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Acronyms

ASEAN	Association of South East Asian Nations
CESD	Centre for Economic and Social Development
CSO	Civil Society Organisations
EITI	Extractive Industries Transparency Initiative
FACA	Federal Advisory Committee
MDRI	Myanmar Development Resources Institute
MEITI	Myanmar Extractive Industries Transparency Initiative
MFMA	Myanmar Federation of Mining Association
MOF	Ministry of Finance
MSG	Multi-Stakeholder Group
PH-EITI	Philippines EITI
PWYP	Publish What You Pay
RUMFCCI	Republic of the Union of Myanmar Federation of Chambers of Commerce and Industry
RWI	Revenue Watch International
SOE	State Owned Enterprise
TOR	Terms of Reference
USEITI	US EITI
WB	World Bank



1. Introduction

The Terms of Reference (TOR) for this institutional options analysis for the implementation of EITI in Myanmar require it to be a desk study that analyses relevant institutional set-ups from other countries, assessing the drawbacks and advantages of each in light of the current context in Myanmar. The TOR also requires that the analysis draws on examples from Mongolia, the Philippines and Timor Leste. In what follows, we have drawn on these countries and five others, basing the analysis primarily on a review of the Multi Stakeholder Group (MSG) TOR for each country, but also relying on other reports such as the validation reports (where they exist). The TOR also states that the analysis must take into account ministerial responsibilities, local-central arrangements, potential capacity and resource constraints. The TOR also requires that a number of institutional models must be proposed for EITI implementation, including the structure of the Multi-Stakeholder Group, any sub-committees of the MSG, the composition and location of the Coordinating Office as well as recommendations to each of the three stakeholder constituencies. The recommendations in section three below do just this, building in sufficient flexibility that stakeholders who read this report may select among the options provided with confidence on the basis of the preceding analysis. Again, the TOR requires that “The Consultant must also conduct a needs assessment related to the establishment of an office of the EITI Coordinator to support the stakeholder consultations, including identifying a long term locally based EITI National Coordinator.” This Options Study does not address this final requirement, as an EITI Coordinating Office has already been set up (currently based within MDRI-CESD) and a National Coordinator appointed. However, the institutional arrangements for the MEITI Secretariat are considered in some depth in section three below. The initial findings of this study were presented to civil society and stakeholder groups in Mon and Shan States, as well as to a civil society gathering in Yangon and to an oil and gas conference also in Yangon. This final version incorporates feedback from these events.

This study is accompanied by a “MEITI Guidebook”, which provides an overview of the extractives sector in Myanmar, makes recommendations for implementation and includes both an action plan to the end of 2013 as well as a 2013-14 roadmap and an initial communications strategy. Both deliverables follow-on from an Inception Report, which was written earlier this year. All TORs from implementing countries analysed in this report will be forwarded to the current MEITI Coordinating office at MDRI-CESD for their records.



2. Survey of Relevant EITI Institutional Implementations

The following survey focuses on an analysis of the TOR for the MSG in the following eight countries. Institutional analysis by way of assessment of the TOR enables a de jure analysis, which teases out exactly how the institutions are supposed to operate (rather than how they operate in reality). This enables a better sense of what international good practice constitutes. Annex 1 summarises the different components each TOR includes.

The TOR for this study required that Mongolia, the Philippines and Timor Leste were assessed. Australia, Indonesia, Nigeria, Ukraine and the US were also included, to give a more rounded balance between neighbouring countries and recently candidated countries, as well as, in the case of Australia and the US, countries who are in the pre-candidacy phase as with Myanmar. It was hoped that the MSG for the UK implementation of EITI would also be reviewed, however, at the time of finalizing this report, this document was not yet available (it is now expected to be ready by December 2013).

In each case, small but significant tips for MEITI *are italicized in the text* whereas bigger picture recommendations for MEITI are summarized in the blue boxes at the end of each country analysis.

2.1 Australia

The Government of Australia is currently running a pilot of EITI, to consider how existing governance arrangements deliver outcomes consistent with EITI principles, and to test the applicability and usefulness of the EITI in the Australian context. An MSG has been established, with a TOR published on 29th August, 2012. The MSG features equal participation from government (including Commonwealth, Queensland, South Australia and Tasmania), CSOs and the private sector. The MSG is chaired by the Department of Resources, Energy and Tourism. Deloitte Touche Tohmatsu Ltd has been appointed as the reconciling firm for the first EITI report, with the first reporting period starting on July 1st, 2012. The MSG has agreed on which core payments will be assessed in the first report, as well as other payments that will be “investigated” such as Native Title payments and the Carbon Price. The Government of Australia’s piloting of EITI does not as yet constitute a commitment to full implementation of EITI via becoming a candidate country. Since November 2011, the MSG has met 12 times, therefore averaging six meetings per year.

The Australia pilot MSG TOR begins by stating the objectives of the pilot, along the lines of the summary above. Then, the TOR defines the role of the MSG as

- Developing a work plan and communications plan
- Establish sub-groups (sub-committees) to examine specific issues
- Agree on a definition of what constitutes “extractive industries”
- Agree on a definition of materiality



- Assess existing data collection/reporting mechanisms and governance/compliance mechanisms
- Undertake a gap analysis of existing arrangements vs EITI rules
- Develop the TOR for the reconciliation report
- Recommend to the Government of Australia whether Australia should apply to join EITI

The TOR then addresses the issue of composition and membership of the MSG. The MSG will have seven members from each constituency group. In terms of government participation, membership will be from the Commonwealth and up to four states and territories. The selection mechanisms for each group are defined as follows:

- Government – an Inter-Departmental Committee will select government members
- Private Sector – the “peak representative bodies” will select their representatives through consultation
- Civil Society – self-selected and will “cover a broad range of civil society interests.” There are no further details given on the self-selection mechanism

In the next section, on membership terms (lasting the duration of the pilot), the TOR states that the “group may agree by broad consensus at any time to change, add, or reduce the number of Members.” Should Australia go forward to sign-up to EITI, a new MSG TOR will be drafted.

The following section defines how meetings will take place. Meetings are due to take place monthly, or “as otherwise agreed.” The agenda will be set by the chair, and announced at least one week in advance, along with any board documents. The secretariat for the EITI pilot is the Department of Resources, Energy and Tourism (with no further institutional details given on secretariat composition etc.)

Meetings will take place under Chatham House Rules, with meeting minutes made publicly available after review and approval by the MSG. The section also sanctions against MSG members and observers disclosing sensitive information outside of MSG meetings, with the threat of possible dismissal. All members (and alternates) must sign a confidentiality agreement, although (inconsistently), only alternate (“proxy”) members must sign conflict of interest forms.

The final section of the TOR concerns decision-making and voting, which is further detailed in a decision-making protocol (a separate document). The MSG will make decisions by consensus wherever possible, requiring all 21 members to be represented. Where general agreement is not possible, the decision-making principles and voting rules detailed in the protocol will be applied. In the first instance, this would require a two-thirds or greater majority. In the second instance (where 2/3 is not possible), then voting would be via simple majority (i.e greater than 50%). Members must inform the EITI Secretariat of their proxy



representative in advance of MSG meetings, with proxies used (where required) on a meeting-by-meeting basis. In other words, MSG members do not appoint permanent alternates; rather they may be represented by more than one alternative on a case-by-case basis, with the limitation that no person can hold more than two proxy votes for MSG members.¹

Useful and re-usable innovations from Australia:

1. Piloting EITI before committing to it. A practical approach
2. Explicit use of Chatham House rules and confidentiality agreements
3. Effective three-tiered decision-making framework

2.2 Indonesia

Indonesia announced its decision to implement EITI in March, 2009 and was recognised as a candidate country in October of the following year. Indonesia's first reconciliation report was published in April 2013. This report provides information on the fiscal regime for the extractive sector, payments disaggregated by individual revenue stream company by company and project by project. The report also includes information on allocations of crude oil to the national government, as well as analysis on where companies operate and the size of their financial contribution to government.

The EITI Board is currently considering the validation report for Indonesia. The governance body for EITI implementation in Indonesia is known as the "Transparency Team", in accordance with Presidential Regulation 26/2010 (published on the 14th April, 2010). The Transparency Team has two layers, an inter-governmental "Steering Team" and a multi-stakeholder "Implementation Team", with the latter reporting to the former. The Steering Team is headed by the Coordinating Minister for Economic Affairs, and has the Minister of Energy and Mineral Resources, the Minister of Finance and the Minister of Home Affairs among its members. A Ministerial Decision followed the Presidential Regulation, further specifying who from local government, industry and civil society is represented on the MSG.

A TOR for the Implementation Team in line with the Presidential Regulation was then published on the 30th August, 2012. It's not clear why it took two years on from the Presidential Regulation to develop the MSG TOR. *This level of delay in implementation should be avoided at all costs in the case of Myanmar.* This TOR comprises of six main sections which will be assessed below.

¹ In response to the suggestion of following Chatham House rules, the EITI Secretariat commented (on a draft version of this report) that, "the EITI generally advises against piloting and the use of Chatham House rules. The latter as liaison with broader stakeholder groups is a fundamental part of the EITI. We encourage countries to publish agendas, documents and MSG meeting minutes online so that those not members of the MSG can follow the work of the MSG."



The first section states the objective of the TOR, which is to fulfill requirement four of the EITI (2011) Rules that the MSG must agree a clear and public TOR and keep written records of their discussions and decisions. This section also clarifies that the MSG is first of all identifies as the Transparency Team, which comprises of both the Steering Team and the Implementation Team.

The second section defines the function of the Implementation Team, which is established by Presidential Regulation 26/2010. Section 8 of the regulation assigns four main tasks to the Implementation Team:

1. Establishing a 3 year work plan
2. Establishing reporting templates
3. Appointing a reconciler
4. Carrying out any other activity that ensure extractive sector transparency

This section also notes that according to the same Presidential Regulation, reporting templates must be submitted to the Implementation Team (and not directly to the appointed reconciler).

The next section concerns reporting, not in terms of EITI reporting, but in terms of levels of authority. It is clarified that the multi-stakeholder Implementation Team reports to the inter-governmental Steering Team, and that the head of the latter is the Coordinating Minister of Economic Affairs. This section also introduces a secretariat for the Implementing MSG. Directives regarding the organization, tasks and procedures of the Secretariat are to be determined by the head of the Steering Team.

The fourth section defines the membership of the Implementation Team in some detail. The Head of the Implementation Team is the role of the Deputy for Energy and Mineral Resources in the Coordinating Ministry for Economic Affairs. There are two listed deputies to the Head: the Director General of Budget in the Ministry of Finance and the Secretary General of the Ministry of Energy and Mineral Resources. There are then nine government officials listed; two from the Coordinating Ministry for Economic Affairs, three officials from the Department of Finance, as well as officials from the Department of Energy and Mineral Resources, the Department of Home Affairs and the Agency for Finance and Development Supervision. In addition, the head of the oil and gas regulator BPMIGas is also an MSG member, as is the Director General of the state-owned enterprise Pertamina. There are three members from Associations of Local Governments, three members from mineral, coal, oil and gas associations as well as three members from civil society with a “history of engagement with the issue of extractive industry revenue transparency.”

From this list above, Indonesia has thirteen government officials as ordinary members on the MSG (not including the Head and the two Deputies) and only three civil society members. This seems from a neutral external perspective to be far too heavily biased numerically in favour of government. *It is not advised*



that Myanmar replicates this model, especially given the complexities of civil society in the country. It hardly seems appropriate even for Indonesia.

The fifth section outlines the MSG membership selection process. The national government position are automatically selected based on role/position, however, the three local government representatives are selected by the Minister of Home Affairs. Professional association and civil society members are selected by the Head of the Steering Team (the Coordinating Minister for Economic Affairs), based on recommendations from industry associations and from civil society. The section further clarifies that the three CSO members were selected via Publish What You Pay (PWYP) Indonesia, which sought nominations from among its 38 member organisations. Twelve individuals were nominated, and three were selected.

The sixth and final section discusses rules and meeting procedures which defines who calls meetings (the Chair), what constitutes quorum (50% attendance), advance notice. This section also defines decision-making/voting, with consensus being the preferred method, and majority vote as the alternative should general agreement not be possible. Interestingly, at least one member of each constituency group must vote in favour of the motion in order for it to be carried. This provides some measure of protection for the relatively low numbers from civil society in the MSG.

Useful and re-usable innovations from Indonesia:

1. Work plans are medium-term (3 years)
2. A two-tier steering/implementation governance structure
3. Majority voting must include at least one favourable vote from each constituency group

2.3 Mongolia

The Government of Mongolia committed to joining EITI in January 2006 by way of a government resolution. Resolution No.1 (2006) establishes a “National Council” as the oversight body for EITI implementation. A TOR for the National Council was approved in May 2006. An article within the TOR proposed setting up a Multi-Stakeholder Working Group (MSWG). In other words, as with Indonesia, Mongolia has a two-tiered governance structure. However, in contrast with Indonesia, both layers are multi-stakeholder. The National Council is intended to guarantee high-level political will for EITI, whereas the MSWG’s mandate is to focus more on implementation and delivering on work plans. Mongolia EITI has been “compliant” with EITI since October 2010. Mongolia EITI has been successful in issuing reports on an annual basis since 2006. Each year, the materiality threshold has lowered, such that in 2006, 35 companies reported, whereas in 2011, 200 companies reported. Meanwhile, Mongolia’s EITI reports are innovative in that they include production data by commodity,



number of deposits, a map of current oil exploration, payments collected at sub-national level (including social payments and donations). The 2011 report also included a survey of IFRS compliance by company (including the name of the audit firm). This shows real innovation and going beyond the minimum requirements.

A draft institutional review² of the institutional structure of EITI in Mongolia (conducted in November 2012) noted that,

“At present, the National Council suffers significantly from the lack of clear governance rules and ultimately, from the absence of a legal framework. For example, there are no rules on meeting frequency and a lack of clarity on voting procedures and the responsibilities of board members. Meanwhile, the MSWG meets relatively frequently, but has no executive decision-making power. All critical decisions (such as the revision of reporting templates) must be approved at National Council level. Given that National Council meetings take place less than annually with unclear voting rules, the current modus operandi is dysfunctional and in need of reform. There are clear duplications of function in the regulations that guide both the National Council and the MSWG as governance bodies. Again, there are clear duplications of function from an implementational/operational perspective in the guidelines that underpin the MSWG and the EITIM Secretariat. Meanwhile, the EITIM Secretariat suffers from a lack of capacity and in its current guise, specifically in terms of technical analysis, compliance and monitoring and evaluation and would not be capable of administering an expanded set of functions for EITIM, as mandated in the medium-term strategy for EITIM approved by the National Council in 2010. Their key recommendations are:

- The governance rules for the National Council and the MSWG should be clarified to avoid duplication
- The MSWG should be empowered to be the executive decision-making body, with delegated authority granted by the National Council. The National Council would change into an annual meeting (which it is in reality at present), with a focus on longer-term strategic direction and policy-making. The National Coordinator of the EITIM Secretariat should be the secretary of the MSWG
- The EITIM secretariat needs additional capacity and needs to grow in size. There needs to be capacity added in technical, monitoring & evaluation and compliance. Civil servants with EITI duties in the Ministry of Finance, the Mineral Resources Authority, the Ministry of the Environment and the General Department of Taxation should carry out their duties in accordance with an agreed operational framework which formalises reporting requirements from their respective ministries to EITIM”

These issues were accepted by the National Council, and a new TOR for the National Council was approved in late November 2012. Meanwhile, the MSWG

² The Institutional Review was written by the author of this Options Study.



endorsed new “Operational Rules” for the MSWG in early November 2012. These will be assessed below.

The new TOR for the National Council is divided into eight sections. The first section sets out the duties and objectives of the National Council, which are defined as a duty to “coordinate and monitor” the implementation of EITI as a consultative entity with equal representation from all three stakeholder groups. The objective of the National Council is defined as providing the political, legal and institutional framework that will enable implementation of the initiative.

The second section outlines the membership structure of the National Council. The Chair of the National Council is the Prime Minister, whereas the Deputy Chair is the Minister of Mining. This is an excellent mechanism to ensure highest-level political will for implementing the initiative. This section then goes on to clarify that the membership of the National Council will be approved by government resolution. Government and parliamentary participation on the National Council will be approved by the Prime Minister; private sector participation approved by the President of the Mongolian National Mining Association whereas CSO participation will be decided by the Publish What You Pay coalition. This section also nominates heads of each of the three constituency groups. Finally, this section states that the Secretary of the National Council will be the Senior Advisor to the Prime Minister. Effectively, the National Council is institutionally embedded within the office of the Prime Minister.

The next section provides rules for National Council meetings, starting with designating that the Chair and the Deputy Chair in the first instance have powers to call meetings, with the Secretary of the National Council given the responsibility to prepare for the meetings. The agenda and associated materials must be sent to all members at least 3 days before each National Council meeting.

The fourth section addresses the question of the agenda for each meeting. Each agenda topic should be presented to the National Council only after having been considered via the MSWG. However, National Council members are also empowered to introduce their own agenda topics. This section then goes onto define the subjects that the National Council may consider – drafts of decisions, resolutions and issues prepared by the MSWG; MEITI reconciliation reports; TOR of the National Council and the MSWG; updates and proposals regarding implementation; guidelines on draft legislation and resolutions relevant to EITI and any other issues.

The fifth section deals with dispute resolution, in the first instance, requiring the heads of each constituency group to meet and resolve issues. An alternative option provided is to set up an expert group of researchers, consultants and experts to provide advice on the issue. A final alternative is to delegate discussion on the issue down to the MSWG to provide recommendations in time for the next National Council meeting.



The next section defines the types of decisions the National Council may make:

- Prime Minister's order
- Prepare draft laws and resolutions
- To request a National Council member to monitor an issue
- To make collective decisions and then inform the public

The seventh section concerns monitoring and evaluation of the work of the National Council, and empowers the body to monitor itself as well as the MSWG and take actions where required to "intensify" implementation. This section also empowers the National Council to set up an expert group to review the progress of the National Council. The final section address minor administrative matters such as funding of stationery expenses and use of logos and letterheads.

Meanwhile, the "Operational Rules" of the lower governance body, the MSWG, are defined in a separated document, and are analysed here. The Operational Rules are divided into ten sections. The first section introduces the goal of the MSWG as preparing, making conditions for, organizing and coordinating the implementation of EITI. This more clearly separates the division of labour between the National Council and the MSWG than previously, with the former focusing on political buy-in, legal and regulatory frameworks, and the MSWG focusing on organization, coordination and implementation. The final aspect of the first section empowers the MSWG to establish committees and sub-committees in furtherance of its objectives.

The second section focuses on defining the operational functions of the MSWG, which are given as:

- Commissioning an independent reconciling firm to conduct EITI reports
- Organise outreach events, workshops, training programmes, study tours etc.
- Communicate progress on EITI implementation

This section also states that MSWG work should be in accord with the work plan, which itself must be in compliance with EITI rules.

The third section addresses the question of the structure of the MSWG, and broadly replicates the TOR for the National Council: equal representation and the same means by which members are selected (the Prime Minister selects government and parliamentary members, the President of the Mining Association selects private sector members and PWYP selects CSO participants). The Chair of the MSWG is the Senior Advisor to the Prime Minister. This means that the secretary of the National Council is also the Chair of the MSWG, providing an effective linking mechanism between the two bodies, and again tying the MSWG to being a body effectively within the office of the Prime Minister. Interestingly, the duties of the Chair of the MSWG are then listed out. Among these duties include the day-to-day management of the Secretariat. This seems a little odd: the Chair of the MSWG also provides daily management of the



Secretariat which supports it! A more logical role would be for the *secretary* of the MSWG to provide daily management of the Secretariat, in keeping with the vertical relationship between the MSWG and the National Council via the joint role of the Senior Advisor to the President (secretary to the National Council *and* Chair of the MSWG). Confusingly, below this in the same section it is stated that the secretary of the MSWG is the “coordinator” of the Secretariat. In which case, it is not clear what is the difference between “day-to-day management” of the Secretariat (the job of the Chair of the MSWG) and “coordination” of the Secretariat (the role of the coordinator). *It is vital that Myanmar avoids these kind of ambiguities and potential overlaps in role and duties.* As with the National Council, each stakeholder group is entitled to nominate (and rotate) its lead member. These “chairs” of the stakeholder groups are then allotted rights and obligations. The section ends with some bullet points on the rights and responsibilities of each MSWG member.

The fourth section provides guidance on MSWG meetings. Either the Chair, or the chairs of the stakeholder groups has the power to call meetings and to submit proposed meeting topics to the MSWG secretary. Interestingly, this section also provides clear rules for observers, “Citizens, representatives of national and foreign agencies and organizations are entitled to participate in the MSWG meeting, make speech, make proposal, ask questions and get responses.” *This is an excellent example of open governance, and could readily be adopted in the case of Myanmar.* In addition, the media are invited to attend MSWG meetings. Minutes are developed in two forms: detailed and abridged, with minutes also published on the MEITI website. Interestingly, there is also provision made for “electronic” meetings – in other words, by video conference. *Given the regional/logistical issues of convening meetings in Myanmar, this also may be readily adopted.*

Section six of the Operational Rules defines the kind of topics that can be discussed during the meetings. These are listed as:

- EITI policies and plans
- Member presentations
- EITI Annual report (preliminary and final)
- Presentations and proposals from government agencies
- Rules and procedures of the MSWG
- Secretariat reports and briefings
- Other topics

The next section provides guidance on the role of the Secretariat. The Chair of the MSWG is granted powers to guide and coordinate the Secretariat (note that the role of the “coordinator” is absent at this point). The Secretariat is empowered here to organize activities which fulfil implementation of the work plan, including capacity building, training, seminars and workshops. The Secretariat is also required to operate a website which reports on implementation in terms of policies, decisions and outcomes.



The seventh section goes into details about how agenda items are developed, whereas the eighth section addresses the question of decision making. Decisions are in the first instance made on the basis of a consensus and will require equal participation from members of the MSWG. Decisions must also have a legal background, be compliant with EITI principles and grounded on research and evidence. If this is not possible, all three parties have 5-10 days to follow up and resolve the issue and present to the next meeting. To support this, a task force may be set up to examine the issues in depth. If consensus still cannot be met, then the issue can be raised to the National Council for discussion.

Section nine addresses how resolutions and decisions are made within the MSWG. Draft resolutions are submitted to the National Council or relevant ministry for review and final decision. The Secretariat is empowered to submit updates on implementation between meetings. However, there are no more detailed guidelines on the structure of the Secretariat or the roles of different officers. As with the National Council TOR, the final section of the Operational Rules deals with sundry matters: stationery costs, use of logo etc.

Useful and re-usable innovations from Mongolia:

1. National Council is multi-stakeholder and facilitates high-level political will. The MSWG linked to the National Council through its Chair (who is Secretary to the latter)
2. The duties of the Chair are detailed, as are the rights and responsibilities of each MSWG member.
3. Clear rules for observers to meetings
4. Provision made for meetings by video/telephone conference
5. Mongolia reports innovate and go far beyond the minimum standards

2.4 Nigeria

Nigeria was one of the early adopters of EITI. The MSG, known in the case of Nigeria as the National Stakeholders Working Group (NSWG) was first convened in February 2004. A NEITI bill was first introduced to parliament later that year. After a period of delay, the NEITI law was enacted in May 2007 – the first country implementing EITI to establish a standalone legal framework. The NEITI Act transformed the initiative into a government agency under the office of the Presidency, giving formal powers to the NSWG, and embedding NEITI with an institutional context (in relation to parliament, the auditor general and so on). NEITI became compliant with EITI in March 2011. NEITI reports have so far covered the years from 1999 to 2011. The first NEITI report was retrospective, covering the period from 1999 to 2004. *The MSG in Myanmar may wish to consider whether its first report should have retrospective elements or not.* From the outset, NEITI reports have gone way beyond the basic requirements of EITI and included both physical production reporting as well as a “process” audit which compares de jure and de facto business processes and practices between



government institutions in governing the extractive sector. It should be noted that this increased scope has meant that NEITI annual audits are far more costly than in any other country. For instance, in the 2012 workplan, the annual audit was budgeted to be 388 million naira (over US\$2.5m), not including a separate budget for initial preparation costs. EITI reports typically cost US\$150,000, in which case, NEITI reports are over 15 times more expensive than elsewhere.

While the NEITI Act 2007 effectively embeds an MSG TOR within its terms, the ambiguities in the law in terms of corporate governance identified through the validation process led to the development of an NSWG Board Charter, which was published in January 2011. One of the key ambiguities concerned the role of the Executive Secretary of NEITI vis-à-vis the role of the Chair of the NSWG. The development of the Board Charter was facilitated by the NEITI Act itself, which empowers the NSWG to formulate policies and regulations to give effect to the provisions of the Act and ensure its effective implementation. The Board Charter can therefore be thought of as a set of regulations that accompany the NEITI Act. The Board Charter is a comprehensive, 32 page (plus appendices) document which reads like a legal document and covers all aspects of the governance of NEITI by the NSWG. What follows is an analysis of the most significant aspects of the Board Charter.

The first section of the Board Charter details the mandate and the role of the NSWG. The NSWG's principle responsibility is in formulating policies, programmes and strategies for the effective implementation of NEITI, as well as monitoring and evaluating performance. NEITI is also given the mandate of going beyond the minimum requirements of EITI. Day to day operational management and administration of NEITI is delegated to the Executive Secretary. Meanwhile, the NSWG is further given responsibility in this section for setting the strategic direction of the government agency, defining materiality, having oversight over budgetary matters, as well as providing periodic reports to both the President and the National Assembly (parliament) on direction, governance and performance of NEITI. The NSWG is also given the responsibility of formulating annual work plans and budgets.

The second section addresses the composition of the NSWG. Members are appointed by the President, which contravenes the self-selection requirements of the EITI 2013 Standard (and the previous EITI 2011 Rules). As well as the usual tripartite set of stakeholders, there is also a requirement that a representative of each of the six geopolitical zones of Nigeria is a member of the NSWG. Members have a maximum term length of four years. This presents a continuity problem for NEITI, as there is little formal opportunity for the transfer of knowledge from one NSWG cohort to the next. *Myanmar should avoid designing this continuity problem into its corporate governance arrangements for the MSG.*

The third section focuses on the role of the NSWG Chair, and starts by proposing a strong distinction between the leadership provided by the NSWG and the "executive responsibilities" of running NEITI's day-to-day operations – an



attempt to clarify the ambiguities within the NEITI Act which had led to tensions and conflict in previous incarnations of NEITI. The Chair is then given a detailed list of responsibilities which focus on supporting a balanced, informed and ethical NSWG. It is clarified further that the Chair of the NSWG has no role to play in the day-to-day operations of the NEITI Secretariat.

The fourth and fifth sections in turn address the role of the Executive Secretary, who is appointed by the President on recommendation from the NSWG. The Executive Secretary is also a full member of the NSWG. While other NSWG members are part-time, the role of the Executive Secretary is full-time. There is a fudge in the Board Charter here, as the NSWG is asked to advertise the position of the Executive Secretary within the NSWG, select interested candidates and then recommend an appointment. Here, the Board Charter is constrained by a deficiency within the NEITI Act itself. It would have been better if the Executive Secretary was a professional appointment outside of the NSWG (much like the CEO of a private sector company), rather than the confection of an artificial selection process. The Executive Secretary serves a single term of 5 years. *Again, this designs-in a continuity from the outset which should be avoided in the case of Myanmar.* What follows in this section is an exhaustive set of duties of the Executive Secretary, which reads like a detailed job description.

The sixth section of the Board Charter lists the duties of ordinary NSWG members, which include a set of fiduciary and ethical duties, including a sentence which warns against using confidential information obtained during meetings for personal gain. *There is also a relatively detailed section on disclosure of conflict of interest, which is worth replicating/adapting in the case of Myanmar's implementation.*

The seventh section provides guidance on NSWG meetings, stipulating that meetings must be at least quarterly, with a quorum of eight members. This section also has a provision whereby NSWG members can be asked by the Chair to vote without meeting, with votes nonetheless recorded as an NSWG minute. *This is a good practical idea which may be replicated in Myanmar's case.* Voting procedures are constrained by the NEITI Act to simple majority voting. In the case of an equal vote for and against, the Chair of the meeting has the casting vote. This section also has rules on proxies, non-members, staff of the NEITI Secretariat and observers.

The following section (eight) grants the NSWG powers to create sub-committees. All NSWG sub-committees should have a majority NSWG members except where their mandate is mostly operational. Each sub-committee must be constituted by its own TOR which determines membership, purpose, powers and authority. Section eight also determines permanent "standing" committees for Audit and Risk; Human Resources; Finance; Communications; Tenders and Ethics and assigns primary duties and responsibilities for each. The section then goes on to grant the NSWG powers to also set up Ad Hoc Committees for detailed consideration of policy and/or strategic issues. The section also lists "stakeholder related committees" including a Civil Society Steering Committee



and Extractive Industry Committee and an Inter-Ministerial and Remediation Committee, and assigns basic duties and responsibilities to these.

Section nine deals with inducting new NSWG members, whereas section 10 addresses evaluation and performance of members. The NSWG must evaluate its performance annually via key performance indicators. The NSWG is also entitled to appraise the performance of the Executive Secretary. Section eleven provides guidance on finance and administrative arrangements for servicing the NSWG, including remuneration and allowances for board members, meeting costs, travel expenditures, accommodation, per diem etc. Section twelve reprises the NEITI Act in listing the key functions of the NEITI Secretariat. Sections 13-15 address NEITI bank accounts, corporate seal and signatories and internal, external and industry audits. Section sixteen provides a basic stakeholder analysis, mapping stakeholders onto relevant members of NEITI. Section seventeen refers to an appendix of powers delegated by the NSWG to the Executive Secretary, while section 18 grants the NSWG power to review and amend the Board Charter.

Useful and re-usable innovations from Nigeria:

1. NEITI has a standalone law, which is complimented by a detailed Board Charter (regulations to the law), which provides guidelines for all aspects of corporate governance
2. The Board Charter provides good guidance on disclosure of conflict of interest, roles and responsibilities of board members and a sub-committee structure that may be replicated

2.5 Philippines

The President of the Philippines, Benigno Aquino III, committed his country to implementing EITI in July 2012. The stimulus for signing up to EITI was Executive Order 79 which concerned institutionalising and implementing reforms in the Philippine mining sector to ensure that the extractive industries serve the greater good of the Filipino people. The MSG was established in January 2013, and a candidature application was submitted in April³. The Philippines was declared a candidate country at the Sydney EITI conference in May. The country has yet to submit a first EITI report, but must do so and undertake validation by July 2016.

The TOR for the Philippines EITI (PH-EITI) has seven sections. The first addresses the objectives and mission of the initiative, starting with a general

³ The Philippines' candidature application (under EITI 2011 Rules) can be downloaded here: http://eiti.org/files/PH-application-2013_0.pdf



statement that the initiative, that its aim is to introduce greater transparency and accountability in the extractive sector through a process of open dialogue. This makes for a good opening statement setting out the general aim in a positive fashion; *this could well be replicated in the case of the TOR for the Myanmar MSG*. The mandate is then specified in terms of five objectives:

- Ensuring sustained political commitment and fundraising
- Setting the strategic direction for the initiative
- Assessing and removing barriers to implementation
- Setting the scope for the EITI process
- Ensuring the initiative is effectively integrated into the reform process outlined under Executive Order 79

The second section outlines the “Principles of Engagement” between the three stakeholder groups. *The ten principles or values stated here are an excellent model for Myanmar, and replicated in full:*

- **Local ownership and inclusive dialogue** – provide an environment where all participants can engage freely and openly
- **Transparency** – provide all parties, as well as the general public, timely access to relevant and verified information/data, subject to the limits set by law
- **Accountability** – abide by the policies, standards and guidelines of engagement that may be agreed upon, and fulfil commitments
- **Integrity** – adhere to moral and professional standards in fulfilling our commitments
- **Inclusivity** – freely appoint their own representatives, bearing in mind the desirability of pluralistic and diverse implementation
- **Partnership** – cooperate, share responsibilities and uphold mutual respect to ensure that the objectives of the engagement are achieved
- **Consultation, Capacity-building and Empowerment** – enhance knowledge-sharing and continuing dialogue
- **Respect for Internal Processes** – understand and abide by the limitations of stakeholders with respect to the nature of information to be disclosed and the extent of involvement based on institutional/legally imposed limitations
- **Sustainability** – ensuring continuing engagement by instituting progressive policies and operational mechanisms that will promote an environment of mutual trust
- **National Interest** – uphold the national welfare above the interests of organisations or individuals

Section three then details the specific functions of the MSG, in terms of providing strategic direction, creating a work plan, setting up a reporting mechanism, appointing a validator, overseeing implementation of the work plan, supervising the Secretariat and, through its members, conducting outreach in support of the work plan. The work plan itself must be reviewed quarterly to assess progress.



The fourth section addresses the composition of the PH-EITI MSG. There is equal participation in the MSG across the three stakeholder groups (five representatives from each). In terms of government participation, senior officials will be appointed from the Office of the President (the lead implementing agency), the Department of Environment and Natural Resources, the Department of Finance, the Department of Energy, and the Union of Local Authorities of the Philippines. Private sector and civil society participation in the MSG will be via a process of self-selection from each stakeholder group, supported by the PH-EITI Secretariat. Each constituency group is entitled to appoint both a permanent and an alternative representative to the MSG. *This principle may be adopted by MEITI.* Each stakeholder group can also, by decision of its members, decide to replace their members at any time following their own governance mechanisms.

This section closes by noting that an interim PH-EITI MSG will be initially established for the purposes of EITI application and facilitate the selection of both private sector and civil society representatives. For the interim MSG, private sector representatives will be represented by members of the Chamber of Mines, while civil society representatives will be represented by members of Bantay Kita, a transparency coalition created with the support of the Revenue Watch Institute⁴. *The approach of beginning with an Interim MSG, successful in the case of the Philippines, may be adopted by Myanmar.*

The fifth section defines the general role of all MSG members, then goes into specifics about the roles of stakeholder group members. For the private sector and for civil society, this includes requirements that they communicate with their stakeholder groups on developments with the implementation. *It is in line with the EITI 2013 Standard that rules are provided on how MSG members communicate and engage with their respective constituency groups, however, Myanmar's MSG TOR may wish to go into more substantive details on this crucial accountability mechanism principle.*

Section six provides guidelines on the term length for MSG members (3 years), which includes the excellent principle that MSG members are appointed on a staggered basis, to ensure institutional memory. In this case, PH-EITI significantly improves on the drawbacks of NEITI, as discussed above. The staggering mechanism is set up from the beginning, by appointing three members from both the private sector and civil society for three years, and the remaining two members from each constituency group for a period of two years. In addition, members may be re-appointed (with no rules on maximum length of tenure). *The staggered appointment mechanism for the MSG is an excellent idea, and should be adopted by MEITI if at all possible, as it helps to ensure institutional continuity across time.*

⁴ See <http://www.revenuwatch.org/grants/partners/bantay-kita-network>



The final section of the TOR stipulates that the MSG should meet quarterly or as often as required, with the Chair calling meetings, with a minimum of one week's notice. Quorum is set at 50%, with decisions made by consensus.

Useful and re-usable innovations from the Philippines:

1. The TOR gives the MSG as an objective ensuring sustained political commitment
2. Excellent statement of principles/values for the MSG
3. Quarterly review of the work plan by the MSG
4. MSG members appointed on a staggered basis, to ensure institutional memory

2.6 Timor Leste

As with Nigeria, Timor Leste was an EITI early adopter. The Government of Timor Leste indicated its readiness to implement EITI in June 2003 (during the first EITI International Conference). By this time, Timor Leste had already decided on a Petroleum Fund scheme which would release quarterly public reports and the National Petroleum Authority adopted a high level of transparency when the Multi Stakeholder Working Group was formed. Timor Leste's decision to sign up to EITI took place in the context of a nationally-constructed decision for extractives sector transparency, which includes codification of transparency measures with petroleum sector legislation. Timor Leste EITI has produced four reports for the years 2008-11 thus far. The number of reporting companies has increased from 16 to 20, with data disaggregated by both company and revenue stream. Timor Leste was accepted as an EITI compliant country in July 2010. The Government of Timor Leste is currently exploring options for linking EITI implementation to other transparency and accountability reforms, via the "Timor Leste Transparency Model", which includes a transparency portal⁵.

The TOR for the Timor Leste MSWG begins with an opening statement providing background to the country implementing EITI, before a statement of the seven objectives of the MSGW:

- Create a public and financially sustainable work plan which is endorsed by the MSWG after public review
- Monitor implementation of the work plan, reviewing and updating it when necessary
- Determining the scope of EITI reporting, developing reporting templates and a TOR for an independent auditor to undertake EITI reports

⁵ <http://www.transparency.gov.tl/english.html>



- Determine the degree of aggregation/disaggregation in EITI reports
- Address weaknesses and capacity constraints in extractive sector transparency and raise public awareness of both EITI and petroleum sector transparency
- Support the validation process
- Establish a program of work for EITI for the mining sector once this sector is established.

The next section addresses the membership of the MSWG, stating that government participants will be the Secretary of State, Natural Resources/Public Servant EITI Focal Point (who will be the Chair); two senior representatives from either the Ministry of Finance or the Tax Authorities; a senior representative from the Banking and Payments Authority and two senior representatives from the Ministry of Natural Resources/Regulatory Authorities. From civil society, there will be three representatives, selected by a forum of CSOs involved in transparency. Meanwhile, for the private sector, there will be three representatives from petroleum companies selected on the basis of the largest share/interest. Each member must name an alternate and must consult and fairly represent the interest of others within their constituency group. The section ends by including rules on observers to the MSWG meetings, which include development partners as well as others as the MSWG sees fit. The following section defines the term of membership as two years, with the possibility of reappointment for a second term. The MSWG is given powers here to change, add or reduce its numbers at any time.

The next section defines the rules for MSWG meetings, which must take at a minimum of monthly intervals, or as otherwise agreed by the MSWG. Meetings are called by the Chair, who also sets the agenda. The agenda and background documents must be sent a minimum week before the next meeting, with a secretariat supporting the meetings and providing all coordination and administrative functions (these functions are not further detailed). The section goes on to state that Chatham House rules will apply, with meeting minutes made public after review by the MSWG. There is also a statement sanctioning against the disclosure of commercially sensitive information outside of meetings with the threat of dismissal attached. The final section on decision making and voting stipulates that quorum will be 50% attendance and must include at least one member of each stakeholder group, with voting by consensus, or otherwise by a vote representing 60% of the quorum (the members attending), including at least one member of each stakeholder group.



Useful and re-usable innovations from Timor Leste:

1. EITI being linked to a more general “Transparency Model” of governance in Timor Leste

2.7 Ukraine

Ukraine formed an EITI MSG in October 2012, submitting an application to join EITI in July 2013. No EITI reports have yet been produced. Ukraine’s candidacy application was discussed at the EITI International Board meeting in Abidjan in October 2013. A resolution to establish an MSG from the Ministry of Energy and Coal was passed in December 2012, which will be assessed below.

The first section provides a set of general provisions, which grounds the activity of the MSG in the constitution and laws of Ukraine and specifically an Order of the Cabinet of Ministers from September 2009. A general statement that the activity of the MSG is based on the principle of free discussion and decision-making follows, with the clarification that the MSG reports to the Cabinet of Ministers of Ukraine. The second section states the objectives and aims of the MSG. The objective is stated as being the creation, implementation and monitoring of the EITI process, focusing on reporting activities. Then, a set of aims are described:

- Creation/implementation of transparency mechanisms, focused on EITI reporting
- Promoting the effective participation of civil society
- Encouraging companies to participate in EITI in Ukraine
- Being a tripartite platform for effective implementation of EITI
- Improving public awareness on the initiative and the benefits of better governance of the extractives sector
- Facilitate discussions and government decision-making
- Fulfilling the TOR of the MSG in terms of becoming a candidate country and ultimately, compliant with EITI
- Monitoring and evaluation of implementation

The next section restates that the TOR were determined by cabinet order. Section four then addresses the structure of the MSG, with equal membership from each stakeholder group. MSG members are approved by the Ministry of Energy and Coal and the Cabinet of Ministers. The Chair of the MSG is the Deputy Minister of Energy and Coal. A Deputy Chair is selected from among the company representatives by simple majority vote. This section then goes on to define the duties and responsibilities of the MSG Chair and ordinary members in turn. This is followed by outlining the role of the Secretariat. The Secretariat is governed by the Chair of the MSG, although it is not clear if this includes day-to-



day management and coordination. A list of basic administrative functions of the Secretariat is then itemized. The section ends by outlining that the MSG has the power to set up working groups.

The fifth section provides rules on MSG meetings. Observers and experts may be invited to meetings. Meetings are quarterly at a minimum. Decisions are by consensus, or by 2/3 majority vote in the second instance. Quorum is defined as a minimum of 12 members, with four members from each stakeholder group. Members may nominate alternates. The Secretariat must give a minimum of five days notice in advance of meetings and distribute board papers no later than three days in advance. Guidelines on the format of the minutes are then given – they must include the date, time and place of the meeting, the number of members present and absent, the agenda, the list of board papers, issues and proposals submitted for decision and the results of discussions and any decisions made. This section also allows MSG meetings to be filmed or recorded on audio.

The final section concerns the reporting relationship of the MSG: an annual report on EITI activities is sent to the Cabinet of Ministers.

Useful and re-usable innovations from Ukraine

1. EITI reports directly to the cabinet, ensuring high-level political engagement with implementation
2. Clarity on what should be included in MSG minutes

2.8 USA

The USA committed to signing up to EITI in 2011 but has not yet submitted its candidacy application⁶. The lead agency for EITI in the US (USEITI) is the Department of the Interior. The MSG for USEITI is convened as a Federal Advisory Committee (FACA) and has 21 primary members and 20 alternate members from government, industry and civil society. Rules and guidelines for the FACA are contained in a Charter under the Department of the Interior. This will be assessed below.

The first section is brief and gives the committee's official designation as being the "United States Extractive Industries Transparency Initiative Advisory Committee." The second section outlines the authority of the FACA as being "in the public interest in connection with the responsibilities of the Department of the Interior and other agencies of the Federal Government." This section then lists relevant laws which give the FACA its authority. It is not clear how this set of laws (which pre-date USEITI) give the committee its authority; perhaps it is that the specific clauses referred to include transparency and accountability provisions).

⁶ The draft application is here: <http://www.doi.gov/eiti/FACA/upload/USEITI-CanApp.pdf>



The third section states the objectives of the MSG and the scope of its activities. This begins with a recap on EITI and the requirement to set up an MSG and develop a work plan under its terms. It is stated here that “the Committee will fulfil the sign-up requirements by serving as the initial MSG, including providing collaborative and consensus-based oversight of USEITI implementation, and by acting as a forum for consultation among the stakeholders.” As with the Philippines “interim MSG”, the US therefore intends to begin with an “initial MSG” in order to achieve candidacy status. *This may be the best way forward for Myanmar, ensuring that a review mechanism is built-in to the TOR of the MSG.* The text then goes on to state that the FACA will provide advice to “the Secretary” (although it is not clear which role this refers to – the Secretary of the Department of the Interior?) as well as to all other interested parties and the public. The FACA is also empowered to deliberate on whether its current formulation as a FACA committee is sufficient to achieve and maintain EITI compliance, and if not, what optimal structure may be required. In other words, the FACA is the initial model for an MSG, but is provisional based on findings from the pre-candidature phase.

The fourth section then describes the duties of the MSG, restating again that the MSG is “initial”. Three main duties are outlined:

- Develop a fully costed work plan in line with EITI requirements
- Provide opportunities for collaboration and consultation among stakeholders
- Advise the Secretary on long-term oversight of EITI as well as requirements to achieve candidacy and compliance status

Sections 5-11 address detailed administrative matters, but include stating that administrative support (the USEITI Secretariat) will be provided by “Policy, Management and Budget” (it is not clear whether this is a unit within the Department of the Interior, but presumably so). It is also noted that the FACA will terminate two years from the date the charter is filed (even though below, non-Federal members are granted 3 year terms).

Section 12 defines the membership of the FACA, with nine members each from government, the private sector and civil society. It appears that appointments are made by “the Secretary”, in other words are not made on the basis of self-selection from constituency groups. This section also entitles the appointment of alternate members and gives details on reimbursement of expenses for participating members. Section 13 is a brief statement of conflict of interest, whereas the following section entitles the FACA to set up sub-committees. The final section on record keeping clarifies that minutes to FACA meetings should be made available for public inspection and copying, subject to the Freedom of Information Act.

Useful and re-usable innovations from the USA:

1. The MSG (as a FACA) is an “initial MSG” whose organisational and administration structure can be reviewed and changed



3. Institutional Options

Based on the analysis of eight institutional models above, and in line with the EITI 2013 Standard, the broader context of other implementing countries, *and* the specific requirements of Myanmar (as detailed in the Inception Report and other background reports), we can now propose a series of institutional options for MEITI and its three core stakeholder constituency groups.

3.1 Institutional context and structure the MSG

The first question to address for the MSG is the institutional context of itself and MEITI in general. One model from the analysis above is for MEITI to eventually become, by law, a government agency (as in the case of Nigeria). Alternatively, MEITI can develop a legal framework, become compliant with EITI and yet stay as an independent public body (as is the case in Mongolia). The longer term institutional context of MEITI should be discussed by the MSG, and, once agreement is reached, embedded within the strategic plan that will be developed. There are of course pros and cons for each option. Staying close to government, either as a standalone government agency or an initiative within the office of the president ensures (or at least promotes) sustained high-level political will and will likely help to guarantee funding after the initial period of development partner support. On the other hand, stakeholders in civil society may have other views on how MEITI should relate strategically to government, and may prefer the model of becoming an independent public body backed by law. There is no cookie-cutter recommendation available here that can be made from the outside; how MEITI develops and embeds itself as an institution in an institutional context is a matter for discussion and strategizing from within the MSG.

In terms of structure, we have seen from the eight case studies above that there are two kinds of governance structure for EITI implementations that have emerged: a two-tier model (Indonesia and Mongolia) and a one tier model. The advantage of a two-tier model is that it combines high-level political will (the Steering Team and the National Council) with implementation availability (the Implementation Team and the MSWG). This is therefore an effective way to resolve the conundrum that faces all EITI implementations: how you get senior-level buy-in at the same time as guaranteeing that there is availability and resourcing for effective governance. In the case of Myanmar, one option would then be for the current Leading Authority to function rather in the same way as the Steering Team does in Indonesia, providing high-level political oversight and traction. In other words, this option would require that the Leading Authority renews (and adapts) its mandate beyond the limitations of the first Presidential Decree on EITI, and continues in to a post-candidacy (and then post-compliance) phase. The added advantage of this approach is that MEITI can be closely integrated with the wider reform effort, with even the opportunity of it becoming the basis of a “Transparency Model” of governance, along the lines of what is being developed in Timor Leste.⁷

⁷ In response to this section, the EITI Secretariat commented (on an earlier draft of this report), “As noted, a two-tier model may be heavy and bureaucratic and has not functioned well in practice in neither Mongolia



Of course, in attempting to square the circle of high-level political will and oversight effectiveness, the two-tier model brings with it the risk of an overly cumbersome, slow-moving and expensive corporate governance structure. Where resources are limited and a more agile approach is required, the MSG may ultimately agree that a one-tier model is preferred. In which case, again a careful balance between seniority and availability will have to be reached. The MEITI working group that has already been set up under the Leading Authority already provides an adequate balance in this regard, with the Chair of the working group being the Deputy Finance Minister. In forming the first MSG, stakeholders should ensure that senior representatives from the private sector and from civil society are nominated and selected to sit on the MSG. An example not given above is the case of the Iraq EITI, which has on its MSG the chief executives of international oil companies from the private sector. There is no reason why this model – of the most senior company official in-country – being adopted in the case of Myanmar.

In terms of membership numbers, the 2013 EITI Standard does not require numerical equivalence among stakeholder groups. Of the eight country case studies above, four have equal membership and four do not. This is very clearly a case where there is no international best practice available to adapt and adopt; the potential stakeholders to the MEITI MSG will have to discuss and agree on their preferred approach. From an external perspective (for what its worth), numerical equivalence has a symmetry and a basic principle of fairness behind it. However, decision-making and voting rules can be designed in such a way (as we have seen in the case studies above) that a principle of fairness can be built in even where there isn't numerical equivalence. For instance, rules of quorum and voting may require a minimum number of members from each constituency group. In the case of general agreement not being possible, there can be second and third tier disagreement measures designed into decision-making, which is well thought through in the case of Australia and Mongolia.

The Inception Report that preceded this Options Study proposed the following membership of the MSG (in its initial form), which would create a 7: 6: 6 structure (nineteen members in total).

Government	Companies	Civil Society
<ul style="list-style-type: none"> Ministry of Finance representative Ministry of Energy representative Ministry of Mines representative Ministry of Environmental Conservation and Forestry representative Ministry of National Planning and 	<ul style="list-style-type: none"> Two IOC representatives Two foreign SOE representatives UMEHL/MEC representative Myanmar Federation of Mining Association 	<ul style="list-style-type: none"> Two issues-based CSO representatives Two community-based representatives Two organised labour/professional body representatives

nor Indonesia. If a two-tier model is adopted, we would recommend that the MSG is the decision-making body with a Steering Team simply providing strategic direction and “political championship”. In Nigeria, a high-level Inter-Ministerial Task Team has been established to specifically follow up on NEITI recommendations. Such an approach could also be considered.”



Economic Development		
• Attorney-General representative		

This table reduces the number of government officials currently involved in the MEITI Working Group (leaving out a representative from the Union Accountant General’s office, the Ministry of Home Affairs, the Ministry of Electrical Power and the Myanmar Investment Commission’s office). The Leading Authority may decide that these agencies must also be represented on the MSG. In terms of the private sector, the Myanmar Federation of Mining Associations (MFMA) would likely represent the mining sector on the MSG and might also include a representation from a to-be-set-up oil and gas association. Civil society stakeholders may wish to increase their representation on the MSG, and propose a different category structure than that provided. In other words, stakeholders will likely wish to discuss and adapt the suggestions provided, on the basis of the principle of self-selection and uncoerced decision-making in line with the EITI Standard. The recommendation however is that the total size of the MSG is kept to 24 members or lower, in order to maintain a minimum level of corporate governance agility.

The question of how the MSG appears in its initial guise appeared both in the case of the Philippines and USEITI. The former (which is now a candidate country) adopted an “interim MSG” model, whereas the US wording is that of an “initial MSG”. In both cases, the principle is that the organisational model for the MSG can be reviewed and amended at any time. This approach makes a lot of sense in the case of Myanmar, which has a complex civil society which may require adjustments to ensure maximum buy-in across time. There is no sense in which in either case the first version of the MSG is not also a full version that satisfies EITI requirements; it is simply that the first version is agreed to be provisional and subject to possible amendments. In the case of MEITI, the first version of the MSG may be in fact simply be referred to as *the* MSG; however, powers of review and amendment to the structure and rules of the MSG can be integrated into its TOR, and the work plan can include periods of strategic review in line with these granted powers.

Finally, one aspect which is relatively weak in all the eight case studies reviewed above is the question of downwards accountability from the MSG to its constituency groups. One weakness of the EITI Rules prior to the 2013 EITI Standard is that there were no substantive requirements to ensure that MSG were held accountable to their constituency groups by ensuring that all relevant interests are represented and all relevant issues raised. This is one issue where Myanmar, rather than adopting best practice from elsewhere, can actually lead the way for the rest of the EITI international community, by providing substantive guidelines, rules and obligations for MSG members to liaise with and engage their constituencies.

3.2 Sub-Committees of the MSG

As with any government board, there are readily available models of sub-committee structure that can be drawn from, both in terms of international and



local examples. The first sub-committee that the MEITI MSG should consider establishing is a technical sub-committee which prepares for candidacy application. The question of whether other sub-committees (finance and admin, procurement, communications, civil society etc.) should be set up in the pre-candidacy phase or only after Myanmar becomes an EITI candidate country should be discussed by the MSG.

An initial 'working group' comprising representatives of each stakeholder group could be established before the MSG is created and which will meet to work on the early stages and steps required leading up to MSG creation, and support with candidature application process. This group could potentially then feed into/transform into an MSG sub-committee.

3.3 Composition of the Coordinating Office/Secretariat

Currently, the coordinating office for MEITI in the pre-candidacy phase is MDRI-CESD, a think-tank/research organisation, which provides advice to the President and key reformers within government. It is not part of MDRI-CESD's wish or long-term planning to transition into being the secretariat to the MSG once Myanmar becomes a candidate country. While other countries often embed EITI within the relevant line ministry (the ministry of mining/energy or equivalent) as we have seen above, Myanmar's multiple extractive sectors require an alternative approach. Myanmar has well developed oil, gas and mining sectors (as well as gemstones), as well as a historically undercapacitated Ministry of Finance. In order to provide effective transparency and accountability oversight within the terms of EITI, it makes practical and economic sense for the initiative to be institutionally embedded within the Ministry of Finance, and closely linked to the wider reform programme (such as the planned public financial management reform). There are no strong alternative options to this model at present. However, the MSG may agree that as part of a longer-term strategy, MEITI may in time become a self-funded independent public body, functioning along similar lines to an industry regulator. Similar trajectories away from being embedded at the centre of government have worked elsewhere (as in the case of Mongolia). Again, care should be taken to ensure that there are effective linkages between roles and institutional hierarchies of corporate governance (avoiding the ambiguities in the case of Mongolia). In which case, the National Coordinator of MEITI should also be a full board member and secretary to the MSG, therefore linking corporate governance with operational management. However, in the case of the National Coordinator being a senior government official or advisor, it may be required that a Deputy National Coordinator be appointed who can oversee the MEITI Secretariat in terms of day-to-day operational management. Given that the MEITI Secretariat should be based within the Ministry of Finance, the Deputy National Coordinator may be appointed from among existing ministry officials. Alternatively, a sufficiently experienced and capable administrator could be brought in from outside the ministry's resource pool. This is another decision for the incoming MEITI MSG to discuss and agree. One issue not discussed in the case study analysis above is the actual preferred size of an EITI secretariat. In practice, EITI secretariats vary greatly in staff numbers. As with the cost of its reports, Nigeria leads the way in this regard. However, as a bare minimum, it is



recommended that apart from a National Coordinator and a Deputy National Coordinator, the Secretariat has finance and administration staff, a technical unit as well as staff who oversee liaison with both companies and civil society. The MSG may also consider that a full-time communications team is also required.

3.4 Recommendations to each Stakeholder Constituency

The principle of stakeholder self-selection varies significantly from country to country, as we have seen in the country analysis above. It is recommended that there are quite clear, precise and substantive guidelines for how each stakeholder group selects its members onto the MSG, given the relatively low-trust historical context that is the case in Myanmar. Self-selection and other internal governance issues are best substantiated by each constituency group developing its own TOR and corporate governance framework. For instance, if a Civil Society Steering Committee is formed, this body should develop its own corporate governance framework: its aims and objectives, its core functions, its rules on membership and decision making and so on. Of critical importance will be developing rules on how members elected onto the MSG raise and represent issues from the wider constituency group, and rules on how they report back to this group. The same goes for the private sector. Whether one single private sector body can be formed, or alternatively, whether the MFMA represents mining interests on the MSG, and a to-be-set-up oil and gas association represents hydrocarbons interests again should be discussed and agreed by stakeholders.

3.5 Recommended MSG TOR Framework

Given the analysis in section two above and the comparative analysis table in Annex 1 below, it is recommended that the TOR for the MEITI MSG contain the following nine sections. The MEITI Coordinator and the MEITI working group (and stakeholders from the private sector and civil society) may wish to review the table below and commission a draft version of the MEITI MSG TOR, in advance of the first MSG meeting, for consideration by the Board:

	Section Description
1	An open statement about the purpose of MEITI, in promoting transparency and accountability in the extractives sector for the equitable benefit of the Myanmar people. Also a statement about MEITI functions within and contributing to the broader reform process
2	A definition of the roles and functions of the MSG: <ul style="list-style-type: none">• Role in developing strategic plans, MTEFs and annual work plans and what these plans must contain at a minimum to be in line with the EITI 2013 Standard• Role in defining the scope, materiality threshold and terms of reference of the EITI reports (including sector scope: oil, gas, mining, hydro etc.)• Role in procurement (of independent administrator etc.)



	<ul style="list-style-type: none"> • Role in communicating the reports and raising public awareness • Role in monitoring and evaluating progress and powers to review and update any part of the TOR • Powers to create sub-committees • Powers of remediation/acting on recommendations from EITI reports • Powers to go beyond the minimum requirements of EITI international rules • Powers to develop fundraising strategy (with a view to becoming a self-funded body) • Powers to review the structure of the MSG and the functions of the secretariat
3	<p>Guidelines on membership:</p> <ul style="list-style-type: none"> • Define the size of the MSG by stakeholder group • Define the selection mechanisms for each stakeholder group • Describe the rights, duties and responsibilities of the Chair, the Secretary and ordinary members <ul style="list-style-type: none"> ○ Specify powers to call meetings, raise issues, communicate discussions externally etc. ○ Representing constituency interests and being substantively accountable to constituency groups ○ Declaration of conflict of interest and avoiding benefiting from commercially sensitive information disclosed during meetings ○ Length of tenure (preferably staggered) • Rules on use of alternates, proxies and the role of observers
4	<p>Guidelines on meetings:</p> <ul style="list-style-type: none"> • Who can call a meeting, who draws up the agenda, what advance notice minimum limits are provided • Publication of minutes • Define decision-making (via a tiered hierarchy which prioritises decision-making by consensus first), including provisions for off-meeting voting and tele/video-conference meetings • Define types of topics that can be raised, and types of decisions that can be made • Chatham House rules (or otherwise) • Guidelines on confidentiality and disclosure of conflict of interest • Guidelines on permanent and ad hoc sub-committees
5	<p>Disciplinary codes (sanctions for non or partial-attendance, failure to declare a conflict of interest, breach of confidentiality etc.)</p>
6	<p>Defining the role of the secretariat in supporting the MSG:</p> <ul style="list-style-type: none"> • The organisational structure of the secretariat • The functions of the secretariat



	<ul style="list-style-type: none">• Finance and admin procedures (HR, procurement, accounts, internal and external audit)
7.	Guidelines on the role of parliament and other stakeholders outside the MSG
8.	Guidelines on the development, production and review of MEITI reports
9.	Omnibus clause: carrying out any other activity required to promote/ensure transparency in the extractive sector

3.6 Legal Framework for EITI

The MSG will, as part of its strategic planning, agree on steps to ensure that EITI has sufficient legal underpinning to fulfill EITI requirements and whatever innovations beyond the minimum requirements are also planned. These steps may be incremental, beginning with a second Presidential Decree and amendments to relevant legislation, and leading to a standalone EITI law – the trajectory that has taken place elsewhere. The first step in the direction of developing a legal framework for MEITI is the currently ongoing legal review. The TOR developed from the framework above can be further developed and extended into a standalone law.



ANNEX