

Report on the 4th EITI Board Meeting Held in Accra, Ghana, 21- 22 February 2008

Introduction

The 4th EITI Board meeting was held in Accra from February 21- 22, 2008. It was attended by forty-four representatives of EITI implementing countries, extractive industry companies, Civil Society Organisations and observers.

2. The Board meeting was preceded by a visit by the Board Members to Newmont Gold Mine at Ahafo, in the Brong Ahafo Region on Thursday, February 21, 2008. At the Newmont site, the group observe the process from top soil removal to the gold extraction and met some of the mine workers. They also visited the Ahafo District Assembly and had a meeting with the District Assembly. The meeting with the District Assembly provided the Board Members an opportunity to discuss mining sector revenue and accountability issues with regional, local officials and traditional chiefs. To the Board Members the EITI creates an excellent framework for this discussion at the local level.

3. On the evening of the 21st February the International EITI Secretariat hosted a reception to welcome all delegates to the Board Meeting. The reception was attended by Ministers of State, representatives of Governments, extractive industries companies and Civil Society Organisations. The welcome address of the reception was delivered by the Hon. Minister for Forestry, Mines and Energy, Madam Esther Obeng Dappah on behalf of His Excellency, President J.A Kufuor.

4. On Friday, 22nd February, 2008, the EITI Board Chairman Dr. Peter Eigen opened the meeting at 8.30 am by thanking the Government of Ghana for the hospitality and also took the opportunity to welcome new members of the Board.

Welcome Address

5. The welcome address was delivered by the Hon. Deputy Minister of Finance and Economic Planning Prof. Gyan Baffour. He thanked the EITI Secretariat and the Board for choosing Ghana among other implementing countries as the venue for the Board meeting. He also updated the Board on the progress so far made in implementing EITI in Ghana. He concluded by thanking the donors and the international community for supporting the Government of Ghana to implement the initiative.

6. After lunch, the Board was addressed by the Minister of Finance and Economic Planning of Ghana, the Hon. Kwadwo Baah-Wiredu. In his address he underscored the important role of the Extractive Industry in Ghana and the role transparency can play in promoting good governance and attracting critical investment to the country. The Minister also took questions from the Board members on how the EITI process would help Ghana to attract the much needed investment into the country. The recently issued Sovereign Bond by Ghana was also discussed.

DISCUSSIONS

Agenda

EITI Secretariat Activity Report and Audited Accounts for 2007

7. The Head of EITI Secretariat Mr. Jonas Moberg presented the Report on the Activities of the EITI Secretariat and the Financial Statement for 2007.

8. He highlighted the establishment of the International Secretariat, progress on developing the Validation methodology for EITI implementing countries, and outreach activities. The Report was accepted by Board. The Audit Committee was also satisfied with the Secretariat's accounts and therefore had no recommendations for the improved management of the accounts.

Secretariat Work Plan 2008 and Budget

9. The Secretariat's Work plan was presented by the Head of the EITI Secretariat, Mr. Jonas Moberg. He highlighted three priorities of the work programme i.e, support to implementing countries, outreach to potential EITI countries, and overseeing the first batch of validations. He noted that the process of drafting the work plan had been an important exercise in drawing a common vision for the new Secretariat.

10. While emphasising the need for shifting the balance of work towards more 'coordinating energy' in implementing countries, there was a desire amongst some Board members to become more involved in outreach activities and to hear more at each meeting on country progress.

11. The 2008-2010 budget for the Secretariat was also discussed. There was lower expenditure than planned. The lower expenditure was said to be due to delay income and expenditure from 2007. However, the Secretariat did not foresee a significant change in its budget over the full term of the Secretariat. Commitments were felt to be coming in well but there is the need to continue to attract a broader funding base for the budget of the Secretariat.

12. The Board accepted the work plan and budget. The Secretariat however, is expected to make minor amendments to the work plan to reflect the discussion.

Validation Process

13. The process of validating EITI implementing countries was extensively discussed. The discussion was led by the Shell representative, Mr. Mike Wilkinson. He explained that validation of EITI implementing countries has become absolutely necessary because so many countries are doing different things in the name of EITI. That validation would ensure that all implementing countries comply with the international EITI guidelines. He also noted that to ensure the integrity of the validation process it is critical to get the procurement process for Validators right.

14. Various options to address the balance between country ownership, consistency, objectivity, and reliability of payment to validators were outlined. The Validation Committee recommended that a country procure a Validator from the approved Validator list developed by the EITI Secretariat, but with Board oversight.

15. The Board discussed how the Validators would assess all 20 indicators outlined in the EITI Validation Guide, given that some of the early countries began the process before the indicators were developed e.g., Azerbaijan has never had a work plan which is one of the prerequisites for an implementing country to become EITI compliant.

16. The Board Chairman urged that the validations be conducted with common sense and historical context as well as due concern for the indicators. The Board agreed that a country should not take more than two years to undertake a validation and that validation should begin once the new guidance is issued.

15. The Board briefly discussed three further scenarios for validations:

- No validation undertaken within two years;
- Validation begun but not completed within two years;
- Validation undertaken but assessment result shows that no progress has been made.

16. 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 the country sets out a clear plan of how it intends to complete the process. The Validation committee was tasked with examining these issues in further detail.

17. The Board discussed how often should revalidation take place once a country has passed an initial validation and become a compliant country - **The Board agreed to revise the instruction that a country should validate every two years, by stating that revalidations only need to take place every five year unless the Board asked for one – based on consideration of complaints or concerns from stakeholders.**

Legal Entity

18. In his introduction to the agenda item, 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 mandate the Governance Committee to find a conclusive position on this key issue without further delay, and before the next EITI Conference. The Chairman pointed out the risks of potential liability arising from the current legal uncertainty.

19. 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 towards an entity reflecting the multi-stakeholder character of the EITI; with clear roles and responsibilities 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.

20. Defining the legal personality of Board members in a manner satisfactory to both state and non-state actors was considered a challenge. Options discussed included membership of individuals and individuals nominated by organisations, since the initial proposal to make the organisations themselves members had been rejected as too cumbersome. Government representatives acknowledged they had yet to clarify their positions on the matter.

21. 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(Oxfam America), Marie-Claire Cordonier Segger (Government of Canada) and Jean-Pierre Vidon(Government of France) are to join the Committee.

EITI Conference 2008

22. The Conference 2008 agenda was introduced by the Head of the Secretariat Mr. Jonas Moberg seeking the guidance of the Board on timing, venue and governance of the Conference.

23. On timing, although an EITI Conference is held 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 and appropriate conference venue.

24. 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 in an appropriate location (e.g., Qatar or South Africa); or rewarding implementers (Azerbaijan or Nigeria). The Head of the Secretariat outlined the pros and cons of the various options. The Board requested the Secretariat to present a proposal based on further discussions with prospective hosts.

25. On governance, the Governance Committee will consider membership issues and voting rights for the Conference. 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 (F&C Asset Management), Edward Bickham (Anglo American), Mike Wilkinson (Shell), Bennett Freeman (Oxfam America) and William Kingsmill (Government of UK) to design a suitable nomination process.

Memorandum of Understanding (MoU)

26. Mr. Jonas Moberg, Head of the EITI Secretariat and Anwar Ravat of the World Bank presented the draft Memorandum of Understanding that provides guidance on the relationship between the Multi-Donor Trust Fund (MDTF) and the Secretariat. The Board members were satisfied with the MoU, but requested more information on MDTF activities and more alignment of the work plans of the two bodies.

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

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

UN General Assembly Resolution

29. Shahmar Movsumov, representative of Government of Azerbaijan, 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 tabled on 13th February, 2008 and 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.

30. The Hon. Minister of Finance and Economic Planning assured the Board of Ghana Government's support for the Resolution.

Company Engagement

29. Some key issues facing the company constituency prior to the 4th EITI Board meeting Conference were briefly outlined: 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 EITI Business Guide;
- Encouraging EITI Company forms to be filled out.

Appreciation

30. The Board expressed its appreciation to the Government of Ghana and the Ghana EITI for hosting the meeting.

Next Board meeting

31. The Board is scheduled to meet again on 26-27 may, 2008.

Summary of Key Decision Points

The following decision points were reached at the Board Meeting:

- I. The Secretariat will provide each Board meeting with a country status report on each of the implementing (candidate) countries, based on, inter alia, reporting from the World Bank.
- II. The Secretariat will also provide briefs on EITI implementing countries and EITI –related matters on request from Board members. A selection of EITI facts sheet will be sent out with the next Board circular.
- III. The EITI Chairman will write to the new candidate country Governments to welcome them and to invite them to take the necessary steps to become fully compliant.
- IV. The Secretariat will set out guidelines on how to apply for a candidate status.
- V. The Secretariat will also facilitate the establishment of the EITI Rapid Response Committee.
- VI. The Secretariat is to finalise the Guidance Note for implementing Countries on Procuring an EITI Validator. The secretariat will send the Guidance note to the EITI Coordinators in each of the 22 implementing countries with a note indicating that they have two years to undertake a validation from the date of the letter.
- VII. Upon special request the secretariat will issue standard ToRs and contractual documents for retaining Validators very shortly.
- VIII. 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 validation.
- IX. The expanded Governance Committee will start its work as soon as possible.

- X. Board members will clarify what kind of legal personality is acceptable for their organisations to be represented on the Board.
- XI. The Secretariat will propose to the Board recommendations on Conference timing, venue and governance by end April.
- XII. The Governance Committee of the Board will consider membership issues and voting rights for the Conference.
- XIII. The nomination Committee will be established to develop guidelines on the renewal of the Board drawing on constituency processes.
- XIV. 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
- XV. Azerbaijan will draft a letter for the Chair to send to selected countries to solicit their support for the Resolution.
- XVI. The Secretariat to organise company constituency teleconference to discuss company constituency teleconference to discuss company constituency issues in more detail.
- XVII. 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.
- XVIII. Once the Conference date had been decided upon, the Secretariat will set out a calendar of proposed Board and sub-Committee meeting dates.