EITI Extractive Industries Transparency Initiative

Minutes of the 4th EITI Board Meeting
Hotel La Palm, Accra, Ghana, 22 February 2008

Board Members
- Peter Eigen, Chairman
- Pedro AGUIRRE, PEMEX
- Humphrey Assisi ASOBIE, Transparency International Nigeria
- Edward BICKHAM, Anglo American
- Fernand EPIGAT, (Acting in place of Fidèle NTISSI), Government of Gabon
- Bennett FREEMAN, Oxfam America
- Stephen GALLOGLY, Government of the USA
- Gavin HAYMAN, Global Witness
- John KELLY, ExxonMobil
- William KINGSMILL (Acting in place of Mark LOWCOCK), Government of the UK
- Karina LITVACK, F&C Asset Management
- Carlos MONGE, Grupo Propuesta Ciudadana, Peru
- Shahmar MOVSUMOV, Government of Azerbaijan
- Christian MOUNZEO, Coordinator PWYP Congo-Brazzaville
- Jean-Pierre VIDON, Government of France
- Mike WILKINSON, Shell

Alternates
- Stuart BROOKS, Chevron
- Milas Evangelista DE SOUSA, Petrobras
- Kamilla KOLSHUS, (Acting in place of Tormod Cappelen ENDRESEN), Government of Norway
- Bernard TRAUTNER, (Acting in place of Ingrid-Gabriela HOVEN), Government of Germany
- Jean-François LASSALLE, Total
- Olivier LOUBIÈRE, AREVA
- Michel ROY, International Advocacy Director of Secours Catholique
- Radhika SARIN, Publish What You Pay

Observers
- Franklin ASHIADEY, Government of Ghana
- Alison BERG, World Bank
- Marie-Claire CORDONIER SEGGER, Government of Canada
- Pierre COLMANT, Secours Catholique
- Paulo DE SA, World Bank
- Richard DION, Shell
- Corinna GILFILLAN, Global Witness

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- Mora JOHNSON, Government of Canada
- Delphine LIDA, Government of France
- Adil MAMMADOV, Government of Azerbaijan
- Charles MCPHERSON, IMF
- Anwar RAVAT, World Bank
- Tove STRAUSS, African Development Bank
- Rachel TAYLOR, Publish What You Pay

Secretariat
- Sam BARTLETT
- Tim BITTIGER
- Jonas MOBERG, Head of the Secretariat
- Francisco PARIS
- Eddie RICH

Welcome and Introductions

The Chair opened the meeting by thanking the Ghanaian Government for their hospitality and welcoming new members of the Board:
- Bennett Freeman, Oxfam America, replacing Karin Lissakers, Revenue Watch;
- Michel Roy, International Advocacy Director of Secours Catholique, as Bennett's alternate; and
- Jean-Pierre Vidon, Government of France, who in February 2008 had alternated with Ingrid-Gabriela Hoven, Government of Germany.

The Board then received a welcome address from the Vice Minister of Finance and Planning, Professor Gyan Baffour who updated the Board on EITI progress in Ghana.

After lunch, the Board was addressed by Minister of Finance and Economic Planning of Ghana, the Hon. Kwadwo Baah-Wiredu, who also took questions about how he felt that the EITI process would help Ghana. He committed his Government's support to the UN General Assembly Resolution on EITI.

Secretariat Activity Report and Audited Accounts for 2007 (Board papers 4-2 and 4-3)

Jonas Moberg introduced the Activities Report and Financial Statement for 2007. He highlighted the establishment of the International Secretariat, progress on developing the Validation methodology, and outreach activities. **The Board accepted the Report**.

Carlos Monge introduced the audited accounts on behalf of the Audit Committee explaining that the Committee was satisfied that the Secretariat's accounts were in good order and that

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they had no recommendations for the improved management of the accounts. In discussion, a question was raised about the compatibility of Norwegian audit law and international auditing convention. **The Board accepted the Report on behalf of the Audit Committee**.

Action:

The **Secretariat** will confirm the approval of the Board of the selection of the auditors, and whether Norwegian audit law is fully in accordance with international auditing convention.

Secretariat Workplan 2008 and Budget (Board paper 4-4 and 4-5)

Jonas Moberg introduced the workplan, highlighting the three priorities of support to implementing countries, outreach to potential EITI countries, and overseeing the first batch of validations. He noted that the process of drafting the workplan had been an important exercise in drawing a common vision for the new Secretariat.

The following discussion supported the broad direction of the workplan, while emphasising **the need to prioritise support to implementing countries and country validation over outreach efforts.** Board members expressed that they could take on a more active role in outreach activities, thereby reducing some of the burden on the Secretariat. Several Board members asked for more information about the role and choice of "EITI special advisors".

The Board asked the Secretariat to play a strong coordination role **in implementing countries and to provide regular reports to the Board on country progress**.

Eddie Rich introduced the **budget** paper for 2008-2010 which reflected the initial underspend due to delayed income and expenditure from 2007, but did not foresee a significant change in the budget over the full term of the Secretariat. Commitments were felt to be coming in well but there was a continued need to attract a broader funding base.

The Board accepted the workplan and budget, noting that the current allocation of staff time needed to be revised in order to reflect the Board's recommendation to prioritise implementation and validation over outreach. The Secretariat will make amendments to the workplan to reflect the discussion.

Action:

The **Secretariat** will revise its allocation of staff time in order to prioritise support to implementing countries and validation over outreach.

The **Secretariat** will provide each Board meeting with a country status report on each of the candidate countries, based on, inter alia, reporting from the World Bank.

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The **Secretariat** will provide briefs on countries and EITI-related matters on request from Board members. A selection of the EITI factsheets will be sent out with the next Board circular.

Pre-validation (Board paper 4-6)

Sam Bartlett presented paper 4-6 proposing that seven of the nine countries that were deemed indeterminate at the last Board in September, now be accepted as EITI Candidate countries.

Some civil society members of the Board expressed concern that the Board be able to respond quickly to cases in which civil society or other stakeholders in candidate countries are excluded from playing a fully active role in monitoring revenue transparency**. A committee was established to develop a proposed framework for EITI rapid responses to political developments**. This committee consists of Bennett Freeman, Christian Monzeo, Stephen Gallogly, Jean-François Lassalle and Karina Litvack.

There was also a brief discussion on Equatorial Guinea, in which Board members made it clear that the changes suggested by NGOs that were agreed by consensus at the recent workshop, should be included in the final workplan. It was noted that progress on EITI in Equatorial Guinea will have to go hand-in-hand with reforms to encourage the rule of law and the development of civil society.

Having noted these concerns, **the Board accepted the recommendation that the Democratic Republic of Congo, Equatorial Guinea, Madagascar, the Republic of Congo, Sao Tome and Principe, Sierra Leone, and Timor-Leste become EITI Candidate countries with effect from 22 February**.

It was also agreed that, in future, applicant countries be required to submit completed standardised documents for candidate status to the Chairman. The Secretariat would continue to play its existing role in evaluating the application by consulting all stakeholders and then presenting a recommendation to the Board. Decisions could then be taken by circular on a no-objection basis at any time, allowing Board members three weeks to state reservations or seek further information and clarification.

The Board agreed to use this procedure to assess the application for candidate status received from **Côte d'Ivoire** shortly before the Board meeting.

Action:

The **Chairman** will write to the new candidate country Governments to welcome them and to invite them to take the necessary next steps to become fully compliant. He will also write to the Governments of Chad and Trinidad and Tobago to encourage them to apply for candidature once they have met the four sign-up indicators.

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> The **Secretariat** will set out guidelines on how to make an application for candidate status.
>
> The **Secretariat** will facilitate the establishment of the EITI Rapid Response Committee.

Validation Process (Board paper 4-7)

Mike Wilkinson led this discussion explaining that validation would determine the value that the EITI brings. It was critical to get the procurement process for Validators right. He focused on the proposed clause guaranteeing partial compensation for Validators. This suggestion had arisen from the concern of Validators that they would not get paid by contracting governments in a timely manner.

Sam Bartlett outlined the various options to address the balance between country ownership, consistency, objectivity, and reliability of payment. He presented the recommendation of the Validation Committee that the country procure a Validator from the approved Validator list, but with Board oversight and partial compensation in cases of late or non-payment.

In discussion, some Board members queried why a partial compensation was required for what they deemed to be normal commercial risk. They were concerned that the compensation might become a self-fulfilling prophecy. In any case normal contract dispute resolution processes existed. Others argued that it helped ensure the Validator's impartiality. **The Board agreed to continue without the partial compensation but to revisit the issue if problems arose. The Board also agreed that Validators that did not produce accurate or high-quality reports would be removed from the list of approved Validators.**

The Board discussed how the Validators would assess all 18 indicators given that some of the early countries began the process before the indicators were developed e.g., Azerbaijan has never had a work plan. The Chair urged that the validations be conducted with common sense and historical context as well as due concern for the indicators. **The Board agreed that the validation should be completed within two years, and that candidate countries should work toward achieving compliant status within that period. The Board also agreed that the two year time period to complete Validation should begin once the guidance note on procuring a Validator is issued.**

The Government of Azerbaijan volunteered to commence the validation process immediately upon receiving the Guidance Note from the Secretariat. In addition to a guidance note, there was also recognition of the importance of developing a standard TOR/contract outlining arrangement between government and validator as soon as possible to ensure that validation can proceed in countries that are ready.

The Board discussed the process for reviewing EITI Validation Reports and assessing candidate and compliant status. Karina Litvack introduced a number of scenarios, including:

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1. No validation undertaken within two years;
2. The Validation report is completed and documents substantive progress in EITI Implementation, but not full compliance.
3. The Validation reveals little or no substantive progress in implementing EITI.

It was agreed that under the first and third scenarios, subject to appeal, a country should be removed from the candidate list without the possibility of re-applying for one year. In the second scenario, the country could be given up to another six months if they set out a clear action plan of how they intend to address all issues identified by the Validation Report. The Validation Committee was tasked with examining these scenarios in more detail, including how compliance with agreed actions plans should be assessed, and how appeal mechanisms would operate.

The Board discussed how often revalidation – i.e. once a country has passed an initial validation and become a compliant country - should take place. **The Board agreed to revise the IAG's recommendation that validations should occur every 2 years, by stating that, after the first validation, revalidations could take place up to every five years but that stakeholders in the process should be allowed to call for a validation at any time that they think the process needs reviewing and that this request could be mediated (if necessary) through a member of his or her constituency representative(s) on the Board.**

The Board agreed the proposed further wording of indicator 4 clarifying the need for stakeholder agreement of the workplan.

Action:

The **Secretariat** will finalise the Guidance Note for Implementing Countries on Procuring an EITI Validator to reflect the Board agreement to proceed without a partial compensation clause. The Secretariat will send the Guidance note to the EITI Coordinators in each of the 22 implementing countries with an explanation that they have two years to complete validation from the date that the guidance is issued. Countries should aim toward achieving compliance within that period.

The **Secretariat** will develop standard ToRs and contractual documents for retaining Validators as soon as possible.

The **Secretariat** will proactively identify and work with countries that are in a good position for being "pilots" on validation to get them going (e.g. Azerbaijan).

The **Secretariat** will work with the Validation Committee with a view to issuing draft guidelines on the implications of various scenarios relating to the two year rule and revalidation.

The **Secretariat** will publish the agreed clarification of indicator 4.

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Legal Entity (Board paper 4-8)

In his introduction, the Chair recalled the request made at the 3rd Board meeting in Oslo to develop a definitive legal and governance structure for the EITI. He asked the Board to request that the Governance Committee seek to indentify options on this key issue as soon as possible. The Chair pointed at the risks of potential liability arising from the current legal uncertainty. While recognizing the urgency of addressing potential liability issues, other board members noted that this was a difficult issue, especially given the multi-stakeholder make up of the board, and that it needed to be addressed effectively.

Members agreed that the current structure was not tenable and called for a swift resolution in a constructive and collaborative effort. The new structure should move away from the interim association of two members, towards an entity reflecting the multi-stakeholder character of the EITI; with clear roles and responsiblities for the Conference, the Board and the Secretariat; limiting the liability of the Board and staff; and taking into account the finite character of the EITI. The question whether the Board has executive functions or - as one board member felt - just an advisory role, needs to be clarified under the definitive structure.

Defining the legal personality of the Board in a manner satisfactory to both state and non-state actors was considered a challenge.

The Board mandated the Governance Committee to address the above issues without delay. The Governance Committee is to draw on solutions already found for other comparable multi-stakeholder organisations. Bennett Freeman, Marie-Claire Cordonier Segger and Jean-Pierre Vidon are to join the Committee.

Action:

The expanded **Governance Committee** will start its work and make recommendations to the Board as soon as possible.

Board members, who have not yet done so, will clarify what kind of legal personality is acceptable for their organisations to be represented on the Board.

Conference 2008 (Board paper 4-9)

Jonas Moberg introduced this paper seeking Board guidance on timing, venue and governance of the Conference.

On timing, although the IAG report said a conference should take place every two years, **the Board stated that it would accept a delay until March 2009 if it enabled completion of the first validations, more time to test results, and a better location.**

On venue, the balance was between using the venue to attract country commitment in target countries (e.g., Indonesia or Mexico); or holding an event independent of government

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in an appropriate location (e.g., Qatar or South Africa); or rewarding implementers (Azerbaijan or Nigeria). Jonas outlined the pros and cons of the various options. The Board felt it was important to obtain a significant commitment from any country chosen to host the conference, such as a concrete announcement to implement EITI **The Board requested the Secretariat to present a proposal based on further discussions with prospective hosts.**

On governance, the Governance Committee will consider membership issues and whether voting rights should be considered for the Conference, which has thus far operated on a consensus basis. This raised also the question of the nomination process for the new Board to be elected at the Conference. The Board agreed to set up a nomination committee of Karina Litvack, Edward Bickham, Mike Wilkinson, Bennett Freeman and William Kingsmill to design a suitable nomination process.

Action:

The **Secretariat** will make a full proposal to the Board on Conference timing, venue and governance by end April.

The **Governance Committee** will consider membership issues and whether voting rights should be introduced for the Conference.

The **Nomination Committee** will be established to develop guidelines on the renewal of the Board drawing on existing constituency processes.

Memorandum of Understanding with the World Bank MDTF (Board paper 4-10)

Jonas Moberg and Anwar Ravat presented the draft Memorandum of Understanding, that provides guidance on the relationship between the Multi-Donor Trust Fund (MDTF) and the Secretariat. They noted that it had been agreed by the Management Committee of the MDTF. **The Board were content with the MoU, but requested more information on MDTF activities, more alignment of the workplans of the two bodies, and more consultation with civil society and companies in their country activities.**

Action:

The **Secretariat** and the **World Bank** will jointly prepare country progress reports for each Board meeting.

The **World Bank** will present the work of the MDTF at the next Board meeting and put their workplan on the EITI website.

UN General Assembly Resolution

Shahmar Movsumov updated the Board on progress made since November 2007 in preparing the General Assembly Resolution on the EITI. He reported that the draft had been

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tabled on 13 February and that 16 countries had co-sponsored the resolution. He confirmed the intention to adopt the Resolution by consensus in the Sixty-Second Assembly Session. More advocacy was required to fully inform UN members outside the circle of Friends of the EITI about the initiative and the resolution. The Secretariat was called upon to increase outreach. Civil society offered to lobby governments through their constituencies. Azerbaijan offered to draft letters for the Chair to send to target countries in the General Assembly. Azerbaijan asked the Secretariat to send information and materials about EITI to the relevant permanent missions in New York.

Action:

Azerbaijan will draft a letter for the **Chair** to send to selected countries to solicit their support for the Resolution.

The **Secretariat** will send information about EITI to the relevant permanent missions in New York.

Company Engagement

Eddie Rich briefly outlined some key issues facing the company constituency prior to the 2008 EITI Conference. These included:

- How to widen the support of companies to include more state-owned companies, and medium-sized corporations;
- How to deepen their role, such as collective action to encourage a particular country to sign-up;
- What role for non-extractive companies such as service companies who support extractive companies; mineral manufacturers who are supplied by them; and ancillary companies who provide consultancy services to them right across the value chain;
- Constituency issues such as representation on the Board, and funding levels;
- Launching the Business Guide;
- Encouraging EITI company forms to be filled out.

Civil society Board members noted that only 3 of the 37 companies signed up to the EITI had filled out the international-level company validation form, and asked all the company Board members to send completed company validation forms to the Secretariat so that they can be posted to the EITI website.

Action:

The **Secretariat** will organise a company constituency teleconference to discuss these issues in more detail.

The **Secretariat** will arrange a launch event for the EITI Business Guide.

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Companies should submit their validation forms as soon as possible as an integral part of meeting their commitments to EITI.

Vote of Thanks

The Board gave a vote of thanks to Franklin Ashiadey on behalf of the Ghana EITI for hosting the meeting.

The Board is scheduled to meet again on 26-27 May 2008.

Action:

The **Secretariat** to approach the Government of Spain to request that the meeting be held in Madrid to build on Spain's increasing support of the initiative. Once a Conference date has been decided upon, the **Secretariat** will set out a calendar of proposed Board and sub-Committee meeting dates.

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Summary of Action Points

The **Secretariat** will confirm the approval of the Board of the selection of the auditors, and whether Norwegian audit law is fully in accordance with international auditing convention.

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The **Secretariat** will provide briefs on countries and EITI-related matters on request from Board members. A selection of the EITI factsheets will be sent out with the next Board circular.

The **Chairman** will write to the new candidate country Governments to welcome them and to invite them to take the necessary next steps to become fully compliant. He will also write to the Governments of Chad and Trinidad and Tobago to encourage them to apply for candidature once they have met the four sign-up indicators.

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The **Secretariat** will publish the agreed clarification of indicator 4.

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The expanded **Governance Committee** will start its work and make recommendations to the Board as soon as possible.

Board members, who have not yet done so, will clarify what kind of legal personality is acceptable for their organisations to be represented on the Board.

The **Secretariat** will make a full proposal to the Board on Conference timing, venue and governance by end April.

The **Governance Committee** will consider membership issues and whether voting rights should be introduced for the Conference.

The **Nomination Committee** will be established to develop guidelines on the renewal of the Board drawing on constituency processes.

As well as jointly preparing country progress reports for each Board meeting, the **World Bank** will present the work of the MDTF at the next Board meeting and put their workplan on the EITI website.

Azerbaijan will draft a letter for the **Chair** to send to selected countries to solicit their support for the Resolution.

The **Secretariat** will send information about EITI to the relevant permanent missions in New York.

The **Secretariat** will organise company constituency teleconference to discuss company constituency issues in more detail.

The **Secretariat** will arrange a launch event for the EITI Business Guide.

Companies should submit their validation forms as soon as possible as an integral part of meeting their commitments to EITI.

The **Secretariat** to approach the Government of Spain to request that the next Board meeting be held in Madrid to build on Spain's increasing support of the initiative.

Once a Conference date had been decided upon, the **Secretariat** will set out a calendar of proposed Board and sub-Committee meeting dates.

EITI Secretariat
28 March 2008

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