

October 13, 2020

Dear Mark Robinson and Helen Clark,

We are writing on behalf of Myanmar civil society and select representatives of the private sector with regards to recent developments in the Myanmar EITI process that will have significant repercussions on the future of the MEITI process. Our concerns are related to what is essentially a government takeover of the MEITI National Coordination Secretariat (NCS) and the newly appointed National Coordinator.

### **Restructuring of NCS**

In January 2020, the MEITI MSG agreed to restructure the NCS, whose role is to oversee the implementation of the MEITI MSG activities. The MEITI Office Budget Department (MOBD) is staffed by personnel from the Ministry of Planning, Finance and Industry (MOPFI) and has been responsible for managing the budget for MEITI MSG work plan implementation. However, for the past few years, we have observed that the MOBD has hindered implementation of the MEITI work plan by refusing to grant NCS funding for certain ad hoc activities; we therefore identified the need to reform NCS to ensure they have sufficient authority to implement all activities necessary to achieve MEITI's goals. A semi-independent NCS would help ensure the MEITI MSG work plan is implemented more effectively and efficiently. An organizational restructuring of the NCS has been underway with the support of a consultant since January 2020.

On August 12 2020, the consultant presented 2 new structure options to the MSG. The first option was a hybrid model in which an independent NCS was attached to the MOPFI's office; the second option was a hybrid model in which an independent NCS was attached the highest level of government, the President's Office. At this meeting, the MEITI MSG agreed to start with the first option as an interim arrangement and transition to the second once the new government settled into office in 2021.

However, in early September, the consultant learned over a call with the MSG Chair that a new structure was designed by MOPFI and was already on the way to the Leading Committee for their approval. This development led the consultant to pause her assignment. The new structure, designed by MOPFI, would be led by MOPFI's Deputy Director General with three department sections run by MOPFI's directors. Altogether, 19 staff members from MOPFI would operate the NCS. This decision has not been officially communicated to the MEITI MSG. The MOBD and the MOPFI still refuse to release details of their

proposed structure; our information about the new structure of the MOPFI's NCS has only been communicated to us by the consultant and has been verbally confirmed by the MOBD in a Technical and Reporting subcommittee meeting on September 10 2020.

The role of the MOPFI in MEITI is extremely concerning given their recent efforts to stall progress in the MEITI process. We have been pushing for disclosure of existing contracts; the MEITI MSG reached a stalemate on this topic and decided that the President should make the final decision. It was agreed that the MSG would send a letter together with arguments for or against disclosure of present contracts to the President's Office. The NCS attempted to send the MSG's letter directly to the President's Office in mid-August 2020 but the MOBD intercepted it stating the MOPFI is the only MEITI entity authorized to send letters directly to the President's Office. To this day, the letters are still with the MOPFI and have not been sent to the President. We believe the delay is because the MOPFI does not wish to move the conversation on contract disclosure forward since they play a key role in negotiating contracts with companies -- there may be segments in the contracts that they do not wish to disclose. This presents an alarming conflict of interest in the MOPFI acting as the NCS (and as the entity responsible for sending the letter to the President's Office); as the MOPFI has already demonstrated, they can stall activities with which they do not agree under the guise of bureaucratic red tape.

We would like to highlight that the MOPFI does not have the authority to unilaterally restructure the NCS. According to the MEITI implementation manual, the MEITI Leading Committee<sup>1</sup> is responsible for forming the NCS, which was done in 2017. The MSG is the decision-making body of MEITI and is responsible for the MEITI implementation process. The need to restructure the NCS for improved implementation of the MEITI work plan was identified in MSG meetings (as part of the MEITI implementation process), lending the MSG authority over NCS restructuring decisions. The MOPFI in turn is only responsible for the MOBD.

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<sup>1</sup> The Leading Committee is composed of the Union Ministers from the Ministry of Planning and Finance, Ministry of Natural Resources and Environmental Conservation and Ministry of Electricity and Energy. They are responsible for ensuring reforms from the EITI benefits Myanmar's socioeconomic plans and that Myanmar becomes an EITI compliant country.

Further, according to the EITI’s validation guide, decision-making must be “conducted in an inclusive way which treats each constituency as a partner”.<sup>2</sup> However, the government has dismissed the inclusive process that was already ongoing in the MSG and instead independently developed their own NCS structure. This is a violation of Requirement 1.4.

#### **Appointment of new National Coordinator**

Another significant cause for concern is the appointment of the new National Coordinator. Renaissance Institute (RI) has been acting as the NCS since 2017 and their contract was set to end on September 30 2020. MOPFI and RI agreed that the new National Coordinator would be appointed by RI. On August 27 2020, MATA learned that the newly nominated National Coordinator was U Aye Lwin, a member of the Myanmar Investment Committee and the government’s Central Economic Committee, and Joint Secretary of the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI). U Aye Lwin facilitates investment projects largely from China by brokering access for investors to relevant government officials; he has a dubious reputation for rent seeking.

Given his ongoing private sector interests, we do not believe U Aye Lwin is appropriate for this position. Within the MEITI, the National Coordinator should possess sufficient political leverage to facilitate the implementation of the MEITI – he/she needs to have the respect of top government officials to push for the reforms necessary for the EITI process to continue. However, U Aye Lwin does not have the political experience nor reputation necessary to influence high-level government officials. His credentials are solely in facilitating business interests, which we are concerned will impact any meaningful reforms to enhance transparency and accountability in the extractives sector. Indeed, the National Coordinator should not have business interests in the very sector they are expected to assist in reforming.

On September 27 MATA sent an official letter to the MOPFI complaining against his appointment; on September 28 we had an MSG meeting. A few hours after this meeting, we received a letter from the MOPFI informing us that the Leading Committee had officially appointed U Aye Lwin as the National Coordinator; the letter was dated September 26<sup>th</sup> 2020. The MOPFI’s deliberate avoidance in discussing the appointment of the National Coordinator at the MSG meeting hours earlier is a demonstration of disrespect to the MSG.

<sup>2</sup> <https://eiti.org/document/eiti-validation-guide-2016>

### Response from MEITI Leading Committee

On September 17 2020, MEITI's Leading Committee held a meeting to discuss the above issues. When the issue of U Aye Lwin as the National Coordinator was brought up, one of the ministers asked, "Do we have a choice?", implying that they have no option other than to appoint him. However, according to the MEITI Implementation Manual, the National Coordinator should be appointed by the government, which means they do have a choice.

Further, regarding the restructuring of the NCS, the minister embraced the decision to employ only MOPFI staff given his mistaken belief that the state funds EITI implementation. It does not appear as though he was aware of the proposed hybrid models the MSG had agreed upon. **He emphasized the importance of continuing to produce MEITI reports, causing us to worry that the highest level of government in Myanmar overseeing MEITI progress believes the outcomes of the EITI process consist only of MEITI reports and not the systematic reforms necessary to ensure transparency and accountability.**

### Urgent Request for Support from EITI Board

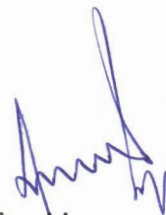
It is clear that we cannot depend on the Leading Committee for support in reversing the restructuring of the NCS and the inappropriate appointment of U Aye Lwin as MEITI's National Coordinator. Given the conflict of interest in MOPFI acting as the NCS and the investment interests of and lack of political influence of the newly appointed National Coordinator, progress in the MEITI process will almost certainly be stalled. We are urgently requesting the EITI board to step in as soon as possible to help Myanmar get back on track to achieve MEITI goals. Otherwise, we are afraid that the MEITI process will lack the credibility and integrity needed to make any meaningful reforms from here on, rendering Myanmar's participation in the EITI process superficial.

Sincerely,



Moe Moe Tun

MSG – Civil Society Representative  
Director – Citizen Action for Transparency



U Soe Maw

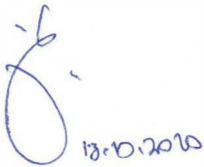
MSG – Private Sector Representative  
President – Myanmar Forest Product &  
Timber Merchant Association



Dr. Kyaw Thu  
MSG – Civil Society Representative  
Executive Director – Paung Ku



U Khin Maung Han  
MSG – Private Sector Representative  
President – Myanmar Federation of Mining  
Association



Ye Lin Myint  
MSG – Civil Society Representative  
Coordinator – BEE House



Thant Zin  
MSG – Civil Society Representative  
Director – Dawei Development Association