

June 27, 2018

Dear Chair Reinfeldt, Mr. Moberg and Members of the EITI Governance and Oversight Committee:

We appreciate the Chair's letter in response to USEITI civil society members' grievance against ExxonMobil and Chevron. We thank you and Jonas Moberg for meeting with the signatories in Washington earlier this year. These steps represent progress, but more must be done to reform the EITI grievance process. We believe that the absence of a grievance process that meets international standards prevented the EITI Board or Secretariat from having a meaningful impact in addressing the challenges that led to the U.S. withdrawal from the initiative, which were raised on multiple occasions by USEITI civil society.

To complement the information included in the Exxon and Chevron grievance, this letter provides a detailed account of attempts by USEITI civil society members to request EITI Board and Secretariat assistance in addressing serious implementation concerns prior to the U.S. withdrawal. This includes formal support requests, public statements and meetings. It also provides a gap analysis of the current EITI process as compared to international standards, and recommends a way forward to strengthen it.

USEITI CSO Support Request Summary: Prior to the 2018 grievance letter, civil society had raised concerns with the EITI Secretariat about the non-reporting of taxes by USEITI companies, as well as the U.S. government's unprecedented closing of civic space during USEITI meetings.

- **February 9, 2017** - USEITI MSG civil society members sent a grievance letter to the USEITI Secretariat<sup>1</sup> at the suggestion of the EITI Secretariat. The letter objected to 1) actions by industry members that worked to repeal Section 1504 despite the USEITI needing the regulation for implementation, and 2) actions by the U.S. government that closed civic space and violated the EITI Standard, by turning off civil society microphones and shutting off public access to the February 2017 USEITI MSG meeting in the midst of deliberations.
- **February 14, 2017** - Mr. Moberg and two Secretariat colleagues met with several USEITI civil society members. In that meeting, civil society representatives presented their increasing concern, based on the 2016 USEITI report, that a number of companies were not disclosing taxes. Mr. Moberg responded to these complaints with assurances that the concerns were valid and that action - although unspecified - would be taken. However, it is apparent that these concerns were not substantively addressed, nor was a process established to ensure protection of civil society space or to address the non-reporting of taxes. If any action was taken by the EITI Board or Secretariat at this time, it was not documented or shared with civil society.
- **March 17, 2017** - USEITI MSG civil society members issued a public statement expressing alarm regarding the U.S. Department of the Interior's intention to halt the U.S. from seeking EITI validation, because of company refusal to report taxes.<sup>2</sup>

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<sup>1</sup> <http://www.pogo.org/our-work/letters/2017/pogo-and-colleagues-object-to-actions.html>

<sup>2</sup>

<http://www.pogo.org/about/press-room/releases/2017/administration-ends-eiti-transparency-initiative.html?print=t>

- **May 11, 2017** - Mr. Moberg met privately with a small invited group of USEITI MSG members including industry co-chair the National Mining Association, civil society co-chair Project on Government Oversight, Chevron, Oxfam America, U.S. Department of Interior and U.S. Department of State. During this meeting for which there are no public notes, companies' refusal to report taxes and Chevron's direct role in repealing Section 1504 regulations was raised, but no solution was proposed. The Chevron representative called into question the need for tax disclosure as well as the USEITI initiative. Department of Interior representatives indicated USEITI implementation would come to an end. Mr. Moberg facilitated a discussion on options for withdrawal.
  - **May 24, 2017** - Civil society EITI International Board representative Daniel Kaufmann raised these issues at the board meeting in Oslo.
  - **June 22, 2017** - USEITI MSG members produced a public critique of the Interior's Inspector General's assessment of US EITI implementation.<sup>3</sup>
  - **October 25, 2017** - USEITI MSG civil society members made a final appeal to the USEITI Secretariat to protect adequate space for civil society by rescheduling MSG meetings which had been cancelled.<sup>4</sup>
  - **November 2, 2017** - U.S. Department of Interior sent a letter to Chair Reinfeldt announcing the withdrawal of U.S. candidacy for EITI.<sup>5</sup>
  - **February 7, 2018** - USEITI civil society formally filed a grievance against ExxonMobil and Chevron.<sup>6</sup>
  - **April 3, 2018** - Chair Reinfeldt and Mr. Moberg met with signatories in Washington.
  - **May 30, 2018** - Chair Reinfeldt responds to USEITI civil society grievance.<sup>7</sup>
  - **June 13, 2018** - USEITI civil society responds to the Chair's letter.<sup>8</sup>
- [The [PWYP US Public Record](#) provides an online summary of the Exxon/Chevron grievance.]*

Please note that the bullets above document formal support requests, public statements and meetings, however, throughout this time period the USEITI Civil Society Chair, Danielle Brian, and USEITI civil society MSG members were in email and phone contact with Mr. Moberg and other members of the Secretariat. Information regarding these serious concerns was extensively and regularly shared through that correspondence. We did not attempt to compile these communications, however, we are willing to do so should it be helpful to a more comprehensive analysis on areas for improvement.

EITI Grievance Process Gap Analysis and Recommendations on Improvements: The lack of a formal EITI grievance process presents significant risks to EITI implementation. Throughout the process detailed

<sup>3</sup> <http://www.pwypusa.org/interior-inspector-general-misses-chance-to-help-save-useiti/>

<sup>4</sup>

<http://www.pogo.org/our-work/letters/2017/useiti-civil-society-members-urge-government-industry-to-resume-work-on-transparency-initiative.html>

<sup>5</sup> <http://www.pwypusa.org/wp-content/uploads/2017/11/Signed-EITI-Withdraw-11-17.pdf>

<sup>6</sup>

<http://www.pwypusa.org/pwyp-news/civil-society-organizations-call-on-exxonmobil-and-chevron-to-be-removed-from-the-eiti-board/>

<sup>7</sup> <https://eiti.org/document/statement-in-response-to-useiti-grievance-letter>

<sup>8</sup> <http://www.pwypusa.org/pwyp-news/civil-society-response-to-eiti-chair-reinfeldts-may-30-statement/>

above, U.S. civil society was denied access to a grievance process that met international standards even as clear violations of the EITI Standard, its Code of Conduct, and the USEITI Code of Conduct and bylaws were taking place.

The United Nations issued guiding principles that require multi-stakeholder initiatives to develop grievance mechanisms that are at a minimum: accessible, transparent, predictable, legitimate, equitable and a source of continuous learning.<sup>9</sup> The experience of U.S. civil society demonstrates that EITI's current ad hoc grievance process is:

- **Not transparent** - There is no clear procedure for informing complainants and the general public of the timelines, decisions and outcomes of grievance procedures;<sup>10</sup>
- **Not equitable** - There are no safeguards in place to protect complainants who may risk retaliations for filing complaints, nor is there an explanation of what information complainants must provide or an ability to seek advice and expertise in order to engage in the grievance process in a fair, informed and respectful manner;
- **Not legitimate** - There is no dedicated and impartial body for handling complaints; there are not disclosed conflict of interest provisions to account for staff or board members that are involved in complaints;
- **Not predictable** - EITI members do not have access to information about the processes for handling complaints, including who is responsible for making decisions, how those decisions are made, and the timelines for the procedures and for processing complaints;
- **Not accessible** - There are no efforts to raise awareness of grievance mechanisms to all EITI participants; knowledge of the informal ad hoc processes is limited to those who operate at the international level; and there is no ability to seek assistance when filing a complaint for those who may face barriers to access;
- **Not a source of continuous learning** - Grievance mechanisms should identify lessons to improve both themselves and EITI to ensure the initiative is operating effectively and does not lead to future grievances, but there is currently no formalized process for formally documenting these processes, or learning or adapting procedures and practice from past complaints and grievances.

We propose that the EITI adopt a formal grievance mechanism that addresses the shortcomings listed above, and meets international best practice for multi-stakeholder initiatives. We encourage the EITI to follow the guidance set by the United Nations. This includes designing the mechanism with consultation and input from the stakeholder groups that are the intended users.<sup>11</sup> To avoid any adverse impact on decision making, disputes that concern board members should be evaluated by an impartial and independent complaint resolution body without involvement from the EITI Secretariat or the multi-stakeholder group in the country where the grievance originated. This will improve efficiency, effectiveness and independence.

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<sup>9</sup> [https://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31\\_AEV.pdf](https://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf)

<sup>10</sup> To address this shortcoming, PWYP-US tracks developments on the grievance online:

<http://www.pwypusa.org/pwyp-news/civil-society-grievance-against-exxonmobil-and-chevron-a-public-record/>

<sup>11</sup> United Nations Human Rights Council *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2 March 2011), Principle 31(h)

We hope that US civil society's grievance with ExxonMobil and Chevron as well as the documentation of issues that led to the withdrawal of the United States, can serve as a catalyst to establish a formal grievance process for the benefit of resolving this dispute and providing a clear mechanism to efficiently and effectively deal with future EITI disputes.

We share your commitment to ensuring the success of EITI and appreciate the opportunity to provide our recommendations. Please let me know if you have any questions. I look forward to your response.

Sincerely,

**Filmona Hailemichael**

Director, Publish What You Pay - United States

(on behalf of U.S. civil society filing the [February 2018 grievance](#))

CC:

EITI Governance and Oversight Committee:

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