

9TH EITI BOARD MEETING, WASHINGTON, 14-15 MAY 2009

Minutes

EITI International Secretariat Oslo, 26 May 2009

MINUTES OF THE 9TH EITI BOARD MEETING

World Bank, Washington D.C., 14-15 May 2009

Board Members

Chair

Dr Peter EIGEN

Implementing Countries

Mr Abdoul Aziz ASKIA, Permanent Secretary, EITI Niger

Alt: **Mr Sidi OULD ZEÏNE**, Chairman, EITI Mauritania

Mr T. Negbalee WARNER, National Coordinator, EITI Liberia

(Alternating for **Mr Essimi MENYE**, Minister of Finance, Chairman EITI Cameroon)

Prof Humphrey ASSISI ASOBIE, Chairman, NEITI, Nigeria

Mr Dashdorj ZORIGT, Minister for Mineral Resources and Energy, Mongolia

(Alternating for **Mr Shahmar MOVSUMOV**, State Oil Fund, Azerbaijan)

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

Supporting Countries

Mr Mark PEARSON, Director General, External Relations, Science and Policy Integration, Natural Resources, Canada

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

Mr Jostein LEIRO, Deputy Director General, UN Department, Ministry of Foreign Affairs, Norway

Alt: **Mr Henk MAHIEU**, General Counselor, Department of Economic Issues, Ministry of Foreign Affairs, Belgium

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

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

Civil Society Organisations

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

Alt: **Mr Dorjdari NAMKHAIJANTSAN**, 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

Alt: **Dr Gilbert MAOUNDONODJI**, Coordinator, Groupe de Recherches Alternatives et de Monitoring du Projet Pétrole Tchad-Cameroun, Chad

Mr Bennett FREEMAN, Oxfam America/Oxfam International), United States

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

Mr Anthony RICHTER, Revenue Watch Institute, United States
Alt: **Ms Radhika SARIN**, International Coordinator, Publish What You Pay

Companies including Investors

Mr Mariano RUÍZ FUNES, Consultant Coordinator, General Directorate, PEMEX

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

Mr Jean-François LASSALLE, Vice President of E&P Public Affairs, Total
Alt: **Mr Keith RUDDOCK**, General Counsel - Exploration and Production, Royal Dutch Shell

Mr David DIAMOND, Co-Head of SRI Development, Allianz Global Investors France
(Alternating for **Ms Julie McDOWELL**, Standard Life Investments, UK – Ms McDowell joined by video-conference for Friday morning session)

Others

Observers

Mr Charles ARNOTT, Department of Foreign Affairs & International Trade, Canada

Ms Thora BROUGHTON, Canadian International Dev. Agency, Canada

Ms Oby EZEKWESILI, Vice President, World Bank, Washington

Ms Erica FERGUSON, AusAid, Australia

Mr Ian GARY, Oxfam, USA

Ms Corinna GILFILLAN, Global Witness, USA

Mr Moctar Ould Mohammed EL HASEN, African Development Bank

Mr Gavin HAYMAN, Global Witness, UK

Mr Joe HEDGER, AusAID, Australia

Mr David HENRY, State Department, USA

Mr Jon HOBBS, DFID, UK

Mr Geir LØKKEN, Ministry of Foreign Affairs, Norway

Mr Adil MAMMADOV, State Oil Fund, Azerbaijan

Mr Steve MANTEAW, Civil society representative, EITI National Committee, Ghana

Mr Marcelo MERELES, PEMEX, Mexico

Mr Barry METZGER, Baker & McKenzie LLP, USA

Mr Håkon NORDANG, Statoil Hydro, Norway

Mr Diarmid O'SULLIVAN, Global Witness, UK

Mr Dorian PANCHYSON, Department of Natural Resources, Canada

Mr John SHIELDS, IMF

Ms Tove STRAUSS, African Development Bank

Ms Bente WEISSER, Ministry of Foreign Affairs, Norway

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

EITI Secretariat

Dr Sam BARTLETT, EITI Oslo

Mr Tim BITTIGER, EITI Berlin

Mr Jonas MOBERG, Head of Secretariat, EITI Oslo

Dr Francisco PARIS, EITI Oslo

Mr Jürgen REITMAIER, Senior Regional Advisor, EITI

Mr Eddie RICH, EITI Oslo

Welcome and Introductions

The Chair opened the session by welcoming new members of the Board, acknowledging Mr Dashdorj Zorigt from the Government of Mongolia, Mr Jostein Leiro from the Government of Norway, Dr Ulla Mikota from the Government of Germany, and Mr Mariano Ruíz Funes from PEMEX, who all sat as official Board members for the first time. He also announced apologies received from Mr David Baker of Newmont, Mr Olivier Loubière of AREVA, Dr Anthony Hodge of ICMM, and Ms Julie McDowell from Standard Life Investments.

Action

The **Secretariat to invite Board Members** to send in short biographies for public information.

The **Secretariat to create a password-protected intranet** and make circulars and other materials available on this site.

Board Induction

The Chair outlined his expectations of the Board:

- That it be a working Board, with on-going information and decision processes through circulars, committees and meetings;
- That Board deliberations be private and confidential;
- That the languages of the Board be English, French and Russian.

He then introduced Barry Metzger, a partner of Baker and McKenzie LLP New York, who addressed the Board on good governance practices for multi-stakeholder Boards. Barry outlined four topics:

- What is the role of the Board?
- What are the responsibilities of a Board member?
- Are there liabilities to which Board members are exposed?
- How are these potential liabilities to be addressed?

He focused on four roles of the Board: to consider general and specific EITI policy issues; to establish procedures for Validation and other EITI processes; to assess the EITI budget and workplans; and to oversee the Secretariat. In delivery of these, Board members were required to act in the best interests of the EITI Association at all times as set out in Article 13 of the Articles of Association. This meant that Board members must approach their role not only as representatives of the entity which employed them or the Constituency which elected them, but also with consideration to the mission of the EITI and, at all times, its best interests. He suggested five 'rules of conduct' for Board Members that they should be:

- 'attendant' – be present at all Board and Committee meetings. Proxies and deputies cannot be appointed;
- 'attentive' – read all documents provided for Board members and provide input throughout the year;
- 'pro-active' – participate in all discussions and ask questions;

- ‘deliberative’ – make decisions based on good information and discussion, and without conflict of interest;
- ‘attentive to potential conflicts of interest’ – disclose potential vested interests and in case of conflict refrain from voting, though she/he can participate in the discussion.

On liability, Barry interpreted the Articles of Association to say that Board members were only liable if their conduct as Directors had been negligent or constituted willful misconduct and economic loss had been suffered as a result of such conduct. He said that this was extremely unlikely. The Secretariat was seeking ‘Directors and Officers Liability Insurance’ to cover members’ involvement in litigation and liability (though this would not cover cases where the member has acted in bad faith). For more details on any of the above, members were suggested to consult the Articles of Association.

In discussion, advice was sought on the constitution of Board committees. Although the Articles required that 2 or more Board members or alternates serve on each committee, they gave no direction on whether non-members can serve on committees as members. Barry reminded the Board that committees were creatures of the Board and advised that outside experts/advisers could be called upon, without however giving them the right to serve as full members (see discussions below).

Implementation and progress update (Board Paper 9-3A and 9-3 B)

Jonas Moberg introduced the paper by noting the rapid progress since the last Board meeting. However, while pointing out the significant challenges ahead, he also cited some reasons for slow progress in implementing countries: lack of international and governmental funding for some EITI implementation processes; time required for proper stakeholder consultation on reporting and on Validation preparations; staff turnover and change of personnel; and difficulties of multi-stakeholder functioning on such issues as agreeing the initial scope of the EITI. He advised the Board against changing rules or deadlines at this meeting, but instead to focus on what needed to be done to keep the process moving along. He also highlighted outreach progress with another four countries submitting their candidate applications to this meeting, and good progress towards candidature made in Indonesia.

The Board expressed their gratitude for the paper and noted that many of the actions to follow up on implementation issues in countries fell to them. Some members encouraged the Secretariat to provide more sourcing to their material where public, and others emphasised the strong need for factual accuracy. One implementing country pointed out that the slow progress towards Validation was, in many countries, due to the need for countries to pay these costs themselves. As a result they were cautious about beginning the process unless confident of a successful outcome.

At a special session of the Board, the Chair invited National Coordinator Haruna Saeed of Nigeria to summarise the deliberations of the National Coordinators at their meeting in Washington over the previous two days, 12-13 May. Haruna noted that National Coordinators from 28 countries had met to discuss the issues of Validation, communications and funding. He began by emphasising the enthusiasm, commitment and determination of the National Coordinators to meet their Validation timetables, despite the daunting challenges. He said that they were feeling optimistic that they could meet the deadlines. He referred to the results of a survey of all National Coordinators undertaken before the meeting that highlighted some key points. Amongst the challenges he mentioned the need for widespread and complex consultation, multi-stakeholder differences and tensions, logistics and technical challenges, access to affected regions, change of personnel, change of governments, bureaucracy, and national secretariat and multi-stakeholder capacity. But he highlighted three obstacles above the others: financing for the whole process, financing for the Validation, and unstable political environments.

National Coordinator Sharyn Tsolmon of Mongolia outlined the concerns of the National Coordinators regarding financing of the implementation. He began by noting that the primary responsibility for funding belonged to the national government. However, most countries also relied on significant external funding for the implementation and had met delays, confusion, or simply slow processes, in the international agencies’ procedures. As the largest

and most popular financing source, the World Bank-administered MDTF was particularly cited.

National Coordinator Franklin Ashiadey of Ghana spoke on the topic of financing of the Validation. He emphasised the commitment of governments to the Validation process and to the EITI policy that implementing governments fund the Validation. However, he noted that many of the countries were going through severe economic problems with budget lines being cut and reprioritised. He pointed out that paying for Validation was not the only way for a government to demonstrate commitment – e.g. in Ghana where they had paid for the audits. In view of this, he asked that the policy be revisited to allow other sources of funding to cover the full costs in some circumstances.

National Coordinator Harifidy Ramilson of Madagascar spoke on behalf of the three countries in current political crisis: Madagascar, Guinea, and Mauritania. He noted that these countries were at various stages of implementation, but that they all needed the enhanced dialogue and trust created by the EITI more than ever as part of the peace-building process. Whilst the crisis may be sweeping the countries, the mining operations were continuing. The EITI was facing problems in these countries due to the temporary suspension of international financing, though solutions to these funding issues were actively being sought. The commitment and engagement of civil society in the EITI process also remained very strong and very important in building peace and trust and embedding democracy. He asked that in such circumstances that the Board accept the need for extensions to the deadline to keep the process alive where it is most needed. This view was echoed by the representatives from Guinea and Mauritania.

Board Member and National Coordinator for Niger, Abdoul Aziz Askia, noted that implementation can be difficult even where political will is strong. For example some of the countries had 60-70% illiteracy. He asked the Board for flexibility when assessing and evaluating progress. Board Member and National Coordinator for Liberia, Negbalee Warner, informed the Board of the situation in his country in which an MDTF payment had been delayed by 3-6 months for what he felt had been a slight procedural matter, thus significantly delaying the report within a two-year timeframe.

In a specially invited intervention, the Vice President of the World Bank, Oby Ezekwesili, praised the sense of urgency around the Validation but challenged the Board and National Coordinators to consider what came after Validation. She argued that the process of Validation should not merely be a technocratic, bureaucratic exercise, culminating in meetings and a report, the EITI needed to be transformative - 'a trigger for change' - and that Validation should only be a snapshot of what had been achieved. She urged that the EITI be a way of showing how the private sector can be an engine for change by preferring quality environments where transparency provides a more stable and attractive investment climate. For citizens, the EITI would show that opacity undermined the management and governance and thus the social and public services that they relied on. This was an agenda of the poor. She concluded that the EITI was at the crossroads at a time of volatility which she saw as not just a financial crisis but a social crisis. Without seeing EITI within the larger context and its ability to grow and use its benefits for broader change, it could end up as something of interest for a small group of donors, the World Bank, government officials and a small group of civil society. Without connecting EITI to this broader agenda, she felt that it would not achieve its full potential and impact.

Following these interventions, the formal Board meeting reconvened.

Michel Roy and Christian Mounzeo briefed the Board on their visit to Gabon at the invitation of the Government to observe the EITI Interest Group. They reported progress in involving civil society and preparing for Validation. Marc Ona remained on the group and was able to travel. The Interest Group had been extended by three civil society members. Gabon was to begin the Validation process and Michel and Christian expressed some confidence in the process, reporting a 'good trend'. However, they were keen to distinguish progress on the EITI and the wider freedom for civil society to tackle corruption. They also noted that there was still a need to encourage the Government of Gabon to drop their legal charges against Ona and others.

At the request of Michel Roy, Adil Mammadov briefed on progress in Azerbaijan since the Board meeting in Doha.

He informed the Board that the formal establishment of the multi-stakeholder group and the adoption of the draft workplan with all parties to the Memorandum of Understanding were in the final stages with completion due within a month. The proposed multi-stakeholder group will have 9 members: 3 from each of the constituencies.

Michel Doucin briefed the Board on progress within the Validation Committee (Board paper 9-3B). The Committee had met on 21 April to discuss their Committee procedures, methodology and workload, and whether clarification of some of the Validation rules is required. On procedures, they were still awaiting a formal nomination of a company expert and acknowledged the challenge of operating in two languages, English and French. On clarification of indicators, questions had been raised about indicators 14 and 15 regarding how 'all material payments' related to those countries doing 'partial' implementation, such as Nigeria whose EITI so far covers oil and gas, but not mining; and about indicators 12 and 13 relating to auditing standards for national companies and for governments. He asked the Board for more time for the Committee to make recommendations. This was accepted but, in the case of Nigeria, they were encouraged to continue towards Validation on the assumption that solid minerals would not be required to be covered yet. It was noted that the Validation Committee has not come to any conclusions yet on this or other issues related to Validation.

There was some discussion on Validation deadlines with some Board members emphasising the risk to the integrity and credibility of the EITI should it not be sufficiently flexible on this issue as the situation develops in the coming months. Negbalee Warner reminded the Board that the national coordinators had not asked for any change in rules for deadlines. There was a consensus that it was too early to consider changes to the deadline and to do so would send a negative signal. Alfred Brownell made the point that the debate should focus on political commitment rather than deadlines. Some civil society members expressed their objection to the sentence in the paper that Validation deadlines 'may require a flexible approach that accommodates local challenges' on the grounds that the Validation Committee did not discuss this idea during its conversations and that it would be inconsistent with existing EITI Policy Note 3. The Board recognised this point, but as the paper did not form a mandate or legal document, it was agreed that there was no need to remove the sentence. The Chairman summarised that the Board consensus was not to consider flexibility on deadlines.

On the issue of funding for Validation, there was a call for common sense in the application of policy note 4, but that individual cases might be referred to the Validation Committee for an assessment.

Action

The **Validation Committee** to present **further clarification on indicators 12-13** on international auditing standards, and on 14-15 on "partial implementation".

EITI candidacy applications: Albania, Burkina Faso, Mozambique and Zambia (Board Paper 9-4)

Eddie Rich introduced the applications of Mozambique and of Zambia. Both were passed, though, in the case of Mozambique, the Board asked for an improvement in the communications of the programme especially with respect to the timely calling of meetings.

Tim Bittiger introduced the application of Burkina Faso which was approved.

Sam Bartlett introduced the application of Albania highlighting the rapid progress made there. The Board also approved this application, however noting their close interest in Albania's capacity, motive for joining and need for consultation.

All four countries were given a Validation deadline of 14 May 2011.

Report by the Governance Committee (Board Paper 9-5A)

Jonas Moberg updated the Board on progress in the International Secretariat. The overwhelming focus of the previous months had been on supporting countries to undertake Validation. Belgium and the Netherlands had recently become the latest supporting countries to start financing the Secretariat. A new website (www.eiti.org)

was being redesigned and would be launched within a couple of weeks, with most information in English, French and Russian. On the website could be found news items, general guidance and contact information, and access to the 20 or more publications produced by the Secretariat. Before work begun on the 2010 workplan and budget, a decision would be required by the Board on the extension of the EITI International Secretariat's mandate.

The proposal to extend the EITI International Secretariat's mandate by two years to 2012 was requested since it was felt important that staff have clear contract security. The paper also proposed a review of the Governance arrangements in 2011. Jonas reminded Board members about the EITI funding principles that all contributions are voluntary and shared against the given formula, therefore an extension did not commit any single entity to further funding in the future.

The proposal was generally supported recognising the value-for-money provided by the Secretariat and the need for security of job tenure. Board members asked for a little longer to seek authority for approval for the extension and it was agreed that the final decision would be taken by circular within four weeks.

In addition, some members asked for a review of the salary structure and staff performance. It was agreed that this would form part of the proposed finance review over the summer to be overseen by the Finance Committee. However, a faster decision by Board circular was agreed for special allowances to cover taxation on children's schooling.

Action

The chair to issue a Board Circular requesting a **final decision on the extension of the Secretariat mandate** and on **special allowances to cover taxation on children's schooling**.

The **Finance Committee** to undertake a **full finance review** including financial arrangements, budget lines, salary structure and staff performance.

Committees (Board Paper 9-5B)

The Board noted that Article 14 of the Association did not give direction on whether Board Committees could include members beyond Board members and alternates. Whilst some felt that the Committees' representation and responsibility should reflect the full Board, others felt that outsiders could bring expertise, diversity and continuity. It was agreed that whilst only Board members and alternates could be full members of Board Committees, other experts, advisers and consultants could be brought on for advice and input into specific deliberations. However, only full members would be responsible for recommendations to the Board. It was also agreed that the Chairs and advisors of the Committee should in general be appointed by the Committee itself, but the Board reserved the right to choose if necessary. The principle should be that these decisions are delegated to the lowest appropriate body.

The Board then discussed the establishment of each of the Committees: Finance, Governance, Validation, Rapid Response, Nominations, and Audit. Some members raised concerns about the EITI Chairman acting also as Chair of the Governance Committee, but it was agreed that this was acceptable.

Bennett Freeman made a statement on behalf of the Nominations Committee. He noted that whilst the EITI is fortunate to have Peter for a final two year term as Chair, prudent governance compelled the Board to determine a search process for his successor at the September meeting in Baku. He therefore asked for a mandate from the Board for the Committee to develop a search process, including a timeline for the various steps, to be ready for consideration and decision at the September Board Meeting. This proposal would include elements such as an updated profile for the position; a recommendation as to whether to commission an international search firm to identify appropriate candidates; consideration of sensitivities such as how public to make the process; a process to keep the Board informed; and a proposed timeline. This proposal was accepted.

Action

The **Secretariat** to issue, through a Board Circular, the **proposed members of each Committee** including listing, where

appropriate, non-members as experts and advisors.

The **Nominations Committee** to develop a proposal for the Baku Board meeting on **procedures for seeking the next EITI Chair**.

Protection of Civil Society Representatives (Board Paper 9-7)

Jonas Moberg briefed the Board on a meeting 2 April of interested parties on this issue (see further Board Paper 9-7). He noted that the EITI itself avoided commenting in detail on specific events linked to the security of civil society. Instead the Chair and Secretariat had generally reminded governments of the general principles and criteria of the EITI. On behalf of the group, he proposed a continued and unchanged mandate for the Rapid Response Committee. Christian Mounzeo emphasised the point that persons were not necessarily being harassed for specific EITI activities, but due to their wider efforts to fight for transparency. Michel Doucin of France suggested that implementing countries formally commit themselves to respect the UN Declaration of Human Rights and recognise its applicability to the representatives of the civil society involved in EITI. He also suggested that EU Member States prepare a statement announcing that their use of the EU Guidelines on Human Rights.

Improved EITI Reporting

Somit Varma, World Bank Director for Oil, Gas, and Mining, briefed the Board on the World Bank's efforts to support and improve EITI-reporting. He informed the Board that all IFC loan arrangements would now require all payments to Government to be publicly disclosed without exemption and that they be disclosed locally. He noted that civil society had welcomed this but had complained that the data were still not easily accessible. To address this, Somit said that the IFC website would now publish a breakdown of all payments to Government from companies to whom it lends. He noted that there had been no pushback from companies on this and that the IFC was actively pushing other international financial institutions such as OPIC to do the same.

On EITI reporting, Somit recognised that the form and content of the reports were very variable. He noted that there was some inevitability about this, but that there should be a minimal baseline. That was why the World Bank hosted two workshops on improved reporting. He alerted the Board to some of the dilemmas presently facing the MDTF – how to approach the issue of potential country delisting following the Validation deadline without losing momentum in those countries; how to manage expectations of the MDTF when the number of implementing and outreach countries is becoming unmanageable under the present staffing model; and how to address the pace of disbursement (though he was confident that an improved process was now in place).

Peter Eigen thanked the World Bank for 'going the extra mile' in improving the reporting process and for hosting the week's events. Confirmation of the Baku Board meeting dates and proposals for Board meetings in 2010 would go out in a Board circular.

Action

The **Secretariat** to **confirm Baku Board dates** and **propose dates and venues for Board Meetings in 2010**.

In closing the meeting, the chair thanked everyone for their active participation during the Board Meeting and at all of the EITI-related meetings that had taken place during the week. The Chair announced that it was Bennett Freeman's last meeting and on behalf of the Board thanked him for his valuable service to the EITI. In thanking the chair and the Secretariat, Bennett concluded by observing two great challenges that the EITI would face over the next year—validation and civil society protection—that would test the integrity of the initiative but that he was confident that the EITI would meet these challenges responsibly.

EITI Secretariat
6 July 2009