

12<sup>TH</sup> EITI BOARD MEETING, BERLIN, 15-16 APRIL 2010

# Minutes

**EITI International Secretariat** Oslo, 26 May 2010

# MINUTES OF THE 12<sup>TH</sup> EITI BOARD MEETING

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*Humboldt-Viadrina School of Governance, Berlin, 15-16 April 2010*

## Chair

**Dr Peter EIGEN**, Chairman EITI

## Implementing Countries

**Mr Abdoul Aziz ASKIA**, Permanent Secretary, EITI Niger, Niger

**Mr T Negbalee WARNER**, National Coordinator, EITI Liberia  
(Alternating for Mr Essimi MENYE, Minister of Finance, Chairman EITI Cameroon, Cameroon)

**Prof Humphrey ASSISI ASOBIE**, Chairman, NEITI, Nigeria

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

## Supporting Countries

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

Alt: **Mr Stephen GALLOGLY**, Director for International Energy and Commodity Policy, US State Department

**HE Birgitta NYGREN**, Ambassador, Ministry for Foreign Affairs, Sweden

**Dr Ulla MIKOTA**, Deputy Director General, Federal Ministry for Economic Cooperation and Development, Germany

## Civil Society Organisations

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

Alt: **Mr Dorjdari NAMKHAJANTSAN**, Open Society Forum, Mongolia

**Mr Alfred BROWNELL**, Green Advocates, Liberia

Alt: **Mr Eduardo BOHORQUEZ**, Transparencia Mexicana/Transparency International, Mexico

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

**Mr Michel ROY**, International Advocacy Director, Secours Catholique, France

Alt: **Mr Diarmid O'SULLIVAN**, Team leader, Oil Campaign, Global Witness

**Mr Anthony RICHTER**, Chairman of the Governing Board of Revenue Watch Institute

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

## Companies including Investors

**Mr Stuart BROOKS**, Manager, International Relations, Chevron

Alt: **Mr Michael D. MAHER**, Public Affairs, ExxonMobil

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

Alt: **Mr Jim MILLER**, Vice President Environmental Affairs, Freeport-McMoRan Copper & Gold Inc.

**Dr R Anthony HODGE**, President, International Council on Mining and Metals

Alt: **Mr Edward BICKHAM**, Independent Consultant, International Council on Mining and Metals

**Mr Jean-François LASSALLE**, Vice President Public Affairs – France and NGOs, Total

Alt: **Mr Keith RUDDOCK**, General Counsel – Exploration & Production, Royal Dutch Shell

**Ms Julie McDowell**, Head of SRI, Standard Life Investments

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

## Observers

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

**Mr Baldanjav ARIUNSAN**, Deputy Minister of Minerals and Energy, Mongolia

**Mr Franklin ASHIADEY**, GHEITI, Ghana

**Ms Christina Del CASTILLO**, Anticorruption Advisor, US State Department

**Ms Diana CORBIN**, Operations Officer, Donor Relations Extractive Industries Transparency Initiative (EITI), World Bank

**Ms Francisca Tatchouop BELOBE**, EITI National Coordinator, Equatorial Guinea

**Ms Nikita Micieli de BIASE**, Directorate of Economic Affairs, Ministry for Foreign Affairs, Italy

**Mr Wouter BIESTERBOS**, Senior Policy Officer, Good Governance Division, The Netherlands

**Mr Hervé CRONEL**, Special adviser for Economics and Development of the general Secretary of la Francophonie

**Mr Lennart DERIDDER**, European Commission

**Ms Page DYKSTRA**, Program Associate, Revenue Watch Institute

**Mr Cristiano FACCIOTTO**, Legal Counsel, ENI SpA, Italy

**Mr Farid FARZALIYEV**, State Oil Fund, Azerbaijan

**Mr Hans-Aasmund FRISAK**, Head of CSR, Statoil, Norway

**Ms Katharina GUNSELMANN**, EITI Policy Advisor, German Technical Cooperation (GTZ), Germany

**Mr Moctar O MOHAMED EL HACEN**, Technical Adviser, African Development Bank, Tunisia

**Mr David HENRY**, Energy and Natural Resources Division, US State Department

**Mr Karybek IBRAEV**, Head of National Secretariat, Kyrgyzstan

**Ms Suneeta KAIMAL**, Deputy Director, Revenue Watch Institute

**Ms Armine KHACHATRYAN**, Economist, Strategy, Policy and Review Department, IMF

**Mr William KINGSMILL**, Senior Advisor, Office of the Vice President (Africa), Senior Adviser, World Bank

**Ms Asmara KLEIN**, Intern, Publish What You Pay (PWYP)

**Ms Magali KREITMANN**, Financial Governance Unit, Ministry of Foreign Affairs, France

**Ms Kirsten KYNGDON**, Legal Assistant to the General Counsel, Shell International B.V

**Mr Manuel De LEMOS**, Timor-Leste

**Mr Hakan LUCIUS**, Head of Division, Public Information and Relations with Civil Society Division, European Investment Bank

**Mr Ron LYEN**, Senior Policy Advisor/Manager, International Affairs Division, Natural Resources Canada, Canada

**Mr Geir LØKKEN**, Assistant Director General, Ministry of Foreign Affairs, Norway

**Mr Louis MARÉCHAL**, Policy Officer - Mineral Resources, Ministry of Foreign Affairs, France

**Mr Naingaral MADJIRO**, Member of the Pilot Committee and Civil Society Representative, Chad

**Mr Tabe Eugene N'GAOULAM**, Minister of Petroleum & Energy, Chad

**Mr Christian PETERS**, Programme Officer, European Commission

**Ms Donica POTTIE**, Foreign Affairs and International Trade, Canada

**Mr Anwar RAVAT**, Program Manager, EITI, Oil, Gas and Operations Unit, World Bank

**Mr Paulo de SA**, Manager, Oil, Gas and Mining Policy Division, World Bank

**Mr Al-Habbo Mahamat SALEH**, EITI Chad

**Mr Carlos SANTISO**, Sector Manager, Department of Governance and Economic and Financial Reforms, African Development Bank, Tunisia

**Mr Oliver WAGENER**, EITI advisor to BMZ division 211, German Technical Cooperation (GTZ)

**Ms Bente WEISSER**, Senior Advisor, Ministry of Foreign Affairs, Norway

**Mr Jelte van WIEREN**, Head, Good Governance Division, The Netherlands

**Mr Joseph WILLIAMS**, Information and Advocacy Officer, Publish What You Pay (PWYP)

**Mr François VALÉRIAN**, Head of Private Sector Programmes, Transparency International

**Ms Gabriele ZÖLLER**, EITI Desk Officer, BMZ, Germany

### **EITI International Secretariat**

**Dr Sam BARTLETT**, Regional Director

**Mr Tim BITTIGER**, Regional Director

**Ms Carole ISIK**, Programme Adviser

**Ms Marie-Ange KALENGA**, Regional Director

**Mr Anders KRÅKENES**, Communications Manager

**Mr Jonas MOBERG**, Head of Secretariat

**Ms Christine NOWAK**, Executive Assistant

**Dr Francisco PARIS**, Regional Director

**Mr Eddie RICH**, Deputy Head of Secretariat

**Mr Jürgen REITMAIER**, Special Advisor

**Mr Mike WILKINSON**, Special Advisor

## **1. Welcome and adoption of the agenda (Board Paper 12-1)**

The Chair thanked the Humboldt-Viadrina School of Governance for hosting the Board Meeting.

The Chair welcomed new Board Member Birgitta Nygren (Sweden).

The Board approved the nomination of Olivier Loubiere (Areva and previously Alternate) to the Board replacing Dave Baker (Newmont) and welcomed Jim Miller (Freeport McMoRan) as Olivier's Alternate. (

The Board approved the nomination of Mrs Effie Simpson Ekuban, replacing Nana Juaben-Boaten Siriboe as

Ghana's representative on the Board.

The Chair welcomed the observers to the meeting, including the Minister of Petroleum from Chad, H.E. Tabe Eugene N'Gaoulam. He reminded all participants that the Board's discussions are confidential and noted that he would ask Board members (and observers) to recuse themselves from some sessions where they had a conflict of interest and that certain agenda items would be discussed in closed session.

The Chair also welcomed Marie-Ange Kalenga, recently appointed as a Regional Director with the EITI International Secretariat.

The draft agenda was adopted. Following a suggestion from Anthony Hodge, the Board agreed to include, in future Board agendas, a summary of action points agreed at previous meetings, and details on their current status.

The Chair introduced the agenda and objectives of the 12<sup>th</sup> Board Meeting. He noted that the decisions made would shape the future of the EITI. He highlighted the many achievements over the past few months, noting that all but three of the countries with a 9 March Validation deadline had now produced an EITI Report. Validation had commenced in all but four of these countries. Validation had been a learning process for all concerned. Validation had proved to be a complex and time consuming exercise, but was also successfully highlighting the strengths and weaknesses in EITI implementation and identifying opportunities for improvement. In handling the applications for an extension of the Validation deadline, the Chair urged the Board to apply the EITI rules fairly.

### Action

The Secretariat to include a summary of action points agreed at previous meetings, and details on their current status in future Board agendas.

## 2. Report from the EITI policy discussion on 14 April

Anthony Richter reported on the EITI policy discussion held on 14 April at the Humboldt-Viadrina School of Governance. The meeting opened with a presentation from the EITI Chairman, followed by speakers representing implementing countries, civil society organisations and supporting companies. Richter highlighted four themes in the subsequent discussions:

1. "Incentivising compliant countries". As a minimum standard, the EITI needs to do more to encourage countries that become Compliant or are close to Compliant to continue strengthening their implementation;
2. Improving EITI reporting. The EITI reporting process must become a natural and integrated part of an implementing country's data collection and dissemination on a regular basis.
3. Strengthening support to civil society in implementing countries. Beyond current support, the EITI needs to ensure that civil society representatives are allowed to operate freely and have the political and financial support that they require.
4. Consolidating the global standard, including increasing the number of implementing countries, dealing with de facto governments, and possible changes to the governance of the EITI itself.

The Board had previously agreed to convene a number of working groups to address these issues. The Chair invited Board Members and other interested parties to contact the Secretariat if they wished to participate in the working groups. The Secretariat was tasked with establishing terms of reference for each working group and convening them in advance of the next Board meeting. It was suggested that the Board hold a retreat to further discuss policy issues.

### Action

The Secretariat to establish terms of reference for each working group and to convene meetings in advance of the next EITI Board meeting.

### 3. Voluntary Suspension Request: Sao Tome e Principe (Board Paper 12-3)

Eddie Rich introduced the voluntary suspension request from Sao Tome e Principe. The letter requesting the voluntary suspension was signed by the Prime Minister Dr Joaquin Rafael Branco. The letter cited the challenge of leading an EITI process over a sector that is jointly managed with Nigeria. The reporting process for the Joint Development Zone (JDZ) has effectively been stalled for 1½ years waiting for the green light to proceed from the Nigerian and Sao Tomean authorities. The letter argued that this was beyond the control of the Sao Tomeans alone.

In the International Secretariat's view, the Prime Minister's description of a process that had effectively been out of the control of the Sao Tomeans was fair. Whilst the Sao Tomeans do sit on the JMC, the Nigerian authorities are in a stronger position and progress had been difficult. However, the International Secretariat noted that the lack of progress in implementing the EITI was not entirely due to the slow progress of the JMC. There did not appear to have been regular meetings of the MSG, and there had been no strong or clear evidence of continued political commitment to the process.

The International Secretariat noted that Policy Note 5 states that "Countries that are experiencing exceptional political instability or conflict may apply for voluntary temporary suspension for up to one year... The government's application should note the views of the EITI multi-stakeholder group (MSG)". The Secretariat's view was that STP had not experienced 'political instability or conflict'. Accordingly, the International Secretariat recommended that the Board reject the application for suspension from Sao Tome e Principe.

Julie McDowell advised the Board that the Validation Committee had discussed the application and the Secretariat's recommendation. She advised the Board that the Committee endorsed the Secretariat's recommendation to delist Sao Tome e Principe, noting that the EITI process was not within the control of the country, and that when those conditions change, they should be encouraged to reapply.

The Board agreed to reject the request for a suspension and de-list Sao Tome e Principe. In taking its decision, the Board concluded that implementation had been stalled mainly due to circumstances related to the joint management with Nigeria of the Joint Development Zone-The Board emphasised that it would welcome a reapplication by Sao Tome e Principe with a renewed commitment and a clear outline of how the previous barriers to effective implementation had been corrected.

#### Action

The EITI Chair to write to the President of Sao Tome e Principe, informing him of the rationale for the Board's decision, and encouraging Sao Tome e Principe to reapply once the previous barriers to effective implementation had been corrected.

### 4. Validation

The Chair opened the session by thanking the Validation Committee, chaired by Julie McDowell, for the extraordinary amount of work undertaken in the lead up to the meeting.

#### 4-A. Validation report: Mongolia (Board Paper 12-4-A)

Board Members and observers from Mongolia were asked to recuse themselves from this session.

Julie McDowell advised the Board that the Validation Committee had discussed the Secretariat's recommendation to designate Mongolia as a Candidate country that is close to Compliant. She advised that the Committee endorsed the Secretariat's recommendation, subject to a number of amendments to the proposed recommendation. This included emphasising that "close to compliant" is not the default option for countries that had not achieved compliance. The Board agreed that in assessing whether a country could be designated as "close to compliant", the Board will: (1) Undertake a detailed assessment of the final Validation Report and agree specific

remedial actions that need to be undertaken in order to achieve compliance; (2) Assess whether the remedial actions can be fully addressed and implemented quickly; (3) Set a deadline for the submission of the Secretariat's review (endorsed by the MSG) to the EITI Board. The Board will not extend this deadline.

The Board agreed the following statement:

*The Board designates Mongolia as Candidate country as of 15 April 2010.*

*Based on a thorough assessment of the specific circumstances, Mongolia is "close to compliant".*

*The Board congratulates the government, companies and civil society organisations in Mongolia for the impressive progress made in implementing the EITI.*

*As set out in EITI Policy Note #3, the designation of "close to compliant" applies in cases where the EITI Board considers that a Candidate country has not only made meaningful progress, but can reasonably be expected to achieve Compliance within a very short time. Based on the Validator's findings, the Board recommends a number of remedial actions:*

*1. The Mongolian multi-stakeholders working group (MSWG) should: (a) agree a clear definition of "material payments and revenues", (b) incorporate this definition into the reporting templates, and (c) take steps to ensure that all entities that make or receive material payments are included in the reporting process. This should specifically address the question of company donations, any material payments to local government authorities, and ensuring the participation of local government authorities that receive material payments in the reporting process.*

*2. As per the Indicator Assessment Tool for Indicator 11, the MSWG should take steps to demonstrate, in the next EITI Report, that all companies that make material payments (as per 1(a), above) are participating in the reporting process.*

*3. As per the Indicator Assessment Tool for Indicators 12 and 13, the government and MSWG should take steps to ensure that disclosures to the Reconciler are based on audited accounts to international standards and agree a strategy for addressing these issues in accordance with the requirements as specified in Validation IATs 12 & 13.*

*4. Regarding indicator #14 and #15, and based on the clear definition of "material payments and revenues" (as per #1(a) above), the government and MSWG should take steps to demonstrate, in the next EITI Report, that all material oil, gas and mining payments by companies (indicator 14) and all material oil, gas and mining revenues received by the government (indicator 15) have been disclosed to the organisation contracted to reconcile figures and produce the EITI Report.*

*When the MSWG considers that the outstanding issues have been addressed, the EITI International Secretariat will reassess Mongolia's compliance. The Secretariat review will reassess the unmet indicators 11-15 in accordance with the requirements as set out in the Validation Guide. In addition, the Board noted that the National Council and MSWG recently agreed a work plan for 2010 and proposed an EITI Law and strategy to move beyond the core EITI requirements (licensing, contract, natural reclamation costs and physical audit). In conducting its review, the Board instructs the EITI International Secretariat to review progress with these initiatives, in particular with regard to removing any outstanding obstacles to EITI implementation (i.e. to reassess Validation indicator 8).*

*The EITI International Secretariat should consult widely with stakeholders during the review. The MSWG should be given an opportunity to comment on the Secretariat's findings. The Secretariat's review will be*

*a public document - supplementing the Validation Report - thereby ensuring that the basis for the Board's decision regarding compliance is clear to all stakeholders.*

*The Secretariat should submit its report to the Board via the Validation Committee. If the Board is satisfied that remaining requirements have been met, the country will be designated as EITI Compliant. In the interim, Mongolia will retain its Candidate status. The Board retains the right to require a new Validation if the remedial steps and Secretariat review are not completed within 6 months (i.e. by 15 October 2010).*

## Action

The EITI Chair to write to the Prime Minister of Mongolia, informing him of the Board's decision and the steps needed to achieve compliance.

### 4-B. Consideration of Validation deadline extension applications (Board Paper 12-4-B)

Julie McDowell outlined the process undertaken by the Validation Committee. The Committee had examined the procedures for applying the EITI rules and examined the extension applications from each country. Under the agreed rules, extensions of the deadline could be granted in exceptional and unforeseeable circumstances (where constraints in meeting the deadline arose that were beyond the control of the EITI Candidate country). The Committee had scrutinised each country's extension request, and considered additional relevant information provided by the EITI International Secretariat and others (as outlined in Board Paper 12-4). The Committee had subsequently agreed recommendations for the majority of applications. The committee's recommendations were table for discussion. The Committee had not reached a consensus on the applications from Equatorial Guinea, Peru, the Democratic Republic of Congo, and Sierra Leone.

On behalf of the Validation Committee, Julie McDowell noted that it would be for the Board to address issues relating to the legitimacy of specific governments. The Committee noted that this issue could be said to have arisen in the cases of Niger and Madagascar.

The Board discussed the option of granting a blanket extension to all implementing countries. Shahmar Movsumov noted that the large number of countries that had missed the deadline indicated that the two year deadline set by the Board was unrealistic. Prof Humphrey Assisi Asobie noted that there were aspects of the Validation process that were outside the control of implementing countries. Stuart Brooks noted an element of Board culpability, as the Validation window may have been over-optimistic, and that interim milestones should have been more clearly established.

A number of Board Members highlighted the need to protect the credibility of the EITI by applying the agreed rules. Michel Roy noted that the rules allowed the Board to consider the circumstances and challenges in each country. Diarmid O'Sullivan noted that the credibility of the EITI requires a reasonable application of the agreed rules. The Chair noted that there was no consensus on changing the rules at this stage or in favour of granting a blanket extension, and suggested that the Board proceed by reviewing the merits of each application individually.

For countries that are granted an extension, the Board agreed that the EITI Chair should write to the Head of State and EITI Champion. Each letter should:

1. outline the process that the Board undertook in considering applications to extend the Validation deadline;
2. clearly explain the basis for the Board's decision to grant an extension;
3. set out the terms of the extension, and state that the extension is conditional on the receipt of a letter confirming acceptance of these terms; and
4. be made publically available.

The Board agreed that the Validation Committee should review these letters before they are sent.



The Board discussed the Validation Committee's proposal that no more than one extension should be granted to each country. Several Board Members spoke in favour of the proposal. The Chairman noted the need for flexibility in the event of force majeure situations. Some Board Members argued that the Board should not accept additional extension requests on the same grounds as those cited previously. The Chair noted that the rules require "exceptional" circumstances, and the Board would apply this test in assessing any subsequent extension requests. The Board did not agree any changes to the Policy Note.

The Chair asked that as each application was considered, the Board Members and observers from that country should recuse themselves from the discussions.

The Board noted that **Cameroon, Gabon, Ghana, Kazakhstan, Kyrgyzstan, Nigeria, Timor Leste** had submitted draft Validation Reports in advance of the deadline. Having reviewed these reports, the Committee had requested further information and explanations from the Validator and the multi-stakeholder group, a process which had enhanced the rigour and credibility of Validation, but which had also added significantly to the time needed to complete Validation. Therefore, the Board agreed that this situation was exceptional and unforeseeable, and outside the control of Cameroon, Gabon, Ghana, Kazakhstan, Kyrgyzstan, Nigeria and Timor Leste. No other factors were taken into consideration by the Board. The Board agreed to grant these countries an extension until 9 September 2010, by which time a final Validation Report (endorsed by the MSG) must be submitted to the Board (not for "completion" as defined in Policy Note #3). The Board agreed that if these countries submitted a final report by 9 July 2010, the Board would ensure that they received a decision by the next Board meeting in October 2010 at the latest. It was noted that if a final Validation decision is uncontroversial it may be possible for the Board to decide, on the Validation Committee's recommendation, to make a decision via Board Circular.

The Board scrutinized **Yemen's** extension request, dated 20 January 2010 and considered additional relevant information provided by the EITI International Secretariat. The Board concluded that insufficient and delayed technical and financial support from donors severely hampered the implementation of the EITI in Yemen, and constituted an exceptional and unforeseeable circumstance beyond the country's control within the meaning of the EITI rules. The Board agreed to grant an extension until 9 March 2011 for completion of the Validation process, with a strong recommendation to submit a draft Validation Report to the EITI Board by 9 December 2010 in order to allow enough time for completion of the process.

In the case of **Niger**, the Board granted an extension on the basis that political instability in the country had caused delays to EITI implementation constituting an exceptional and unforeseeable circumstance beyond the country's control. The Board agreed to extend Niger's Validation deadline to 9 September 2010 for submitting a final Validation Report (endorsed by the MSG) to the Board, with a recommendation to complete a draft Validation report by 9 June 2010.

The Board discussed the Validation process in the **Republic of the Congo**. The Board noted that the Validation process had been delayed by the initial lack of French-speaking Validators. It also noted that the International Secretariat had refused to provide a no objection to the first Validator procurement process due to concerns over the rigour and transparency of the process and potential perceived conflict of interest. The Board agreed to grant an extension on the basis that there were exceptional and unforeseen circumstances in relation to the appointment of a Validator in accordance with Board policy. The Board agreed to extend the Republic of the Congo's deadline to 9 September 2010 for submitting a final Validation Report (endorsed by the MSG) to the Board, with a strong recommendation to complete a draft Validation Report by 9 June 2010. The Board agreed that the letter from the Chair should note concerns with the process for procuring a Validator. The Board requested that the International Secretariat closely monitor the implementation process.

In the case of **Madagascar**, the Board concluded that the political instability and crisis in the country led to delays in the implementation of the EITI. The political situation further exacerbated delays in the implementation of EITI

because the country was unable to access technical and financial support from donors during the period of political instability. These factors constituted exceptional and unforeseeable circumstances beyond the country's control within the meaning of the EITI rules. The Board agreed to extend Madagascar's Validation deadline to 9 March 2011. In granting an extension, the Board agreed a number of milestones. The government should:

- appoint a senior government representative to champion EITI implementation, in addition to the present National Coordinator, by 15 July;
- convene the EITI national assembly and confirm its multi-stakeholder group membership and terms of reference, by 15 July;
- produce a formal EITI Report no later than 31 December 2010; and
- provide written confirmation of its agreement to the terms and conditions specified in this letter.

In the case of **Mali**, the Board concluded that the sustained delays in securing donor financing constituted an exceptional and unforeseeable circumstance beyond the country's control. The Board agreed to extend Mali's deadline to 9 September 2010 for submitting a final Validation Report (endorsed by the MSG) to the Board, with a strong recommendation to complete a draft Validation Report by 9 June 2010.

In the case of **Mauritania**, the Board concluded that the political instability and crisis in the country had led to delays in the implementation of the EITI. The political situation further exacerbated delays in the implementation of EITI because the country was unable to access technical and financial support from donors during the period of political instability. These factors constituted exceptional and unforeseeable circumstances beyond the country's control within the meaning of the EITI rules. The Board agreed to extend Mauritania's Validation deadline to 9 March 2011.

In the case of **Democratic Republic of the Congo**, the Board concluded that sustained delays in securing donor financing constituted an exceptional and unforeseeable circumstance beyond the country's control. The Board agreed to extend the Democratic Republic of the Congo's deadline to 9 September 2010 for submitting a final Validation Report (endorsed by the MSG) to the Board, with a strong recommendation to complete a draft Validation Report by 9 June 2010.

In the case of **Sierra Leone** the Board concluded that delays around finalising political reforms and in securing donor financing, constituted exceptional and unforeseeable circumstances beyond the country's control within the meaning of the EITI rules. The Board agreed to extend Sierra Leone's deadline to 9 September 2010 for submitting a final Validation report (endorsed by the MSG) to the Board, with a strong recommendation to complete a draft Validation report by 9 June 2010.

In the case of **Peru**, there was detailed scrutiny of the extension application and lengthy discussion regarding the case for granting an extension. The Board sought clarification from the International Secretariat as to whether the MSG had endorsed, and was supportive of, the extension request. It was noted that Peru's implementation had been against a backdrop of distrust between key stakeholders and controversy around the role of the extractive sector. This had been reflected in the significant delays in achieving stakeholder consensus in order to produce the first EITI Report, and unexpected delays and difficulties in procuring a Validator, initially arising from PWC's withdrawal from the international list of approved Validators. Several Board Members questioned whether this constituted "exceptional and unforeseeable" circumstances. Following extensive discussions, the Board concluded that the withdrawal of the only Validator with an office registered in Peru and the subsequent failure to obtain any bids to the public tender for a Validator constituted exceptional and unforeseeable circumstances beyond the country's control within the meaning of the EITI rules. The Board agreed to extend Peru's deadline to 9 September 2010 for submitting a final Validation report (endorsed by the MSG) to the Board, with a strong recommendation to complete a draft Validation report by 9 June 2010. The Board noted that the letter to the Head of State should emphasise that meeting this deadline would require that rapid progress be made and that the procurement of a

Validator be urgently concluded. The Board furthermore noted that, in the case of Peru, the timely completion of Validation would depend on continued political commitment, with a senior government official (EITI champion) having a clear mandate to oversee the successful continued implementation of the EITI.

In the case of **Equatorial Guinea**, there was detailed scrutiny of the extension application and lengthy discussion regarding the case for granting an extension. The Board considered additional information provided by the EITI International Secretariat regarding delays in the implementation and Validation process. The Secretariat noted that both reconciliation and Validation had taken longer than anticipated. The reconciliation was delayed by challenges in addressing confidentiality agreements. Validation was delayed by protracted negotiations regarding financial terms and review of contract terms. The request for extending the Validation deadline emphasised the progress that had been achieved in recent months, including the publication of the first EITI Report. The Board discussed the implementation delays in detail, including difficulties in ensuring meaningful civil society participation in the process. The Board examined the extent to which the delays were beyond the control of the country. Several Board Members argued that the delays demonstrated a lack of commitment of behalf of the Government.

The Board did not consider that the circumstances in Equatorial Guinea had amounted to “exceptional and unforeseeable” beyond the control of the EITI Candidate country as required by the rules of the EITI. Equatorial Guinea would be delisted from the EITI (no longer considered an EITI implementing country) effective 16 April 2010. The Board agreed that it would welcome a reapplication by Equatorial Guinea with a renewed commitment and a clear outline of how the country would address the constraints that hampered the process the first time. The Board noted that the requirements for re-entry were set out in Policy Note #5. The Board also noted that supporters of the EITI stood ready to provide assistance should Equatorial Guinea renew its efforts towards extractive industry transparency, and tasked the International Secretariat with supporting this work.

The Board referred the extension request from **Côte d'Ivoire** to the Validation Committee for further assessment. At the conclusion of this session, Diarmid O’Sullivan made a statement of behalf of Global Witness, which the Board agreed would be noted in the minutes: "Global Witness is very concerned that the Board has not exercised the rigour and objectivity, in all its decisions relating to Validation, that are essential to the EITI's credibility. These qualities will be essential to our continued participation in the initiative."

### Action

The EITI Chair to write to Head of State from each country as set out above. The Secretariat to make these letters publically available.

## 5. Report from the Nominations Committee (Board Paper 12-6)

The report from the Nomination Committee was held *in camera*. Stuart Brooks, chair of the Nominations Committee reported on the Committee’s search efforts to identify a successor to Peter Eigen as the Chair of the EITI after the end of his term in 2011. A number of short-listed potential candidates would be further consulted.

## 6. Briefing on the World Bank EITI Multi-Donor Trust Fund

Anwar Ravat and Paulo de Sa briefed the Board on the activities of the World Bank EITI Multi-Donor Trust Fund. The fund was established in 2005 to support the goals of the EITI. The MoU set out the relationship between the MDTF and the EITI Board. Paulo reported that, since 2005, the MDTF had attracted 13 donors a growing number of donors and approximately USD 30 million funding. Approximately 50% of that amount had been disbursed. The MDTF work programme covered in excess of 50 countries, including both implementing and EITI outreach countries. A typical grant agreement supported key elements of the country’s EITI work plan, although the MDTF did not fund Validation. The work was carried out in close collaboration with the International Secretariat, and with staff drawn from World Bank headquarters and country offices.

## 7. Implementation Report (Board Paper 12-5)

Jonas Moberg briefly introduced this paper, noting that the progress in several implementing countries had been discussed in detail in the preceding session. He welcomed comments in writing from Board Members.

## 8. Candidature assessment: Chad (Board Paper 12-7)

The paper on **Chad** was by introduced by Tim Bittiger. He outlined the history of the EITI's engagement in Chad. Chad's oil sector had been marred by conflict, political instability and inadequate infrastructure. The EITI Chairman had received a Candidate application from the Minister of Petrol and Energy on 29 March 2010. In accordance with agreed procedures, the EITI International Secretariat had evaluated the application in consultation with stakeholders and partners. The International Secretariat's assessment was that Chad had met the four sign-up indicators and was therefore eligible to be admitted as an EITI Candidate country.

The EITI Board admitted Chad as an EITI Candidate country on 16 April 2010. Chad will be required to complete Validation by 15 April 2012.

H.E. Tabe Eugene N'Gaoulam thanked the Board, and reiterated the Government's strong commitment to accelerate EITI implementation.

## 9. Financial report 2009 and budget 2010 update (Board Paper 12-8)

Eddie Rich introduced the International Secretariat's financial update. This included the detailed accounts for 2009 and a revised budget for 2010. Although the end of 2009 saw the International Secretariat with significant credit in their balance, Eddie noted that the budget was sensitive to exchange rate fluctuations, and that the addition (or removal) of financial support from supporting countries had a particularly significant impact on Secretariat revenue. Therefore, the Secretariat did not propose any reduction in the contribution levels for 2010. The situation would be reviewed at the end of 2010.

Jonas Moberg explained that the budget for 2009-11 had been agreed in Doha, and that this paper merely sought the Board's approval for minor changes. The Secretariat proposed a revised budget for 2010 (adjusted down from the previously approved overall expenditure of US\$3,817,500 to US\$3,320,000, including some reallocations). Eddie Rich noted that the revised budget accommodated the recent appointment of an additional Regional Director.

The Board considered the Secretariat's proposal and agreed that the Finance Committee should consider the matter in detail and make a proposal to the Board by Board Circular.

## 10. Report by the Audit Committee (Board Paper 12-9)

Tony Hodge presented a report from the Audit Committee. He confirmed the Committee's understanding that the auditor was satisfied that the audited accounts were a true statement of the financial position of the EITI Secretariat for 2009. He also confirmed the understanding of the Committee that the auditor was satisfied with the financial probity and management of the Secretariat.

Board members considered the question of a management letter, which was not required under Norwegian law and noted that, given its own emphasis on strong governance and probity, it was appropriate for the EITI to be guided by international best practice rather than only the requirements of national law. The Board requested further information from the Auditors regarding this matter.

The Board accepted the Audit report.

## 11. 5th EITI Global Conference (Board Paper 12-10)

Jonas Moberg briefly introduced this paper, noting that the Secretariat was not yet in a position to make a recommendation to the Board. The Secretariat recognised the urgency of the task, and reported that it was in dialogue with several governments regarding the possibility of hosting the event. It was requested that any recommendation should include an exposition of the financial consequences of the potential options. The Secretariat expected to be able to make a recommendation to the Board shortly.

## 12. 13th EITI Board Meeting

The Board agreed to convene its next meeting on 19/20 October 2010. The location has yet to be determined.

## 13. Other Business

The Board agreed that Peter Eigen and Stuart Brooks had signature authority for the EITI Association.