Philippine Extractive Industries Transparency Initiative

Multi-stakeholder Group

CONSOLIDATED COMMENTS ON THE DRAFT VALIDATION REPORT

27 July 2017

As part of the Philippines' Validation under the 2016 EITI Standard, the Philippine Extractive Industries Transparency Initiative (PH-EITI) Multi-stakeholder Group (MSG) submits these consolidated comments on the Draft Validation Report by Adam Smith International (ASI) as independent Validator.

The MSG thanks the International Secretariat and ASI for their in-depth and objective assessments and hopes that the following comments would contribute to greater appreciation of the Philippines' efforts and progress in implementing EITI.

SUMMARY

We welcome the general evaluation that the independent Validator "for the most part agrees with the International Secretariat's preliminary assessment that the Philippines has met the requirements of the EITI Standard".

Still, we note and respond to the requirements as to which it is suggested that our country's level of compliance be downgraded, particularly those where the recommended downgrade is from *satisfactory* to *meaningful* progress, namely: (2.6) state participation, (4.1) comprehensiveness, and (5.2) sub-national transfers. **It is the collective belief of the incumbent members of the MSG that the Philippines has satisfied the requirements of the Standard.**

We do note that the CSO sector, through Bantay Kita, has submitted to the PH-EITI as well as to the international secretariat a *Validation Report Assessment* which may reflect a different belief. However, this CSO assessment embodies the views of CSOs that are not part of the MSG, and it does not necessarily mirror the sentiment or opinion of the CSO representatives in the MSG who actually submitted separate comments.

Nonetheless, the MSG acknowledges the CSO assessment and hereby furnishes the Validator a copy of the *Validation Report Assessment* (attached to the email transmitting this document) for information, in keeping with PH-EITI's objective to "create opportunities for dialogue and constructive engagement… to build trust and reduce conflict among stakeholders". Indeed, as mentioned under the General Comments of the draft Validation Report, in the Philippines, "a key strength of EITI implementation has been strong engagement from all three stakeholder groups." The MSG strongly agrees.

1. State participation

The Validator found that, as per 4.5, it is not clear what evidence exists that shows that dividends from the SOEs are immaterial; and that without this evidence, the assessment of *satisfactory* becomes questionable.

We point out that under Section F (page 43), the 3rd Country Report presents total dividends declared by SOEs, namely PNOC and PMDC, amounting to P3 billion and nil, respectively, which were obtained based on reporting template submissions of both agencies and traced to their audited financial statements. Compared to total government receipts of their represented industry sector, PNOC dividends amount only to 6.6% and 5.2% of collections made from the oil/gas sector and the entire extractive industry, respectively.

In addition to the above, the same Section, on page 42, provides the payments made by the two (2) SOEs to the government, totaling P1.2 billion, which represents 2.1% of total government collections amounting to P57.7 billion (Table 69).

The foregoing underlie the assessment made that revenues arising from SOEs are not deemed significant but are nonetheless disclosed for the information of users of the report.

As commented by a government representative: "[T]he rating should not be downgraded to 'Meaningful', as requirement 4.5 is not focused on dividends only. To reiterate, the requirement merely calls for MSG ensuring '*that the reporting process comprehensively addresses the role of SOEs, including material payments to SOEs from oil, gas and mining companies, and transfers between SOEs and other government agencies*'."

2. Comprehensive disclosure of taxes and revenues

Materiality

We would like to take exception to the Validator's understanding on the absence of *a detailed materiality monetary distinction between mining and oil and gas revenues.*

Consistent with the 2nd Country Report and as discussed with the MSG, the selection and determination of material revenue streams is mainly dependent on monetary thresholds applied to mining and oil/gas. There were two (2) materiality thresholds used, as underscored on page 260 of the report. The pertinent portion states, "*determination of materiality level for the third PH-EITI report was done <u>on a per industry basis</u>*," which recognizes the peculiarity of each industry, particularly on respective tax regimes, as considered by the MSG and the Independent Administrator (IA).

For better clarity and illustration, materiality thresholds are calculated as follows:

	Mining	Oil/Gas
Total collections reported by government agencies (both national and local offices) from participating entities	XXX	YYY

Percentage	2%	2%
Materiality threshold	XX	YY

Only revenue streams amounting to at least XX and YY for mining and oil/gas, respectively, were subjected to reconciliation procedures. Revenue streams that were below the above materiality thresholds were excluded from the exercise.

Page 261 of the 3rd Country Report discloses an aggregation of immaterial revenue streams for mining and oil/gas amounting to P74.5 million and P14.8 million that approximately account for 0.61% and 0.03% of total industry revenue streams collected by government as seen in Table 69. These exclusions consist of, among others, LGU occupation fees and FPIC. Accordingly, the MSG and the IA believe that more than sufficient scoping was achieved with the adoption of the above materiality thresholds.

Tables 38 and 70 pertain to two different sets of information/data. The former presents total reconciled revenue streams of participating entities, or only those that submitted their reporting templates, while the latter provides total government collections from the two (2) industry sectors. This is consistent with the description indicated in the tables. These government collections represent those that participated *and* those that did not participate in the EITI exercise. Consequently, the numbers detailed in the said tables should not be directly compared with each other.

Omitted Payments

The 3rd Country Report provides for an estimation of revenue streams that were not covered, particularly those considered immaterial (i.e., below materiality thresholds) and payments made by non-participating entities or those that did not submit any reporting templates. This is presented through Table 69 that discloses omitted payments to be at 8%.

We understand that an independent calculation was likewise performed by the International Secretariat based on available information in the Country Report, which resulted in an estimation of 7.82% which approximates the percentage in Table 69.

Based on Annex C, we provide further context to the numbers used by the International Secretariat:

- Page 83 represents total receipts by the Bureau of Internal Revenue (BIR) from the extractive sector (including coal and excluding the non-metallic sector). BIR is the collecting agency responsible for the more material revenue streams, including corporate income and excise taxes. Please refer to the following recalculation:

Corporate income tax		
Large-scale metallic companies	4,737,486,784	
Oil and gas companies	12,070,795,008	
Coal companies	12,134,495	16,820,416,287
Excise tax on minerals		
Large-scale metallic companies	1,687,118,589	
Oil and gas companies	-	

Coal companies	-	1,687,118,589
Final tax		
Large-scale metallic companies	1,482,106,260	
Oil and gas companies	4,858,282,777	
Coal companies	157,435,592	6,497,824,629
		25,005,359,505

- P2.182 billion simply represents the difference between total BIR collections against BIR revenue streams that were reconciled by the IA based on submissions made by participating entities.

- Numbers that were referred to pages 213 to 224 pertain to unilateral disclosures on non-participating entities made by collecting government agencies, excluding BIR given confidentiality restrictions. Correspondingly, other government agencies such as the BOC and MGB can submit information on a per entity basis, whereas the BIR is limited to disclosing on an aggregate basis. This rationalizes the methodology used by the International Secretariat in first determining total omitted payments from the BIR followed by the varying government agencies.

    1. P529k refers to BOC payments of Cambayas Mining Corporation and Mt. Sinai Mining Exploration.
    2. P19.6 million represents LGU payments of Berong Nickel Corporation, Cambayas Mining Corporation, CTP Construction, Mt. Sinai Mining, Oriental Synergy, Strong Built, Wellex Mining, and Zambales Diversified.
    3. P530.6 million mainly pertain to royalty payments that Annex C has specified to which these are attributed to including Wellex Mining and CTP Construction.
    4. SDMP of P321.4 million are sourced from Atro Mining, Berong Nickel, Century Peak, CTP Construction, Eramen Minerals, Mt. Sinai Mining, Norweah Metals, Oriental Synergy, Strong Built, Wellex Mining, and Zambales Diversified.

Essentially, the aggregation of omitted payments amounting to P4.6 billion is deemed reasonable representation, which is further supported by information per Table 69 as follows:

Total reconciled revenue streams from participating companies (excluding NCIP and MGB funds)		53,549,123
Total industry revenue streams collected by government		57,657,885
Estimated omitted payments	(4,108,762)	

Referencing

Recommendations on increment source references are duly noted and will be considered in succeeding country reports. Existing information and current format in the 3rd Country Report, however, are deemed adequate and do not impact overall compliance with the EITI Standard and requirements.

Reporting templates

In the reporting templates, description or guidelines on the concept of materiality was determined to be unnecessary by the MSG and IA, given that government agencies and entities are mandated to disclose all tax payments and receipts (i.e., revenue streams) irrespective of whether these are material or not. This approach is deemed more comprehensive and detailed, enabling an overall evaluation on the sufficiency in scope of the Country Report based on applied materiality principles. Accordingly, the IA strongly recommends this continuing practice in succeeding exercises.

3. Sub-national transfers

The Validator found that neither the materiality criteria nor the discussions related to the monetary determination of exclusions of payments to sub-national transfers have been sufficiently disclosed in the 3rd Country Report.

We wish to point out that, consistent with our 2nd Country Report, sub-national transfer, specifically on the 40% share in national wealth remitted to the different local government units (LGUs), was excluded in the reconciliation exercise, given the current level of data disaggregation. This was underscored on page 231 of the 3rd Country Report and subject of recommendations on page 252 (items 3 and 6).

4. Others

In this section, we compile the comments that do <u>not</u> pertain to the assessments downgrading the Philippines' level of progress from *satisfactory* to *meaningful*. The comments are grouped according to the following subsections:

A. On the downgrades from *beyond* to *satisfactory* progress
B. Inaccuracy in statements of fact in the draft Report
C. Comments on the draft report on initial data collection and stakeholder consultations

A. On the downgrades from *beyond* to *satisfactory* progress

MSG governance (1.4)

The Validator recommends the downgrade to *satisfactory* based on the perception that only the CSO constituency was shown to have made efforts beyond the requirement, and that clarification "in terms of the evidence pointing beyond the minimum requirement for MSG membership and representation" is required.

We would like to point out that there are sectoral processes and procedures for representation in the MSG. Each constituency in the PH-EITI MSG has a duly approved and published selection process for its representatives. For the government sector, although not all representatives are high-ranking officials, all of them are authorized and capacitated to represent and function as point persons of their respective agencies as regards EITI matters. Such arrangement is reasonably common in government, considering the enormity of its work and responsibilities. Yet, despite this understandable limitation, the government constituency musters a quorum in every MSG meeting, delivers agency comments and approvals when required, and participates in PH-EITI activities, including regularly serving as resource persons in the annual nationwide roadshow.

A government representative commented: *"MSG is tripartite and decisions are made on a consensus basis. It would not be possible that CSOs are the lone drivers in PH-EITI activities."* [Department of Finance]

Similarly, the industry constituency takes exception to the recommended downgrade, submitting the following comments:

> *"Going beyond the minimum requirement for CSO constituency which is viewed to be strongest should be expected because EITI constitute a major part of CSO advocacy and because they have the money to spend coming from grants.*
>
> *Industry members are most of the time busy people and have to allocate time for EITI beyond the time they have to spend for their business. The Chamber of Mines however included EITI discussions in its yearly Mining Philippines event from 2008 to 2013 (See attached conference programme, Annex A).*
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> *As a matter of fact, the Chamber of Mines even before EITI was considered by government invited Mr. Sam Bartlett in 2008 to introduce EITI in the country. Following the endorsement made by Mr. Philip Romualdez, President of the Chamber of Mines to then President Gloria Macapagal Arroyo in 2005 to consider adopting EITI in the country, discussions about EITI has been included in the agenda of MDC. (See attached letter to President Arroyo by Mr. Romualdez, Annex B)*
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> *The USAID funded a study on EITI in 2006-2007 by piloting two (2) mines (Philex and Rio Tuba) with the outcome of the study communicated to their members and to the concerned government agencies. (See attached Technical Report on Improving Transparency of Payments and Receipts in the Mining Industry, Annex C). This report was given to the Minerals Development Council (MDC) which endorsed EITI implementation to the various government agencies (DENR, DAR, DA, DILG, DOF, NCIP, ULAP, DFA, BIR, DTI). These agencies agreed to implement EITI but BIR did not agree in view of confidentiality issues.*
>
> *A copy of the report was also given to Ms. Elizea Gozun who further championed EITI in government while she was Presidential adviser to then President Benigno Aquino. Mr. Mamaduo Barry of the World Bank also promoted EITI in 2009 by speaking during the yearly MINING PHILIPPINES event. In 2013, Mr. Michael Stanley, from the World Bank discussed the EITI standards and new requirements and updates to a broad business constituency of more than 300 CEOs and company officials during the same Mining Philippines event. This was in addition to the Focused Group Discussions attended by Mr. Ananda Idris, Interim Team Leader at EITI Indonesia."* [Chamber of Mines of the Philippines]

The foregoing considered, the MSG believes that PH-EITI has indeed gone beyond the requirement as to MSG governance.

Social expenditures (6.1)

The Validator recommended that we be downgraded from *beyond* to *satisfactory* progress on requirement 6.1 on Social Expenditures, for the reason that materiality for mandatory social expenditures was not clearly defined in our 3rd Country Report.

We point out that under Section E (page 260), the 3rd Report explicitly states: "*In addition, the nature of the payments based on their relevance and significance to communities and operations was also considered. Thus, real property taxes, <u>mandatory expenditures and social funds</u> and customs duties <u>were included regardless of their amounts</u>*." This statement clearly provides the materiality definition.

Public debate (7.1)

The Validator found that the 7.1(d) requirement that the EITI Report be published in "appropriate languages" has not been done, and that, as to the 7.1(e) requirement that there be outreach events, there is no statement that subnational outreach is beyond the minimum requirements.

We wish to point out that information, education, and communication materials on past PH-EITI reports had been produced and published in major local languages. However, the reports themselves have not been translated. Nevertheless, English is by all means an "appropriate language" in the Philippines. As an industry representative commented:

> *English is understood by all Filipinos being the medium of instruction in schools and offices. Translating the report in Pilipino as another appropriate language is not that important aside from being costly. We doubt if this concerns the general public most.* [Industry – COMP]

As to outreach events, not only has PH-EITI conducted or participated in a great number of them, as may be gleaned from our annual progress reports; our outreach activities, particularly the national conference and the LGU roadshow, have become regular yearly events that have seen increasing participation over the years. Even with last year's severely limited funding, PH-EITI sought external financial assistance (from USAID-DAI) just to be able to hold our annual roadshow. Subnational initiatives by CSOs, often in collaboration with PH-EITI, are also increasing annually, as observed by one CSO MSG representative.

All in all, we have exerted more than enough efforts to ensure that our reports are comprehensible and communicated to and brought in the discourse among stakeholders across the country.

As one CSO representative remarked: *"[E]ven in national conversations on the future of the extractive industry, all camps cite the EITI reports as source of data: government, civil society, and industry. That is a clear and practical manifestation of its impact."*

Outcomes and impact of implementation (7.4)

The Validator recommends the downgrade to *satisfactory* on account of an issue pertaining to 7.4(b) stated thus: "'Civil society groups and industry involved in the EITI, particularly, but not only those serving on the multi-stakeholder group, should be able to provide feedback on the EITI process and have their views reflected in the annual progress report.' It's not clear whether those not serving on the MSG were engaged to provide input on the annual progress report.

MSG members consulting "their constituencies" may not involve contact with organisations not represented by the MSG."

The fact is that "MSG members consulting 'their constituencies'" does involve contact with organizations not represented by the MSG. This is especially true for the CSO sector who has conducted nationwide conferences/consultations in assessing the PH-EITI reports as well as in submitting inputs throughout this Validation process.

Also, an industry – COMP representative commented: "*We believe the industry MSG group has gone beyond the minimum requirement in terms of broad consultations not only with its members but also with all the relevant agencies that have concerns with taxation in the abolished Minerals Development Council (MDC) now MICC even before the country decided to join EITI and after it was accepted as a candidate country.*"

B. Inaccuracy in statements of fact in the draft Report

On page 1, the last sentence of the fourth paragraph under BACKGROUND states: "The Philippines has produced three EITI Reports covering the fiscal years 2012 - 2014 and is currently preparing its fourth report covering fiscal year 2015." We would like to point out that our 4th Report will cover fiscal years 2015 and 2016.

C. Comments on the draft report on initial data collection and stakeholder consultations

The following table summarizes MSG members' comments on various parts of the draft report on initial data collection and stakeholder consultations:

Section of the draft report	Comment/s
Under **Introduction – Brief recap of the sign-up phase:** The Department of Foreign Affairs (DFA) had led internal consultations on the prospects of EITI implementation since 2007 (Mines and Geosciences Bureau, 2012).	 The statement should be changed to: "The Minerals Development Council led the internal consultations on the prospects of EITI implementation since 2007 after the Chamber of Mines wrote then President Gloria Macapagal Arroyo endorsing its implementation. The President tasked MDC to consider EITI." [Industry - COMP]
Under **History of EITI Reporting**: The Philippines has produced three EITI Reports covering the fiscal years 2012 - 2014 and is currently preparing its fourth report covering fiscal year 2015.	 The fourth report will also include fiscal year 2016. [CSO]
Under **Key features of the extractive industry** (page 14) The country struggles with a problematic mining legacy with a high degree of mistrust, strong anti-mining sentiments and a large small, artisanal and illegal mining	 Use a more inclusive term when describing the small-scale mining sector. Change "illegal" to maybe "informal", especially since the sector would be

Section of the draft report	Comment/s
sector.	engaged in the future. [CSO]
Under **Industry engagement in the EITI process (#1.2) – Stakeholder views**: All company representatives consulted considered EITI reporting to be purely voluntary, thereby reducing the incentives to participate. Several mining executives noted the lack of penalties for not participating in EITI reporting, in contrast to strict penalties for statutory reporting to agencies like the BIR. CSO representatives consulted were highly critical of industry and government statements about the voluntary nature of EITI reporting, considering that this reflected the industry's perspective that transparency and disclosures were not necessary. Thus, CSOs considered the quality and extent of industry EITI participation poor given the perception that reporting was purely voluntary, which was compounded when such statements were echoed by government representatives. Nonetheless, representatives from government, industry and the IA considered that company participation had consistently increased over the three PH-EITI Reports, as companies became increasingly accustomed to the process.	• EITI is a voluntary initiative. Companies complied voluntarily without a law that compels compliance -- This indicated how well companies treat a voluntary nature of transparency and how this mechanism benefits the industry in terms of reconciling its tax payments with that received by government. Gaps were negligible showing that companies pay their taxes as good corporate citizens. • Volunteerism was actually the initial objective of this global initiative and the mere fact that companies' participation have consistently increased over the three PH-EITI reports signifies the value being attached to transparency by companies as well as by government. We feel the criticism made by CSO is out of context. • With a DENR AO compelling ALL companies to comply with the EITI requirements, a law concerning EITI may not be necessary. • After all the necessary reporting requirements become seamless in all relevant agencies with annual reports being made, the PH-EITI embedded in the DOF structure can suffice. [Industry – COMP]
Under **Civil society engagement in the EITI process (#1.3) - Documentation of progress**: (page 27) There is evidence of killing of anti-mining activists primarily in the southern region of Mindanao, including 25 deaths in 2015 alone (PWYP and CIVICUS, 2016). These included killings by paramilitary forces associated with army battalions protecting mining operations. In October 2016, following his calls for military battalions defending mining projects to withdraw, Jimmy Saypan, secretary general of a local anti-mining group (Kilusang Magbubukid ng Pilipinas), was repeatedly shot, allegedly by members of the Army's 66th Infantry Batallion (PWYP and CIVICUS, 2016).	1. Jimmy Saypan is the Secretary General of Compostela Farmers Association (CFA), which is under the umbrella of Kilusang Magbubukid ng Pilipinas. 2. CFA is allegedly a group of farmers based in Sitio Bango, Ngan, Compostela, ComVal Province. 3. Most of these allegedly farmers are reportedly primarily engaged in small scale mining operation being tunnel owners or operators. 4. All persons interested to open a mining tunnel or other small scale mining operation in the mountain areas of Compostela, ComVal Province are allegedly required by the CFA to register first as their members and pay the corresponding mining share of the CFA.

Section of the draft report	Comment/s
	5. Jimmy Saypan has for several years up to his death, operated a mining area in Sitio Sicaa, New Bataan, Compostela Valley Province. 6. He allegedly bought the area from a member of the Adao Clan. This transaction is not allowed since the same is within the Mandaya/Mansaka Ancestral Domain which is forbidden under the IPRA Law. 7. Hydraulic mining is the main method employed in this area to extract gold and Jimmy Saypan and his family allegedly own the biggest and longest sluice box in the area. 8. This area allegedly hosts the most extensive hydraulic mining practice in Compostela Valley Province. 9. Complaints from rice farmers downstream of the above said mining area due to the heavy siltation of their irrigation canals have already reached local authorities but failed to reach national news. [CSO, IP representative]
(page 29) The government has worked with CSOs for its Full Disclosure Policy and Seal of Good Housekeeping for LGUs programmes focused on promoting good governance.	*Seal of Good Housekeeping* was changed to *Seal of Good Local Governance* in 2014. [CSO]
Under **Additional information on revenue management and expenditures (#5.3) - Stakeholder views**: Other companies said that the government should use the EITI to explain how the government is using the money, including the Malampaya fund or the LGU shares. While it wasn't for industry to ask such questions, industry was affected when local communities were complaining that they didn't receive their share.	The industry is an EITI stakeholder so they have the right to ask how the funds were spent, only for purposes of removing doubts that they are not paying their taxes when the government does receive the revenues. [CSO]