not serve as a precedent for future Validations.

The Board directs the EITI International Secretariat to verify the establishment and effective functioning of the MSG and the implementation of the Validator's recommendations, and to provide regular updates to the Board on progress achieved. The Board invites the Azerbaijan MSG to provide an update to the Board at the meeting scheduled for Baku in September 2009.

The Board congratulates the Government of Azerbaijan for its commitment and leadership, and all the other stakeholders in Azerbaijan who played a key role in achieving the impressive progress made implementing the EITI. It further commends all parties for completing the Validation well in advance of the deadline, and for the collaborative and constructive approach shown by all parties throughout the process.

The first EITI Validation has been a learning process, and several important lessons have emerged from the process in Azerbaijan:

- *The Board has given particular attention to addressing issues that underpin the EITI process in a country and especially to ensuring that there is effective multi-stakeholder oversight of EITI implementation. An effective EITI process is essential to address the substantive policy and content issues that will be raised in Validation which are likely to differ in character between implementing countries. The Board will continue to focus on these issues as it reviews future Validation reports.*
- *There is a unique historical context in Azerbaijan with respect to the workplan and MSG that was taken into account in this case. Azerbaijan developed an EITI process and issued EITI reports prior to the establishment of the EITI Validation Guide. Noting that the EITI Chairman has previously urged that "Validations should be conducted with common sense and historical context as well as due concern for the indicators" (4th EITI Board Meeting, Ghana, 22 February 2008), the Validation Committee worked with the Validator and the stakeholders in Azerbaijan to address these issues. These conditions do not apply in other Candidate countries, and the Board will not make exceptions to the requirements set out in the Validation Guide.*

- *The Board reviews all Validation reports in order to ensure quality, consistency and sustainability in the Validation process. The Board advises Candidate countries that it will typically take a minimum of 6 weeks to process Validation reports. The Board encourages Candidate countries to complete the Validation reports (and have them endorsed by their multi stakeholder groups) well in advance of their Validation deadline where possible.*

The Board instructs the EITI International Secretariat to document lessons learned in the Azerbaijan Validation and to communicate these to all Candidate countries.

The Board also instructs the EITI International Secretariat to examine the Validator's recommendation to clarify Indicators 12, 13, 14 and 15 and the associated indicator assessment tools (IATs). Balancing the need for consistency, continuity and clarity, the EITI International Secretariat should bring any suggested changes to the attention of the Validation Committee which in turn may make recommendations to the Board.

On behalf of Azerbaijan, Shahmar Movsumov thanked the Board for its support and noted that Azerbaijan had underestimated the complexity of the process. He stated that he had learned many lessons in the process. Ingilab Ahmadov spoke on behalf of Azeri civil society by confirming that they agreed with the conclusion of the report – but that Validation was not the final result, merely a crucial step in the process. They too had learned some important lessons.

In discussion, it was confirmed that the EITI International Secretariat should verify the establishment and effective functioning of the multi-stakeholder group and the implementation of the Validator's recommendations, and provide regular updates to the Board on progress achieved. The Board congratulated the Government of Azerbaijan for its commitment and leadership, and all the other stakeholders in Azerbaijan who played a key role in achieving the impressive progress made implementing the EITI.

It was noted by many that the first EITI Validation had been a learning process. The Secretariat was asked to document the lessons learned in the Azerbaijan Validation and to communicate these to all Candidate countries. Shahmar Muvsumov strongly encouraged other countries to complete at least two reports before undertaking Validation.

The Board agreed to accept the recommendation and, on behalf of the whole Board, the Chairman congratulated Azerbaijan on becoming the first EITI Compliant country.

Action

The **Secretariat** to verify the establishment and effective functioning of the multi-stakeholder group and implementation of the Validator's recommendations in Azerbaijan, and to provide regular updates to the Board.

The **multi-stakeholder group of Azerbaijan** to provide an update to the Board on progress at the Board meeting in Baku in September.

The **Secretariat** to document the lessons learned from the Azerbaijan Validation experience and communicate these to all Candidate countries.

Tanzania Candidature (Board paper 7-4)

Eddie Rich briefly introduced this paper by explaining how Tanzania had, in the assessment of the Secretariat, met the four sign-up indicators.

The Board supported the recommendation and Tanzania became a Candidate country.

Governance and Legal Entity and Constituency Guidelines (Board Paper 7-5)

Jonas Moberg introduced the paper by noting that the Board had taken the decision through the Circular to agree the Articles of Association. The proposal was for the EITI to become fully incorporated as a not-for-profit association in Norway. The Constitution meeting which followed the Board meeting was to establish the EITI Association. It was to be open and participants were invited to be founders of the EITI. The Members' meeting, to follow the Constitution meeting, was to have a separate registration with 'members' and 'observers'. Each constituency within the Members' meeting would have equal votes in the unlikely of case of a vote being taken. Jonas encouraged Board members to familiarise themselves with the Guidance on Governance sent out with the Board papers.

In response to questions, EITI legal adviser, Christian Fredrik Michelet noted that the present legal entity ('Secretariat Association') would be wound up once the new association had been established. He asserted that, under the new legal entity, EITI Board members would theoretically have legal liability for imprudent or negligent acts. However, there had never been any case of liability for Board members of Norwegian not-for-profit associations, and very few cases even for for-profit companies. The Secretariat would procure liability insurance for the Board.

The Board noted the agreement and preparations for the Constitution and Members' meetings.

Action

The **Secretariat** to procure liability insurance.

EITI Evaluation (Board Paper 7-6)

Francisco Paris introduced this paper by stating that the objective of the evaluation was to help answer the question of whether the EITI is having an impact and what could be done to improve the initiative. He noted that the final product was more of a survey than an assessment, but that the recommendations were useful and noted.

Karina Litvack questioned the conclusion that the financial crisis presented a challenge. She argued that the resulting shifting relationships between sovereign debt owners, financiers, and institutional investors, gave the initiative more traction not less. Jonas Moberg agreed that this was an area for more consideration by the International Secretariat and agreed to consider how the EITI could make the best opportunity of the crisis drawing partly on Paul Collier's paper for the Board.

Based on the report, there was also some discussion how greater incentives could be generated for countries to achieve compliance. Once more countries become validated, the Board will be better able to assess whether compliance does provide sufficient reward.

The Board accepted the evaluation and found the recommendations useful, but expressed disappointment that the evaluation had not presented a significant deepening of the understanding of the impact of the EITI in implementing countries.

EITI Conference

Jonas Moberg began by recognising the extraordinary generosity of the Qatari Government in hosting this Conference. He also noted the support of the Governments of Germany and Australia and of the World Bank in financing attendance of individuals from all stakeholder groups from so many resource rich countries. He thanked ExxonMobil and Total for their support of the Chairman's Dinner. He outlined the 5 publications to be launched at the Conference (the Progress Report, the Mining Publication, the Guide to Communications, the Guide to Parliamentarians, and the EITI Rules Book) and the video to be played at the opening ceremony. He alerted the Board to the regular updates that would be appearing during the Conference on the EITI website.

The Board thanked the Secretariat for their hard work in preparing the Conference.

The Functioning of the Rapid Response Committee

Bennett Freeman outlined the history of the Rapid Response Committee. It had been established a year previously primarily to protect the security of activists promoting the principles of the EITI. It had been very active in the opening months of 2009. He commended the work of the Members of the Committee, the Secretariat and the Chair. He hoped that there would be less need to meet in future.

Patrice Otha responded that civil society had an important role to play in development, but that, to do so, they needed to be defined legally. They should not, for example, engage in party politics. He warned of the dangers of generalising a situation from a single case.

Gavin Hayman noted that any such definition of civil society should include independence from government. He proposed that a fund is established to provide timely assistance as necessary to defend the human rights of those campaigning to promote the EITI principles.

Action

The **Secretariat** to develop a proposal for how best to provide timely assistance to activists campaigning for the EITI principles who receive harassment or infringements to their civil liberties, such as the establishment of a fund to pay for such assistance.

Secretariat Budget Update (Board paper 7-7)

Eddie Rich presented the summary of accounts for 2008, noting that the overall 3-year budget remained realistic and on-track. He highlighted two points:

- the end of year deficit of about \$250,000 was explained by a delay in revenue for 2008 which was received from one supporter in early January 2009.
- the budget disguised the fact that very little of the expected costs for the Conference (originally planned for 2008) had actually been spent in 2008. Due to the weakness of the dollar in 2008 compared to when the budget was originally drawn up in May 2007 and compared also to February 2009, he argued that this should be interpreted neither as a serious overspend in 2008 nor as a serious under-budgeting in 2009.

In response to a question on overspent items, especially travel, in 2008, he asserted that these could be explained by the exchange rate, noting that the biggest overspend was on the Euro-item (Berlin office costs) where the divergence between expected and actual exchange rates with the dollar had been most acute. However, it was noted that these items would need close tracking by the Board in 2009 to avoid unsustainable patterns of spending.

The Board accepted the summary of accounts for 2008.

The Approval of Accounts 2008 and Auditor's Report (Board Paper 7-8)

Humphrey Asobie introduced this paper on behalf of the Audit committee explaining that the Committee had been unable to meet with the Secretariat and Auditors, but that he had questioned the Auditors and the Secretariat on behalf of the Committee, and had briefed the Committee in Doha. Professor Asobie had raised three issues:

- Noting the public interest/presentation in the matter, why was there such a wide variance of the budget

figures for 2007 and 2008. The Secretariat had explained that this was due to the fact that the Secretariat had only been established in the second half of the calendar year.

- The balance sheet figures for total assets had not matched the total liability figures. The Auditor had noted that his figures were incorrect on this, and a new corrected financial balance sheet was issued and was now presented at the Board.
- The report recorded a loss of NOK1.5m (about \$250,000). The Secretariat had explained that some payments for 2007 were only received in January 2008, thus rendering this 'loss' as a cash flow issue – as explained in the Board Paper on Budget and Finance.

Professor Asobie confirmed his understanding that the auditors were satisfied that the audited accounts were a true statement of the financial position of the EITI Secretariat for 2008 and that he was satisfied with the financial probity and management of the Secretariat. **The Board accepted the report of the Audit Committee.**

In discussion it was noted that there was a role for the Finance and Governance Committees in ensuring a sound oversight process for payments, for compensation of staff, and for the renewal of staff contracts.

ActionThe Secretariat to consider which Committee should oversee a proposal to the Board for the renewal of staff contracts and their remuneration, as well as which Committee should advise on the oversight process for payments.

Agree to Proposal for EITI Chair

To general acclaim, Mike Wilkinson confirmed that the Board would nominate Peter Eigen for a final two year term as EITI Chairman. It was noted that there was an explicit provision in the New Articles of Association for a vice-Chair role if and when necessary.

Winding up of outgoing Board; Thanks to Board Members

Several outgoing members of the Board (Karina Litvack, Edward Bickham, Kalia Moldogazieva, Patrice Otha for Fidèle Ntsissi, and Gavin Hayman) reflected on their experience of having been on the Board and satisfaction with the way that the initiative had developed, often in difficult circumstances.

On behalf of the Board, Peter expressed his gratitude for all their work and noted that it had been a 'pride, delight and honour' to serve as the Chair for his first term.

EITI Secretariat
March 2009