

Protecting the Cornerstone

**Assessing the Governance of
Extractive Industries Transparency
Initiative Multi-Stakeholder Groups**

February 2015





The **Institute for Multi-Stakeholder Initiative Integrity** (MSI Integrity) is a nonprofit organization dedicated to understanding the human rights impact and value of voluntary initiatives that address business and human rights. MSI Integrity researches key questions surrounding the effectiveness of these initiatives, facilitates learning in the field, and develops tools to evaluate initiatives from a human rights perspective. MSI Integrity takes a particular interest in how initiatives include, empower, and impact affected communities.

This assessment of national-level multi-stakeholder group governance in the Extractive Industries Transparency Initiative (EITI) was prompted by a request for research by Publish What You Pay (PWYP) in December 2013. It was conducted independently of both EITI and PWYP. MSI Integrity engaged with and sought feedback from all EITI stakeholders, including EITI Board members from all constituencies, throughout the process. The World Bank Multi-Donor Trust Fund reimbursed MSI Integrity for direct travel costs incurred in conducting interviews and attending meetings, however all research and activities were conducted independently of both the World Bank and the contributors to the Multi-Donor Trust Fund.

MSI Integrity welcomes suggestions for further research projects relating to the impact and effectiveness of multi-stakeholder initiatives. MSI Integrity's assessments are conducted independently of multi-stakeholder initiatives, and are premised on rigorous, transparent, and inclusive research processes.

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For Citation

MSI Integrity, *Protecting the Cornerstone: Assessing the Governance of Extractive Industries Transparency Initiative Multi-Stakeholder Groups*, February 2015.

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Individual country assessments, data sets, and additional materials are available at: www.msi-integrity.org/EITI

Acronyms and Abbreviations

CSO	Civil society organization
DRC	Democratic Republic of the Congo
EITI	Extractive Industries Transparency Initiative
MSG	Multi-stakeholder group
MSI	Multi-stakeholder initiative
NEITI	Nigeria Extractive Industries Transparency Initiative
NGO	Non-governmental organization
PH-EITI	Philippines Extractive Industries Transparency Initiative
PWYP	Publish What You Pay
ToR	Terms of Reference
USEITI	United States Extractive Industries Transparency Initiative

Relevant EITI Documentation

Civil Society Guidance Note: Refers to the *Guidance Note: Good Practices for Civil Society Participation in EITI*, in Annex II of this Report.

*Civil Society Protocol**: Formally described as “recommendations on civil society engagement in the EITI” (EITI Standard, pg 40). It is available as an Annex to the EITI Standard.

*EITI Articles of Association**: The governing framework for EITI. It is available as an Annex to the EITI Standard.

*EITI Association Code of Conduct**: A code of conduct for EITI participants, including MSG members.

*EITI Guidance Note 14**: Guidance note on the establishment of governance and multi-stakeholder groups.

*EITI Rules**: Requirements for becoming EITI Compliant (replaced by the EITI Standard).

*EITI Standard**: Requirements for becoming EITI Compliant.

ToR Protocol: Refers to the *Protocol for Developing Multi-Stakeholder Group Terms of Reference and Internal Governance Rules and Procedures*, in Annex I of this Report.

* Available from the EITI International website www.eiti.org

Terminology Relating to this Assessment

Countries reviewed: Refers to the 29 countries included in the assessment of MSG governance documents. See the Methodology for the list of these countries.

Countries visited: Refers to the five countries MSI Integrity visited to conduct in-person assessments of the governance of MSGs in practice. These were: Azerbaijan, Cameroon, Democratic Republic of the Congo, the Philippines, and Tanzania.

EITI Association: The EITI legal entity, comprised of bodies including the EITI Board and EITI Secretariat. It is fully defined in articles 1-5 of the EITI Articles of Association.

EITI countries: Refers to the 41 candidate or implementing countries involved in EITI as of March 1, 2014.

MSGs assessed: Refers to the 15 countries that were involved in assessments of MSG governance in practice, including the 5 EITI countries visited and the 10 EITI countries from which MSG representatives were interviewed remotely: Albania, Azerbaijan, Cameroon, Colombia, Democratic Republic of the Congo, Guatemala, Nigeria, Norway, the Philippines, Papua New Guinea, Senegal, Solomon Islands, Tanzania, the United States of America, and Yemen.

Validation: Process for assessing an EITI country's compliance with the EITI Standard or EITI Rules.

Background



Multi-stakeholder governance is a relatively novel approach to decision-making. By harnessing the perspectives and knowledge of government, industry, civil society, and communities, it has the potential to be a powerful governance tool. To unleash this potential, it is critical that all stakeholders can meaningfully participate in the decision-making processes and that these processes are inclusive, fair, and efficient.

Many multi-stakeholder initiatives are only now beginning to realize how important their internal governance processes are to their ability to affect change. EITI appears to have taken a positive step in this direction with the release of the EITI Standard in July 2013. The EITI Standard includes a handful of specific requirements for domestic multi-stakeholder groups (MSGs) – which are responsible for implementing EITI in each country – regarding their internal governance practices.¹ In the past, EITI has had few requirements to ensure that MSGs adopt robust internal governance procedures.²

This change presented a timely moment for MSI Integrity to conduct an independent assessment of the internal governance practices and processes in MSGs. In 2015 MSGs will be validated for compliance with the EITI Standard, and will therefore need to review their governing documents to ensure they comply with the new internal governance procedure requirements in the EITI Standard. It is hoped that the findings, recommendations, and practical guidance in this report are useful to MSGs as they review their governance procedures, as well as to the wider EITI community as they seek to improve their governance and enhance the potential for EITI to effect meaningful change.

¹ See *EITI Standard*, Requirement 1.3(f)-(g).

² The *EITI Principles and Criteria* (agreed in 2003 and 2005 respectively), and the EITI Rules that followed in 2009 and 2011, contained very few provisions regarding MSG internal governance: see Methodology, page 7, for further discussion of the new requirements.

Executive summary



In 2014, MSI Integrity conducted the most comprehensive assessment of national-level MSG governance practices in the EITI that, to our knowledge, has ever been completed. The assessment included a review of all publicly available governance materials released by 41 EITI implementing countries.³ Beyond reviewing governance documentation, MSI Integrity also examined the actual governance practices of 15 countries through a combination of discussions with MSG members and in-country visits. In total, over 60 MSG governance documents were reviewed and analyzed for compliance with the EITI Standard and other relevant guidance materials; more than 80 interviews were conducted with MSG members, as well as community members and civil society organizations (CSOs) outside of MSGs; and, this was supplemented by observing seven in-country MSG or civil society meetings and discussing the research and preliminary findings with interested EITI International Board members at two international board meetings in 2014.

The assessment concludes that there are significant shortcomings of internal governance in many MSGs. This in turn implicates a failure at the global level of EITI to ensure sufficient oversight of MSG governance and country-level compliance with EITI's core requirements. The consequences of this are profound. Inadequate internal governance of MSGs may be affecting their ability to reach decisions efficiently and fairly, to uphold principles of inclusivity and transparency, and to ensure that civil society is independent and effective within the MSG. This raises significant questions about whether countries are implementing EITI as effectively as possible, and therefore whether this is limiting the potential for EITI to have real impact on the ground.

None of the countries reviewed met all of the requirements set out in Requirement 1.3(g) of the EITI Standard regarding internal governance procedures. Indeed, a quarter of EITI countries could not be fully assessed as their governance materials were not publicly accessible or shared with MSI Integrity, which is itself a basic failing in governance. While countries will not begin to be validated for their compliance with the EITI Standard until 2015, it is evident that even if MSGs update their governance charters to conform to the EITI Standard, many fundamental aspects of MSG governance may remain unaddressed. This is because the EITI Standard and associated materials do not go far enough to provide sufficient guidance and expectations for MSGs to ensure they address all the issues inherent in multi-stakeholder governance. For example: EITI does not require MSGs to set conflict of interest policies, despite the centrality of CSO independence to the EITI; it does not create processes for resolving disputes if members allege misconduct or become unable to resolve procedural issues; and, it does not offer any guidance to ensure national secretariats are accountable to the MSG and efficiently support MSG operations.

Independence, accountability and effectiveness are all issues that MSG members reported as problematic, yet frequently they had not recognized how these issues could be addressed through improved internal governance procedures. This knowledge gap could be filled by EITI at the international level if they provided greater guidance and more rigorous requirements regarding how good governance in the multi-stakeholder context can affect the substantive outputs of EITI.

³ There were 41 countries implementing EITI at the start of the study on March 1, 2014. However, because many countries did not accessibly publish their governance materials and did not share them upon request with MSI Integrity, only 29 countries could be assessed. At the time the assessment began, Ethiopia, the United States of America, Papua New Guinea (candidates since March 19, 2014), Myanmar (July 2, 2014), the Seychelles (August 6, 2014), Colombia, and the United Kingdom (both October 15, 2014) had not yet been granted "candidate" status and, therefore, were not included in the review of governance documentation. See the Methodology and Part 1.1 for more details.

EITI at the international level should encourage MSGs to take their time to develop clear and comprehensive internal governance procedures before they focus on producing reports. Many MSGs have instead tended to rush to release reports, with only basic decision-making frameworks agreed for the MSG. This has resulted in reliance on informal processes, or ad hoc development of governance rules, which often break down in times of conflict. This sometimes halts or impairs the entire EITI process and leads to a breakdown of trust in the MSG, which can take years to rebuild. More frequently, it simply leads to decisions that do not benefit from the legitimacy or support of the multi-stakeholder approach to governance.

Civil society, in particular, often disproportionately experiences adverse effects from the inadequate or patchy internal governance processes in MSGs. In a number of MSGs, CSO representatives were selected through processes that raised questions about their independence from government or whether they were the best representatives for civil society. Practices within MSGs sometimes risk further compromising the actual or perceived independence of CSOs, for example the per diem payments in the Democratic Republic of the Congo (DRC) and Cameroon where MSG members could receive up to \$6000 USD in a year⁴ – an amount almost four times the per capita income of these countries.⁵ This vulnerability of civil society within the domestic EITI process has not been fully accounted for or recognized by the EITI Association, and civil society themselves need to be developing codes of conduct and practices for liaising with other civil society to ensure strong, inclusive, and accountable governance.

MSGs need to be reminded that they are accountable to, and should be representative of, their wider constituencies. This means that those most interested in, or affected by, extractive activity should be able to participate in the EITI process. Civil society and government are rarely fulfilling their obligations under the EITI Rules and EITI Standard to liaise with their constituents in any meaningful way.⁶ Government frequently appears to view the task of reaching out to the public as the obligation of civil society, and EITI should clarify that such duties cannot be left exclusively to civil society.

Finally, it is concerning that breaches of the EITI Rules outlined in this report have managed to persist in EITI undetected or unresolved for so long. This calls into question the reliability of the validation procedures established to assess whether countries are complying with EITI's requirements, and the EITI Board's response to validation findings. The procedures need to require more in-depth investigation and involve validators with the skills to detect issues such as whether CSO representatives are independent of government and companies, and whether they had the right to select their own representatives (both are requirements in either the EITI Rules or EITI Standard). In addition, there is currently no effective international grievance mechanism to allow complaints or allegations of violations of the EITI Rules or EITI Standard to be brought to the global level if breaches cannot be resolved domestically.

Positively, there are clear pockets of innovation and good practice, which are highlighted in this report. The EITI Standard itself is a marked improvement on the EITI Rules regarding the expectations for MSGs. However, the current low levels of compliance with the EITI Standard, combined with the inadequacies of the EITI Standard and related guidance material, should prompt EITI to develop more comprehensive requirements and guidance for MSGs. MSG members, whether from government, industry or civil society, all welcome greater direction from the global EITI community regarding how they can best structure the MSG. Many MSGs have never encountered multi-stakeholder governance processes before and rely heavily upon the guidance released by EITI, as well as any input from the EITI International Secretariat, to establish good practice.

⁴ See Table 7 in Part 3.2. The actual total payments received by an MSG member in Cameroon fluctuates based on the number of meetings held each year, and whether bonuses were achieved for successful validation or reconciliations.

⁵ See World Bank, *World Bank Open Data: GDP Per Capita (current US\$)*, available at <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD> (last accessed October 1, 2014).

⁶ *EITI Standard*, Requirement 1.3(g)(ii); *EITI Rules*, Requirement 6(b).

Post-2015: Opportunities to address shortcomings in MSG governance?

As EITI countries revise their terms of reference and ensure compliance with the revised expectations of the EITI Standard to prepare for validation and candidature assessment in 2015, the integrity of the EITI faces a watershed moment. It is critical that countries are rigorously tested to ensure they meet every single requirement in the EITI Standard, including those relating to internal governance and ensuring conditions to allow meaningful civil society participation.

To help countries in the transition, this report has been organized to give practical guidance to EITI countries and their constituents: a protocol has been devised to give guidance for MSGs on how to develop terms of reference (Annex I), and a guidance note for civil society representatives outlines some good practices for engaging in the MSG (Annex II). We hope these documents will be immediately circulated to all existing MSGs and CSOs, and that they help inform the basis of subsequent official policy or guidance notes approved by the EITI Board.

This assessment should be a wake-up call for EITI regarding the importance of supporting and requiring MSGs to develop robust internal governance practices, as well as more active and in-depth monitoring of MSG activities and CSO participation. The steps that need to be taken to ensure better governance require action not only by individual MSGs, but also the EITI Board, EITI International Secretariat, and the donors and international organizations that support EITI.

Selected key findings

1. The EITI Standard: Low levels of compliance and shortcomings in content

Lack of transparency regarding internal governance

MSI Integrity planned to review the governance documentation of all 41 implementing countries involved in EITI as of March 1, 2014. However, **less than two-thirds of all EITI implementing countries published their terms of reference or other core governance documentation** on either the national or international EITI websites. As a result, only 29 EITI implementing countries could be assessed, as the remaining countries did not have publicly accessible governance documentation and did not respond to MSI Integrity's requests for access to the material. This is a clear breach of both the EITI Rules and EITI Standard, which require countries to agree to a public terms of reference for the MSG.⁷ It should be noted that in June 2014, MSI Integrity shared a copy of a progress paper with the EITI Board and raised this transparency and accessibility concern. Since then, the EITI International Secretariat appears to have uploaded the governance materials of some countries onto the international EITI website. This is encouraging, and it is hoped the other recommendations in this report are implemented as quickly.

Low levels of compliance with the EITI Standard

Of the 29 reviewed EITI countries, **not a single country included all the internal governance expectations in Requirement 1.3(g) of the EITI Standard** in their governance documentation. The requirements in the EITI Standard are not strenuous, focusing only on requiring MSGs to agree to the most basic procedures, such as keeping written records of MSG discussions or using an inclusive decision-making process. It is very concerning that MSGs have been operating – some for almost a decade – without basic documented governance procedures. For example, only 41% of countries reviewed included provisions regarding nominating or changing MSG members, and only 59% had rules limiting the duration of MSG members' mandates.

The EITI Standard does not provide sufficient internal governance requirements

Even if MSGs were to re-draft their governance procedures to meet the requirements of the EITI Standard, there could still be major shortcomings in their governance procedures because the EITI Standard does not cover all fundamental aspects of MSG governance. Examples of some of the governance issues omitted in the EITI Standard include:

- **Not establishing accountability for national secretariats.** Most MSG members interviewed viewed their national secretariat as important, yet closely aligned to government and, in many cases, under-resourced. This perceived lack of independence or under-resourcing was problematic in many countries. However, there are no requirements in the EITI Standard or other supplemental guidelines to ensure that: (i) national secretariats are accountable to the MSG, as opposed to government; (ii) the MSG is satisfied with the independence of the secretariat (who, in 77% of MSGs assessed, were based in government offices); or, (iii) MSGs sufficiently staff, structure, and finance secretariats so that they can operate effectively.
- **Not requiring guarantees of stakeholder independence.** This is highly problematic given the importance of civil society independence to the integrity of EITI, yet **only 14% of countries reviewed had conflict of interest policies for MSG members** and only 7% require stakeholder group constituencies or MSG members to develop and adopt codes of conduct.

⁷ EITI Standard, Requirement 1.3(g); EITI Rules, Requirement 4(g).

- **Not establishing any requirements regarding the transparency and accessibility of the MSG's activities to the public.** Half of all the countries reviewed did not publish or provide a current list of their MSG members; some countries, such as Azerbaijan and Nigeria, had restrictive presumptions of confidentiality regarding MSG activity or records; and, of the 15 MSGs assessed, **over a third of the MSGs did not actively make meeting minutes publicly available.**

While the EITI Standard is supplemented with additional policies, such as *EITI Guidance Note 14* and the *EITI Protocol: Participation of Civil Society*, that sometimes touch on issues overlooked by the EITI Standard, most countries have only selectively followed these supplements. In addition, a number of important governance issues, such as establishing dispute resolution mechanisms and requiring reviews of internal governance practices, are not mentioned at all.

2. Civil Society in EITI: Governance processes are failing to ensure the independence and effectiveness of civil society

Civil society and MSG members frequently raised concerns about the independence or effectiveness of CSO representatives, many of which could be resolved by setting and following clear governance rules and procedures or through more vigilant oversight of compliance with the EITI Standard by the international community (see Part 4 of this Report).

Inappropriate government involvement in the selection of CSO representatives

In at least 7 of the 15 MSGs assessed, the government was involved in the selection of CSO representatives in a way that may have undermined the possibility of finding independent and effective representatives. The most clear-cut cases were when the government managed the selection process or, worse, directly selected civil society representatives – as occurred in Cameroon (see Box 6 in Part 3.1). However, two other forms of government involvement compromise the civil society selection process:

- Where the government pre-defines the types of civil society organizations that may participate in the MSG without input from civil society.** For example, governments in many countries, such as Senegal and Nigeria, have unilaterally reserved seats for trade union or media representatives. Yet, there is no certainty that within such groups there are engaged, effective, or independent advocates with expertise and skills suitable for CSO MSG representation.
- Where the government empowers an inappropriate organization(s) to select the CSO representatives.** This is often because the selected organization(s) were insufficiently resourced, experienced, or independent to ensure the selection of effective, independent, and legitimate representatives.

Often these forms of government involvement may have been motivated by intentions of helpfulness, and may even have resulted in the selection of strong CSO representatives. However, MSGs that were selected by these impaired approaches were more likely to have concerns about the effectiveness, independence, or legitimacy of their CSO representatives. These forms of involvement, even if well-meaning, also breach the provisions of the EITI Standard and EITI Rules that protect civil society's right to independently select its representatives,⁸ and the government obligation to ensure that the invitation to participate in the MSG was open and transparent.⁹ Unfortunately, EITI has not always detected these problems or intervened, including in cases of the government handpicking CSO representatives.

⁸ *EITI Standard*, Requirement 1.3(f)(ii); *EITI Rules*, Requirement 4(c) (both stating that each stakeholder group must have the right to appoint their own representatives).

⁹ *EITI Standard*, Requirement 1.3(f)(i); *EITI Rules*, Requirement 4(h)(ii) (both requiring the government to ensure that the invitation to participate in the group was open and transparent).

There also remain some instances where individuals who should not be considered civil society have been selected as CSO representatives. There needs to be greater clarity that political and for-profit actors, as well as any organizations that advocate on behalf of, or directly benefit from, the extractive industry or the national government, should not be considered civil society. Civil society constituencies that have gone beyond this by setting qualification criteria, such as regarding the independence, expertise, and standing of civil society, have also experienced very positive results. The case study of the Philippines (see the Civil Society Guidance Note, Box III) highlights the value of civil society independently, transparently, and inclusively establishing qualification criteria and conducting robust selection processes.

Processes within the MSG may undermine civil society independence and effectiveness

Many MSGs were not aware of the specific demands that effective participation in the MSG places on civil society, such as the costs of traveling to MSG meetings for CSOs based in extractive regions, or the greater capacity needs to learn the technicalities of revenue transparency. Those MSGs that were conscious of these demands were often unable to facilitate participation in a constructive manner, or to do so without undermining the actual or perceived independence of CSOs.

For example, in one-third of the MSGs assessed, there was no reimbursement available for MSG members who need to travel to the large cities where MSG meetings are generally held. This creates an exclusionary effect for CSOs from areas of extractive activity, and limits their ability to join or participate in the MSG. While a number of MSGs remedied this by transparently offering reimbursements for the actual or proportionate cost of attending, some MSGs offered per diem payments that were significantly greater than the costs incurred to attend the MSG meetings, or did not disclose the rates. This often led to suspicious speculation outside the MSG, with some CSO representatives being seen as compromised.

Civil society are not adequately utilizing internal governance processes

Multi-stakeholder processes are still a relatively novel form of engagement, and most civil society – particularly at the local or community level – are unfamiliar with the opportunities and challenges that may arise in the multi-stakeholder format. Too often, civil society representatives did not work together; did not understand how internal governance processes affect their ability to participate effectively in the MSG; nor did they seek to ascertain or advance the views of their wider public constituency. These CSO representatives risked becoming unnecessarily divided into factions or isolated from CSOs outside of the MSG. As a result, civil society – already a large and diffuse group of actors by definition – face being the weakest and least organized stakeholder group in the MSG. CSOs should be utilizing internal governance processes within their own constituency (i.e., outside of the MSG) to overcome this, for example by developing civil society codes of conduct and developing nomination and selection processes to choose the most effective representatives.

3. EITI Culture: Learning to value the importance of robust internal governance and involve stakeholders in areas of extractive activity

The need to recognize how internal governance processes affect EITI outcomes

There is insufficient encouragement or guidance for MSGs regarding the importance of robust internal governance procedures and how they should be developed. Instead, once a country has signed up to EITI there is often momentum and pressure to become “EITI compliant” as quickly as possible, by agreeing to reporting frameworks and producing reports. Consequently, MSGs tended to be formed with only very basic decision-making processes agreed in writing, and other governance processes adopted ad hoc or not at all.

This approach is sanctioned at the global level. The EITI International Secretariat, eager for MSG enthusiasm to be sustained, has not required MSGs to agree to comprehensive internal governance procedures at the outset. The Secretariat reported being concerned that this can be time-consuming and can risk causing disagreements over processes, thereby distracting or undermining countries from getting to the substance: EITI reporting. However, the failure to agree, in writing, to comprehensive internal governance procedures that draw from good practice has often allowed a culture of fraught decision-making to be tolerated. It needs to be recognized that this, in turn, greatly affects the decisions, outputs, and thereby the impacts of EITI.

For example, it was common for MSG members to report that: they were not given adequate notice of meetings or that meetings are too short or infrequent to address concerns; MSG members had been selected who were compromised or lacked commitment or availability to participate; and, that decision-making is closed, rushed, or ill-informed. These factors all invariably affect the quality or legitimacy of the decisions made throughout the EITI process. Worse, if an MSG experiences conflict or disagreement, the initial failure to establish clear governance processes risks contributing to the entire EITI process stalling and possibly failing within a country.

Underrepresentation of stakeholders in areas of extractive activity in EITI processes

The 15 MSGs assessed frequently failed to include or consider the perspectives of those living or operating in regions with extractive activity, such as local governments, affected communities, and grass-roots civil society. These stakeholders often have the greatest interest, knowledge, and concern regarding transparency in the extractive industry, yet are frequently either entirely unaware of EITI or feel unable to contribute to its process. The EITI Standard and related guidance material contain no indication that local actors, especially affected communities, are crucial stakeholders to the EITI process; indeed, the assumption throughout the EITI Standard that an MSG consists only of government, industry, and civil society may have an exclusionary effect on community-based organizations or community leaders seeking to participate.

Within MSGs there is an encouraging awareness of the importance of expanding or evolving EITI at the sub-national level. Unfortunately, MSGs are often unsure about how to involve local actors and communities. One of the challenges for EITI is to both encourage localized EITI engagement and provide guidance on how it can be done successfully. There are a number of ways this could be achieved:

- 1. Through direct inclusion of locally affected stakeholders on the MSG.** The overwhelming majority of MSG members are based in the metropolitan area where the MSG holds its meetings (ordinarily a major city), which is rarely where extractive activity occurs. Only 4 of the 15 MSGs assessed had a policy to encourage representation from areas of extraction.
- 2. By government and civil society fulfilling their obligation under the EITI Rules and EITI Standard to liaise with their constituency.**¹⁰ In the five countries visited there was no evidence that government representatives undertook any liaising with their constituents in areas of extraction. The only outreach that appeared to be done by many governments to their constituents was related to the dissemination of completed EITI reports, which is distinct from seeking their input on the content or goals of the domestic EITI process. Civil society in many countries had not established sufficient liaising and outreach practices to allow broader civil society or local actors to meaningfully participate in EITI. However, good practices on inclusive liaising have been developed in some countries, such as the Democratic Republic of the Congo (see the Civil Society Guidance Note), which have reaped demonstrable benefits.

¹⁰ EITI Standard, Requirement 1.3(g)(iii); EITI Rules, Requirement 6.

3. **By innovations, such as the sub-national EITI councils or other efforts that are being piloted in some countries.** Although still in its formative stages, the case study of the initiative under way in Compostela Valley in the Philippines (see Box 9 in Part 4.2.) is a good example. There, local indigenous leaders have autonomously championed a local law that is premised upon the multi-stakeholder reporting model of EITI for local extractive activity, but which extends to issues such as assessing the environmental impacts of mining, and monitoring revenue expenditure. It demonstrates the power that EITI can have when the stakeholders affected by extractive activity are directly involved in advancing the process.

Lack of gender diversity in MSGs

In the 23 EITI countries that have published MSG membership lists with sufficient detail to conduct a gender analysis, the majority of MSGs are composed of less than 25% female representatives. Some MSGs, such as Côte D'Ivoire and Yemen, have no female representatives; only four countries (Madagascar, Mozambique, Norway, and Trinidad and Tobago) have 40% or more females.

4. EITI Global Oversight and Framework: Greater monitoring and incentivizing of MSGs is needed

Detecting non-compliance: Improving validation and establishing an effective grievance mechanism

In examining the governance of MSGs domestically, it became apparent that there are some deficiencies with the global EITI mechanisms used to detect breaches of the EITI Standard and validate compliance, since countries with clear violations of the EITI Rules are deemed “EITI Compliant”. Although a full examination of these mechanisms was beyond the scope of this assessment into governance, EITI needs to focus on addressing these concerns if it wishes to be an effective transparency initiative.

Validation: A more comprehensive validation methodology and set of criteria for the selection of validators is required if EITI’s validations are to be credible. For example, validators must obtain the views of civil society from outside the MSG in order to reliably assess whether an MSG has discharged its requirements related to civil society independence, outreach, or the enabling environment. To obtain the necessary information from external civil society, validators will need specific skills and qualities to ensure they locate reliable individuals and foster trust. At the time of writing, the EITI Standard and related materials do not contain sufficient requirements regarding these issues or many others that are critical to ensuring reliable validations.

Establishing an effective grievance mechanism: Regular and comprehensive validation procedures will help countries move toward true compliance with the EITI Standard – and possibly to consider ways to innovate or improve their existing transparency efforts – but under the EITI Standard validation only occurs every three years. It is therefore crucial to the integrity of EITI that there are well-known, accessible processes in place to detect and address any serious breaches of the EITI Standard that may arise in the periods between validations.

MSG members responded positively to the idea of a formal grievance mechanism at the international level to resolve disputes, or raise allegations of noncompliance with the EITI Standard, where those disputes could not first be resolved domestically. EITI does not currently have this type of independent grievance mechanism. While the EITI International Secretariat has historically mediated some MSG disputes, it does not meet the standard of independence, expertise, or procedural fairness necessary to be an effective grievance mechanism. Relevant EITI Board sub-committees, such as the Rapid Response Committee, do not have a formal avenue for filing complaints and only a handful of MSGs were aware of their existence. As a result, many MSG members did not know whether they could bring concerns about compliance to the international level.

Enabling countries to move beyond the minimum requirements of the EITI Standard

Individual MSG members were often under the impression that the EITI Standard (and EITI Rules) set the limit for what EITI mandates, and that they are not empowered to expand EITI to include anything beyond the basic requirements of the EITI Standard. However, the EITI International Secretariat has clarified that the EITI Standard is simply the minimum requirement that countries must meet, and that countries are in fact encouraged to exceed its prescribed requirements. This needs to be expressed more clearly to MSG members, to enable them to innovatively utilize the EITI reporting framework to respond to issues that their constituents deem important. For example, in many countries EITI had, or was facing, dwindling interest because it did not address extractive industry transparency issues that are of pressing relevance to the population, such as environmental or human rights impacts. Yet with the agreement of the MSG, the EITI framework could expand to include transparent reporting on such issues.

Similarly, MSG members often reported that once the minimum requirements of the EITI Rules were met, and the country was deemed EITI compliant, little innovation or progress was made within the MSG, and attendance or participation at meetings often dropped. While a thorough examination of this issue was beyond the scope of the assessment, the EITI Association should be aware that many MSG members would like EITI to incentivize countries to move beyond simply meeting the basic requirements of the EITI Standard.

Selected key recommendations



Below is a summarized selection of some of the most critical recommendations that arise from this assessment. Please note that these are summaries only, and full comprehensive recommendations are contained at the end of each of the five parts of the Report.

For EITI Board and/or the EITI International Secretariat:

1. Amend Requirement 1 of the EITI Standard or adopt other policies to require that MSGs develop comprehensive internal governance processes before commencing the EITI reporting process or issuing EITI reports. Comprehensive internal governance processes include all the practices identified in the *Protocol for Developing MSG Terms of Reference and Internal Governance Rules and Procedures* in Annex I of this Report. See Part 1 of the Report for more details.
2. Develop resources to provide comprehensive guidance to help MSGs achieve compliance with the EITI Standard and good practice for multi-stakeholder governance, including:
 - a. Formally endorsing the contents of the *Civil Society Guidance Note* in Annex II, or otherwise developing comprehensive supplemental guidance for civil society related to identifying the wider civil society constituency, selecting and nominating civil society representatives, establishing a stakeholder group code of conduct, and conducting robust outreach and liaising.
 - b. Formally endorsing the contents of the *Protocol for Developing MSG Terms of Reference* (Annex I), or otherwise developing comprehensive supplemental guidance and rules for MSGs that addresses how to develop comprehensive and effective multi-stakeholder governance procedures.
 - c. Identifying good practices regarding the structure and operation of national EITI secretariats. This should include practices to ensure the MSG is satisfied with the independence, resources, and mandate of the secretariat, potentially by examining various approaches taken in different contexts.
 - d. Identifying good practices on how the MSG and its constituents can conduct effective outreach and liaising, and ensure appropriate gender and geographic diversity in the MSG, with a special focus on prioritizing inclusion of stakeholders in areas of extractive industry activity.
3. Revise the validation process to ensure it can reliably detect non-compliance with all requirements of the EITI Standard. The current and proposed validation methodologies are very focused on ensuring technical compliance regarding reporting procedures, however additional procedures are required for validating the internal governance, independence of civil society, effective liaising and outreach, and wide dissemination of EITI reports. This revision should explicitly seek public and expert input, and draw on good practices for monitoring and evaluation. See Parts 3-5 of the Report for more details.
4. Develop an independent international-level grievance and dispute resolution mechanism to allow stakeholders in each implementing country to report substantive non-compliance with the EITI Standard, and to resolve internal MSG governance disputes that cannot be resolved in national-level processes. See Part 5 of the Report for more details.

5. Clarify that the EITI Standard only establishes minimum requirements for MSGs and that MSGs are encouraged to go beyond these requirements. In particular, it should be clarified to all MSGs that the mandate and scope of the EITI MSG does not have to be limited to the provisions of the EITI Standard. See Part 5 of the Report for more details.

For multi-stakeholder groups in each implementing country:

1. Review governance rules, procedures, and frameworks to identify current strengths and weaknesses from the perspective of each stakeholder group.
2. Revise and formally document new rules, procedures, and frameworks that:
 - a. Comply with the EITI Standard requirements; and,
 - b. Incorporate comprehensive multi-stakeholder governance processes, at least based on the good practices identified throughout this report, and in the *Protocol for Developing MSG Terms of Reference and Internal Governance Rules and Procedures (Annex I)*, as well as *EITI Guidance Note 14*, the *EITI Association Code of Conduct*, and the *EITI Protocol: Participation of Civil Society*.

All new or revised rules, procedures, and frameworks should be: agreed in writing; developed based on inclusive deliberation and agreement of all MSG stakeholders; and, made publicly available.

3. Publish the following information in an accessible format for local and international EITI stakeholders and observers:
 - a. All core governance documents that establish rules, procedures, and frameworks for MSG operations;
 - b. Current MSG member lists, including at a minimum each member's name, organizational affiliation(s), and stakeholder group constituency in the MSG;
 - c. Annual budgets, and audited financial accounts;
 - d. Records of discussions and decisions from meetings (e.g., meeting minutes), including at a minimum a list of people in attendance, and details about the discussion and decisions taken, as well as any dissent or disagreement; and,
 - e. Announcements of meeting details, including at a minimum the date, location, agenda, and the procedure for attending meetings as an observer.
4. Establish a formal, accessible process to resolve disputes that arise:
 - a. From within the MSG related to governance rules and procedures; or,
 - b. From grievances reported by MSG members, constituent stakeholders, or external observers related to inappropriate conduct of MSG members, EITI reports, the reporting process, or substantive non-compliance with the EITI Standard.
5. Design and implement strategies for conducting outreach and liaising with the public and external stakeholders, particularly at the local and regional level in areas affected by extractive activities. This should be based on the good practices identified in Part 4 of this Report, and should require that government and civil society representatives within the MSG conduct independent outreach and liaising with the public and their wider constituencies (e.g., external civil society organizations, or sub-national governments, and government agencies and ministries) to report discussions and decisions from the MSG, and seek input and feedback on issues related to EITI implementation and MSG deliberations.
6. Consider and support the role of civil society in the MSG by identifying barriers to meaningful participation in the MSG and by taking steps to overcome these barriers.

For civil society active in the EITI in each implementing country:

1. Civil society representatives on the MSG should collaborate with wider constituents throughout the country to:
 - a. Develop a cohesive mandate for civil society by:
 - i. Identifying and establishing a wide network of the individuals, communities, and civil society organizations who may wish to be informed of EITI or participate in the process;
 - ii. Liaising regularly with stakeholders interested in ongoing involvement with the EITI to seek input and report feedback about the MSG and EITI processes, and to develop a vision for how EITI can advance the interests of the public and communities affected by extractive industry activity; and,
 - iii. Establishing parameters for civil society MSG representatives to work cohesively together and with their wider constituency.
 - b. Establish a code of conduct to:
 - i. Establish expectations and responsibilities for civil society representatives to the MSG, including conflict of interest policies and term limits; and,
 - ii. Develop a transparent, accountable framework for collaboration and cohesive engagement among civil society.
 - c. Revise existing civil society nomination and selection processes to ensure they are designed to select effective, legitimate, and independent representatives to the MSG.
 - d. Formalize eligibility and qualification criteria for civil society representatives to the MSG.

Civil society should utilize the *Civil Society Guidance Note* in Annex II of this Report when undertaking these activities.
2. Ensure that CSO MSG representatives are actively involved in the MSG's review and revision of internal governance procedures in preparation for validation under the EITI Standard. The *Civil Society Guidance Note* and *Protocol for Developing MSG Terms of Reference* may be helpful tools to ensure internal governance rules are developed in a manner that allows for inclusive and effective involvement from civil society.

For governments in each implementing country:

1. In advance of establishing the MSG, governments should conduct outreach to inform and educate the public, companies, and civil society about EITI and about the role of each stakeholder group in implementing EITI, taking care to ensure that stakeholders in areas of extractive activity are contacted. See Part 3.1.1 of this Report for more details.
2. Take care not to influence the selection of civil society MSG representatives, either directly or indirectly, in a manner that undermines their independent selection by civil society. This includes by pre-defining the types of civil society that may participate in the MSG or by delegating the selection of civil society to an insufficiently independent organization. See Part 3.1.1 of the Report for more details.
3. Engage with the public to conduct outreach and liaising on a regular basis. These processes should emphasize seeking input and feedback from constituents located in regions affected by extractive activities. See Part 4 of the Report for more details.

For funders and international civil society organizations that wish to support EITI:

1. Prioritize support for training and capacity building for civil society to:
 - a. Conduct robust outreach and liaising processes with civil society's wider constituencies, as detailed in the *Civil Society Guidance Note* (Annex II). In particular, this should enable civil society and communities from areas affected by extractive activities to participate in the EITI processes.
 - b. Draft internal governance rules and procedures that strengthen civil society's capacity to impact decision-making in the MSG.

Methodology

Overview

From February to September 2014, MSI Integrity researched and assessed the governance of national EITI MSGs. Two types of assessment were conducted:

1. **An assessment of MSG governance documentation** of all EITI implementing countries based on the EITI Standard and other relevant guidance materials for multi-stakeholder governance. This desk-based review focused on the core governance documentation of MSGs, such as terms of reference. MSI Integrity endeavored to assess the governance documentation of all EITI countries' MSGs. However, many countries could not be assessed because they did not publish or share their governance documentation.
2. **An assessment of MSG governance practices** of 15 diverse countries. This assessment went beyond the governance documentation to determine how the MSGs operated in practice. MSI Integrity assessed five MSGs during in-country visits that occurred between March and May 2014. The visits included observations of MSG and civil society meetings, as well as extensive in-person interviews. Ten other MSGs were assessed remotely, through telephone and Skype interviews.¹² Interviewers made efforts to understand the perspective of MSG members from all stakeholder groups, including civil society, government, industry, and the in-country secretariat or coordinating body.

In addition to input from MSG members and national secretariats, MSI Integrity sought input from other key stakeholders. These included the EITI Board and EITI International Secretariat, who were expressly invited to participate by EITI Board Circular and through in-person meetings at two EITI Board meetings in 2014.¹³ Also, particularly during in-country visits, MSI Integrity solicited the views of other relevant stakeholders, such as donors, wider civil society, and communities affected or concerned by extractive industry issues relevant to EITI. A progress paper, outlining preliminary findings and recommendations, was also shared with the EITI Board and Secretariat for feedback during June–July 2014.

1. Selection of EITI Countries for Assessment

1.1. Assessment of MSG governance documentation: All EITI implementing countries

MSI Integrity planned to assess the governance documentation of all EITI implementing countries but this was not possible because many countries did not make their governance documentation available. As of March 1, 2014, when the written governance assessment commenced, EITI comprised 41 EITI implementing countries: 24 compliant, 13 candidate, and 4 suspended countries.¹⁴ In total, only 29 countries could be evaluated, as 12 countries did not have sufficient documentation accessible to MSI Integrity to enable an assessment. These 29 countries are referred to as a group throughout this Report as the “countries reviewed”.

¹¹ Azerbaijan, Cameroon, the Democratic Republic of the Congo, the Philippines and Tanzania were all assessed with in-country visits. These five countries are referred to as a group throughout the Report as the “countries visited”.

¹² These countries are Albania, Colombia, Guatemala, Nigeria, Norway, Papua New Guinea, Senegal, the Solomon Islands, the United States, and Yemen. Iraq was initially included but was replaced due to the escalating conflict. Where phone calls were difficult to schedule, MSI Integrity followed up with MSG members by email. This approach was particularly used with Yemen, where contact ceased after the military occupation of Sana'a in September, and the Solomon Islands, where technical complications made it difficult to contact stakeholders.

¹³ EITI Board Circular 169, May 2, 2014, and the 26th EITI Board meeting (Norway, March 2014) and 27th EITI Board meeting (Mexico, July 2014).

¹⁴ At the time the assessment began, Ethiopia, the United States of America, Papua New Guinea (candidates since March 19, 2014), Myanmar (July 2, 2014), the Seychelles (August 6, 2014), Colombia, and the United Kingdom (both October 15, 2014) had not yet been granted “candidate” status and, therefore, were not included in this document assessment.

1.1.1. Countries excluded from the assessment based on lack of available documentation

Thirteen countries had no governance documents publicly available¹⁵ and did not respond to MSI Integrity’s requests for governance documents to be shared during the initial phase of the assessment, hindering the ability to conduct a complete evaluation.¹⁶ These countries were:

Burkina Faso	Mozambique	Timor-Leste
Central African Republic	Republic of the Congo	Yemen
Iraq	São Tomé and Príncipe	Zambia
Mali	Senegal	
Mauritania	Sierra Leone	

An MSG member from Senegal provided a governance document that formed the basis for assessment during the second phase of the study (involving interviews with MSG members), enabling a later evaluation. It was necessary to exclude the other 12 countries from the governance assessment.

1.2. Assessment of MSG governance practices: Selection of 15 countries

Capacity constraints limited the ability to comprehensively assess the practices of all EITI implementing countries, which requires extensive interviewing of MSG participants. After discussions with international EITI stakeholders, MSI Integrity instead chose to assess 15 diverse countries, with five of these countries to be visited in person. MSI Integrity considered all countries with established MSGs as of March 30, 2014.

To ensure results were representative, MSI Integrity considered a variety of factors when selecting the 15 countries. These included: the geographic location, with an emphasis on including countries from the Global South and Global North; the governmental or political systems (e.g., parliamentary versus presidential); the structure and format of the MSG; the perceptions of the strength of the MSG; the country’s present EITI compliance status (i.e., candidate, compliant, or suspended status); and, the length of time the country has been implementing EITI, to include both new and founding EITI countries. The selection was somewhat limited in achieving geographical diversity, which is indicative of the concentration of EITI implementing countries in Africa and the very limited number of European and Northern countries.

This selection also drew on discussions with a variety of EITI stakeholders, including direct requests to all EITI Board members for input.¹⁷ All countries that were suggested by EITI Board members and the EITI International Secretariat were included in the final selection. The countries selected were:

Albania	Guatemala	Senegal
Azerbaijan	Nigeria	Solomon Islands
Cameroon ¹⁸	Norway	Tanzania
Colombia	Papua New Guinea	United States of America ¹⁹
Democratic Republic of the Congo (DRC)	The Philippines	Yemen (to replace Iraq)

¹⁵ Documents were considered to be “publicly available” if they were published on the country’s national EITI website, or on the country summary webpage on the EITI International website.

¹⁶ Countries were considered to have “not responded” if they did not respond to MSI Integrity’s requests for governance documents within four weeks. Requests were made by email and followed up, where possible, by telephone.

¹⁷ EITI Board Circular 169, May 2, 2014.

¹⁸ At the time of initial assessment, Colombia was preparing to apply for candidacy but had not yet done so. Colombia applied for candidate status in August 2014, and was accepted as a candidate country on October 15, 2014.

¹⁹ At the time of initial assessment, the United States had applied for candidacy, but was only accepted as a candidate country on March 19, 2014.

Iraq was initially selected but was replaced with Yemen due to the escalating conflict. In retrospect, it would also have been helpful to include accessibility and political stability as selection factors, as it was difficult to contact MSG members in the Solomon Islands and Yemen.²⁰ These 15 countries are referred to as a group throughout this report as the “MSGs assessed”.

2. Methodology for the Assessment of MSG Governance Documentation

The methodology for the assessment of written governance processes (as distinct from the MSG governance practices, discussed below) included three steps: (1) collection of national EITI MSG governance documents and member lists; (2) an assessment of governance documents using an objective questionnaire; and (3) an opportunity for national EITI secretariats to review and verify or correct assessment results.

2.1. Collection of MSG Governance Documents

MSI Integrity collected any governance documentation published by MSGs, national coordinators, or secretariats.²¹ This included: legislative acts or orders establishing or creating MSGs; terms of reference and internal rules agreed by the MSG or implemented by legislation; and, MSG member lists. Documents were collected by:

- a. Inviting national secretariats in every implementing country by email to share their MSG governance policies and procedures for the purposes of the study;²² and,
- b. Conducting desk-based research to collect all relevant documents containing national MSG governance policies and procedures from the EITI International website and from each country’s EITI portal or website.

In some instances, interviews with stakeholders (see 3. *Methodology of the Assessment of Governance Practice* below) led to additional governance documents being provided to MSI Integrity that were not available through the above methodology.²³ Rather than ignore this data, it has been included in the assessments and noted as having been found through this alternate avenue.

2.2. Assessment of Governance Policies

Governance documents were assessed using a questionnaire that posed questions about governance procedures that were objectively answered in a yes/no format (see Annex III). Sources and explanations for each answer were recorded on the questionnaire. The questions were based on MSG governance criteria derived from three primary sources:

- a. EITI Requirement 1.3(f)-(g) of the *EITI Standard*, relating to the internal governance expectations for MSGs;
- b. *EITI Guidance Note 14: on the establishment and governance of multi-stakeholder groups*;²⁴ and,
- c. Essential elements relevant to internal governance according to the MSI Integrity *MSI Evaluation Tool*.²⁵

²⁰ In these countries, where phone calls were difficult to schedule, MSI Integrity followed up with MSG members by email. This approach was particularly pursued with Yemen, where contact ceased after the military occupation of Sana’a in September, and the Solomon Islands, which became difficult to contact due to Skype spending limitations and high calling rates.

²¹ EITI encourages implementing countries to establish national processes for implementing the EITI requirements, and therefore there are no uniform titles or styles for governance policy documents.

²² Countries were informed of the study in order to ensure the most accurate results by transparently engaging with national Secretariats, and also because many countries did not have MSG governance information available on their websites. Where no Secretariat details were available on country portals, MSI Integrity contacted the regional coordinators and local contact persons identified on the EITI International website and requested contact information for the Secretariat or MSG members, as well as any governance documents that the listed contacts had available.

²³ This provided additional documentation for assessments of the governance documentation of MSGs in the Democratic Republic of the Congo (DRC), the Philippines, and Senegal.

²⁴ January 2014, available at http://eiti.org/files/Guidance%20note%20MSG%20governance_0.pdf.

²⁵ *Draft MSI Evaluation Tool* (2011). The final MSI Evaluation Tool is forthcoming in 2015, along with methodological guidance for evaluating the institutional design of MSIs from a human rights perspective, and will be available online at www.msi-integrity.org.

These documents were used because they represent the current requirements for MSGs, combined with good practices. The *MSI Evaluation Tool* is available on MSI Integrity's website.

The questionnaire included a total of 73 questions. The full data and results for each of the 29 EITI countries reviewed are available for download on MSI Integrity's website.

2.3. Opportunity for Review by Secretariats or MSGs

National EITI coordinators of the EITI countries reviewed, along with MSG members if contact details were available,²⁶ were provided the opportunity to review the governance documentation assessment findings and to provide feedback or corrections.²⁷ This review process was intended both to encourage EITI actors at the national level to begin to critically consider their compliance with the EITI Standard and general performance regarding MSG governance, and to ensure accuracy of the findings of this study.

Nine countries requested to review the assessment results.²⁸ Only one country, Albania, provided feedback to MSI Integrity regarding those results. The secretariat confirmed that they had no comments regarding the results.

3. Methodology of the Assessment of Governance Practice

MSI Integrity complemented its review of the governance documentation of MSGs by assessing the governance practices in 15 EITI implementing countries. This provided a deeper understanding of MSGs' operations. It allowed MSI Integrity to more fully appreciate governance challenges, good practices, and innovations at the national level, and to assess whether rules and procedures are followed in practice.

In-depth discussions and interviews were conducted with over 80 individuals. As explained above, in five countries these conversations took place in person. For the remaining ten countries, conversations were held remotely.

One of the challenges to conducting this assessment was the lack of contact information available for MSG members. Of the 15 MSGs assessed, only three – Albania, Tanzania, and the United States – had contact details for all MSG members available online. The EITI International Secretariat does not keep copies of the current MSG members or contact details.

Interviews encouraged MSG members to discuss their experiences and opinions related to: MSG meetings and procedures, civil society participation and independence, EITI national secretariat structure and capacity, and general comments. The interviews were conducted as open-ended discussions, as opposed to surveys, that focused on understanding governance practices, challenges to effective MSG operation, and ideas for innovation. MSI Integrity interviewers took notes with the permission of interviewees, and the level of attribution was agreed in advance of conducting interviews. Many interviewees requested that their discussions remain all or partly off-the-record. In a few instances, details and additional questions were asked by email after interviews had been completed, often due to difficulties arranging additional conversations or making contact by telephone, Skype, or other voice services.

²⁶ Where contact information for individual members was available, MSG members were included as recipients on correspondence with national coordinators and secretariats delivering the assessment results after the offer to review had been accepted.

²⁷ Due to the late nature of the evaluation of Senegal's governance document as a result of the method of document sharing (during the interview stage), MSI Integrity was not able to offer Senegal the opportunity to review its governance document evaluation results.

²⁸ The countries that requested a review of the results were Albania, Ghana, Kyrgyz Republic, Liberia, Madagascar, Niger, Solomon Islands, Tanzania, and Togo.

3.1. Focus on civil society

The assessment considered the governance of MSGs as a whole. However, during the assessment of government practice, there was a special focus on the selection, composition, and governance of civil society participation in the MSGs. CSOs have a special role in EITI governance as an impartial stakeholder group that is not targeted by the revenue transparency goals of the EITI. CSOs act as an independent safeguard for the integrity of EITI and are empowered to liaise with the public to both ensure that their concerns are reflected in the EITI process, and to ensure that EITI (and the information it generates) is accessible and relevant to the wider community.

3.2. In-Country Visits

Before MSI Integrity visited the five countries selected for in-country study,²⁹ the secretariats were notified of the visit and the individual members of the MSG were contacted in countries where the secretariat facilitated or supplied contact details.³⁰ Where possible, each member of the MSG, as well as the secretariat, was given the opportunity to discuss the study and provide input. Special emphasis was also placed on obtaining the perspectives of civil society organizations that were not a part of the MSG but that had an interest in EITI's activities. Finally, where possible given the limited nature of the in-country visits, MSI Integrity visited resource-rich areas or sites of extraction. These extractive site visits enabled discussions with community members affected by extractive activity, as well as local NGOs that frequently lack opportunities for meaningful input in the EITI process.

In addition to conducting interviews, MSI Integrity observed MSG meetings in Cameroon, Tanzania, and the United States, civil society coalition meetings in Azerbaijan and the Philippines, and a training of MSG members in the DRC.

3.3. Remote assessments

For the ten countries assessed remotely, an effort was made to speak with at least one industry and one government MSG representative, as well as a representative from the national EITI secretariat, and at least two CSO MSG representatives. Given the difficulties in contacting MSG members discussed above, a modified version of "chain-referral" sampling (where known contacts or networks are asked to provide contact details and introductions to reach the desired sample group) was used to make contact and seek volunteers for interviews with each stakeholder group.³² Where MSG members of a particular group were contacted multiple times to request volunteers to interview but no members were forthcoming, MSI Integrity was unable to include the perspectives of that stakeholder group in the assessment. Interviews were conducted by telephone or using Voice over Internet Protocol (VoIP) technology such as Skype or Google, based on the convenience of the interviewee, and interpretation services were provided using external contractors where language barriers existed.

²⁹ Azerbaijan, Cameroon, the DRC, the Philippines and Tanzania.

³⁰ The exception is the Philippines, whose Secretariat did not have functioning contact information at the time of visiting in March 2014, and who did not publish a list of MSG members to allow for individual contact.

³¹ Although technically the assessment of the United States MSG was not conducted with the same methodology as the countries visited, MSI Integrity is based in the United States and was able to attend an MSG meeting in Washington, DC, on June 10, 2014.

³² This generally involved four steps:

(1) Using publicly available information to contact EITI secretariats or national coordinators to introduce the background and aims of the research project, and request an introduction to MSG members. This emailed letter requested that the secretariat communicate the overview of the study and extend the call for volunteers for interviews to all MSG members. If no response was received and MSI Integrity could not obtain contact details for MSG members through other sources, MSI Integrity followed up with at least one additional email and a phone call using the contact number available on the EITI International website, national EITI website, or the website of the government ministry known to house the secretariat or national coordinator.

(2) To maximize the possibility of obtaining contact details and interviewees, MSI Integrity concurrently sought to make direct contact with at least one MSG member using facilitated introductions by Publish What You Pay. This direct contact message asked for an interview with the MSG member, and requested an introduction to other MSG members from each stakeholder group.

(3) Following any introductions to MSG members, MSI Integrity directly requested volunteers from each stakeholder group for phone or Skype interviews to discuss their experiences of MSG governance, either in English or using independent interpretation services. During each interview, MSG members were asked to suggest additional interview subjects (inside or outside of the MSG) that should be interviewed if possible, and to facilitate introductions where necessary, in a form of chain-referral qualitative research.

(4) If no MSG members volunteered from a particular stakeholder group, the National Coordinator and/or secretariat were contacted again to confirm contact information was correct, and to request telephone numbers for MSG members to ensure that members were aware of the opportunity to voluntarily participate in the research. Absent engagement by the national secretariat, MSI Integrity conducted an Internet search for contact details for known MSG members and, where possible, reached out directly to those members.

4. Consultation and input from key stakeholders

Throughout the process, MSI Integrity sought input and feedback from key stakeholders. In addition to informing the national coordinators and/or EITI secretariats in each EITI implementing country,³³ the EITI International Secretariat and Board members were informed of the study by both board circular and individual emails.³⁴ Board members were asked to offer their experiences with MSG governance, as well as suggestions for the particular countries whose governance practices should be assessed.

MSI Integrity also attended two EITI Board meetings in 2014 to ensure that Board members were aware of the study and of the opportunity for input, and to discuss findings and seek input from stakeholders.³⁵ Finally, MSI Integrity attended regional PWYP civil society meetings for Asia-Pacific in March 2014, and for Central Africa in February 2014.

MSI Integrity shared a progress paper with EITI Board members, the International Secretariat, and other relevant stakeholders in advance of the 27th EITI Board Meeting, held in Mexico on July 1-2, 2014. The paper outlined the core challenges that EITI participants and concerned stakeholders had identified during interviews and observations conducted to date, and outlined suggested approaches to overcome those governance challenges. Individuals were encouraged to give feedback on the findings and proposed recommendations in the progress paper. MSI Integrity was invited to present the progress paper to civil society pre-Board-meeting events. MSI Integrity made a request to the EITI Governance Committee to present and discuss the progress paper with the committee in order to seek further feedback, but no response to the request was received.³⁶ The EITI International Secretariat also provided feedback on the paper following the Board meeting.

A note on the use of the EITI Standard as the basis for evaluation

The MSG governance policies and procedures required in the EITI Standard, adopted in 2013 to replace the 2011 EITI Rules, formed the basis of the criteria for assessment used in this study. At the time the research for this report was completed in September 2014, the EITI Standard had not been used to validate any countries. Instead, the EITI Rules continued to form the basis of validation. As a result, the countries assessed in this report were not yet expected to conform with the EITI Standard in order to be deemed EITI implementing countries. It is understood that from 2015 onwards, countries will be validated under the EITI Standard.

The EITI Standard builds on the internal governance requirements for MSGs established in the EITI Rules. The most significant relevant change for the purposes of this study is that the EITI Rules did not require MSGs to establish their internal governance procedures in writing, whereas the EITI Standard specifies minimum provisions to be included in the MSG's ToR in Requirement 1.3(g). The major changes relevant to internal governance following the introduction of the EITI Standard are illustrated in the table below.

³³ The national coordinators and/or secretariats were contacted in February and March 2014 to introduce this research assessment. This initial communication included a discussion of the background and goals of the project, and offered an opportunity to provide input and learn more about the scope of the assessments by speaking with MSI Integrity.

³⁴ All EITI Board members were notified of the study by EITI Board Circular No. 169 on May 2, 2014, and individually contacted by email on May 9, 2014. Discussions and correspondence with individual Board members took place after this initial outreach.

³⁵ Amelia Evans attended the 26th EITI Board meeting (Norway, March 2014) and the 27th EITI Board meeting (Mexico, July 2014).

³⁶ This request was made in-person to the Chair of the Governance Committee at the 27th EITI Board Meeting.

Table A: **Substantive changes to MSG internal governance requirements under the EITI Standard**

Old Requirement: EITI Rules (2011)	New Requirement: EITI Standard (2013)	Substantive Change
EITI Requirement 4(g) required the MSG to “agree clear public Terms of Reference”, and that “[o]nce the group has been formed, members should agree internal rules and procedures. This might include voting procedures.”	EITI Requirement 1(g)(vi) requires that the MSG “agree procedures for nominating and changing multi-stakeholder group representatives, decision-making, the duration of the mandate and the frequency of meetings.”	<p>The MSG must now agree to:</p> <ul style="list-style-type: none"> ▪ Procedures for nominating and changing MSG representatives; ▪ Decision-making; ▪ Duration of the mandate of the MSG; and, ▪ The frequency of meetings.
EITI Requirement 4(a) listed the appropriate stakeholders for the MSG as “including – but not limited to – the private sector, civil society (including independent civil society groups and other civil society, such as the media and parliamentarians), and relevant government ministries (including government leads).” (Emphasis added).	EITI Requirement 1(f)(ii) lists the appropriate stakeholders for the MSG as “including, but not necessarily limited to: the private sector; civil society, including independent civil society groups and other civil society such as the media and unions ; and relevant government entities which can also include parliamentarians ” (Emphasis added).	<p>Parliamentarians are no longer considered civil society, but “relevant government entities”.</p>
EITI Requirement 4(e) appeared to encourage MSG members to liaise with their constituency groups, but left it optional, by stating that MSG members “should be able to operate freely without restraint or coercion, including by liaising with their constituency.”	EITI Requirement 1(g)(iii) states explicitly that MSG members “should liaise with their constituency groups.”	<p>The requirement that members should liaise with constituency groups is affirmatively stated as an activity that should be completed by MSG stakeholder groups.</p>
EITI Requirement 4(h) encouraged the government establishing the MSG that it “may also wish to: undertake a stakeholder assessment”.	No reference to a stakeholder assessment.	<p>The EITI Standard no longer suggests that the government may wish to undertake a stakeholder assessment.</p>

1. MSG Internal Governance Processes

Overview

Multi-stakeholder governance requires trust among and between stakeholder participants, and sufficient engagement with the public and external stakeholders to establish the legitimacy of decisions and outcomes.

As a global multi-stakeholder initiative focused on transparency in the extractive sectors, EITI at the international level places a high value on transparency in its global activities. For example, the EITI Board has a comprehensive governance framework defined in the *EITI Articles of Association*. It has also developed a code of conduct for Board members, and publicly shares meeting minutes, the list of current Board members, and other Board governance documents and materials on the EITI International website. In contrast, this commitment to transparent governance has not been emulated at the national level in many countries.

The potential for EITI to be effective and credible in many countries is being hampered by the lack of transparency in MSGs, and the failure to establish clear and comprehensive internal governance and decision-making processes.

- **Lack of Transparency:** Less than two-thirds of all EITI countries' core governance documents were available on either the national EITI website, or the country summary page on the EITI International website. This is contrary to both the EITI Rules and EITI Standard, which require the EITI terms of reference to be publicly available.³⁷ In addition, over half of all EITI countries did not publish a list of the current membership of the MSG. Finally, MSG activities often lack transparency: less than half of the EITI countries reviewed required meeting minutes to be published or have a policy specifying how observers can attend meetings.
- **MSGs internal governance procedures are frequently not clearly defined:** Interviews with the MSGs assessed indicate that there has been a tendency for MSGs to be formed without a full understanding of what constitutes good practice for multi-stakeholder governance. This is compounded by views at the global level that good governance will “evolve” over time.³⁸ As a result, practices have often been developed on an ad hoc basis, rather than as a result of considered analysis of the basic requirements for a well-functioning MSG. This has proven severely problematic for MSGs when a conflict has emerged, and has sometimes paralyzed the MSG or created deep divisions and distrust amongst members. In turn, it has negatively affected the capacity of the MSG to establish and execute robust EITI processes and reports.

³⁷ *EITI Standard*, Requirement 1.3(g); *EITI Rules*, Requirement 4(g). Out of the 41 implementing countries as of March 1, 2014, only 24 had published their basic governance documentation – including legislation establishing the MSG, or terms of reference – to one of these websites. See Methodology and Part 1.1 for further details.

³⁸ Email correspondence with the EITI International Secretariat on June 19, 2014.

- **Incomplete and insufficient governance procedures in most MSGs:** Most MSGs lack detailed written governance procedures or rules, and many have failed to establish even the most fundamental governance procedures. The majority of countries reviewed had insufficient governance rules and procedures to enable MSGs to function effectively and almost none had established processes to resolve disputes between members related to MSG governance or arising from members' conduct.³⁹ For example, less than half of the countries reviewed had: procedures for nominating and changing MSG members; a specific process for convening MSG meetings; or, policies regarding the publication of meeting minutes.
- **Compliance with the EITI Standard will require all MSGs to revise core governance documentation and internal rules:** None of the countries reviewed currently have governance rules that comply with the EITI Standard. Therefore, almost every EITI implementing country will need to revise its terms of reference in order to be validated under the EITI Standard. The failure to establish clearly agreed-upon written governance procedures is unsurprising given that the EITI Rules did not set detailed expectations or requirements for the internal governance of MSGs. The EITI Standard takes a positive first step by including some minimum requirements regarding governance, such as defining: decision-making processes; the frequency of meetings; and, the duration of members' mandates. The EITI Standard, however, does not go far enough in setting requirements for core governance issues that affect MSGs in practice, and is missing requirements for provisions that: (i) guarantee the independence of the MSG; (ii) eschew conflicts of interest for MSG members; and, (iii) establish dispute resolution mechanisms for the MSG. We strongly encourage all MSGs to develop comprehensive internal governance processes while undertaking this revision, and the ToR Protocol in Annex I of this Report was developed to assist MSGs in this process.

1.1. Transparency of MSG Governance, Composition, and Activities

As a governance instrument focused on enhancing transparency, it is critical that each MSG's governance documents, membership lists, and information related to meeting times, agenda, discussions, and decisions are transparently and accessibly shared with the public, unless there are legitimate policy reasons to justify confidentiality. Such basic transparency is essential to building the public's trust in the EITI as a credible and reliable process for addressing extractive industry transparency and accountability.

1.1.1. Transparency of MSG Terms of Reference and other governance documents

Both the EITI Rules and EITI Standard require MSGs to "agree [to] clear public terms of reference".⁴⁰ However, under the EITI Standard it is required that internal governance rules and procedures are made public in the ToR, whereas the EITI Rules called for MSGs to agree internal rules and procedures once the group had been formed – and not necessarily as part of the public ToR.⁴¹

Only 59% of the 41 EITI implementing countries surveyed in March 2014 have published their core governance documents on their own EITI website or the EITI International website.⁴² While five MSGs provided their governance documentation to MSI Integrity upon request, MSI Integrity could not assess over a quarter of all EITI implementing countries because their governing documentation was not publicly available.

³⁹ There were 29 countries with MSG governance documents available for review. This includes 24 countries with publicly available documents, and an additional 5 countries' whose documents were made available for the purposes of this study either upon request from national coordinators or secretariats, from MSG members directly, or from PWYP representatives. See Methodology for further details.

⁴⁰ *EITI Standard*, Requirement 1.3(g); *EITI Rules*, Requirement 4(g).

⁴¹ *EITI Standard*, Requirement 1.3(g); *EITI Rules*, Requirement 4(g).

⁴² "Core governance documents" outline how the MSG functions and operates, including such information as: the mandate and structure of the MSG, selection processes for MSG members, the frequency of MSG meetings and the number to be held per year, the process for decision-making, and other internal rules and procedures. For example, this included: a decree, order or legislative act passed by a branch of government to establish or create the MSG; or an instrument formalizing internal rules for the MSG, such as terms of reference, memorandum of understanding, or committee charter. See the Methodology for further explanation.

Table 1: Summary of transparency of MSG core governance documents*

Countries without core governance documents on the national or international EITI website and that did not provide them upon request	Countries without core governance documents publicly available but that provided them upon request	Countries with core governance documents available on the national or international EITI website
Burkina Faso	Madagascar	Afghanistan
Central African Republic	Senegal	Albania
Iraq	Solomon Islands	Azerbaijan
Mali	Tanzania	Cameroon
Mauritania	Togo	Chad
Mozambique	Trinidad and Tobago	Côte D'Ivoire
Republic of Congo		DRC
Sao Tomé and Príncipe		Ghana
Sierra Leone		Guatemala
Timor Leste		Guinea
Yemen		Honduras
Zambia		Indonesia
		Kazakhstan
		Kyrgyz Republic
		Liberia
		Mongolia
		Niger
		Nigeria
		Norway
		Peru
		The Philippines
		Tajikistan
		Ukraine

*There were 41 EITI implementing countries included in the initial assessment of EITI documented governance processes, as of March 1, 2014. Of these, 24 countries had core governance documents available on the national or international EITI website. An additional five countries' MSG governance documents were made available to MSI Integrity for the purposes of this study, either upon request from the national coordinator or secretariat in each country, from an MSG member, or from Publish What You Pay.

1.1.2. Publication of MSG member lists

Over half of all EITI countries did not publicly disclose the names of members in their MSG. This is not surprising, given that the EITI Standard does not require MSG member lists to be published. However, it is imperative for the credibility, accessibility, and accountability of the MSG that the representatives responsible for overseeing and making decisions to implement the EITI are publicly known and, ideally, able to be contacted.

Surprisingly, the EITI International Secretariat does not keep copies of member lists or contact details of current MSG members in EITI implementing countries. To increase their accessibility and transparency, MSGs should make member lists publicly available on their national EITI websites and other relevant forums, including at least basic details such as: member names, organizational affiliation(s), and the stakeholder group they represent on the MSG.

Table 2: Summary of the availability of each country's MSG member list

Countries without a publicly available MSG member list	23/41 (56%)	Afghanistan Cameroon** Central African Republic Chad** Côte D'Ivoire** DRC** Guatemala Guinea* Honduras Indonesia Iraq Kazakhstan**	Kyrgyz Republic** Mauritania** Niger** Peru Sao Tomé & Príncipe Solomon Islands* Senegal** Tajikistan Togo* Yemen Zambia
Countries with an MSG member list publicly available that details: member names, organizational affiliations, and the stakeholder group they represent.	8/41 (19.5%)	Albania Madagascar Mali Mongolia Mozambique	Tanzania Timor-Leste Ukraine
Countries with an MSG member list publicly available but with limited details	10/41 (24.5%)	Azerbaijan Burkina Faso Ghana Liberia Nigeria Norway	Republic of the Congo Sierra Leone The Philippines Trinidad & Tobago

* These countries provided MSG member lists to MSI Integrity upon request, though they were not accessible by independent means.

** Partial member lists of civil society representatives were provided to MSI Integrity by Publish What You Pay, upon request.

1.1.3. Information and records about MSG activities

Neither the EITI Standard nor the EITI Rules establish any requirements regarding the transparency or accessibility of the MSG's activities to the public.⁴³ As a transparency initiative that operates in the public interest, it is important that MSG meetings and activities are open and accessible to the public. MSGs should establish a presumption of transparency and accessibility for meetings and the records of discussions and decisions made at those meetings (e.g., meeting minutes), unless there are justifiable policy reasons for confidentiality. MSGs should publicize clear, accessible processes for interested observers to attend the meetings. This will serve to increase understanding of EITI and also help to build trust, credibility, and legitimacy in the process.

⁴³ Both the *EITI Rules* (Requirement 4(g)) and *EITI Standard* (Requirement 1.3(g)(viii)) require that there is a written record of discussions and decisions, but neither requires that these should be publicly accessible. *EITI Guidance Note 14*, in §4.3 of the Annex: Model Terms of Reference, encourages MSGs to adopt policies to publish records of meetings to the national EITI website.

The observed policy and practice is that MSGs tend to limit public access to MSG meetings and records. Although it may occasionally be necessary to allow aspects of MSG meetings or activities to be confidential to enable members to share sensitive information and build trust within the MSG, the vast majority of EITI countries have created unnecessarily opaque MSG practices that may appear secretive to outsiders. Notable findings include:

- **Meeting minutes are often not available to the public:** Only 41% of countries reviewed had MSGs governance policies that required the publication of meeting minutes. Members from 6 of the 15 MSGs assessed – including Albania, Cameroon, Nigeria, Senegal, Solomon Islands, and Yemen – indicated that meeting minutes are not published and there is no policy requiring them to be public. In Nigeria, minutes are confidential unless an interested party can demonstrate a legitimate interest for requesting to view them.
- **Meeting minutes frequently lack sufficient detail and critical information to understand discussions and decisions:** Promisingly, meeting minutes are recorded by most MSGs in practice, as required by the EITI Rules and EITI Standard, and many MSGs were happy to provide these to MSI Integrity upon request, even if they were not published. A basic review of many of those minutes, however, indicates that critical information is often omitted from them. Very few countries included aspects such as the reasons for decisions or made note of dissent from members involved in the discussion, even if consensus was ultimately reached. This may be due to a lack of procedural rules about the content that should be recorded in minutes, as only 55% of the countries reviewed had MSG governance rules that required the group to keep written records of the decisions and/or discussions of the MSG.
- **MSG meetings are generally closed to the public and observers in practice:** In 14 of the 15 MSGs assessed, meetings are closed to the public by default,⁴⁴ and only 55% of the countries reviewed had MSG governance policies regarding the attendance of observers. Therefore, almost half of the countries reviewed did not specify a process for an outsider to understand how to gain access to observe a meeting. This is compounded by a lack of publicity regarding meetings – offering little opportunity for concerned stakeholders to attend or become engaged in meetings. The result is that most individuals are likely to assume that such meetings are simply closed or too difficult to attend. Numerous countries required the entire MSG to approve observers by consensus, including Azerbaijan, the DRC, the Philippines, and Tanzania.

⁴⁴ Although, only 8 MSGs assessed have explicit policies stating that meetings are not public. The exception is the United States, which follows an explicit policy that meetings are open to the general public. MSG members from 11 of the 14 countries with closed meetings indicated that observers are allowed to attend meetings, though in several countries MSG members interviewed could not specify the procedure for observers to request to attend.

Box 1: Varying levels of transparency within national EITI processes

Because of the lack of expectations set in the EITI Rules or EITI Standard, each country has adopted its own practices for the level of confidentiality for MSG activities. Below are some examples of the range of practices, from the excessively confidential practices of Azerbaijan and Nigeria, to an exploration of the side effects of rigorous transparency requirements in the United States. EITI needs to act quickly to set minimum standards regarding transparency of MSG practices, and to highlight good practices—such as the balance struck in the Philippines.

Azerbaijan: Unchecked and excessive confidentiality

In June 2014, the Azerbaijan MSG agreed to a new memorandum of understanding (the governing document of the MSG). The memorandum establishes very high levels of secrecy around the MSG's activities. It requires that any publication of material relating to MSG activities, including MSG meetings, can only be published with the consensus of the entire MSG.⁴⁵ In addition, each member has to abide by absolute confidentiality regarding any decisions or activities in the MSG, unless all MSG members agree by consensus that the information can be disclosed.⁴⁶

Meeting minutes are not published, but rather “extracts” are made available.⁴⁷ These are prepared by the national secretariat, which is essentially an extension of the government (i.e., it is housed, funded, and staffed by the State Oil Fund of the Republic of Azerbaijan) as discussed further in Part 2 of the Report. The extracts are heavily simplified, making any understanding of the real issues impossible. For example the full public meeting minutes from July 21, 2014 are:

“Meeting agenda:

1. Discussion on emerged difficulties in the activity of Members of the EITI Coalition of Civil Society Organizations
2. Discussion on the activity of Working group consisting of MSG members on supporting the development process of synthetic schedules and contextual data to be included in the Auditor's report.
3. Any other business.

Regarding the first matter has decided as follows: If the emerged difficulties and problems have not been solved until September 2014, the EITI Secretariat to organize next MSG meeting in September of the current year in order to discuss these issues.

Regarding the second matter has decided as follows: 1. Auditor to introduce draft structure of the report on contextual information to Working Group. 2. Working Group's meeting to be organized on 26 August-9 September by the Secretariat.”

Without external information, it is impossible to gauge the real issues being discussed. For instance, what are the “emerged difficulties and problems” that should be solved? In this case, if a reader had attended the EITI International Board meeting in Mexico in July 2014 they would know that the difficulties relate to concerns about civil society's ability to operate freely and to fulfill their EITI obligations, owing to fear of government oppression. The concerns expressed by civil society included: persecution of CSOs by governmental ministries, and media articles by the government discrediting NGOs.⁴⁸ At the EITI Board meeting, the EITI Rapid Response Committee and Board had decided to

⁴⁵ Memorandum of Understanding on Implementation of the Extractive Industries Transparency Initiative in the Republic of Azerbaijan (June 10, 2014), clause 1.6.

⁴⁶ Memorandum of Understanding on Implementation of the Extractive Industries Transparency Initiative in the Republic of Azerbaijan (June 10, 2014), clause 3.

⁴⁷ Memorandum of Understanding on Implementation of the Extractive Industries Transparency Initiative in the Republic of Azerbaijan (June 10, 2014).

⁴⁸ EITI International, EITI Board, *Minutes of the 27th EITI Board Meeting* (21 July 2014), 14.

send a delegation to Azerbaijan. However, the minutes do not reference this major development, nor even give basic information regarding the concerns raised, the discussion that was held, or MSG members' responses to civil society's points. This level of vagueness is present in most of the Azerbaijan MSG meeting minute extracts reviewed by MSI Integrity, especially regarding issues that may reflect negatively on the MSG or country.

A policy prohibiting observers from participating in the MSG meetings unless they have the full consensus of the MSG members (see clause 1.3) further compounds the lack of transparency in meeting minutes. Additionally, there is no requirement for meetings to be publicly announced.

When these policies are taken together, they render any external party interested in MSG proceedings incapable of understanding its progress or decisions.

Nigeria: Guarded access to information

In Nigeria, MSG meetings are private and can only be attended by observers upon the formal invitation of the Chairperson.⁴⁹ Meeting minutes must be kept confidential unless the interested party can show they have a "legitimate interest" in viewing the minutes.⁵⁰ However, the Board Charter does not establish any procedure through which an interested party may request access to meeting minutes, and leaves what constitutes a legitimate interest to view the minutes unclear.

By comparison, CSO representatives in Nigeria noted that the civil society steering committee holds meetings that are open to the public and intends to show the MSG, by example, that public attendance is acceptable and consistent with the effective performance of meetings.

The Philippines: Establishing a balanced presumption of transparency

The Philippines EITI (PH-EITI) has established a clear presumption of transparency of MSG information. Title III, Article II-§1 of the Internal Rules states that the files of PH-EITI are "open and accessible to the public" as a general rule, subject to four exceptions⁵¹:

1. Material containing business secrets or other material that "for competition reasons are important to keep secret in the interests of the person whom the information concerns";
2. Personal information relating to the MSG or secretariat, such as employment performance reviews;
3. Documents revealing information received from a third party where disclosure of the material would harm the legitimate interests of that third party, such as personal security or personal privacy; or,
4. PH-EITI internal documents, such as emails between MSG members. By comparison, minutes of the MSG and working groups are not internal documents.

Although the EITI process is relatively new in the Philippines compared to the other countries profiled, this tailored approach appears to be working well for all MSG members.

⁴⁹ Nigeria Extractive Industries Transparency Initiative (NEITI), *The Presidency, Board Charter for the National Stakeholders Working Group (NSWG)*, (January 2011), § 7.3.4.

⁵⁰ Nigeria Extractive Industries Transparency Initiative (NEITI), *The Presidency, Board Charter for the National Stakeholders Working Group (NSWG)*, (January 2011), § 7.6.4.

⁵¹ Philippine Extractive Industries Transparency Initiative (PH-EITI), *Internal Rules for the Philippine Extractive Industries Transparency Initiative (PH-EITI)*, Title III, Article II-§1.

The United States: Side effects of rigorous transparency?

In the United States, federal “sunshine” laws require all committees formed under the Federal Advisory Committee Act (FACA) of 1972⁵², such as the USEITI MSG, to be transparent and open unless specific exemptions allow confidentiality.⁵³ There are ten exemptions, including: where disclosure would constitute a breach of personal privacy, or reveal commercial information that is privileged or confidential.⁵⁴ To comply with these legal requirements MSG meetings are required to be publicly announced at least 15 days in advance, indicating the time, location and agenda for the meeting, and must be held on-the-record and explicitly open to the public to attend in person or by phone; working group meetings are open to the public unless a stakeholder member presents a legitimate policy reason that they should be closed; and, meeting minutes for MSG and working group meetings are published on the USEITI website. MSG meetings even include dedicated time in the agenda for public comment that can be made in-person, by phone, or by email (which is then read aloud at the meeting for entry into the public record).

In interviews with MSG members, industry and civil society representatives noted that the intense transparency of MSG meetings forces much of the more difficult debate and negotiation over substantive EITI issues to occur outside of public MSG processes. According to these representatives, it is common for controversial topics to be deliberated off the record – either in private among MSG members, or in confidential working group sessions – to allow members to share openly and find a resolution. By the time the issue is presented at public MSG or working group meetings, stakeholders have generally reached an agreement on how to proceed, or clarified their positions to present any disagreement in mutually accepted terms for the public record.

1.2. Basic Governance Procedures in MSGs: Levels of Compliance with the EITI Standard

1.2.1. No documentation of internal governance procedures required under the EITI Rules

Under the EITI Rules, there were no specific requirements about the internal governance procedures of MSGs, so countries could be declared candidates or implementing countries without documenting their MSG’s governance procedures. As a result, an alarming 17% of the 29 countries reviewed did not even have general provisions outlining the internal governance rules and procedures for the MSG. It is not uncommon for many MSGs to have governance provisions limited to just a few central paragraphs, outlining little more than the MSG’s mandate, membership composition, and decision-making process (i.e., consensus or majority vote).

In practice, this has left many MSGs operating based on ad hoc processes rather than according to predictable, clearly defined, and consensually agreed rules. As a result, EITI has permitted countries to achieve and retain EITI compliant status for years, without having them agree in advance to the most basic governance processes.

⁵² Public Law 92-463, 86 Stat. 770 (Oct. 6, 1972), §1.

⁵³ Government in the Sunshine Act, Public Law 94-409, 90 Stat. 1241 (Sept. 13, 1976).

⁵⁴ Title 5, United States Code §552b(c).

⁵⁵ Although the EITI Rules prescribe certain requirements to be in writing, these requirements are very limited. Correspondence with the EITI International Secretariat clarified that to be accepted as an EITI Candidate or Implementing Country it is not expected that governance procedures must be recorded in writing. While looking at the written terms of reference is one source of evidence to fulfill the requirements to agree to internal governance procedures (e.g., Requirement 4(g) of the *EITI Rules*), other evidence includes an assessment of the MSG governance procedures as observed in practice, and stakeholder feedback on the adequacy of arrangements.

⁵⁶ Examples of some internal governance rules or procedures include: decision-making processes, duration of mandates, frequency of meetings, rules for advance notice of meetings or timely circulation of documents prior to discussion, or requiring written records to be kept (e.g., meeting minutes).

Many issues of grave concern raised by MSG representatives about negative governance practices could have been largely mitigated if procedures to address them had been agreed upon and documented when the MSG was first formed and in the process of developing its terms of reference (e.g., the Cameroon case study in Box 3 in Part 1.2.3). For example, in some MSGs assessed, members felt that civil society representatives were not sufficiently independent, and others were repeatedly unable to attend meetings because they were given insufficient notice to accommodate travel from their hometowns to the city where meetings were being held. If notice provisions or independence requirements had been agreed at the outset, these issues could have been avoided.

1.2.2. Low levels of compliance with the EITI Standard

The EITI Standard addressed this oversight in the EITI Rules by specifying a number of fundamental internal governance rules that must be included in the MSG's terms of reference.⁵⁷ As MSGs prepare for validation under the EITI Standard, the vast majority will need to revise their terms of reference and related governance documentation in order to comply with these requirements. While the EITI Standard is a significant improvement on the EITI Rules, it still only sets minimal standards that do not address all the core governance issues facing MSGs, as explained in Part 1.2.4. MSGs should use the opportunity when revising their governance documentation to develop comprehensive MSG procedures, as advised in the ToR Protocol in Annex I of this Report.

⁵⁷ *EITI Standard*, Requirement 1.3(g).

Table 3: Ranking countries by percentage of compulsory governance issues included in governance documents

Country	Compulsory* Governance Issues in Writing	Optional** Governance Issues in Writing
Afghanistan	88%	70%
The Philippines	88%	65%
Ukraine	88%	57%
Azerbaijan	88%	39%
Honduras	82%	74%
DRC	76%	52%
Nigeria	71%	57%
Guinea	71%	57%
Côte D'Ivoire	65%	61%
Madagascar	65%	43%
Norway	65%	43%
Chad	65%	39%
Kazakhstan	59%	65%
Indonesia	59%	39%
Togo	53%	48%
Solomon Islands	53%	39%
Mongolia	53%	26%
Liberia	53%	22%
Albania	47%	43%
Peru	47%	35%
Tajikistan	47%	26%
Tanzania	47%	17%
Guatemala	41%	43%
Cameroon	41%	30%
Ghana	41%	30%
Senegal	41%	26%
Niger	29%	22%
Trinidad and Tobago	18%	26%
Kyrgyz Republic	12%	9%

* Governance issues that are required to be in writing under EITI Standard Requirement 1.3(g).

**Governance issues that are optional to capture in writing in the ToR under *EITI Standard* Requirements 1.3(f)(ii)-(iii), and *EITI Guidance Note 14*.

Table 4: **Summary of the compulsory written provisions contained in the governance documents**

This table is a quantitative summary of the aggregate number of MSG ToRs that contain each of the minimum provisions that should be addressed according to the EITI Standard. In the current EITI validation process it is not mandatory for the MSG ToRs to contain all of these provisions in writing, but it is mandatory under the EITI Standard.

The sections highlighted indicate that less than two-thirds of EITI Implementing countries assessed had included provisions to address the stated issue in their governance documentation.

EITI Requirement	Provision Required in Terms of Reference/ Core Governance Policies	Total countries with written provisions*
1.3(g)	Outline of the role, responsibilities, and rights of the MSG	97%
	General provisions on the MSGs role in the approval of work plans, EITI reports and annual activity reports	76%
	General provisions on internal governance rules and procedures for the MSG (e.g., any rules or procedures for meetings, decision-making, or other internal processes)	83%
1.3(g)(i)	Commitment to ensure that MSG members have the capacity to carry out their duties	24%
1.3(g)(ii)	MSG required to undertake outreach activities with civil society groups and companies, including informing stakeholders of the government's commitment to implement EITI and the central role of companies and civil society	41%
	MSG required to widely disseminate the public information that results from the EITI process such as the EITI report	79%
1.3(g)(iii)	MSG members required to liaise with their constituent groups**	17%
1.3(g)(iv)	MSG members required to oversee the reporting process and approve annual work plans, the appointment of the Independent Administrator, the Terms of Reference for the Independent Administrator, EITI reports, and annual activity reports	76%

EITI Requirement	Provision Required in Terms of Reference/ Core Governance Policies	Total countries with written provisions*
1.3(g)(v)	MSG required to engage in validation in accordance with Chapter 3 of the EITI Standard	45%
1.3(g)(vi)	MSG required to use an inclusive decision-making process throughout implementation of the EITI, with each constituency being treated as a partner	62%
	Any member of the MSG granted the right to table an issue for discussion**	21%
	Provisions including agreed procedures for nominating and changing MSG representatives, in accordance with the principles set out in Requirement 1.3(f)**	41%
	Provisions including agreed procedures for decision-making**	83%
	Provisions including agreed procedures for the duration of the mandate of MSG members (i.e., term limits)**	59%
	Provisions including agreed procedures for the frequency of group meetings**	76%
1.3(g)(vii)	Provisions requiring a certain amount of advance notice of meetings	55%
	Provisions requiring timely circulation of documents prior to their debate and proposed adoption	55%
1.3(g)(viii)	Provisions requiring that the MSG must keep written records of its discussions and decisions (e.g., provisions requiring the keeping of meeting minutes)	55%

* Totals are out of 29 countries, whose governance documents were available for assessment.

** These provisions were not previously explicitly required under the EITI Rules, but they are included in the Requirements of the EITI Standard.

As Table 4 shows, there is a serious lack of documented governance processes compared to the EITI Standard's minimum provisions in Requirement 1.3(g). In fact, **none of the countries whose governance documents were examined contained provisions that met all of the EITI Standard requirements.** Some notable findings from governance document assessments include:

- **Absence of term limits:** Only 59% of countries reviewed had MSG rules limiting the duration of MSG members' mandates, or the number of consecutive or total terms a member can serve. Yet in many countries, there has been a failure to adequately rotate MSG members, which causes external credibility issues and may account for a lack of accountability within the MSG. For example, in Cameroon some of the sitting MSG members date from the original MSG appointment in 2005, and in Yemen none of the civil society MSG representatives have rotated since EITI's inception in 2007.
- **Absence of nomination and selection procedures:** Only 41% of countries reviewed had agreed MSG procedures for nominating and changing representatives. This is explored further in Part 3 of this Report in relation to the need for more comprehensive and thoughtful civil society selection processes.

- **Insufficient rules for the basic logistics of MSG meetings:** Only 55% of countries reviewed had MSG governance provisions requiring: a certain amount of advance notice of meetings; timely circulation of documents to inform discussions and decision-making; or that records be kept of MSG discussions and decisions (e.g., meeting minutes). Unfortunately, MSGs that do not have formally documented procedures for organizing meetings often struggle to arrange meetings with sufficient notice to allow preparation or attendance (or sometimes, meet so frequently as to diminish the value of meetings) and face other basic logistical concerns regarding circulation of materials. Where MSGs do not have, or do not follow, clear rules for providing members with notice in advance of meetings, key members may be unavailable to attend on short notice or may face serious challenges to adjust their schedules and arrange to travel.
- **Insufficient communication and outreach processes:** 59% of countries reviewed did not have MSG governance provisions that required the group to conduct outreach to companies or civil society to explain the EITI and their central role in implementation, and only 17% explicitly required MSG members to liaise with their constituent groups. This may have contributed to many of the problems discussed in Part 4 of this Report about the lack of local and community-level stakeholder involvement in many MSGs.

Box 2: The value of taking simple steps to plan, prepare and schedule MSG meetings

Discussions with MSGs highlight that establishing simple procedural policies to clarify expectations for meetings has many benefits. Such policies may set out minimum notice periods, methods for scheduling meeting dates and timelines, agenda-setting processes, as well as procedures for approving and circulating documents and minutes. Failure to set these types of policies has resulted in low levels of attendance at MSG meetings, delays in decision-making, and has limited members from making informed decisions and seeking input from the stakeholders they represent. These impacts have often caused a particular burden for civil society or other members who are not based in the city centers where meetings and secretariats tend to be located.

Nigeria initially had difficulties with attendance at meetings, but in 2012 started to schedule the date for each of the regular quarterly meetings at the start of the year. This has led to a vast improvement in attendance and availability for all members. At each meeting, the final date and time for the next meeting is confirmed with the members. MSG members in Nigeria reported that attendance rates at MSG meetings have significantly improved since the adoption of the pre-scheduling practice. **The Philippines**, which has a practice of meeting on the first Friday of every month while it prepares its first EITI report, has also had a positive experience from these regular meetings.

The lessons from these MSGs is that **expectations for the timing of meetings, attendance, agenda-setting, and circulation of documents should be set by the MSG in order to avoid logistical problems when organizing each meeting.** The number of meetings held by MSGs varies from country to country and depends partly on the stage of EITI implementation. Rather than commit to a specific number per year, MSGs would benefit greatly from setting a small number of regular meetings in advance (e.g., quarterly meetings), and then supplementing them with additional meetings organized according to minimum notice requirements, as necessary.

1.2.3. Problems of relying upon informal or ad hoc development of governance practices

One of the most positive findings of this study is that in almost every country where MSG members were interviewed, they agreed that where clear rules are in place, the MSG generally adheres to them. However, because EITI has not required that MSGs agree at the outset to a comprehensive set of governing principles, many MSGs have simply developed procedures in an ad hoc manner.

Based on discussions with stakeholders in MSGs, the following findings are notable:

- A) Many MSGs seem to have been formed without the individual stakeholders in the MSG having a full understanding of what constitutes good practice for multi-stakeholder governance. Instead, ad hoc practices emerge from simply continuing to follow the initial practices established by the government or secretariat because they often drive the initial stages of MSG convening. These are often ill suited for the unique demands of multi-stakeholder convening and are formed without considering the basic requirements for a well-functioning MSG.
- B) Although many MSGs function with ad hoc practices, the absence of consensually developed rules risks jeopardizing the EITI process if any major conflict arises within the MSG that implicates the decision-making process, because disputes increasingly focus on the validity of decisions made (e.g., was there quorum or sufficient notice of the meeting?) rather than the content of decisions themselves. This risks disrupting the MSG from functioning for a period, and undermining the trust and goodwill necessary in multi-stakeholder governance.
- C) There is no evidence that MSGs will, at a later date, proactively undergo a comprehensive review or address the major shortcomings in the governance procedures (unless necessitated by conflict). One possible reason behind this is that most members of the MSG only have a limited understanding and awareness of existing internal governance rules, and only address them when there is a problem. Certainly, some countries, such as Nigeria, have revised their procedures and developed very comprehensive regimes.⁵⁸ However, these countries remain the exception, not the rule, and still have not addressed all of the provisions required in the EITI Standard.
- D) Often, it is civil society that bears the greatest burden from incomplete and poorly developed governance procedures. The reasons for this are explored further in Part 3, but include that the CSO representatives: often come from divergent backgrounds and may have few cohesive or unified positions or interests; are less likely to have encountered complex governance arrangements, or have access to resources to assist in increasing their understanding; and, are generally less well-resourced and more likely to be based outside of the city where MSG meetings are held, and therefore more likely to miss short-notice or unofficial MSG meetings.

While this report contains many examples of MSGs that have experienced problems as a result of not agreeing to governance procedures, the Cameroon case study below is particularly illuminating as it encapsulates all of (A)-(D) above. It demonstrates that failing to agree to governance provisions has contributed to the MSG failing to function effectively.

⁵⁸ Nigeria Extractive Industries Transparency Initiative (NEITI), The Presidency, *Board Charter for the National Stakeholders Working Group (NSWG)*, (January 2011).

Box 3: Cameroon – A case study in the pitfalls of incomplete governance procedures

The Cameroon MSG governing document was declared by a government decree in 2005.⁵⁹ Other stakeholders, such as CSOs appointed to the MSG, were not given the opportunity for meaningful input. Despite major changes to the governance structure in practice, such as redefining the size of the MSG, there has not been an official revision of the decree. The decree does not include term limits, and several MSG members have been on the MSG since inception almost ten years ago. Still, they have little understanding of the governance rules of the MSG.

Critical governance provisions are missing from the decree. Aside from the absence of term limits, the decree: does not prescribe rules regarding conflicts of interest or set term limits for members; sets quorum as an absolute number without requiring the presence of each stakeholder group; and, has no provisions requiring meeting minutes to be published or MSG members to liaise with their constituencies, among other issues. Together, these issues have left the perception that the MSG is ineffective and secretive. This not only undermines public faith in the EITI reports released, but may also account for Cameroon's slow progress in implementing its work-plan and releasing reports.

The government universally offers a per diem of approx \$620 USD per meeting, which is supplemented by bonuses over \$1000 USD for successful validation or reconciliations. Since civil society members did not agree to the per diem rate before agreeing to join the MSG,⁶⁰ there was no discussion regarding how it risked creating a conflict of interest for CSO members that received it. The per diem is well in excess of the costs of attending the meeting and represents a disproportionate amount of the income that some CSO representatives receive relative to their organization's overall operating budget. As a result, some CSO members refuse to take the per diem. This division, between CSO members that receive payments and those that refuse them because they compromise independence, has divided the CSO constituency. However, because there are no specified term limits or agreed CSO selection processes, many of the same members or institutions have remained in the MSG, leaving civil society fractured and mistrustful of each other. As a result, civil society does not work as collaboratively as desired, and civil society outside the MSG are sometimes confused or worried about its operational secrecy, and the perceived "capture" of CSOs in the MSG that accept the per diem, as well as the fear of the fracturing of civil society.

Civil society and communities in extractive areas visited were unaware of EITI and several civil society members in Yaoundé (both inside the MSG and outside) had grave concerns about its operation.

The EITI International Secretariat explained that it does not object to ad hoc development of internal governance, because it can be time-consuming and taxing for the entire MSG to agree on governance issues at the outset. This is based on a concern that using time and energy to agree on internal governance practices risks causing protracted and heated discussions that could potentially harm the collaborative spirit of the MSG and undermine enthusiasm to start preparing reports. Yet, the experience of countries like Cameroon demonstrate that failing to collectively develop internal governance procedures that comprehensively address the issues relevant to EITI multi-stakeholder decision-making comes with a very high price, which is often borne by civil society. While agreeing to comprehensive governance rules may take time at the outset, it is well spent if it averts later disagreements and serves to build effective, legitimate, and respected decision-making.

⁵⁹ République du Cameroun, Le Premier Ministre, Chef du Gouvernement, Décret n° 2005/2176/PM du 16 juin 2005 portant création, organisation et fonctionnement du comité de suivi de la mise en œuvre des principes de l'initiative de transparence des industries extractives.

⁶⁰ Per diem and reimbursement practices and rates for all MSGs assessed are outlined in Table 7, in Part 3.2.

Diving straight into substantive decisions without first developing the decision-making framework to account for all stakeholder needs is an approach that is problematic in the delicate multi-stakeholder context. In addition, the time spent developing robust internal governance by MSGs would be greatly reduced if a clear framework regarding the precise expectations for MSG governance were provided by EITI at the international level. The proposed ToR Protocol should assist MSGs in this process and we encourage EITI to formally adopt it or build it into existing supplemental protocols and guidance notes.

1.3. EITI Standard does not include sufficient governance rules for MSGs

Some of the most pressing governance issues faced by MSGs – many of which have led to conflict either within the MSG or within specific stakeholder groups – are not required to be agreed upon under the EITI Standard. These include fundamental issues, such as: conflict of interest provisions for MSG members; policies for the attendance of observers at meetings; and, establishing a dispute resolution mechanism.

Some of these issues are encouraged as good practices in the *EITI Guidance Note 14* and the *Civil Society Protocol*. However, the vast majority of MSGs have not codified these practices in their governance documentation (see Table 5), leaving them susceptible to conflicts and ineffective operations. At the global level, it is EITI's obligation to ensure MSGs have sufficient governance procedures to create predictable, legitimate decision-making processes through clear rules and procedures. This may require amending the EITI Standard to address its current gaps and shortcomings.

Table 5: Summary of MSGs that have adopted EITI guidance for establishing effective multi-stakeholder group governance and terms of reference

This table summarizes the number of multi-stakeholder groups whose governance documentation reflects the optional guidance suggested in *EITI Guidance Note 14* and the *Civil Society Protocol*.

The sections highlighted indicate that less than two-thirds of EITI Implementing countries assessed had this provision in their governance documentation.

Guidance for MSGs in establishing Terms of Reference	Total %*
<i>Guidance Note 14, Section 2.3:</i> specify the commitment of MSG members to participate in and contribute effectively to MSG meetings	28%
<i>Guidance Note 14, Step 2:</i> stakeholder groups should consider the diversity of commodities produced in the country when selecting representatives (e.g., member selection requires consideration or actual representatives of different extractive industries or specialization in the different commodities produced)	28%
<i>Guidance Note 14, Step 2:</i> stakeholder groups should consider geographic diversity when selecting representatives (e.g., member selection requires consideration or actual representation from geographical areas where extraction occurs)	10%
<i>Guidance Note 14, Step 2:</i> MSG members must or should have alternate members to the MSG	34%
<i>Guidance Note 14, Step 2 & EITI Standard, Protocol: Participation of civil society:</i> safeguard the right of civil society to self-appoint its own representatives on the MSG	45%

Guidance for MSGs in establishing Terms of Reference	Total %*
Guidance Note 14, Step 3: set rules for decisions to be made by vote where required due to lack of consensus	52%
<i>Guidance Note, Step 3: specify rules or procedures for quorum</i>	76%
Guidance Note 14, Annex section 2.5: establish that stakeholder groups or the MSG should establish codes of conduct for group members	7%
Guidance Note, Annex section 2.5: establish rules or procedures governing the treatment of confidential information by group members	21%
Guidance Note 14, Annex section 3.2: establish a specific policy regarding the attendance of observers at MSG meetings	55%
Guidance Note 14, Annex section 4.1: establish a specific process for calling MSG meetings	66%
Guidance Note 14, Annex section 4.3: establish rules that require written records of the MSG's meeting minutes to be available to the public (e.g., on the national EITI website)	41%
Guidance Note 14, Annex section 4.3: establish clear procedures for circulating and verifying MSG meeting minutes with MSG members	38%
<i>Guidance Note 14, Annex section 4.3: clarify the relationship between the MSG and the national secretariat</i>	79%
<i>Guidance Note 14, Annex section 4.3: specify the role and responsibilities of the national secretariat</i>	79%

*Totals are out of 29 countries, whose governance documents were available for assessment.

1.3.1. Individual MSG member rights, responsibilities and selection processes

Provisions explaining members' rights, responsibilities, and selection processes are instrumental in safeguarding the credibility of MSG members and ensuring they are accountable for their participation. They are not required in the EITI Standard, which focuses on the roles, responsibilities and rights of the MSG as a whole and, as Table 4 indicates, even basic policies to establish the rules and procedures for MSG membership are often not included in MSG governance documents. Some notable findings include:

- **Few MSGs set expectations for the conduct or behavior of MSG members (e.g., disclosing conflicts of interest, attendance and participation requirements):**
 - Only 14% of MSGs in countries reviewed established rules regarding conflicts of interest. This leaves 86% of those MSGs without governance rules that oblige members to disclose or address actual or perceived conflicts of interest in issues and decisions relevant to the MSG. This is highly problematic given the importance of the independence of civil society to the integrity of EITI, as recognized in the EITI Standard itself.
 - Only 7% of countries reviewed have provisions requiring or encouraging stakeholder groups to establish codes of conduct.
 - Only 28% of the countries reviewed had governance policies that require members to commit to actively participate in and contribute to MSG meetings.
- **Alternate member requirements are rare:** Only 34% of countries reviewed required or encouraged designated alternate members for each primary member. The case study in Box 4 highlights the value of alternate members, especially for government officials.

- **Limited guarantees for stakeholder group rights to appoint representatives:** Only 62% of the countries reviewed had provisions explicitly granting each stakeholder group the right to appoint its own representatives.⁶¹
- **Absence of diversity requirements in member selection:** A striking 86% of countries reviewed did not have requirements for stakeholders to consider diversity and pluralism in their selection and nomination processes,⁶² which likely contributes to the lack of gender and geographic diversity discussed in Part 4 of this Report.

Positively, EITI released the *EITI Code of Conduct* in March 2014, which outlines responsibilities for EITI Board, MSG, and secretariat members. For example, it includes general conflict of interest provisions and requirements regarding professionalism and integrity. Unfortunately, few MSG members were aware of the document. Because of its universal applicability to many EITI participants, it does not address many of the issues above or does so only in a general fashion. However, it could prove to be a useful starting point for MSGs when they establish their own rights, responsibilities, and selection processes.

Box 4: Encouraging greater participation and attendance from high-ranking government officials in MSGs

MSG representatives from all stakeholder groups seem to universally value the importance of having the participation, or at least endorsement, of high-ranking government officials. They emphasized that their support was critical to ensuring that the MSG could implement decisions quickly and sustain overall government support. However, many individuals were concerned that the frequent absence of government officials from meetings sometimes hampers EITI progress. The demanding duties of government ministers and other high-ranking officials often limits their availability for numerous or extensive in-person meetings. In several countries this left civil society and company representatives with serious concerns about the attendance, enthusiasm, and engagement of government representatives, even where MSG attendance was otherwise strong. Some representatives expressed that requiring the appointment of dedicated alternate members may ensure that participants at meetings are capable of representing the views of official members who are unable to attend and contribute effectively on a regular basis.

1.3.2. Absence of dispute resolution procedures

Neither the EITI Standard nor the guidance materials issued by EITI discuss the value of establishing procedures for resolving disputes that may arise related to internal governance, for example if it is alleged that a civil society member is not acting independently of government, or that a decision was made without the required quorum. Such processes are critical to ensuring there is a mechanism for swiftly and fairly addressing governance disputes, to prevent those disputes from undermining the broader EITI process. However, only 4 of the 29 countries reviewed had provisions establishing even the most rudimentary procedures to resolve internal governance disputes within the MSG, such as a simple majority vote of the MSG to resolve controversies that arise related to internal rules.⁶³ In the 15 MSGs assessed, representatives from several countries indicated that when, or if, disputes arise they would likely seek a resolution through discussion within the MSG or a working group on an ad hoc basis.

By relying on these kinds of ad hoc processes, the MSG is susceptible to disruption if major disputes arise. This is because the dispute may have already caused fracturing or disagreement within the MSG, making it difficult or time-consuming to agree on an acceptable procedure for resolving the dispute. This not only distracts the MSG from its substantive functions, and may create delays for the reporting process; it also threatens the overall legitimacy of the EITI process in the country.

⁶¹ *EITI Standard*, Requirement 1.3(f)(ii).

⁶² *EITI Standard*, Requirement 1.3(f)(ii).

⁶³ EITI Guatemala, *Acuerdo No. 1-2012 Normas Internas de la Comisión Nacional de Trabajo para la Implementación de EITI-Guatemala*, Artículo 15.

Within MSGs, there was widespread agreement amongst stakeholders that internal dispute mechanisms would be helpful for the MSG. In particular, national secretariats – who sometimes are forced to informally mediate disputes or manage the day-to-day running of EITI despite divisions within the MSG – often strongly supported the idea that EITI should require MSGs to establish a dispute resolution process, and should provide guidance on how it should operate. Stakeholders generally felt that MSGs should attempt to resolve any disputes within the MSG itself first, but that it would be helpful to have a clear procedure for when issues could or should be referred to the EITI Association.

Some MSG members also suggested that dispute resolution mechanisms could also serve to hear substantive grievances regarding the EITI reports or reporting process from constituents outside the MSG.

As MSGs revise internal governance processes to align with the EITI Standard, they should take the opportunity to agree and document a procedure mandated to address disputes about breaches of internal governance rules, which should include the jurisdiction to review member behavior based on the expectations in the ToR or code of conduct. Further guidance for establishing these mechanisms can be found in the ToR Protocol, and in the MSI Evaluation Tools designed by MSI Integrity.⁶⁴ Part 5 of this Report discusses the need for the EITI Association to publicize the global bodies that can help with dispute resolution in more detail.

1.3.3. Absence of review procedures

It is good practice for internal governance procedures to be reviewed periodically to ensure that the decision-making processes adopted at the outset of the MSG reflects local realities as well as the MSG's needs. However, none of the MSGs assessed had built-in procedures for revising their internal governance rules and procedures. It is recommended that MSGs include provisions that require the MSG to regularly – for example, every three to five years – review and revise their governance rules, to ensure that opportunities to update and improve governance processes are not missed.

1.4. Requirements of civil society independence in MSG processes

Despite the centrality of civil society independence to the effectiveness of EITI, there is a disturbing lack of procedural safeguards within MSGs to ensure the independence of the participating CSOs. Only 7% of countries reviewed had MSG governance provisions explicitly requiring the independence of civil society representatives. Additionally, as explained in Part 1.3.2 above, only 14% of countries reviewed had any conflict of interest policies in MSG governance rules. Furthermore, very few civil society constituents themselves have agreed to any safeguards of independence, such as conflict of interest provisions regarding political affiliation or financial support.⁶⁵ While such provisions themselves are not an assurance of independence, they are an important measure. They provide procedural recourse when allegations of partiality are brought, and can serve to clarify what is considered “independent” behavior. For example, all MSGs should clarify whether CSOs can accept funding from the national government or extractive companies and, if so, establish their disclosure responsibilities, as discussed in Part 3.2 of this Report.

In addition, in the countries visited that had an absence of safeguards, such as those regulating whether or how civil society could accept benefits from government or extractive industry, civil society organizations outside the MSG often had questions about the independence of CSOs. This was true even when it appeared to MSI Integrity that the CSO representatives in MSGs truly were an independent voice.

⁶⁴ The MSI Evaluation Tools can be found on the MSI Integrity website, www.msi-integrity.org.

⁶⁵ Out of the countries where representatives were interviewed, only two (the United States and Nigeria) had MSG-wide conflict of interest rules. In Azerbaijan, Colombia, and the DRC, civil society representatives had agreed to their own conflict of interest rules.

The EITI Standard does not require that MSGs agree to, or document, any provisions regarding the independence of CSOs. This oversight should be addressed to give meaning to Requirement 1 – which states there must be “full, independent, active and effective participation of civil society”.⁶⁶ Substantive processes regarding how to enhance and strengthen the independence of CSOs are explored further in Part 3 of this Report.

Table 6: Summary of MSGs that have adopted written governance rules or procedures related to civil society independence

This table summarizes the number of multi-stakeholder groups whose governance documentation reflects the governance provisions related to civil society independence, which are optional to include in writing, but mandatory to follow in practice, under Requirement 1.3(f)(ii) of the EITI Standard.

The sections highlighted indicate that less than two-thirds of EITI Implementing countries assessed had this provision in their governance documentation.

EITI Requirement	Provision Required in Terms of Reference/ Governance Policies	Total countries with written provisions*
1.3(f)(ii)	Each stakeholder is granted the right to appoint its own representatives	62%
	Safeguards to ensure that each stakeholder group nomination process is independent and free from any suggestion of coercion	24%
	Safeguards to ensure civil society groups involved in EITI as MSG members to be independent, both operationally and in policy terms, from the government and/or companies	7%
	Requirements for stakeholder groups to consider the desirability of pluralistic and diverse representation in appointing representatives	14%

⁶⁶ EITI Standard, Overview of Requirement 1.

Recommendations

For EITI International Secretariat and/or the EITI Board

1. Amend Requirement 1 of the EITI Standard or adopt other policies to require that MSGs:
 - a. Address all the issues in the *Protocol for Developing MSG Terms of Reference and Internal Governance Rules and Procedures* (see Annex I) when developing comprehensive multi-stakeholder governance processes, such as those enumerated below in Recommendation 3(a)-(g) for MSGs. This could be achieved by endorsing the contents of the Protocol, or by otherwise developing comprehensive supplemental guidance and rules for MSGs to address these issues.
 - b. Create domestic processes for resolving disputes related to governance rules and procedures, as well as for responding to grievances related to substantive non-compliance with the EITI Standard or the reporting process. These should be exhausted before referring complaints to the international level (see Part 5 of the Report);
 - c. Include conflict of interest provisions relating to the MSG, national secretariat, and/or other bodies that support EITI implementation;
 - d. Establish a formal review process to assess existing MSG governance rules, procedures, and frameworks at regular intervals (e.g., every three years).
2. Provide comprehensive guidance for MSGs regarding:
 - a. **Enhancing transparency and accessibility of meetings.** This should provide guidance for: (i) setting a policy presumption that meetings, and records of discussions and decisions at meetings, are transparent and open to the public; or, (ii) designing and publicizing accessible processes to enable interested observers to attend meetings.
 - b. **Ensuring adequate representation in the MSG.** This should provide guidance for: (i) ensuring diversity in the MSG based on gender and geographic representation, particularly from regions affected by extractive industries (see Part 4 of the Report); and, (ii) requiring stakeholder groups to select and appoint alternate MSG members.
 - c. **Establishing procedural safeguards for civil society independence.** This guidance should identify: (i) model policies for internal governance procedures to protect and preserve the “full, independent, active and effective participation of civil society”⁶⁷ in the MSG (e.g., conflict of interest provisions, transparency and disclosure requirements, elements to include in a code of conduct); and, (ii) process-oriented guidance for consulting and liaising with the wider civil society constituency in the country to ensure that safeguards address concerns of external stakeholders.
3. Establish a policy requiring MSGs to submit current copies of the following MSG documents:
 - a. All core governance documents that establish rules, procedures, and frameworks for MSG operations; and,
 - b. Current MSG member list, including at a minimum each member’s name, organizational affiliation(s), and stakeholder group constituency in the MSG.

These should be submitted to EITI annually, or sooner if changes are made to the documents, and then published on the EITI International website.
4. Revise the validation process to ensure it can reliably detect non-compliance with all aspects of the EITI Standard: see Part 5 of the Report.

⁶⁷ EITI Standard, Requirement 1.

For multi-stakeholder groups in each implementing country

1. As soon as possible, review existing internal governance rules, procedures, and frameworks to:
 - a. Identify current strengths and weaknesses from the perspective of each stakeholder group; and
 - b. Identify areas of non-compliance with the EITI Standard requirements, and internal governance practices identified in Recommendation 2 below.
2. Develop internal governance rules that comply with the EITI Standard, as well as practices identified in the *Protocol for Developing MSG Terms of Reference and Internal Governance Rules and Procedures* (Annex I); the *EITI Guidance Note 14*, the *EITI Association Code of Conduct*, and the *EITI Protocol: Participation of Civil Society*. This includes establishing:
 - a. Requirements for stakeholder groups to select and appoint alternate representatives for each primary representative; establishing term limits for all representatives; and requiring the MSG and secretariat to include alternate members in all communications, discussions, and meetings of the MSG to the same extent as primary members.
 - b. Procedural safeguards that establish the expectations and accountability measures to safeguard civil society independence, as well as provisions to address actual or perceived conflicts of interest for MSG members relating to the issues and decisions in the MSG and the national secretariat (see also Part 3 of the Report).
 - c. Procedural safeguards guaranteeing that each stakeholder group has the right to appoint their own representatives independently, free from interference by any other stakeholder group (see also Part 3 of the Report).
 - d. Requirements for stakeholder groups to consider diversity when selecting representatives, with a particular emphasis based on gender and geographic diversity, particularly regarding those from areas affected by extractive activities (see also Part 4 of the Report).
 - e. Establish a presumption that meetings, records, and other MSG activities are transparent and accessible to the public, unless there are justifiable policy reasons for confidentiality. This policy should:
 - i. Identify specific grounds to justify confidentiality; and,
 - ii. Specify a process for observers to request to attend meetings that are otherwise closed to the general public.
 - f. Periodic review of governance rules, procedures, and frameworks at regular intervals, as well as clear processes for revising and amending governance processes based on consensus agreement.
 - g. Establishing a formal, accessible process to resolve disputes that arise:
 - i. From within the MSG related to governance rules and procedures; or,
 - ii. From grievances reported by MSG members, constituent stakeholders, or external observers related to inappropriate conduct of MSG members, EITI reports, the reporting process, or substantive non-compliance with the EITI Standard.

All new or revised rules, procedures, and frameworks should be: agreed in writing; developed based on inclusive deliberation and agreement of all MSG stakeholders; and, made publicly available.

3. Publish the following information in an accessible format for local and international EITI stakeholders and observers:
 - a. All core governance documents that establish rules, procedures, and frameworks for MSG operations;
 - b. Current MSG member lists, including at a minimum each member's name, organizational affiliation(s), and stakeholder group constituency in the MSG;
 - c. Annual budgets, and audited financial accounts;
 - d. Records of discussions and decisions from meetings (e.g., meeting minutes), including at a minimum a list of people in attendance, and details about the discussion and decisions taken, as well as any dissent or disagreement; and
 - e. Announcements of meeting details, including at a minimum the date, location, agenda, and the procedure for attending meetings as an observer.
4. Send current copies of the following documents to the EITI International Secretariat annually, or send updated copies within a period of time designated by EITI International policy:
 - a. All core governance documents that establish rules, procedures, and frameworks for MSG operations; and,
 - b. Current MSG member lists, including at a minimum each member's name, organizational affiliation(s), and stakeholder group constituency in the MSG.

2. National Secretariats

Overview

The EITI Standard does not require countries to establish a national secretariat and does not contain any rules, protocols, or guidance regarding the operation of secretariats. Yet, nearly all EITI countries appear to have (or are establishing) a secretariat to support the work of the MSG. Although varied in their format and operation, secretariats are generally established primarily to provide administrative and technical support to the MSG. Despite their administrative purpose, secretariats are often viewed as a powerful and influential actor in the EITI process. In many instances, the secretariat is central to implementing the EITI process, often drafting EITI materials and undertaking activities with a direct bearing on EITI reporting, reconciliation, or validation.

Despite their significance to the EITI process, national EITI secretariats in many countries do not have:

- (i) Independence from government, which is problematic in some countries where there is distrust between government and civil society. There is also sometimes a concern that national secretariats are close to the EITI International Secretariat in a way that overrides the MSG;
- (ii) Access to the staff and financial resources necessary to fulfill its duties; or,
- (iii) Basic institutional governance procedures.

While there may be no one-size-fits-all prescription for the size or structure of secretariats, the lack of any guidance or rules for the operation of secretariats is problematic. The EITI Standard should be modified to require that the MSG must approve the governance arrangements of the secretariat. We strongly encourage the EITI International Secretariat to consider issuing a guidance note on good practice for the governance of secretariats, addressing issues such as public disclosure of budgets and audited financial records, independence safeguards, conflict of interest policies, and procedures for legitimately reimbursing or making payments to MSG members.

2.1. Definition of Secretariats and National Coordinators

Every EITI country has what is known as a national coordinator.⁶⁸ Although not defined or required by the EITI Standard or EITI Rules, the EITI International website explains that although the role of the national coordinator differs from country to country, he or she generally “leads EITI process on a day-to-day basis in an implementing country, heads the national EITI secretariat and is part of or chairs the multi-stakeholder group”.⁶⁹ National coordinators are generally civil servants dedicated to working on EITI full-time, and almost always supported by other staff members. Each country’s national coordinator, support staff and office are referred herein, for simplicity, as the “secretariat”, even though the exact format of such secretariats varies across countries. Secretariats are not mentioned in the EITI Standard or EITI Rules, but are discussed in *EITI Guidance Note 14*.

⁶⁸ EITI, National Coordinators, <https://eiti.org/about/national-coordinators>.

⁶⁹ EITI, Glossary, <https://eiti.org/glossary>.

2.2. Institutional Governance and Arrangement of Secretariats

2.2.1. Formation of secretariats by government

Under EITI Requirement 1.2, the government is “required to appoint a senior individual to lead the implementation of the EITI” before being accepted as a candidate country.⁷⁰ In practice, this individual is generally either the national coordinator themselves or appoints someone within his or her government department or ministry. The national coordinator is generally charged with supporting the senior individual with fulfilling the remaining administrative procedures to apply to be an EITI candidate country, often prior to the MSG itself being established. This natural progression results with secretariats that are often closely linked to government and are largely pre-defined before the MSG is created. Indeed, 77% of the MSGs assessed had established secretariats that were physically located in government offices, and government employees exclusively staffed 80% of those secretariats.⁷¹

2.2.2. Format and size of secretariats

Staff levels varied amongst secretariats, although the majority of MSGs assessed had between two and six full-time staff members in their secretariats, with the median number of staff being three.⁷² However, there were outliers: Yemen and Norway had only a national coordinator, and Nigeria had over 55 staff.

As explained in Part 2.1.1, the overwhelming majority of secretariats were housed or linked to government. However other arrangements are possible. For example, Nigeria has created the secretariat as a distinct legal entity.⁷³

2.2.3. Funding and transparency of secretariats

There was a lack of transparency over national secretariat budgets and financial accounts, making it difficult to assess their funding arrangements. Only two of the MSGs assessed, the Philippines and the Solomon Islands, had secretariat budgets, financial accounts, or both that were publicly available or shared with MSI integrity upon request. MSG representatives in Albania even stated that although the MSG votes to agree to a draft budget, the final budget was never set – or even seen – by the secretariat or MSG. This lack of transparency undermines the credibility of the secretariat. To address this, secretariats should be required to disclose their budgets and independently audited financial accounts for each year. In particular, given concerns regarding the independence of MSG members, particularly CSOs as discussed in Part 3.2, there should be individual line items specifying any payments made to individual MSG members.

MSG members often did not know the particulars of funding arrangements, however based on their understandings, rather than financial accounts, it appears that all 13 MSGs assessed that had operational secretariats were either partially or fully funded by the national government. This is consistent with guidance from EITI that government should have the “lead responsibility” to fund national processes.⁷⁴ Levels of funding from corporations or other entities could not be reliably measured.

2.2.4. Governance procedures for secretariats

EITI Guidance Note 14 advises setting up basic secretariat governance processes in the MSG terms of reference by defining the MSG’s relationship with the secretariat, and specifying the roles and responsibilities of the secretariat.⁷⁵ Despite this encouragement, there is a worrying absence of detailed governance processes established for national secretariats. In particular:

⁷⁰ Previously this was sign up Requirement 3 of the *EITI Rules*.

⁷¹ These percentages are derived from the 15 MSGs assessed: out of these 15 countries, 13 had established secretariats. Papua New Guinea and the Solomon Islands are both in the process of establishing and developing national secretariats, but both are in the early stages of development and were therefore excluded from analysis. Only Nigeria, the DRC, and Senegal have physically separate offices distinct from government facilities.

⁷² This median was derived from the 15 MSGs assessed: out of the 13 countries that had established secretariats, nine had between 1-6 staff, three had between 7-10 staff, and one had over 10 staff (Nigeria, with a total of 55 or more staff).

⁷³ Nigeria Extractive Industries Transparency Initiative (NEITI), The Presidency, *Board Charter of the National Stakeholders Working Group (NSWG)*, (January 2011), §12.2.

⁷⁴ EITI (2014), *Guidance for corporate support to national EITI processes*, 1.

⁷⁵ EITI (2014), *Guidance Note 14: on the establishment and governance of multi-stakeholder groups*, 5.

- 21% of countries reviewed did not have any provisions regarding the role, responsibilities, or expectations of the national secretariat;
- Only 66% of countries reviewed specified both the roles and responsibilities of the secretariat and its relationship with the MSG.⁷⁶

As discussed in Part 1 of the Report, issues such as record keeping, transparency, and conflicts of interest provisions are central to the integrity of the MSG and yet rarely included in MSG governance documentation. Given that the secretariat will often implement these provisions, it is important that the codification of these issues is framed with respect to the secretariat, and similarly for other core issues related to the secretariat's administrative functions.

2.3. Independence of the secretariat

2.3.1. Independence from government

As demonstrated in Part 2.1, there is frequently a close relationship between secretariats and governments with the majority of secretariats being staffed and funded by government. This was sometimes seen as very helpful to the EITI process, and other times viewed as deeply problematic.

In certain countries, such as Azerbaijan, Cameroon, and the DRC, civil society expressed concern about the secretariat's close proximity to government and had previously raised this concern within the MSG, or to the secretariat itself. The lack of independence was perceived to be problematic because of fears that the secretariat was either intentionally or inadvertently inhibiting the ability of civil society to actively participate in decision-making (e.g., through the late circulation of documents or last-minute announcement of meetings) or was taking actions that advanced the position of the government rather than the MSG as a whole (e.g., when drafting documentation). Although this assessment did not investigate the veracity of these claims, the perception of bias was enough to cause mistrust in the EITI process and appeared to lead to more fractured and protracted decision-making.

However, MSG representatives in other countries, such as Colombia, Norway, Nigeria, the United States, Senegal, and Yemen sometimes saw the secretariat's connection to government as advantageous to the implementation of EITI. For example, in the United States, the government-operated secretariat was seen to enhance the MSG's communication and relationships with relevant federal government bodies that may be difficult for an independent entity to navigate and coordinate, and therefore improved the speed of government action on EITI issues.

It is clear from the range of formats of secretariats and views on their optimal relationship with government that there is no universal idealized format for the operation of a secretariat. Each MSG will need to navigate its own comfort with the degree of government (or other stakeholder) involvement in the design of national EITI secretariats. The critical issue of importance is that the secretariat should be accountable to the MSG as a whole, rather than to any particular stakeholder group, and that the governance procedures should be fully agreed upon by the MSG. This allows the MSG as a group to define how independent or connected the secretariat should be to government, and should ensure greater comfort with any working relationships with government (if they persist).

It should be noted that establishing an independent legal basis for the secretariat does not equate to independence of the secretariat from government. For example, Nigeria has created the secretariat as a distinct legal entity and yet continues to need to insure the secretariat's independence against vigilant concern given that government continues to fund most of the secretariat budget. Broader questions, such as funding, appointment of staff, mandate, and location of the secretariat are greater indicators of independence than the legal form.

⁷⁶ In Peru, Senegal, and Tanzania, MSG governance documents contain provisions clarifying the relationship between the secretariat and the MSG but do not specify the role and responsibilities of the secretariat. Yet the governance documents for MSGs in Azerbaijan, Ghana, and Kazakhstan contain provisions specifying the secretariat's role and responsibilities, but did not clarify the relationship between the secretariat and the MSG.

2.3.2. Independence from EITI International Secretariat

Many interviewed national secretariats spoke favorably of the support and guidance offered by the EITI International Secretariat. They explained that the International Secretariat was readily accessible, facilitated regional discussions with other secretariats, and provided many helpful resources. However, in some countries there were concerns from MSG members about the exclusivity and proximity of relationship between the EITI International Secretariat and national secretariat. For example, in the DRC some representatives felt that the national secretariat valued the EITI International Secretariat's advice over input from the MSG and in Cameroon some MSG representatives felt disconnected from the EITI International Secretariat because it seemed to work so closely with the national secretariat, which was seen as lacking independence from the national government. Those MSG members felt that if they had direct access to the EITI International Secretariat, or were involved in the correspondence with the EITI International Secretariat, they would be less wary of the exclusive relationship between the international and national secretariats.

2.4. Sufficiency of Resources for the Secretariats

2.4.1. Adequacy of financial and human resources

MSGs generally perceived their secretariats as hard working, if not over-worked. In 92% of the countries with EITI secretariats where MSGs were assessed, the MSG members or secretariat staff wished that the secretariat had more resources in terms of staff or funding.⁷⁷ Incredibly, this perception of insufficient resources was also shared in Nigeria, where the secretariat employs over 55 staff. Given that secretariats are often seen as a significant and powerful actor in the implementation of EITI, it is critical that they have sufficient staff and financial resources to fulfill their duties. Many national secretariat staff praised the EITI International Secretariat for providing guidance and materials to assist in their operation. However, without sufficient resources, the basic operation of the MSG and therefore the EITI process may be undermined.

On the other hand, MSGs can be over-resourced. For example, in Albania the secretariat and civil society representatives both perceived the nine staff members as surplus to needs, but since the director of the secretariat did not have control over staff appointments, the secretariat could not be reduced. In the MSGs assessed from the global North, Norway and the United States, there was an awareness by civil society that EITI should not be given unduly high levels of government funding that would detract from other valuable government initiatives. In addition, civil society in Nigeria raised fears that the large staff and budget of the NEITI Secretariat could make it a prized appointment for political patronage in the future.

The exact level of staffing will depend on the role and responsibilities of the secretariat. Different countries attach different levels of responsibility to the secretariat. In some countries, such as Nigeria, they are expected to obtain and circulate information to facilitate the achievement of NEITI objectives, and monitor the development of objectives on a continuous basis,⁷⁸ whereas in other countries the MSG itself may undertake such tasks, or may delegate them to sub-committees, working groups, or expert bodies, leaving the secretariat with solely organizational or coordinating functions. The larger the mandate of the secretariat, the larger the resourcing that may be needed. There are a variety of ways that MSGs and secretariats could ensure that all the activities of EITI are adequately performed if resources are limited. For one example, in the United States, extra staff are volunteered by industry and civil society stakeholder groups in order to assist the three Department of the Interior staff who make up the official secretariat in the preparation of materials and research.

⁷⁷ This percentage is derived from the 15 MSGs assessed: out of these 15 countries, 13 had established secretariats.

⁷⁸ Nigeria Extractive Industries Transparency Initiative (NEITI), The Presidency, *Board Charter of the National Stakeholders Working Group (NSWG)*, (January 2011), §12.2.3.

Box 5: Observations on the value of an effective and well-resourced secretariat

In **Cameroon**, many MSG members saw the 17-person technical secretariat as overworked yet also inefficient. The secretariat had three paid staff and was supplemented by a consultant and 13 members from different stakeholder groups, particularly civil society.⁷⁹ The coordinator of the secretariat acknowledged that documents were frequently circulated only three or four days before meetings, in breach of a government decree requiring that they are circulated seven days in advance,⁸⁰ and sometimes members were required to collect documents from the secretariat offices instead of being delivered; that their financial accounts were not up to date; and that the secretariat needed an additional six full-time paid staff members to adequately accomplish its obligations. At the MSG meeting on May 16, 2014, attended by MSI Integrity, the start of the meeting was delayed by almost thirty minutes because certain MSG members had not received documentation in advance of the meeting (which had only been called only May 13, 2014 because regular meetings are not scheduled: see Box 3 in Part 1.2.3). The administrative inconveniences caused by the lack of resources often frustrated the ability of MSG members to fully prepare for meetings and make informed decisions, thereby likely contributing to delayed decision-making processes in Cameroon and civil society's concerns about delays with EITI progress in Cameroon.⁸¹

By comparison, the secretariat in **Tanzania** had eight full-time staff and was seen by all MSG members interviewed, including the secretariat itself, as sufficient to the demands of its mandate. On May 21, 2014, MSI Integrity observed one of the regular MSG meetings held on the third Wednesday of each month. The meeting appeared well organized and all members had copies of the agenda and documents, which are reportedly generally circulated at least 1.5 weeks in advance of meetings. This allowed a range of issues to be debated and discussed during the three-hour meeting; any delays or inefficiency around the EITI process in Tanzania do not appear attributable to administrative issues.

2.4.2. Access to obtained funds

MSG members and secretariat staff in several countries raised concerns about the difficulty of accessing funds for secretariats, even where the government or international donors had agreed to supply the funds. In the Philippines, bureaucratic difficulties associated with releasing funds from the government have, at times, led the secretariat to have problems paying staff or implementing urgent EITI tasks. In Senegal, slow disbursements from some international donors have caused delays in planned activities, and changes to the scheduled work plan. Sufficient access to adequate financial resources is imperative to the effectiveness and success of the MSGs. This allows the MSG and secretariat to make detailed plans with the confidence that financial resources are available in the budget and will be accessible in MSG accounts to cover costs.

⁷⁹ République du Cameroun, Secrétariat Technique de l'ITIE, *Liste Des Membres Des Structures De Mise En Oeuvre De L'ITIE Au Cameroun* (February 24, 2014), copy given to MSI Integrity on May 13, 2014 by the Coordinator of the Secrétariat Technique.

⁸⁰ République du Cameroun, Le Premier Ministre, Chef du Gouvernement, Décret n° 2005/2176/PM du 16 juin 2005 portant création, organisation et fonctionnement du comité de suivi de la mise en œuvre des principes de l'initiative de transparence des industries extractives.

⁸¹ See, for example, *EITI Cameroon on brink of suspension – Civil Society*, The Post Newspaper (August 11, 2014), available at <http://www.cameroonweb.com/CameroonHomePage/NewsArchive/artikel.php?ID=308861>.

Recommendations

For EITI International Secretariat and/or the EITI Board

1. Amend Requirement 1 of the EITI Standard or adopt other policies to require that MSGs agree to provisions to govern the role and responsibilities of national coordinator and/or secretariat, and their relationship with the MSG. This should, at a minimum, include:
 - a. Requirements that the coordinator and/or secretariat is accountable to the MSG as a whole, rather than the government or any one particular stakeholder group; and,
 - b. Requirements that the MSG must agree to the level of operational and physical independence for the secretariat, including arrangements for sources of funding, procedures for hiring staff, and the mandate of the secretariat.
2. Provide comprehensive guidance regarding the structure and operation of national EITI secretariats. This should include:
 - a. How to ensure the MSG is satisfied with the independence and mandate of the secretariat, potentially by examining differing approaches taken in different contexts.
 - b. Good practices for secretariat governance rules and procedures, particularly regarding ensuring sufficient access to resources; requiring regular disclosures of secretariat budgets and audited financial accounts that detail any payments to MSG members; provisions to mitigate conflicts of interest; and, managing adequate staff resources to balance cost-efficiency with the work demanded of the secretariat.
3. Establish a communications policy to ensure that all interested MSG members (including alternates) are copied on correspondence between the EITI International Secretariat with the national secretariat and/or national coordinator.

For multi-stakeholder groups in each implementing country

1. Revise internal governance document(s) to ensure that there are provisions to govern the role and responsibilities of the national coordinator and/or secretariat and their relationship with the MSG. This should, at a minimum, include:
 - a. Specifying that the coordinator and/or secretariat is accountable to the MSG as a whole, rather than the government or any one particular stakeholder group;
 - b. Specifying the level of operational and physical independence for the secretariat, including arrangements for sources of funding, procedures for hiring staff, and the mandate of the secretariat and/or national coordinator; and,
 - c. Requiring that the secretariat and/or national coordinator disclose budgets and annual financial accounts. These should itemize any payments made to individual MSG members.

All new or revised rules, procedures, and frameworks should be: agreed in writing; developed based on inclusive deliberation and agreement of all MSG stakeholders; and, made publicly available.
2. Consider whether the national secretariat and/or national coordinator has access to sufficient financial and human resources.

3. Participation of Independent and Effective Civil Society in EITI

Overview

As the key stakeholder group in the EITI MSG process tasked with representing the interest of the public to seek improved transparency and accountability in the extractive industry, it is paramount that civil society involved in EITI are effective and independent from government and companies. This section reviews practice and policy to examine the challenges and highlight good practices for civil society representatives. Key points include:

- Very few MSGs have explicit rules to ensure that civil society is independent. Government has often had some form of involvement in the selection of civil society representatives, raising questions by some external CSOs about the independence and effectiveness of selected representatives.
- Selecting effective and appropriate civil society representatives is very challenging, because civil society implicates such a wide range of actors. While it is difficult and undesirable to precisely define “civil society”, it is clear that neither publicly elected officials nor organizations that directly benefit from extractive industry activities should be included in the civil society constituency. Unless there are good reasons, politically affiliated individuals or for-profit entities are often not suitable MSG representatives for civil society. It is helpful for CSO constituencies to agree to qualification criteria for MSG representatives, such as demonstrating independence, expertise and involving representatives from areas of extractive activity.
- Participation in EITI can be costly for civil society, and denying reimbursement for travel and other costs of participating in the MSG can make it impossible for civil society with limited resources to participate in the process. However, high per diems or benefits given to civil society representatives involved in the MSG can create conflicts of interest that damage the perceived and actual independence and legitimacy of representatives.
- CSOs often do not recognize how an MSG’s internal governance procedures have the capacity to affect their effectiveness and influence within the EITI process. Unless CSOs are aware of the importance of internal governance procedures, there is a risk that MSGs operate in a way that undermines the ability of civil society to use EITI to affect change.
- For maximum effectiveness, civil society should establish participatory, transparent processes to ensure the accountability and independence of the civil society representatives involved in the EITI. These should include a code of conduct, an agreed process for the selection of MSG representatives, and also clear expectations regarding the representatives’ obligations to liaise with their wider constituency, including communities and the public in areas of extractive activity. The Civil Society Guidance Note (See Annex III) outlines good practices for CSO constituencies regarding these issues.

3.1. Identifying and Selecting CSO Representatives: Independently Establishing Clear, Defined, Transparent, and Inclusive Processes

Whereas it is relatively straightforward to both define and identify the relevant government and extractive industry companies that ought to be included in the EITI process, identifying and selecting appropriate civil society representatives for the MSG is complex. This is partly because the range of actors that make up civil society is diverse and the definition of the group is somewhat ambiguous. Yet, it is critical that civil society selects effective and independent MSG representatives who are aware of issues related to EITI, and able to connect to their constituencies and the general public.

The EITI Standard requires that each stakeholder group should have the right to appoint its own representatives, and that civil society must be independent of government and companies in both operational and policy terms.⁸² In many countries concerns were raised by civil society within and outside the MSG, as well as other stakeholders, regarding the sufficiency of the process for selecting civil society representatives, and the independence and relevance of those representatives. The Civil Society Guidance Note provides more details on how civil society can ensure that its selection process is open, inclusive, and fair.

3.1.1. Government Involvement in the Selection of Civil Society Representatives

Allowing civil society to freely select their own representatives is a critical step to ensuring that the civil society representatives are independent and legitimate, and is protected by the EITI Rules and EITI Standard.⁸³ There are at least three different ways in which government involvement can undermine the ability for civil society to select effective and independent representatives for the MSG:

- 1. Where the government directly appoints or runs the civil society representative selection process.** This type of activity is a clear breach of Requirement 1.3(f)(ii). The case study on Cameroon (see Box 6, below) is an example of government handpicking CSO representatives. In Yemen, while the government did not directly select CSO representatives during the initial selection of CSO representatives in 2007, the Ministry of Oil and Minerals apparently defined the selection criteria, with government officials observing and overseeing the election process. This presence and involvement of government may have deterred organizations from becoming involved or negatively impacted the ability of organizations to speak or vote freely during election, even if there was not a direct selection of CSO by government.
- 2. Where the government pre-defines the types of civil society organizations that may participate in the MSG.** It appears to be a fairly common practice for the government to allocate CSO positions to particular sub-groups of civil society, or to set eligibility criteria for civil society without input from CSOs. For example, in Nigeria and Senegal, specific seats were held for a media representative and a trade union representative. It may be that governments are not aware that restricting civil society involvement in this way greatly frustrates the ability of CSOs to independently select the most effective and appropriate representatives.

⁸² *EITI Standard*, Requirement 1.3(f)(ii); *EITI Rules*, Requirement 4(d).

⁸³ *EITI Standard*, Requirement 1.3(f)(ii); *EITI Rules*, Requirement 4(c).

3. **Where the government empowers an inappropriate organization(s) to select the civil society representatives.** This is often because the selected organization(s) is insufficiently resourced, experienced, or independent to ensure the selection of effective, independent, and legitimate representatives. This occurred in Tanzania, as explained in the case study in Box 6. A small group of CSOs was also entrusted in Albania, Colombia, Guatemala, and the Philippines, with varying degrees of success depending on the openness, legitimacy, and resources of the representatives. For example, in the Philippines civil society held trainings throughout the country before holding well-attended, transparent elections that ensured geographic and gender diversity (see Box III, Civil Society Guidance Note). By comparison, the selection process in Guatemala has left many CSOs disgruntled and the selected CSOs are seen as illegitimate by external CSOs.

Of the 15 MSGs assessed, at least 7 countries had a form of government involvement or interference in the selection processes that risks CSO representatives being selected that are not as independent or effective as possible: Albania, Cameroon, Guatemala, Nigeria, Senegal, Tanzania, and Yemen. Yet neither the candidacy nor validation review processes have detected this failure to allow civil society to meaningfully select representatives independently, raising concerns about the depth and oversight of these processes, as discussed in Part 5 of this Report.

Government interference or involvement in CSO selection in all three of these forms is closely linked to the failure of governments to raise awareness about their commitment to implement EITI, and to issue open and transparent invitations to participate in EITI that reach all relevant stakeholders, including CSOs. The EITI Standard and EITI Rules both require open and transparent invitations;⁸⁴ however, there is no guidance from EITI on how to raise awareness about the EITI and arouse civil society interest in participating in the MSG.⁸⁵ Consequently, basic approaches are often adopted, such as simply issuing a notice in an official gazette or newspaper, in tandem with possibilities (1)-(3) above. Yet, these standard publicity methods are insufficiently “open” to ensure that all relevant civil society are aware of the establishment of the MSG.

For the invitation to participate to be meaningful, it is critical that there is widespread understanding of EITI and its potential relevance to civil society by government. In almost all countries where MSG members were interviewed, civil society representatives noted that explaining the significance and potential value of the EITI process is extremely difficult at the initial stages of forming the MSG and initiating EITI implementation. Over time, many civil society representatives commented that apathy from uninvolved CSOs waned as more information became available during the implementation process, but that suspicion or confusion about how the process could contribute to improved natural resource governance persisted in many cases. One way to make the invitation more meaningful is by engaging a network of relevant and independent civil society to conduct regional outreach and trainings on EITI and to find suitable representatives.⁸⁶

In order to ensure that they are truly fair and independent, it is essential that all MSGs periodically review their civil society representatives' selection processes. Additionally, the EITI International Secretariat and/or Board should compulsorily review evidence that appointments of civil society representatives are independent during future validations under the EITI Standard, if not sooner. Where CSO representatives are found to have been appointed under a compromised process, such as those outlined in (1)-(3) above, or where there is any other suggestion that the representatives are not independent, an independent selection process should be held as soon as possible in accordance with the good practices outlined below and in the Civil Society Guidance Note.

⁸⁴ *EITI Standard*, Requirement 1.3(f)(i); *EITI Rules*, Requirement 4(h)(2).

⁸⁵ EITI, *Guidance Note 14*; EITI, *Guidance Note 1: How to become a Candidate Country* (neither of which discuss the requirement to issue an open and transparent invitation to participate in the MSG).

⁸⁶ For an example of good practice, see the Philippines case study in Box 9 in Part 4.2.

Box 6: Examples of Government Involvement in Civil Society Representative Selection

Government involvement in the selection of CSO representatives to the MSG undermines the independence and legitimacy of the civil society constituency, and threatens the credibility of the EITI implementation process overall. The following examples illustrate three common ways (described in (1)-(3) above) that governments have, directly and indirectly, interfered with the independent selection of CSO representatives.

[1] Direct Government Appointment of CSOs in Cameroon: In Cameroon, when EITI was established by a decree in 2005, officials from the Ministry of Justice chose specific representatives to represent civil society in the MSG. These included faith-based organizations, members of parliament and local government authorities, representatives from Transparency International, and the Cameroon journalism trade union. After EITI was formally launched by governmental decree, various NGOs, primarily those within the PWYP coalition, denounced the legitimacy of the selection. While the government agreed to allow civil society to then select an additional six CSO members, the original ten CSO representatives selected by the government remained in the MSG. Nine years later, many of these representatives continue in the MSG today, or have merely been replaced by other personnel from within their respective organizations. Furthermore, the decree was never amended to formally include the six members selected by civil society. The civil society constituency has remained very fractured, and many representatives cite that internal disagreements arising from the different views of these representatives have hampered the effectiveness of the CSO constituency in the MSG.

[2] Categories of Civil Society Pre-Defined by Government in Senegal: On June 20, 2013, in Decree No. 2013-881, the Senegalese government set out the basic mandate and composition of the MSG.⁸⁷ Interviews with MSG members indicate that although civil society disagreed with the allocation and pre-definition of some categories of civil society representatives, the Minister for Mines pre-defined those allocations regardless. In particular, civil society representatives were uncomfortable with one civil society position being allocation for a representative from the Association of Town Councilors, or Mayors, because they feel that group is a representative of local government, and should therefore sit with the government constituency. Although five seats were allocated for “civil society”, the important quality to note in Senegal is that the government determined the number and type of delegates that would sit on the MSG, with limited input and potentially against the advice and wishes of civil society.

[3] CSOs selected in a closed process in Tanzania: In November 2008, the Tanzanian government announced its intention to join EITI. In January 2009, the government hosted a two-day stakeholders’ workshop to introduce EITI to a limited number of invited CSOs and companies, and initiate the process of implementing EITI in Tanzania. Whereas the invited companies deferred on selecting MSG representatives until a later date, civil society voted for their five representatives at the meeting. Accounts suggest that between 12-40 civil society representatives from differing backgrounds, not necessarily with experience in transparency or extractive industry issues, attended the workshop. By choosing representatives at this introductory meeting, where the leading NGOs engaging with the extractive industry or working on fiscal transparency issues were not in attendance, the initial selection of CSO representatives failed to include significant relevant actors. For example, Revenue Watch Institute, Agenda Participation 2000, Policy Forum and Haki Madini, all of which had been instrumental in campaigning for natural resource governance reforms since 2005, were not involved. Subsequent CSO selection processes have been influenced by the format of the initial selection process, which has led to the continued exclusion of some of the CSOs with the most experience and engagement on extractive industry issues or fiscal transparency.

⁸⁷ Journal Officiel du Senegal, Decret No. 2013-881, Ministere de la Energie et des Mines, (20 Juin 2013).

3.1.2. Eligibility Rules and Qualification Criteria for Selecting CSO Representatives

Both the EITI Standard and EITI Rules require that the MSG comprises appropriate stakeholders.⁸⁸ However, there is no clear, universally accepted definition of “civil society”⁸⁹ and, because of the vast number of civil society organizations in any given country, care must be taken to ensure that the most appropriate and effective representatives are selected from these organizations. For example, several representatives in the United States felt that the civil society caucus appears to have become a catch-all for any non-government, and non-company representatives, after it was unclear how to accommodate certain interested actors who were difficult to classify.

(a) Formal eligibility rules should be defined for CSO representation on the MSG

The EITI Standard contains a significant and positive advancement from the EITI Rules by excluding parliamentarians as civil society representatives on the MSG.⁹⁰ Nonetheless, the EITI Standard continues to provide very limited guidance about who should be considered civil society for the purposes of EITI, and defining eligibility remains challenging for many countries. In order to strike a balance between the autonomy of CSOs to include their desired representatives – identified through their outreach and liaising processes – and ensuring the legitimacy and effectiveness of CSO appointments, EITI should set global eligibility rules for CSO representatives, and civil society at the national level should further define that eligibility based on local circumstances.

It is important to remember that even if various actors are not eligible to represent civil society on the MSG, they are not necessarily excluded from the EITI process. For example, the MSG could create an additional stakeholder group or additional sub-constituency chambers to support these actors. Also, EITI requires each stakeholder group to liaise with its constituency,⁹¹ and motivated actors could participate in these processes as part of the broader groups, coalitions, or constituencies that help inform the mandate for representatives on the MSG – discussed further in Part 4 of this Report, and in the Civil Society Guidance Note.

(b) EITI should give guidance on which organizations are eligible to be CSO representatives on the MSG

Because each country had different views on the precise definition of civil society, it may be unhelpful to issue a rigid, blanket definition or classification of civil society. However, there should be clear rules set by the EITI Board regarding who is ineligible to sit on the MSG as a civil society representative. Based off accepted definitions of civil society and interviews with stakeholders, this should exclude:

- Any publicly elected officials (e.g., local government or opposition parliamentarians); and,
- Any organizations that advocate on behalf of, or directly benefit from, the extractive industry or the national government, whether for-profit or not-for-profit. This could include consultants, industry associations, or other entities (whether for-profit or not-for-profit) that benefit from the extractive industry.

⁸⁸ *EITI Standard*, Requirement 1.3(f)(ii); *EITI Rules*, EITI Requirement 4(a).

⁸⁹ The precise definition of “civil society” varies from source to source, however there is general consensus that it excludes government and for-profit actors. For example, according to the World Health Organization, “civil society embraces the general public at large, representing the social domain that is not part of the State or the market. ... The increasingly accepted understanding of the term CSOs is that of *non-state, not-for-profit, voluntary organizations* formed by people within the sphere of civil society.” *Discussion Paper No. 2, CSI/2002/DP2*, “Understanding Civil Society Issues for WHO” (February 2002). In the UN Global Compact, civil society “does not include the private sector, academia, labour, or municipalities.” UN Global Compact, *How to Participate: Civil Society*, http://www.unglobalcompact.org/HowToParticipate/civil_society/ (last updated: 27 Oct, 2010). The World Bank considers “civil society to refer to the wide array of non-governmental and not-for-profit organizations that have a presence in public life”. *World Bank Topics, Civil Society, Defining Civil Society*, <http://go.worldbank.org/4CE7W046K0> (last updated: 22 July, 2013). Similarly, the UN Development Programme identifies civil society as “the full range of formal and informal organizations that are outside the state and market.” UNDP.org, *UNDP Engagement with Civil Society: Who we work with*, http://www.undp.org/content/undp/en/home/ourwork/partners/civil_society_organizations/ (last visited 15 Oct. 2014). The UN Economic and Social Council has also included private sector associations, defining civil society as “...that sphere of action that is independent of the State, within the realm of private sector and civil organizations... includ[ing] non-governmental organizations, professional and private sector associations and trade unions.” *United Nations Economic and Social Council*, “Definition of basic concepts and terminologies in governance and public administration”, E/C.16/2006/4, (5 Jan. 2006), paras. 39, 43, available at <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan022332.pdf>.

⁹⁰ *EITI Standard*, Requirement 1.3(f)(ii), as compared to the *EITI Rules*, EITI Requirement 4(a).

⁹¹ *EITI Standard*, Requirement 1.3(g)(iii).

Additionally, there was widespread agreement among stakeholders from interviewed MSGs that in most cases for-profit actors or politically affiliated organizations should not be considered civil society on the MSG. However, in certain circumstances, CSO representatives were able to make a strong case for including these actors (see the case study from the United States, in Box 7 below) within the context of the country. While there should be a presumption against these actors generally, where civil society publicly explains the reasons for including those actors among the potential representatives and sets parameters for their independence, this should be accepted.

(c) Civil society at the national level should further define formal eligibility rules and qualification criteria for CSO representation on the MSG

Civil society in each country should collaborate to formally set any further rules to define eligibility to be CSO representatives on the MSG based on national circumstances. In particular, civil society should deliberate amongst itself whether it wishes to create exemptions for the actors that should otherwise be presumed to be ineligible to sit on the MSG as civil society representatives – including for-profit organizations and politically affiliated individuals or organizations.

Box 7: Examining Eligibility and Qualifications for CSO Representatives

Cameroon: Space for five governmental officials in the CSO?

In Cameroon, NGOs expressed frustration that parliamentarians and local government officials were in the MSG as CSO representatives. The terms of reference expressly allocated two seats for members of parliament, and three seats for local/regional government officials. Previously, the EITI Rules defined civil society to include parliamentarians⁹², but the EITI Standard now implies they may be considered government⁹³. However, the EITI Standard remains silent as to whether local or regional government officials are acceptable as CSO MSG members.

USA: Should for-profit organizations be CSO representatives?

In the United States, for-profit organizations – such as social enterprises, private consulting companies, and former government officials now working as independent consultants – can be considered CSO representatives. While the strength of current MSG members (which includes private consultants that regularly contract with extractive industry companies and a socially responsible investment firm) was not questioned, several civil society representatives raised concerns regarding the possibility that organizations that are not independent of corporate interests could participate in the civil society constituency. There was also frustration expressed that space on the MSG granted to these actors reduced the available space for CSOs from areas affected by extractive activities. MSG members from civil society and companies agreed that the inclusion of for-profit entities in the USEITI MSG should not serve as a model to other countries. The lesson from their experience – which members noted has not yet been done in the USEITI – is that civil society and the MSG need to develop safeguards designed to demonstrate the independence, credibility, and legitimacy of CSO representatives. Examples of such safeguards are outlined in the Civil Society Guidance Note in Annex II.

Tanzania: Does including journalists create a media conflict of interest?

In Tanzania, it was felt that including journalists was inappropriate, as being a decision-maker in EITI created a conflict of interest and impaired their actual or perceived ability to report freely and independently on the EITI process. As a result, when elections for civil society were held in 2012, it was decided that the seat held for journalists would be abandoned. By comparison, in other countries CSO believed it was helpful to the outreach and visibility efforts of EITI to involve journalists in the MSG.

⁹² EITI Rules, Requirement 4(a).

⁹³ EITI Standard, Requirement 1.3(f).

In addition to the mandatory eligibility criteria to be considered “civil society”, the civil society and communities within each EITI country should collectively agree on the specific attributes that are desired to ensure that each CSO representative is capable and sufficiently resourced to participate in the MSG effectively, and that the CSO constituency on the MSG is representative of the diversity of civil society in the country. Civil society that have adopted robust qualification criteria, such as Azerbaijan and the Philippines, appear to benefit from increased perceptions of external credibility and effectiveness compared to those countries that have not actively considered the qualities necessary for robust CSO representation.

Qualification criteria should be: developed by civil society collectively; subject to revision at regular intervals; and, made publicly available. A transparent record of how the rules are devised, as well as how the process for selection was followed, is helpful to demonstrating the legitimacy and fairness of the process. Several CSO representatives from the 15 MSGs assessed indicated that certain attributes are generally connected to ensuring robust, effective representation for CSOs. These include:

- (i) Independence from government and company influence, including accountability for appropriate conduct while serving on the MSG, such as managing conflicts of interest and disclosing payments received from the MSG or other stakeholders.
- (ii) Availability and commitment to attend meetings, and participate in MSG activities – including liaising with constituents.
- (iii) Relevant expertise or experience related to the extractive industries, or more generally in transparency, governance and accountability issues.
- (iv) Legitimacy and credibility as civil society, including such proof as legal documents to prove charitable or non-profit status, and evidence of networks or constituencies for which the candidate will serve as a representative.

Where possible, CSOs should also strive to include on the MSG:

- (v) Diversity of expertise or experience in issues affected by EITI (e.g., experience related to different extractive commodities, or different advocacy focuses such as human rights or environmental issues).
- (vi) Representatives from areas affected by extractive activity.
- (vii) Gender diversity.

The Civil Society Guidance Note provides more guidance and considerations for developing qualification criteria, including a case study of how criteria were developed through regional consultations in the Philippines.

(d) Using care with pre-defined categories of the types of civil society representatives eligible for the MSG

Some MSGs have created pre-defined categories or quotas for civil society based on their form. The types of CSOs that are typically allocated places in the MSG include: faith-based organizations; media; unions; academia or research organizations; advocacy-focused or special interest NGOs (sometimes even specifically allocating a place for a PWYP representative); or, parliamentarians or local government members. At least 5 of the 15 MSGs assessed had allocated representation for CSOs, including Cameroon, Nigeria, Senegal, Tanzania, and Yemen.

Even where civil society independently created these classifications with the intention of ensuring maximum involvement from CSOs, it has often not proven to be effective or helpful. Sometimes there are only a few relevant actors as candidates for the MSG (e.g., among media or unions) or it enables those with relatively little interest, commitment, or availability to continually participate in the MSG. For example, in Tanzania there are five CSO positions, including positions reserved for representatives from a trade union, a faith-based organization, and a marginalized group (e.g., people working with disabilities). While encouraging such diversity of CSOs is positive, the experience in Tanzania has been that there are only a handful of CSOs interested in these specifically allocated positions, and they often do not have much experience or focus on extractive issues. Alternatively, the one position reserved for NGOs had 20 candidates contesting each other for appointment during the last selection process, in October 2012. It is possible that creating categories could be useful to ensure diversity of expertise and inclusion of under-represented views, but it is very critical that any mandatory categorization of civil society representatives: (a) is only set by civil society, not the government or MSG; and (b) requires that potential candidates also meet the general qualifying criteria (i.e., independence, commitment, expertise) for CSO representatives on the MSG.

As discussed above, government sometimes creates these classifications. If governments created the classification, this should be treated as a breach of the right of CSOs to independently select their representatives. The classifications (and incumbent representations) should be reconsidered at the soonest opportunity through an inclusive and independent selection process, as described in the Civil Society Guidance Note.

3.2. Payments and Benefits for Civil Society Participation in the MSG

The EITI Standard and related materials do not fully address the conflicts of interests that may arise when the MSG gives payments to its members or when other benefits accrue to members from the MSG. Such payments can be crucial to enabling civil society to participate in MSG activities. However, if these payments are not transparent or proportionate then they risk creating a real or perceived conflict of interest for CSO representatives.

3.2.1. The value of payments to civil society: overcoming financial barriers to participation

To participate effectively in the MSG requires considerable effort, time, and resources for all MSG representatives. Committed representatives need to: prepare for meetings, including planning with other representatives in their stakeholder group prior to the MSG meetings; travel and take time away from their job to attend meetings; and, conduct outreach to their wider constituents.

CSO representatives usually feel the costs of participation most adversely, because they typically have lower budgets and less access to financial resources than other stakeholder groups. Grassroots or local CSO representatives are also more likely to need to travel for MSG meetings, which are ordinarily held in the capital city or region where government and company representatives are located.

The vast majority of CSOs, including both MSG members and other CSOs, recognized the time and energy that effective representation on the MSG requires. In addition, it was emphasized by many CSOs that obtaining adequate funding remains a challenge for CSOs, particularly those that are not a part of PWYP or other international networks.

3.2.2. Review of payment practices in MSGs and the effects on civil society

Many MSGs attempt to reduce the burdens of participation by providing per diem allowances or reimbursements to MSG members, without special attention to civil society. As Table 7 outlines, almost two-thirds of the MSGs assessed offer payments to their members.

There are three primary payment schemes by MSGs: paying flat rates to MSG members (e.g., per diems); reimbursing for actual costs; or, offering no payments to any members. The effects are discussed in the table and further analyzed below.

Table 7: Summary of MSGs that have adopted written governance rules or procedures related to civil society independence

This table summarizes the range of practices for the MSG to offer payments and reimbursements to MSG members in the 15 assessed MSGs.

1. Fixed-Rate Payments (e.g., per diems)

Cameroon

- A per diem of XAF 300,000 (approx \$620 USD) per meeting attended. Reimbursements for transport costs are also available if the representative is outside the capital city, Yaoundé.
- A bonus of XAF 500,000 (approx \$1035 USD) is also paid if the MSG achieves successful validation or reconciliations.
- The establishing decree requires at least two meetings each year, but in practice there are normally between 4 - 8 meetings each year. This results in approximately \$2480 - \$4960 USD per year, with a possible \$1035 USD bonus. Note that some CSO representatives refuse to accept the payments on the basis it creates a conflict of interest.

DRC

- A per diem of \$500 USD is payable per regular meeting attended. CSO representatives explained that this might be lowered to \$300 USD in the future. CSOs that were not on the MSG did not know the level of per diem, and some expressed concern about the benefits received by CSO members. This was compounded by them witnessing CSO representatives travel domestically and internationally for EITI, and not being aware who funded this travel (which, in fact, was sometimes funded by external actors, such as PWYP International).
- No per diems are payable for extraordinary meetings.
- As the Règlement Intérieur requires meetings to be held once a month, a total of \$6,000 USD per year is paid to each member.

Nigeria

- Unknown for MSG members. MSG members did not specifically state how much they received for attending meetings. The Secretariat confirmed that MSG members receive an allowance,⁹⁴ as well as a reimbursement at fixed rates for travel (in Business Class, as specified in the MSG Board Charter), subsistence (e.g., meals and incidentals), and accommodation, based on receipts for expenses or a fixed flat rate. When events are held outside of Abuja, the Secretariat arranges the accommodation and pays directly. The Secretariat did note that MSG members were paid a rate higher than the CSO Steering Committee.

⁹⁴ However, the NEITI Secretariat did disclose that allowances for MSG board members are fixed by approval of the Revenue Mobilization, Allocation, and Fiscal Commission (RMAFC) after being suggested by the Finance and General Purpose Committee of the MSG. This policy is reflected in Article 11.3 of the Board Charter. Since meeting minutes are not public, and since the RMAFC website does not have information for salaries or remuneration policies more recent than 2009, it is impossible to know the current per diem policy.

- For the CSO Steering Committee (which is distinct from the MSG), members receive a travel allowance and compensation for meals and incidentals of N19000 (approx \$120 USD) for attending each meeting, and N23000 (approx \$150 USD) for conducting consultations before meetings. In addition, representatives can be reimbursed for travel to CSO Steering Committee meetings. In practice, this amounts to approximately N76000 (or \$480 USD) for sitting allowance per year, and N92000 (or \$600 USD) for consultation allowance per year.

Senegal

- A per diem allowance is paid to MSG members as well as reimbursements for travel costs. According to MSG members interviewed, the per diem allowance for meals and incidental expenses is based on rules that were initially established to comply with USAID grant rules to fund the MSG, and is approximately \$40 USD per day. Based on only regular quarterly meetings, the total per year is at least \$160 USD. Members that must travel to Dakar for meetings are also provided financial support, and additional payments may be offered to MSG members, but no further information was available.

Tanzania

- A sitting allowance is paid per meeting of TZS 180,000 (approx \$106 USD). In practice, one meeting is held each month, amounting to at least \$1272 USD per year.

USA

- A per diem is paid according to the Federal Travel Regulations contained in 41 Code of Federal Regulations, chapters 300 through 304. These rules set rates for payments for meals and incidentals, as well as lodging and accommodation, based on calculated average costs in each state and/or city. The MSG regularly meets in Washington, DC, where the full per diem rate is \$71 USD for each meeting day for meals and incidentals, and \$53.25 USD for travel days (75% of the full rate).⁹⁵ In practice, total payments amount to approximately \$248.50 USD per meeting (two travel days, and two days of official MSG meetings), or \$994 USD per year based on holding four regular meetings.
- Under these regulations, travel and lodging expenses are also reimbursed based on receipts and documentation for all expenses incurred. This is capped at \$229 per night, depending on the season.

Yemen

- A small stipend is paid for attendance (approximately \$20 USD), and approximately 12 meetings are held a year in practice. This amounts to approximately \$240 USD per year.

Effect of arrangement

There was distrust, misinformation, and concern generated about the payments received by CSO representatives in DRC and, more obviously, in Cameroon, where the total amount of the payments were seen as disproportionate relative to the actual costs of attending a meeting. There were similar concerns, to a lesser degree, in Tanzania, where external civil society did not know the exact rates paid to MSG members (even though the rate was set by regulatory instruments and was therefore publicly available).

continues

⁹⁵ U.S. General Services Administration, *FY 2015 Per Diem Rates for District of Columbia (October 2014 - September 2015)*, <http://www.gsa.gov/portal/category/100120> (last visited 9 Nov., 2014). Although company and civil society constituencies hold caucus meetings the day before MSG meetings, for per diem purposes this is considered a travel day.

As external civil society were not interviewed in the other countries where fixed rates were offered, it is not possible to assess the effect of the arrangements. However, based on discussions with stakeholders in many countries, it seems that the level of payments offered to civil society in Nigeria, the United States, Senegal and Yemen would be seen as proportionate to the cost of participation and therefore not perceived as a conflict of interest, provided that the representatives and MSG were transparent about these rates. The lack of transparency for MSG members in Nigeria would be likely to cause concern to external stakeholders.

2. Payment of directly incurred travel expenses only

Norway*

Papua New Guinea**

The Philippines: (Paid to CSOs – not other MSG members – by the PWYP network, known as Bantay Kita; per diems are not accepted by CSOs in the Philippines)

Effect of arrangement

This allowed regional representatives from CSOs to participate in the MSG and minimized external concerns of bias (where the arrangement was known). However, the time taken to travel to meetings was not reimbursed. In the Philippines, the travel time from extractive regions to Manila exceeds 12 hours, and with frequent MSG meetings, this put a strain on attendance rates for representatives from distant regions.

* The Norwegian government travel reimbursement policy offers payments and reimbursement for travel, accommodation, meals and incidentals based on a schedule of rates. These are only offered when the claimant travels more than 15 kilometers and the trip is at least five hours. Most MSG members are located near Oslo, and no members interviewed could provide details on the policy.

**As of June 2014 no MSG meetings had been held, however, it was intended that the Papua New Guinea EITI Secretariat would directly cover travel costs.

3. No payments

Albania

Azerbaijan

Colombia

Guatemala

Solomon Islands

Effect of arrangement

Since there are payments available to cover travel or incidental costs related to attending MSG meetings, it was much more likely that CSO members from these countries were from a major city. In Guatemala and Colombia some of the CSO representatives interviewed identified this lack of reimbursement as a significant challenge to finding representatives from regions where extractive activities occur.

(a) Not offering payments

Five countries did not offer any payments. As Table 7 explains, this can create a significant barrier to participation for CSOs that operate in extractive regions outside of the major cities, who may have to travel long distances (and, if they are local CSOs or grassroots organizations, are more likely to have less funding than national CSOs). The result is that, without sufficient access to funding, CSOs from outside the major cities may either not join the MSG or may struggle to attend meetings.

While it is not strictly a requirement of MSGs to offset the costs of participation for CSOs, MSGs should ensure they are not creating barriers to participation for core stakeholders. To address this they could facilitate participation by rotating meeting locations to areas where civil society are based, offering reimbursement, or encouraging external funders to contribute to CSO expenses.

MSGs that are offering payments to help offset the burdens of participation must take care to ensure that these steps do not compromise the perceived or actual independence of CSO representatives.

(b) Payments Disproportionate to the Costs of Attendance

As Table 7 shows, some countries are offering payments to MSG members that vastly exceed the actual cost of traveling and attending meetings. For example, in the DRC and Cameroon, MSG members that attend all meetings in a year could receive up to \$6000 USD.⁹⁶ This is a significant amount of money by any standard, but especially when compared to the per capita income of these countries, which was \$454 USD and \$1,315 USD in 2013 respectively, and their costs of living.⁹⁷

Disproportionately high per diems or payments to CSO representatives were perceived very negatively by most CSOs outside of the MSG. They raised the concern that when payment rates are very high relative to income levels or living costs, they risk creating perverse incentives, such as:

- Incentivizing CSOs to adopt positions that avoid or deflect conflict in the MSG for fear of losing access to the payments, and therefore ultimately creating uncritical or “captured” CSO representatives;
- Motivating MSGs to call more meetings than are needed and, related to this, potentially slowing the decision-making process in order to have more meetings; and,
- In the case of highly disproportionate payments relative to income levels, distorting the motivations for joining an MSG in the first place (i.e., to join on the basis of access to a revenue stream, rather than to advocate on behalf of society).

These concerns are illustrated by the case of Cameroon, where the civil society constituency on the MSG has become fractured based on acceptance of the high per diems. Many participants in the MSG also shared the view in interviews that the MSG is operating ineffectively at least partly due to the per diem. This is explored further in the Cameroon case study in Box 3 in Part 1.

While it is clear that CSOs may face unique funding challenges, trying to remedy these issues through high levels of direct payments to CSOs damages the independence and credibility of CSO representatives, and the MSG overall. MSGs should not offer payments that are disproportionately higher than the actual costs of attending a meeting.

⁹⁶ The actual total payments for an MSG member in Cameroon fluctuates based on the number of meetings held each year, and whether bonuses were achieved for successful validation or reconciliations. See Table 7.

⁹⁷ See World Bank, *World Bank Open Data: GDP Per Capita (current US\$)* available at <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD> (last accessed 1 October 2014).

(c) Incentive payments

Cameroon was the only one of the MSGs assessed that offered payments for successful validation or reconciliation. The dangers related to this are obvious: it creates incentives for MSG members to ignore problems or challenges encountered in the validation or reconciliation processes, because doing so might delay or prevent payments. In essence, these reward payments create the same perverse incentives to overlook corruption that EITI reporting is aimed at eliminating. The EITI Board must prohibit such incentive payments, and should ensure that MSG governance processes are closely scrutinized to detect such serious violations.

3.2.3. Speculation and distrust caused by lack of transparency

External civil society and communities were often skeptical of CSO MSG members' independence where CSO representatives on the MSG failed to disclose the actual amount of payments received, or the policies regarding per diems and reimbursements. In all five countries visited, CSOs not involved in the MSG generally did not know whether payments were made to CSO representatives, or the conditions and amounts of such payments. This greatly undermined the perceived credibility and independence of CSO members. In Tanzania, external civil society members expressed concerns about the integrity of CSO representatives because they received a payment for attending meetings and the rate was not common knowledge. However, the subsequent disclosure of the per diem rate (approximately \$106 USD per meeting) helped to assuage doubts and change negative perceptions of the MSG. In Guatemala, external civil society were suspicious that payments were being made to CSO representatives on the MSG, but CSO representatives claimed that no payments at all were received – from government, industry, or the MSG.

Many CSO representatives, and their related MSGs, could improve their perceived credibility by publicly disclosing reimbursement or per diem policies to their constituents, as well as the amount of actual payments received.

3.2.4. Good practice: Transparent reimbursements proportionate to the cost incurred

Based on interviews with MSG members and external civil society, monetary payments to MSG members should be publicly disclosed and commensurate to the actual costs incurred in participating in meetings to ensure the legitimacy and independence of CSOs. MSGs may accomplish this by: reimbursing direct expenses incurred to attend MSG meetings; or, by offering per diem payments at a rate that is appropriate and proportionate to the actual costs related to attendance. Appropriate rates will differ from country-to-country, depending on the costs and income levels of each country. Where MSGs prefer to offer per diems or fixed rate payments, CSO members that must travel to attend meetings should be offered higher rates compared to members that are based in the city where MSG meetings are held to compensate for extra costs.

Article 9 of the *EITI Code of Conduct* encourages MSG per diems to be based on reasonable actual cost and international best practice. This is encouraging, but does not yet appear to be rigorously enforced by EITI given the number of countries still offering disproportionately high per diems. It should be noted that payment rates are sometimes set by ordinance or other regulatory measures, because in many countries MSGs are considered government bodies and therefore members are offered the rate set under that regulation. This happens, for example, in Cameroon, Tanzania, and the United States. Where this leads to disproportionate rates, MSGs may need to request a statutory exemption.

MSGs should also consider other ways they can facilitate meaningful involvement from CSOs. This should involve consulting with CSOs about how their participation could be facilitated without compromising their independence or creating negative incentives. International and external donors wishing to support EITI should also be mindful of how they balance the need for enabling meaningful engagement in EITI versus setting perverse incentives for participation.

3.3. Recognizing that Internal Governance Practices affect Civil Society Effectiveness

Multi-stakeholder processes are still a relatively novel form of engagement, and many civil society actors are unfamiliar with the opportunities and challenges that may arise depending on the rules implemented to govern the process. In some MSGs assessed, CSO representatives had little appreciation of how procedural issues could ultimately affect or frustrate civil society's ability to advance issues in the EITI process. Even where there was such awareness, civil society often did not have extensive experience in devising multi-stakeholder internal governance procedures, or could not access resources to assist in this process.

The result was that many CSOs are involved in MSGs that operate in a way that structurally inhibits their ability to participate in, and advance, EITI. Indeed, in the five countries visited, it was evident that without robust internal governance procedures, civil society's strength and participation in the EITI was adversely affected – often to a greater degree than government or industry – and the potential impact of EITI activities was undermined.

The types of vulnerabilities or missed opportunities that can adversely impact civil society based on MSG internal governance processes include:

- **Civil society's ability to meaningfully participate in the MSG decision-making process is inhibited by procedural rules:** For example, at least ten MSGs permit decisions to be made by some form of majority vote (normally in the event that consensus cannot be reached), without requiring at least some support from each constituency.⁹⁸ This means that it may be possible for the MSG to make decisions without support or input from critical civil society representatives, provided that there is sufficient support from industry and government. To correct this, civil society in these countries could simply have demanded that a qualified majority vote is required to approve a decision, meaning that a majority of each constituency must vote in favor.⁹⁹
- **Provisions that could strengthen civil society's participation are omitted:** As explained in Part 1, many MSGs do not have detailed governance procedures. For example, only 6% of the countries reviewed had written safeguards in MSG governance documents to ensure that civil society groups involved in EITI as MSG members are independent, both operationally and in policy terms, from the government and/or companies.
- **Mechanisms to ensure accountability for the MSG are not instituted:** Only 16% of the countries reviewed had MSG governance procedures for entrenching accountability in their respective operations. It is crucial for MSGs to develop grievance mechanisms that allow complaints to be reported in the event of substantive non-compliance with the EITI Rules or Standard, or breaches of internal governance rules.
- **Opportunities to substantively advance EITI are missed:** Similarly, the mandate of the MSG is often expressed in foundational documents, such as the terms of reference or internal governance rules and procedures, as being confined to reporting on transparency of payments and revenue. By focusing exclusively on reporting payments and revenue, the MSG pays minimal or no attention to other important problems that result from the inefficient use of wealth derived from natural resources – such as environmental degradation, insecurity, communal violence, inequality, poverty, and other human rights violations. These problems can neither be wished away nor addressed conclusively by focusing on the pursuit of transparency in regards to payments and revenue alone. These issues are discussed further in Part 5 of this Report.

⁹⁸ Including Albania, Cameroon, Chad, Côte d'Ivoire, Ghana, Guatemala, Guinea, Senegal, Tajikistan, and Togo.

⁹⁹ See EITI Guidance Note 14, Step 3 (which advises specifying qualified majority voting rules that require support from all constituencies, in the event that consensus cannot be reached).

While it is true that funders have assisted civil society with significant capacity building on the substantive rules and framework of EITI, it would be helpful for them to consider supporting the EITI to provide capacity-building on internal governance processes. One example of good practice was observed during the visit to the Philippines where civil society were proactively engaged in the development of the MSG rules, and conducted extensive regional outreach and training on EITI prior to selecting CSO representatives. The Philippines case, and general guidance for building CSO capacity regarding internal governance in multi-stakeholder processes – particularly through liaising and training local and community-based organizations – is outlined in the Civil Society Guidance Note.

3.4. Civil Society Collaboration and Accountability

In countries where there has not been an effort to foster engagement amongst civil society, there has often been very little progress related to disseminating or developing support for the EITI process outside a narrow set of actors. Conversely, where CSO stakeholders have collaborated on a more formal basis that includes basic governing rules and procedures, they have been more effective at sharing and expanding interest and impact for the EITI process. By working together, civil society in some countries have been able to build a cohesive and bold long-term vision for using the EITI to promote transparency and accountability in the extractive industry.

3.4.1. Liaising with Civil Society's Wider Constituency and Developing a Cohesive Mandate

Challenges for civil society cohesion arise in part because civil society members of the MSG represent a wide constituency, and are more diverse and diffuse than government or the extractive industry representatives. Therefore, in order to be effective, civil society should take steps to ensure that it adequately represents the views of its broad constituency, and that the voice of civil society within the MSG is as strong as the other stakeholder groups. For example, civil society in the Colombia and the Philippines held regional consultations throughout the country to explain the EITI process to CSOs and community-based organizations; select CSO representatives; and develop the framework for civil society to work together as a cohesive constituency (see the case study in Box III of the Civil Society Guidance Note). In the Philippines, this process then led to the emergence of local indigenous leaders experimenting with adopting a localized version of EITI as discussed in the case study in Part 4.2.

The following steps reflect good practice for developing cohesive, collaborative civil society engagement:

- (i) **Identify and establish a wide network of interested stakeholders:** It is critical that civil society is mindful of its broader constituency base, as discussed more broadly in Part 4 of this Report and the Civil Society Guidance Note. Steps should be taken to identify constituencies that have an interest in extractive industry transparency and accountability. Formal or informal networks should be developed to foster and sustain communication with these constituencies as required in the EITI Rules and Standard.¹⁰⁰

¹⁰⁰ EITI Standard, Requirement 1.3(g)(iii); EITI Rules, Requirement 4(e).

- (ii) **Liaise with stakeholders interested in regular involvement with the EITI:** Within the broad group identified, it is likely there will be actors interested in participating regularly or actively in the EITI. Efforts by CSO representatives to liaise with interested stakeholders were mixed, as discussed in more detail in Part 4. Out of the 15 MSGs assessed, 4 countries – Cameroon, Guatemala, the Solomon Islands, and Tanzania – had no agreed liaising policies or practices followed by CSO representatives, leaving non-participating EITI CSO representatives isolated and uninformed about the EITI. Some other countries, such as Azerbaijan, the DRC, and Colombia, have very clear practices for engaging CSOs on a broader level, which include regular in-person meetings with civil society from outside the MSG. These countries viewed these processes favorably, and considered them a valuable measure for advancing and strengthening the EITI. Several other CSO groups – in the United States, Norway, Nigeria, and Yemen – conduct outreach to their constituencies on an ad hoc basis, mainly by electronic news announcements.
- (iii) **MSG representatives should take initiative to work cohesively:** CSOs are more effective when they organize to work together as a united constituency and have a long-term strategy for achieving the constituents' vision. In the countries where there are no formalized processes for civil society to work together, such as Cameroon and Tanzania, civil society appeared to be more fractured, less vocal at MSG meetings, and more likely to merely respond to an EITI agenda driven by the other constituencies, rather than proactively and strategically take steps to advance a long-term agenda of their own. While it may not always be possible, or desirable, for civil society to speak with one voice in MSG meetings, they should come to the meetings prepared and aware of their internal positions.

Unfortunately, this type of engagement with wider civil society was not often evident in the countries visited. CSO representatives identified significant challenges to meaningful outreach and liaising. Examples include:

- MSG representatives often have extremely limited financial and staff resources remaining to report activities and seek input from stakeholders in a meaningful way, after expending significant resources to fulfill their basic duties related to preparing and participating in MSG meetings.
- Many countries have not conducted a comprehensive survey of relevant stakeholders, and therefore have not identified interested actors outside the colleagues of MSG representatives or members of their networks. Significantly, this often means that grassroots and community-based organizations that may be interested in participating are not informed and included in the EITI process.
- CSO representatives sometimes expressed frustration that even where consultations with civil society had occurred, it was difficult: (i) to communicate how involvement or interest in EITI is useful, which is often tied to the misguided belief that EITI can only be used for fiscal transparency (see Part 5.2); and, (ii) to overcome suspicion that participation would not damage the stakeholder's integrity, because it involves collaborating with government and companies.

Additional guidance for conducting outreach and liaising is contained in the Civil Society Guidance Note.

3.4.2. Establishing Expectations and Accountability with a Civil Society Code of Conduct

Collaboration and cohesion among civil society also depends on the accountability and perceived legitimacy of the CSO representatives to the MSG. To address this, some CSO constituencies have developed a code of conduct for their representatives.¹⁰¹ This is an excellent practice for CSOs, because it builds legitimacy for the CSO constituency, encourages CSOs to think critically about how to best engage in the MSG, and fosters a culture of CSOs working cohesively together for a common purpose rather than simply being representatives of the individual organizations they represent.

In the five countries visited, the civil society constituencies with some form of transparent safeguards – even if it is not a formal code of conduct – seemed to command considerably greater trust within their broader external CSO constituencies.¹⁰² In Azerbaijan and the Philippines, where rules had been developed around these issues, external NGOs appeared satisfied with the processes followed, and generally engaged constructively with CSO MSG representatives on substantive concerns relating to EITI.¹⁰³

By comparison, questions were often raised regarding the legitimacy and independence of selected CSOs in countries that did not have safeguards established. For example, in Cameroon and Tanzania – which both also lack conflict of interest provisions, or restrictions on per diems for MSG members – there were significant concerns from external CSOs about the independence and effectiveness of the civil society representatives to the MSG. Although some of these questions may be unfounded in practice, the absence of robust and transparent safeguards clearly undermined the perceived legitimacy of the representatives. In these countries, external CSOs were pre-occupied with their concerns about the procedural processes followed by CSO MSG representatives, rather than advocating about issues for substantive progress in EITI.

The Civil Society Guidance Note outlines specific issues that should be covered in codes of conduct, indicating how these should be developed. The issues include:

- Nomination and selection processes;
- Eligibility and qualification criteria for candidates to represent CSOs on the MSG
- Conflict of interest provisions;
- Duties, responsibilities and expectations of MSG representatives, such as liaising obligations (e.g., expectations of availability and preparation to conduct meetings with the CSO constituency before MSG meetings), procedures for CSOs to impeach or remove under-performing representatives; and,
- Term limits.

¹⁰¹ Three of the 15 MSGs assessed – Azerbaijan, Colombia and Nigeria – had codes of conduct developed by CSOs to govern their representatives. Additionally, the DRC was in the process of finalizing a CSO code of conduct as of October 2014.

¹⁰² At the time of visiting the DRC in May 2014, a code of conduct was under development. This was viewed as a very positive development by civil society inside and outside the MSG. At the time of writing (October 2014) the DRC was also finalizing a CSO code of conduct.

¹⁰³ Unfortunately, it was not possible to interview external CSOs in countries that were not visited, and therefore the views of external CSOs of the codes of conduct established in Nigeria and Colombia could not be assessed.

Recommendations

For EITI International Secretariat and the EITI Board

1. Amend Requirement 1 of the EITI Standard or adopt other policy guidance to:
 - a. Clarify the independence requirements necessary to represent civil society in MSGs. At a minimum, this should:
 - i. Prohibit any publicly elected officials (e.g., local or regional government officials, or opposition parliamentarians) from participating in the civil society constituency;
 - ii. Prohibit any individuals or organizations that advocate on behalf of, or directly benefit from, the extractive industry or the national government, whether for-profit or not-for-profit, from participating in the civil society constituency; and,
 - iii. Create a presumption against the eligibility of for-profit actors, or politically affiliated individuals or organizations. National MSGs, at the request of civil society representatives, should be entitled to request an exemption for these types of actors to be eligible to represent civil society. EITI International should only grant the exemption based on evidence provided in the request that these actors have been selected independently of government and extractive companies, and will be effective and independent civil society representatives.
 - b. Prevent conflicts of interest from arising within the MSG. At a minimum, this should:
 - i. Prohibit payments to MSG members that may create conflicts of interest, such as bonus payments contingent on achieving positive reports from validation or reconciliation processes;
 - ii. Ensure that any payments (e.g., per diems) to MSG members are: transparently disclosed; proportionate to the actual costs of participating in MSG meetings or activities; and, agreed by all MSG members.
2. Review the methodological and procedural requirements for validation to ensure that compliance with the EITI Standard is rigorously assessed in sufficient detail to detect non-compliance (see Part 5 for more detailed recommendations). This review should account for factors such as: assessing whether governments were directly or indirectly involved in the selection of civil society representatives to the MSG; and, whether CSO representatives are independent. This requires validators to ascertain the views of civil society from outside the MSG.
3. Provide comprehensive guidance for MSGs regarding:
 - a. Formally endorsing the contents of the Civil Society Guidance Note in Annex II, or otherwise developing a comprehensive supplemental guidance for civil society related to: identifying the wider civil society constituency; selecting and nominating CSO representatives; establishing a stakeholder group code of conduct; and, conducting robust outreach and liaising processes.
 - b. Establishing good practices for governments when first implementing EITI and establishing the MSG. This should provide good practices for governments on how to: (i) issue open and transparent invitations to civil society to participate in the EITI process that will encourage widespread understanding of EITI; (ii) explain the EITI process and the key responsibilities, benefits, and opportunities related to EITI, with a particular focus on ensuring outreach to communities and CSOs that are not familiar with the EITI process who may not understand the value of committing human and financial resources to participating in the MSG; (iii) emphasize to stakeholders that the EITI Standard only establishes minimum requirements for MSGs and that MSGs are encouraged to go beyond these requirements to require companies to disclose other information of relevance (see Part 5 for more detailed recommendations).

For multi-stakeholder groups in each implementing country

1. Review the selection process for civil society representatives to ensure that the government was not involved, directly or indirectly, in a manner that undermined the independent selection of civil society (see Part 3.1.1. of the Report). If the review determines government was involved, new civil society representatives should be selected as soon as possible through an independent process that incorporates the good practices identified in the Civil Society Guidance Note in Annex II.
2. Only provide payments to MSG members that are consistent with Recommendation 1(b) (for the EITI International Secretariat and the EITI Board, immediately above).
3. Commit to transparency by requiring the publication of:
 - a. Policies and rates for all payments to MSG members;
 - b. Audited annual financial statements for the MSG and/or national secretariat that detail payments to MSG members as individual line-items; and,
 - c. Selection processes employed by each MSG constituency.
4. Consider and support the role of civil society in the MSG by identifying barriers to meaningful participation in the MSG and by taking steps to overcome these barriers.

For civil society active in the EITI in each implementing country

1. Ensure that CSO MSG representatives are actively involved in the review and revision of internal governance procedures required for validation under the EITI Standard. The ToR Protocol (Annex I) and Civil Society Guidance Note (Annex II) may be helpful tools to ensure internal governance rules are developed in a manner that allows for inclusive and effective involvement from civil society. In addition, CSO representatives should feel free to request capacity training from the EITI International Secretariat or CSO EITI Board members regarding good practices for internal governance from a civil society perspective.
2. Civil society representatives on the MSG should collaborate with wider constituents throughout the country to:
 - a. Develop a cohesive mandate for civil society by:
 - i. Identifying and establishing a wide network of the individuals, communities, and civil society organizations who may wish to be informed of EITI or participate in the process;
 - ii. Liaising regularly with stakeholders interested in ongoing involvement with the EITI to seek input and report feedback regularly about the MSG and EITI processes, and to develop a vision for how EITI can advance the interests of the public and communities affected extractive industry activity; and,
 - iii. Establishing parameters for CSO MSG representatives to work cohesively together and with their wider constituency.
 - b. Establish a code of conduct to:
 - i. Establish expectations and responsibilities of civil society representatives to the MSGs, such as conflict of interest policies and term limits; and,
 - ii. Develop a transparent, accountable framework for collaboration and cohesive engagement among civil society.
 - c. Revise existing CSO nomination and selection processes to ensure they are designed to select effective, legitimate, and independent representatives to the MSG; and,
 - d. Formalize eligibility and qualification criteria for civil society representatives to the MSG.

Civil society should utilize the Civil Society Guidance Note in Annex II of this Report when undertaking these activities.

3. Participation of Independent and Effective Civil Society in EITI

3. If a review of the selection process for civil society representatives finds that government was involved, directly or indirectly, in a manner that undermined the independent selection of civil society (see Recommendation 1 for MSGs, immediately above), then a new selection process should occur as soon as possible. This should meet the good practices identified in the Civil Society Guidance Note in Annex II.
4. CSO representatives on the MSG should commit to transparency by annually detailing all payments received from the MSG or national secretariat, and by disclosing all their individual or organizational funding sources.

For governments in each implementing country

1. In advance of establishing the MSG, governments should conduct outreach to inform and educate the public, companies, and civil society about EITI and about the role of each stakeholder group in implementing EITI, taking care to ensure that stakeholders in areas of extractive activity are contacted. Once stakeholders are sufficiently familiar with EITI, the open invitation to join the MSG should be issued (Requirement 1.3(f)(i)) in a manner that ensures all relevant stakeholders are aware of the invitation (see Part 3.1.1. of the Report).
2. Take care not to influence the selection of CSO MSG members, either directly or indirectly, in a manner that undermines the independent selection of civil society (see Part 3.1.1. of the Report). This includes by pre-defining the types of CSOs that may participate in the MSG, or by delegating the selection of CSOs to an insufficiently independent organization.

For funders and international civil society organizations

1. Prioritize supporting training and capacity building for civil society to:
 - a. Conduct robust outreach and liaising processes with civil society's wider constituencies, as detailed in the Civil Society Guidance Note. In particular, this should enable civil society and communities from areas affected by extractive activities to participate in the EITI processes;
 - b. Draft internal governance rules and procedures that strengthen civil society's capacity to impact decision-making in the MSG.

4. Stakeholder Representation and Involvement within EITI processes

Overview

It is the responsibility of government to ensure that stakeholders are adequately represented in the MSG,¹⁰⁴ and of the MSG to conduct effective outreach activities and liaise with their constituents.¹⁰⁵ However, there is little geographic or gender diversity in MSGs, and only limited liaising and outreach is regularly conducted. The value of involving stakeholders that are directly impacted by extractive activity within the EITI process is immense, yet largely overlooked in MSGs. Local stakeholders could be engaged in a variety of ways, ranging from direct inclusion on the MSG to ensuring that MSG representatives regularly liaise and offering them opportunities to provide feedback into the EITI process. The government and MSG should prioritize serious efforts to engage in liaising and outreach activities – especially with local and community-based organizations in regions where extractive activity occurs – to provide opportunities for interested actors to offer input to MSG members regarding the EITI process. This will have the positive effect of increasing public awareness and debate regarding EITI and extractive industry transparency. It may also lead to EITI reports that are more relevant and more widely read than if core stakeholders are not engaged in the process.

The necessary measures to ensure adequate representation and involvement in the EITI process will be context-specific in each country. However, some approaches include:

- Directly supporting geographic diversity and sub-national representation in the MSG, and the expansion of EITI at the sub-national level;
- Ensuring appropriate gender diversity in the MSG;
- Emphasizing the importance of involving communities affected by extractive activity in MSG and EITI activities; and,
- Enhancing government and civil society liaising with their constituencies, particularly focusing on including the public and civil society that is based in areas of extraction.

4.1. Ensuring MSG Diversity: Geographic and Gender Representation

The EITI Standard requires stakeholder groups to “consider the desirability of pluralistic and diverse representation”.¹⁰⁶ MSGs need to be reflective of the diversity of actors and interests within the country, so that discussions and decisions about EITI implementation reflect the views of the public – which are the stakeholders that the process is intended to benefit. Throughout the MSG as a whole, each stakeholder group should focus on ensuring appropriate gender diversity, and should include representatives from areas of extractive activity if feasible.

4.1.1. Geographic diversity: encouraging involvement from areas of extractive activity

In most MSGs assessed, the representation of geographic regions outside the national capital region was extremely limited within all stakeholder groups in the MSG. This is not surprising, since only 10% of the countries reviewed had policies requiring stakeholders to consider the geographic diversity of the country when appointing representatives.

¹⁰⁴ EITI Standard, Requirement 1.3(f)(ii).

¹⁰⁵ EITI Standard, Requirement 1.3(g)(ii)-(iii).

¹⁰⁶ EITI Standard, Requirement 1.3(f)(ii).

Given the importance and benefits of including stakeholders from extractive regions (see Part 4.2. below), it is surprising that there is not a greater focus on ensuring there are some voices from extractive regions in the MSG directly where possible. In the few MSGs assessed that had representatives from extractive regions, the MSG members spoke favorably of the benefits and insights that this representation brought to the EITI process. Conversely, MSG representatives from Colombia, who were all based in Bogotá, expressed concerns that the lack of direct representation in the MSG from communities where extractive activities occur potentially affected the legitimacy and effectiveness of the MSG.¹⁰⁷

Of course, there can be difficulties in encouraging geographic diversity in MSG membership. MSG members explained that financial resources hamper geographic diversity where potential members cannot afford to travel to attend meetings in the major cities, and where funds cannot be secured from the MSG or independent sources to reimburse this expense. Also, where an MSG is not well organized – for example, where they regularly fail to give sufficient advance notice of meetings – those based in regions outside the major cities, where meetings tend to be held, are the most adversely affected. This reinforces the need for effective strong governance processes and well-resourced secretariats, discussed in Parts 1 and 2 of this Report.

Box 8: Approaches to geographic representation

Targeted geographic representation by CSOs: The Philippines, Guatemala, and the DRC

The civil society constituency in the **Philippines** has taken it upon themselves to ensure that within their five member positions, there are representatives from each of the three island regions in the Philippines. This ensures there is representation from the regions where extractive industries are active. Similarly, the civil society selection in **Guatemala** is based on regions (one voting member represents the north, another the west, and other regional representatives are elected to attend meetings). In the **DRC** in 2014, when a new CSO representative was to be appointed, civil society agreed the representative should be from an extractive area (other representatives were not) and confined the selection process to Katanga.

Geographic representation in the MSG: Nigeria

The allocation of MSG member positions in the Nigeria EITI Act (2007) and the Board Charter (2012) requires one MSG member to be appointed from each of the six geo-political zones of **Nigeria**. This is a good practice, however a further improvement would emphasize including greater representation from extractive regions: in practice only one of the six zones – the South-South geo-political zone – is disproportionately impacted by extractive activity.

¹⁰⁷ Interviews with MSG members in Colombia indicated that all MSG members were based in Bogotá, however information provided to MSI Integrity indicates that there has been an effort to ensure regional representation through the inclusion of a regional network of associations from the Sucre region.

4.1.2. Gender diversity

It was difficult to conduct a thorough gender analysis of MSG membership because of the limited availability of MSG membership lists that are current and detailed (see Part 1.1.2).¹⁰⁸ Based on the 23 countries that have published MSG lists with sufficiently detailed member names to assess the gender diversity of the MSG, the clear indication is that overall level of gender diversity throughout MSGs in EITI implementing countries is worryingly low. Some MSGs, such as Côte D'Ivoire and Yemen, have no female representatives, and the majority of MSGs are composed of less than 25% female representatives. Table 8 lists these countries in order from the highest percentage of female members to the lowest.

In discussions with MSG members, it was clear that most MSGs understand the benefits of having a gender balance, and are supportive of working towards achieving that goal. For example, the Nigerian civil society steering committee considered gender equity as part of the criteria for member nominations in 2012 and included this in their memorandum of understanding. Nevertheless, evidence shows that scant efforts are made by most MSGs to improve gender equity. For instance, only 10% of countries reviewed had governance policies regarding gender diversity in representative selection.

Although all interviewed MSG representatives were supportive of improving gender diversity in MSGs and working to overcome impediments to equality in principle, several individuals expressed concern that any suddenly instated quota or diversity requirement may be difficult to meet, or may weaken the capacity of the MSG, due to their perception of an insufficient supply of adequately expert or skilled women. While it was beyond the scope of this assessment to investigate if such claims are accurate, MSGs facing this problem can, and should, take steps to address any capacity challenges for candidates. For example, an MSG could:

- Encourage stakeholder groups to appoint women as alternate members, allowing those women to gain expertise and institutional knowledge about the EITI process, and helping to increase the available pool of qualified female candidates for future selection to the MSG; and/or,

Table 8: Gender Diversity in MSG Membership

This table lists countries in order from the highest percentage of female members to the lowest, based on information published or provided.

Country	Female Members (%)
Trinidad and Tobago	52.6
Norway*	50.0
Madagascar	50.0
Mozambique	46.2
USA	36.0
Nigeria	33.0
Solomon Islands	28.5
Albania	28.0
Timor Leste	26.7
The Philippines	22.5
Peru	21.4
Ukraine	19.0
Ghana	17.3
Mali	13.6
Tanzania	12.5
DRC	11.0
Cameroon	8.7
Azerbaijan	8.3
Guinea	8.0
Iraq	5.5
Togo	4.1
Côte D'Ivoire	0.0
Yemen	0.0

* A 50/50 gender balance is required by Norwegian law for any committee convened to advise the government, and their membership reflects this with exactly 6 male and 6 female members.

¹⁰⁸ For the purposes of measuring the gender balance of MSG membership, there were 23 member lists where either gender was listed, was able to be confirmed during interviews, or which contained members' first and last names sufficient to allow for an internet search to ascertain the gender of the member. These included some of the member lists that were either publicly available or provided to MSI Integrity as of March 1, 2014, and additional information received or confirmed during in-country visits or interviews for the assessments of governance practice. For example, Azerbaijan, Cameroon, the DRC, and the United States' member lists were added following stakeholder interviews.

4. Stakeholder Representation and Involvement within EITI processes

- Adopt a policy requiring each stakeholder group on the MSG (i.e., government, companies, and civil society) whose representation on the MSG has a gender disparity greater than 60/40 (male/female) to publicly announce the steps it is taking to achieve balance in the future.¹⁰⁹

Many other approaches, such as gender sensitivity trainings and assessments are also available to MSGs.

4.2. Valuing the importance of involving stakeholders from areas of extractive activity in EITI

Very few EITI countries appear to have actively and intensively engaged local communities and stakeholders based in extractive regions. Local stakeholders could be engaged in a variety of ways, ranging from direct inclusion on the MSG to ensuring that MSG representatives regularly liaise and offer them opportunities to provide feedback into the EITI process.

Many representatives from the MSGs assessed did not appreciate the value of local-level and community engagement in EITI. This, in part, is likely connected to the misunderstanding (addressed in Part 5 of this Report) that EITI relates only to national issues. However, EITI can, and should, be a platform for increasing all types of transparency related to the extractive industry, especially local concerns.

The benefits of including local stakeholders are vast. It can increase the support, legitimacy, and effectiveness of EITI by including the insights of those stakeholders most affected by extraction, and empowering them to engage in an institution with the authority to improve transparency in meaningful ways. Reciprocally, it can allow the EITI process to expand in direct response to the transparency issues that are most important for communities in the country. Including local stakeholders will also advance the over-arching EITI mission to enhance public debate about extractive industry governance, by raising the profile of EITI within the communities that are most impacted by extractive activities.

The experience of Compostela Valley in the Philippines demonstrates the power and potential of engaging local actors to advance EITI (see Case Box 9). Although still in its formative stages, local indigenous leaders have championed a local law premised upon the multi-stakeholder reporting model of EITI. This law extends the model to include issues such as assessing environmental impacts of mining, and monitoring revenue expenditure. Other countries, such as the DRC, have been considering developing sub-national EITI models which could also be useful.

¹⁰⁹ One suggestion to overcome this could be that where the gender gap in the MSG is greater than 60/40 (i.e., where women account for less than 40% of the MSG) in any given year, a requirement could be triggered for MSGs to undertake an independent gender assessment to identify the structural impediments to gender inclusion and to outline steps to overcome those impediments. The assessment could also include a sensitivity assessment of the public materials produced by the MSG.

Box 9: The Philippines – The immense benefits of engaging communities and local actors in EITI

Compostela Valley is one of the 81 provinces in the Philippines. Although less than 1% of the country's population live in the province, it accounts for a significant amount of the country's extraction of gold.

According to national law, mining that occurs on areas determined to be “ancestral lands” first requires the free, prior, and informed consent of indigenous Filipinos in the area, and royalties of a minimum of 1% must be paid to the relevant indigenous council.¹¹⁰ Local communities became concerned in recent years about mismanagement of these royalties and government misuse of revenue, and began to demand greater transparency about extractive revenue related to proposed and existing large-scale mining operations, as well as the hundreds of existing small-scale operations.

Bantay Kita, the PWYP-affiliated CSO network that conducted regional consultations on EITI (see Box III in the Civil Society Guidance Note), had invited attendees from Compostela Valley to CSO consultations when EITI was introduced in the Philippines in 2012. Through these and other exposures, local government and indigenous leaders in Compostela decided to advance their own transparency initiative modeled on the reporting requirements of EITI, but extending far beyond the minimum requirements of the EITI Standard.

Under Executive Orders issued in 2012 and 2013, the provincial government established a “provincial multi-stakeholder council for extractive industry transparency and accountability”.¹¹¹ The council is made up of small-scale and large-scale companies, local government officials, national government agencies, as well as four representatives from the provincial tribal council and five locally operating NGOs. The Governor of the province chairs the council, and the vice-chairperson is a provincial government representative of the indigenous people. The council is funded by revenue collected by the provincial government from mining operations. It meets at least once every quarter and makes decisions by consensus.

The goals of the initiative include to “institutionalize participatory mechanisms towards transparency and accountability in the development of mining industry” and to “establish strong partnership among local and national governments, private sector engaging in mining in the province, civil society organizations and the Indigenous Peoples communities”.¹¹²

The council has been involved in drafting an ordinance that includes a reporting template to cover these issues. According to the executive order, the reporting template must address issues that extend well beyond EITI. These include disclosure of:

- The level of public consultations or “free and prior consent process” undertaken, and an assessment of its sufficiency;
- Results of monitoring of the environmental, health, and cultural impact of the mining operations;
- Revenue collected by various local actors from extractive industries; and,
- How collected revenues were allocated and utilized at the local level.

As of October 1, 2014, the ordinance had not yet been finalized or released for public review. However, if it is approved, the reporting system will operate completely independently of EITI and will have considerably greater value at the local level.

¹¹⁰ Administrative Order NO. 2010-21 (June 28, 2010), § 16; Indigenous Peoples' Rights Act of 1997, § 59.

¹¹¹ Republic of the Philippines, Provincial Government of Compostela Valley, *Executive Order No. EO.018.2013*, “Amending Executive Order No. 020 Series of 2012, Entitled Creation of the Provincial Multi-Stakeholder Council for Extractive Industry Transparency and Accountability” (August 12, 2013).

¹¹² Republic of the Philippines, Provincial Government of Compostela Valley, *Executive Order No. EO.018.2013*, “Amending Executive Order No. 020 Series of 2012, Entitled Creation of the Provincial Multi-Stakeholder Council for Extractive Industry Transparency and Accountability” (August 12, 2013), § 2.

4.3. Outreach and Liaising by MSG Representatives to their Constituents

Both the EITI Standard and EITI Rules require members of the MSG to liaise with their stakeholder groups.¹¹³ This is an important obligation that ensures the credibility and effectiveness of EITI, especially as it presents an opportunity to reflect on whether EITI is making an impact in extractive regions and amongst the public generally. However, few government and civil society MSG representatives have developed clear processes for conducting outreach and liaising with constituents. This is perhaps unsurprising given only 17% of the 29 countries reviewed have MSG governance rules requiring representatives to liaise with their constituents to ensure accurate representation of the stakeholders' views, and only 41% have rules requiring the MSG to conduct outreach to educate the public about EITI.

It should be noted that extractive company MSG members – perhaps as a result of having a smaller and tightly defined constituency – are regularly able to obtain the views of companies who do not have representatives on the MSG, and often have direct lines of communication whenever major issues are debated in the MSG.

4.3.1. Governments outreach and liaising with the public, especially communities living in regions of extractive activity

In the five countries visited, there was no evidence that government representatives undertook any liaising with their underlying constituency: the public. The only outreach that appeared to be done by many governments related to the dissemination of completed EITI reports. In several countries, interviewed civil society representatives explained that the government seemed to expect that all public consultation related to EITI would be conducted, and sometimes funded, by civil society. Although there is some overlap in the constituencies of the civil society and government representatives on the MSG, government has a fundamental obligation to ensure that it reports progress and seeks feedback on MSG activities continuously throughout EITI implementation. The government must discharge this obligation by sharing information and seeking feedback on the EITI process with the wider public, with a particular emphasis on those living in areas where extraction takes place. It may wish to confer with civil society in this process, but cannot rely on civil society to exclusively conduct outreach and seek public feedback.

4.3.2. Civil society outreach and liaising with stakeholder in regions of extractive activity

Civil society in many countries conducts little or no outreach or liaising with local communities and community-based organizations in areas of extractive activity or with the wider public, however these stakeholders form an important part of their constituency: they are often the very people or organizations on whose behalf CSOs are advocating. Yet, as discussed in Part 3.4.1 of this Report, civil society representatives on the MSG appear to be the most legitimate, and effective at influencing MSG outcomes, when they work together and engage in outreach and engagement using a formal, inclusive, and regularized process. Liaising can also be helpful in expanding a space beyond the MSG for civic debate about extractive industry governance, and even transparency in general. This is especially helpful for countries where there are concerns about the enabling environment, as public discussions may receive the benefit of international protection that sometimes comes with EITI.¹¹⁴

¹¹³ *EITI Standard*, Requirement 1.3(g)(iii); *EITI Rules*, Requirement 4(e).

¹¹⁴ *EITI Standard*, Requirement 1.3(e) (which requires the government to ensure that “[s]takeholders, including but not limited to members of the multi-stakeholder group must: i. Be able to speak freely on transparency and natural resource governance issues. [and] iv. Be able to operate freely and express opinions about the EITI without restraint, coercion or reprisal.”).

Recommendations

For EITI International Secretariat and the EITI Board

1. Clarify that the EITI Standard sets minimum, as opposed to maximum, requirements for implementing countries to follow (see Part 5 of the Report), and that it is allowed and encouraged for countries to innovate by, for example:
 - a. Expanding the process to include local-level sub-processes;
 - b. Creating additional stakeholder groups for representation in the MSG (e.g., communities and community-based organizations in areas of extractive activity); and/or,
 - c. Adopting transparency requirements related to issues of local concern, such as monitoring human rights, environmental, health, and other impacts and activities of extractive industries.
2. Provide comprehensive guidance for MSGs regarding:
 - a. Incorporating diverse geographic representation. This should provide guidance: (i) clarifying the importance of geographic diversity, particularly from regions affected by extractive activities; and, (ii) encouraging MSGs and stakeholder groups to mitigate challenges for achieving geographic diversity, for example by following the approaches detailed in Parts 3 and 4 of the Report, as well as by encouraging sub-national approaches to EITI;
 - b. Achieving diverse gender representation in the MSG. This should include: (i) clarifying that each stakeholder group is expected to strive for gender balance; (ii) including case study examples, or good practices for MSGs and stakeholder groups to achieve gender equity in MSG representation, such as encouraging female alternates to be appointed if gender balance is low; and, (iii) requiring stakeholder groups that do not appoint at least 40% female representatives to publicly explain the factors that limited the appointment of women, and the steps that are being taken to achieve a gender balance in future terms; and,
 - c. How to conduct effective outreach and liaising, especially focusing on including stakeholders in areas of extractive industry activity.

For multi-stakeholder groups in each implementing country

1. Review MSG membership composition to assess gender and geographic diversity and take steps to remedy any imbalances, as detailed in Part 4 of the Report.
2. Ensure that stakeholders from communities in regions affected by extractive activities are involved in the EITI process. For example, this could be done by:
 - a. Creating a stakeholder constituency in the MSG exclusively for representatives from extractive regions as equal decision-making participants in the MSG;
 - b. Encouraging each stakeholder group to select representatives from regions affected by extractive activities or to explain their absence. This may include community-based organizations, indigenous groups, small-scale or artisanal miners and local government officials; or,
 - c. Instituting mandatory outreach and liaising requirements for each stakeholder group, and the MSG as a whole, to regularly communicate with stakeholder constituents and the public in regions particularly affected by extractive activities.

4. Stakeholder Representation and Involvement within EITI processes

3. Consider formally establishing, or informally encouraging, sub-national EITI processes that engage stakeholders from local levels of government, companies, communities, and civil society to foster engagement and public debate about extractive resource governance, transparency concerns, and the national EITI implementation process.
4. Establish clear, procedural requirements for each MSG stakeholder group to conduct outreach and liaising with the public and their specific stakeholder constituents. In particular, MSGs should develop a communication and outreach strategy to guide government and civil society stakeholders in conducting outreach and liaising to the public. Outreach and liaising should, at a minimum:
 - a. Report major discussions and decisions from the MSG and EITI processes; and,
 - a. Seek input and allow feedback from stakeholders for upcoming issues and topics to be considered by the MSG.

More detailed guidance on liaising is contained in the Civil Society Guidance Note in Annex II, which is applicable to other stakeholder groups.

For civil society active in the EITI in each implementing country

1. Conduct outreach and liaising with the public and the wider civil society stakeholder group constituents – including CSOs at the national, regional, local, and community-based level – using an inclusive and regular process. Civil society should utilize the Civil Society Guidance Note in Annex II when undertaking these activities.

For governments in each implementing country

1. Engage with the public, as well as relevant agencies, ministries, and officials at both national and sub-national levels of government, to conduct outreach and liaising on a regular basis. More detailed guidance on liaising is contained in the Civil Society Guidance Note in Annex II, which can be adapted to government liaising. These processes should emphasize seeking input and feedback from constituents located in regions affected by extractive activities.

5. EITI Global Oversight and Framework

Overview

Interviews with MSG members and other stakeholders in EITI countries around the world have uncovered concerns about whether the EITI framework and oversight mechanisms are limiting the potential for the EITI to have an impact on extractive industry governance. In particular:

- Some countries have been granted “EITI Compliant” status despite appearing to not actually be in compliance with the EITI Rules. This is not being detected by the EITI Association, which indicates that the current validation process is not sufficiently rigorous or detailed to adequately identify whether a country is, in fact, EITI Compliant. Additionally, there are no well-known avenues for MSG members or other stakeholders to report concerns of non-compliance to an independent international oversight body in the years between validation reviews.
- The primary goal of the EITI process for many MSG members appears to be getting deemed “EITI Compliant”, rather than focusing on ensuring EITI leads to transparency outcomes that will, in turn, lead to greater accountability or improved resource governance. This is permitted by the framework of the EITI Standard, which does not encourage or incentivize MSGs to progress beyond the minimum requirements contained in the EITI Standard. Occasional efforts by individual MSG members to expand EITI to include transparent reporting on issues of importance in the domestic context, such as reporting on environmental impacts, indigenous rights, or local government payments and revenues, were often rebuked by MSGs who claimed that this exceeded the EITI Standard. This often limited the range of actors interested in participating in the MSG, or wider EITI processes.

5.1. Ensuring EITI has adequate tools to address concerns regarding compliance with the EITI Standard

One of the major concerns arising from this study is that some countries appear to have “EITI Compliant” status despite being actively in breach of the EITI Rules. This casts serious aspersions on the integrity of “EITI Compliant” status, as well as the credibility of the EITI itself. The EITI Board should take urgent action to address this issue.

5.1.1. Insufficient monitoring for compliance with the EITI Standard

EITI monitors countries for their compliance with the basic requirements of membership – previously formulated in the EITI Rules, and now in the EITI Standard – through a process known as “validation”. Under the EITI Rules, validation assessments were previously required to take place every five years. Under the EITI Standard, countries will need to be validated every three years.¹¹⁵

The increased frequency of validation is a positive step towards faster detection of non-compliance. However, the increased frequency of validation needs to be coupled with an improvement in the rigor and depth of these assessments. The current validation process has failed to detect some fundamental requirements of the EITI Rules, such as whether the selection of civil society to the MSG was independent, or whether MSG representatives are adequately liaising with their constituencies, as discussed in Parts 3 and 4 of this Report. In addition, some of the basic requirements regarding internal governance processes, such as making the MSG’s

¹¹⁵ EITI Standard, Requirement 1.6(b).

terms of reference publicly available or agreeing to internal governance procedures, are not being detected or addressed in validation reviews (see Part 1). The result is countries are deemed complaint despite being in violation of the EITI Standard.

While a full assessment and review of validation processes is beyond the scope of this assessment, it appears that some problems lie in a lack of establishing comprehensive frameworks for validators. Currently the validation protocol appears very focused on ensuring validators can detect compliance with technical aspects of EITI reporting, contained in Requirements 2-5 of the EITI Standard. However, there does not appear to be a sufficient methodology or framework to ensure that validation reliably assesses the wider societal issues in EITI contained in Requirements 1 and 6 of the EITI Standard, such as: ensuring there is effective and independent civil society participation in MSG; ensuring there is protection of the enabling environment; or, measuring public awareness and debate of EITI reports. The revision to validation processes being undertaken at the time of writing this report did not appear to take such factors into account and did not directly seek the feedback of experts who would have raised these concerns.

Box 10: Azerbaijan – Insufficient processes in place to assess the enabling environment?

While conducting research in Azerbaijan in May 2014, numerous civil society organizations raised concerns to MSI Integrity about the contraction of the enabling environment and restrictions on the freedom of civil society to operate independently of government: see Requirements 1.3(b)-(f) of the EITI Standard. These concerns range from suspicions about the government directing hotels to deny civil society accommodation to hold EITI-related meetings in their conference facilities,¹¹⁶ to the restrictive laws to sustain non-profit status in Azerbaijan.¹¹⁷ Although CSOs explained that government interference and intimidation had recently escalated, they also clarified that at least some forms of intimidation had existed even since the inception of EITI. These concerns have been raised in Azerbaijan by civil society for some time, with a review mission sent in September 2014 and a prior letter sent by EITI to the government going unanswered.¹¹⁸ The findings of the mission prompted the EITI Board to require early validation in January 2015.¹¹⁹

Azerbaijan, despite joining EITI in 2003, has only had one validation—in 2009—and the issue of civil society independence was barely raised in this report. Indeed, external CSOs outside the MSG were not interviewed for their views on CSO independence or freedoms.¹²⁰ There is no requirement that the new validation would need to seek these views or that experts with an understanding of enabling environment issues would be required to conduct the validation process. Similarly, the mission sent by EITI was composed of secretariat staff and did not require that those with training in human rights issues attend, despite this being the issue under investigation. The risk by not having adequate investigation processes is not only that EITI may fail to accurately understand the ability of CSOs to advocate for EITI, but that poorly conducted investigations could lead to serious human rights repercussions for the CSO interviewees that participate.

Unfortunately, it appears EITI currently does not have the necessary tools to ensure that Requirement 1.3(b) in the EITI Standard, that there is an “enabling environment for company and civil society participation”, is continuously met.

¹¹⁶ Coalition on Increasing Transparency in Extractive Industries of the Republic of Azerbaijan, *Press Release: Inofficial bans for provision of premises for conferences and other events of the Coalition* [sic] (June 20, 2014).

¹¹⁷ For example, Human Rights Watch, *Azerbaijan: Transparency Group Should Suspend Membership* (August 14, 2014).

¹¹⁸ EITI Board, *Mexico Board Minutes* (July 2014), 14.

¹¹⁹ EITI, *Azerbaijan Implementation*, available at <https://eiti.org/Azerbaijan/implementation>.

¹²⁰ Coffey International Development *Validation of the Extractive Industries Transparency Initiative (EITI) in the Republic Of Azerbaijan* (Feb. 2009) at A3-1;

Box 11: Standardizing the basic methodology for conducting validation

Currently there is little guidance given to validators regarding how they should conduct their assessments. While a protocol or terms of reference for validators does not need to be unduly prescriptive, there are basic expectations that should be established. For example, currently there is no requirement for validators to seek the perspectives of stakeholders outside the MSG. This makes it almost impossible to reliably assess compliance with certain EITI Requirements, such as the independence of CSOs in the MSG, or the effectiveness of liaising and outreach, as they inherently require an understanding of external circumstances (see the Azerbaijan case study in Box 10, above).

Requiring interviews of CSOs and communities outside the MSG is just one of a number of methodological requirements that EITI needs to address if its validation process is to be a reliable assessment of compliance with the EITI Standard. A non-exhaustive list of some other issues include:

- Establishing expectations that validators should: conduct field visits to extractive sites to assess the effectiveness of outreach and liaising; set parameters for confidential and secure interviews to ensure that interviewees do not fear reprisal; and, review documentation relating to the formation of the MSG.
- Establishing qualification criteria for validators to ensure they have the expertise to assess technical compliance with EITI reporting requirements as well as societal issues relating to MSG governance, such as political and operational independence.
- Establishing clear and standardized guidance for validators on how to determine compliance with the specific requirements of the EITI Standard. This is particularly important for requirements in the EITI Standard that use subjective or qualitative judgments, such as whether processes are “effective”, “independent”, or “open”.¹²¹

In addition, there should be clarity from the EITI Board regarding how non-conformities are to be addressed, to ensure that they are ultimately remedied. Otherwise, there is a risk that issues that are considered minor, such as those regarding internal governance provisions, may remain unaddressed indefinitely. For example, the EITI Board could define major and minor non-conformities, and explain the expectations for redressing such non-conformities to achieve or maintain compliant status. While it is understood that countries should not be suspended for minor non-compliance, there must be a credible and transparent procedure regarding how it is expected that such non-conformities must be rectified, with clear deadlines and transparent follow-up procedures. For example, minor non-conformities could be outlined in validation reports and remediation could be required within a six-month period.

5.1.2. Developing and publicizing effective compliant mechanisms

While validation enables EITI to assess compliance with the EITI Standard, it only occurs every few years. It is therefore crucial to the integrity of EITI that there are processes in place to detect and address any serious breaches of the EITI Standard that may arise in the periods between validations.

To achieve this, it is essential there are avenues to file complaints regarding alleged nonconformities with the EITI Standard. However, EITI neither requires MSGs to establish such mechanisms domestically,¹²² nor does EITI provide access to a formal grievance mechanism at the global level.

¹²¹ EITI Standard, Requirement 1.3.

¹²² Only 14% of the countries reviewed have any form of internal dispute resolution system within the MSG (see Part 1).

The EITI Board does have a Rapid Response Committee to react with “rapid responses to political developments” in instances when “civil society or other stakeholders in candidate countries are excluded from playing a fully active role in monitoring revenue transparency”.¹²³ Additionally, the EITI International Secretariat explained that it could respond to complaints if they were reported, although this seems to extend beyond its mandate stated in the EITI Articles of Association as: “the day-to-day running of the EITI Association”.¹²⁴ However, neither of these organs can be considered grievance mechanisms as neither body has a publicized procedure for complaints to be filed by either MSG representatives or other interested actors.¹²⁵ Furthermore, very few individuals in the countries visited were aware of the existence of the Rapid Response Committee or understood whether they could raise concerns of substantive non-compliance with EITI organs at the international level. For example, in the five countries visited, only CSO representatives in two countries, Azerbaijan and the DRC, were aware of the Rapid Response Committee. This is because civil society representatives in these countries are also representatives on the EITI Board, which convenes the Rapid Response Committee. MSG members in the other countries visited (Cameroon, Tanzania, and the Philippines) were unfamiliar with the Rapid Response Committee or its powers. Finally, there are provisions in the EITI Standard allowing stakeholders to “petition the EITI Board if they consider that Compliant status should be reviewed”.¹²⁶ While this is a possible avenue for filing grievances, MSG members on the ground were not aware of this right or of the process for filing a complaint. The process requires significant further development and detail in order to meet international good practice expected of multi-stakeholder initiatives, and grievance mechanisms.¹²⁷

By not establishing effective grievance mechanisms, not only is EITI failing to conform to the basic requirements now expected of international multi-stakeholder initiatives, it is also failing to become aware of, let alone address, major grievances that may be occurring within EITI countries.

5.2. Ensuring that the EITI Standard leads to meaningful change

NOTE: The following issues were not addressed directly by this assessment, however stakeholders highlighted them in the majority of the MSGs assessed. They are therefore being recorded as considerations for EITI to address in the future.

5.2.1. Clarifying that MSGs are encouraged to go beyond the EITI Standard

During discussions with MSG representatives, it became clear that for many communities directly affected by extractive activity, and for the wider population of a country, the main concerns regarding transparency of the extractive sector often extended beyond revenue transparency to issues such as the transparency of environmental impacts, or information regarding alleged human rights abuses. MSG representatives therefore often felt that the scope of EITI reports was too narrow relative to the actual concerns expressed by the populations who were affected by extractive activities regarding transparency in the extractive sector. In various countries, from Azerbaijan to the United States and Norway, CSOs reported that they had tried to make EITI more relevant to the national context by encouraging reporting on wider issues, but had been rebuked in the MSG because this was perceived to be going beyond the mandate of EITI and therefore not permissible.

¹²³ EITI, *Minutes of the 4th EITI Board Meeting* (2008), 4.

¹²⁴ *EITI Articles of Association*, Article 16(2).

¹²⁵ In addition, there are no established procedures regarding the admissibility of complaints, how complaints would be investigated, or establishing the possible outcomes of complaints.

¹²⁶ *EITI Standard*, Requirements 1.6(b).

¹²⁷ See, for example, MSI Integrity, *Draft MSI Evaluation Tool*, available at www.msi-integrity.org, Questions 120-151 and, 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].

It should be emphasized that stakeholders in both Northern and Southern countries expressed views that they wanted EITI's reporting scope to extend beyond finance-related issues. Civil society in Southern countries often cited human rights, indigenous rights, and revenue expenditure (i.e., government spending) as issues of major concern in the extractive sector that they were unaware or uncertain EITI could be used to address. Civil society in Northern countries, such as the United Kingdom, the United States, and Norway, observed that there is a large degree of public and CSO-based apathy about EITI given that transparency of payments is often only marginally interesting to the public, whereas if it was possible to address other issues, such as environmental impacts, there may be greater public engagement.¹²⁸

When MSI Integrity published a preliminary progress paper on this research in June 2014 to seek feedback from stakeholders, the EITI International Secretariat clarified that EITI can be used to achieve transparency in these issues.¹²⁹ It was explained that the EITI Rules and EITI Standard should be seen as simply the basic expectations required of MSGs, and that the EITI International Secretariat actually encourages MSGs to extend beyond the requirements.

This news is likely to be very well received by MSG representatives, who are often not aware that expanding beyond the requirements in the EITI Standard is permitted. This should be clearly stated by EITI and complimented with guidance on how MSGs could expand and build off the foundation of basic EITI reporting to enhance extractive industry transparency.

5.2.2. Incentivizing continuous improvement beyond the EITI Standard

MSG representatives in the countries that were deemed EITI Compliant at the time they were visited (Azerbaijan, Cameroon, and Tanzania) expressed that the energy and excitement from governments relating to ensuring transparency in the extractive industry significantly diminished after their country was deemed compliant. Many feel this is because after validation, there is no requirement to progress beyond the basic requirements contained in the EITI Standard and there is also significantly less oversight or encouragement from the international community to ensure improvement.

The concern from stakeholders is that once a country is considered part of the "EITI club", by way of obtaining compliant status, there is little motivation to ensure the quality and depth of transparency efforts. Instead, the emphasis is focused simply on continuing to issue EITI reports in conformity with the validated reporting framework. Consequently, after validation, primary or high-level representatives were less active in MSG meetings, and sometimes attendance levels of representatives across stakeholder groups dropped.

Positively, many stakeholders expressed that the new requirements introduced by the EITI Standard have inspired a resurgence of activity. This raises the possibility that EITI should establish expectations of continuous improvement in order to remain EITI compliant.¹³⁰ This would ensure that MSGs remain focused on improving extractive industry transparency and accountability within their country, and help to prevent lapses in compliance. There are a number of ways this could take place, such as standardized levels of progressive compliance set by EITI (e.g., linking to the "EITI++" model that the World Bank unveiled in 2008¹³¹) or by the MSG proposing clear additional goals that should be met by each subsequent validation period. While any continuous improvement model would need careful consideration and is outside the scope of this assessment, it warrants further exploration by EITI.

¹²⁸ Although the United Kingdom was not included as one of the MSGs assessed, MSI Integrity was invited to observe an MSG subgroup meeting in London on March 6, 2014 and had discussions with MSG members before and after the meeting.

¹²⁹ Eddie Rich (Deputy Head of the EITI International Secretariat), By Phone, July 23, 2014.

¹³⁰ For example, by making it mandatory to meet all or some of the MSG's work plan goals, or establishing a framework of progressive realization of recommendations set by EITI.

¹³¹ World Bank *World Bank Group and Partners Launch EITI++* (Press Release, April 12, 2008, available at: <http://go.worldbank.org/8Z3T3Z3TP0>)

Recommendations

For the EITI Board

1. Revise the validation process to ensure it can reliably detect non-compliance with all aspects of the EITI Standard. This revision should explicitly seek public and expert input, and draw on good practices for monitoring and evaluation. The revision should address, at a minimum:
 - a. Selection of validators. EITI should develop selection criteria to ensure that selected validators have the expertise and competence necessary to assess broader internal governance and societal issues that are central to EITI, such as the enabling environment and independence of civil society (see Requirements 1 and 6 of the EITI Standard). This may require a separate team of validators from those that assess technical compliance with EITI reporting process requirements.
 - b. Developing a clear standardized methodology for validators. The methodology should ensure validation meets certain minimum standards, such as by:
 - i. Requiring validators to engage stakeholders outside the MSG. In particular, external civil society must be interviewed to determine whether civil society representatives were selected independently, and whether they continue to operate independently.
 - ii. Ensuring validators will conduct confidential and secure interviews with contacts, to allow interviewees to give their views without fear of reprisal for participating.
 - iii. Requiring validators to conduct field visits to extractive sites and regions affected by extractive activities to assess: the effectiveness of outreach and liaising efforts of the MSG; the level of public awareness of the EITI implementation; and, the level of public debate about extractive resource governance, including EITI reports or other communications products.
 - iv. Requiring validators to comprehensively review internal governance procedures and documents relating to the formation of the MSG, to ensure they meet all aspects of Requirement 1.
 - v. Including specific criteria to assist validators to measure compliance with requirements that involve subjective or qualitative judgments to determine compliance (e.g., whether a process is “effective”, “independent”, or “open”: see Requirement 1.3).
 - c. Clarify the processes for standardization and transparency of validation reports.
2. Comprehensively outline the processes for finding non-compliance with specific aspects of the EITI Standard. Each process should address issues such as:
 - a. Identifying types of issues that are considered “significant aspects” of non-compliance, which trigger suspension proceedings under Requirement 1.7.
 - b. Outlining how instances of minor non-compliance, such as those relating to minor infringements of internal governance rules, should be rectified. There should be clear expectations that specify: timeframes to redress issues; follow-up procedures to ensure the country has become compliant; and, pre-defined consequences for ongoing instances of minor non-compliance.

3. Develop an independent international-level grievance and dispute resolution mechanism to allow stakeholders in each implementing country to report substantive non-compliance with the EITI Standard, and to resolve internal MSG governance disputes that cannot be resolved by national-level processes. The mechanism should be designed consultatively and draw on existing good practice for grievance mechanisms in multi-stakeholder initiatives, such as being accessible, transparent, effective, and based on principles of fairness. In the interim, EITI International should take steps to ensure all stakeholders are aware of existing mechanisms (e.g., the EITI Board Rapid Response Committee).
4. Clarify that the EITI Standard only establishes minimum requirements for MSGs and that MSGs are encouraged to go beyond these requirements. In particular, it should be clarified to all MSGs that the mandate and scope of EITI MSGs does not have to be limited to the provisions of the EITI Standard. This should be complemented with guidance on how the MSG could build from the foundation of basic EITI reporting to enhance extractive industry transparency in areas beyond finance, such as regarding environment impact management, disclosure of security arrangements at extractive sites (which is often relevant to human rights concerns), or any other issue that the MSG agrees should be disclosed by extractive companies.
5. Consider how to incentivize progressive and continuous advancement of transparency related to extractive industry resource governance beyond the minimum requirements of the EITI Standard. Examples of potential systems include:
 - a. Establishing a tiered series of compliance targets that implementing countries must meet in each subsequent validation process after achieving initial compliance; or,
 - b. Setting clear additional goals for EITI implementing countries to achieve, with some form of reward for achieving each standard – such as a compliance-level label or title indicating that the country has implemented enhanced levels of transparency requirements.

The EITI Board may wish to consider developing a sub-committee mandated to explore such possibilities.

Acknowledgments



This report was researched, authored and edited by MSI Integrity in 2014 independently of the stakeholders and participants in EITI (see Preface and the Methodology). Amelia Evans and Stephen Winstanley co-authored the report. Frances Dales, Amelia Evans and Stephen Winstanley conducted extensive research, interviews, and consultations throughout the project. An earlier progress paper was authored by Amelia Evans and Frances Dales, and was circulated for feedback at the 27th EITI Board Meeting in Mexico in July 2014. Special thanks are also owed to Victoria Ohaeri and Cassandra Dumasias, who assisted in editing the report. The World Bank Multi-Donor Trust Fund provided reimbursement for MSI Integrity's direct costs for travel to conduct research and attend meetings; all other costs were borne by MSI Integrity.

MSI Integrity is grateful for the participation of over 80 individuals in research interviews throughout 2014. We would like to thank all those who agreed to talk with us, especially those who met in-person with Amelia Evans in Azerbaijan, Cameroon, Congo-Brazzaville, the Democratic Republic of the Congo, the Philippines, and Tanzania. Due to concerns expressed by many participants about managing the sensitive nature of multi-stakeholder engagement and, in some cases, fear about potential personal repercussions of participating with this report, MSI Integrity has elected not to identify participants by name. However, special thanks are owed to:

- National EITI Coordinators and/or Secretariat Staff in: Albania, Azerbaijan, Cameroon, Colombia, the Democratic Republic of the Congo, Nigeria, Norway, Papua New Guinea, the Philippines, Senegal, the Solomon Islands, Tanzania, the United States of America, and Yemen.
- Civil society stakeholders, including individuals and many civil organizations that are not in the MSG or involved in EITI, in: Albania, Azerbaijan, Cameroon, Colombia, the Democratic Republic of the Congo, Guatemala, Nigeria, Norway, Papua New Guinea, the Philippines, Senegal, the Solomon Islands, Tanzania, the United States of America, and Yemen.
- Extractive industry stakeholders in: Albania, Azerbaijan, Cameroon, the Democratic Republic of the Congo, Nigeria, Norway, Tanzania, and the United States of America.
- Government stakeholders in: Albania, Azerbaijan, Cameroon, the Democratic Republic of the Congo, Nigeria, Norway, Papua New Guinea, and the Solomon Islands.
- The communities and individuals in Compostela Valley, Philippines, and Central and South Cameroon. We are especially grateful to Michel Bissou (RELUFU) and Rande Bayate (Bantay Kita) for their assistance and advice in organizing visits to these regions.

Many EITI participants and stakeholders at the international level were consulted throughout the production of this report. MSI Integrity owes special thanks to:

- The EITI International Secretariat, especially Jonas Moberg, Eddie Rich, Sam Bartlett, and Dyveke Rogan.
- PWYP International, especially Asmara Klein, Alice Powell, Stephanie Rochford, and Marinke van Riet.
- The EITI International Board Members (2014) who provided written and verbal comments on the progress paper circulated in June and during the 26th and 27th Board Meetings.
- The National Coordinators from the EITI countries that actively corresponded and engaged with the assessment (see pages 1–4), including by sending documents and answering questions by email and telephone between February – September 2014.

Annex I Protocol for Developing Multi-Stakeholder Group Terms of Reference and Internal Governance Rules and Procedures

Effective implementation and oversight of the EITI process requires a robust multi-stakeholder group (MSG) that is guided by clear, comprehensive governance rules and procedures. The EITI Standard requires that the MSG must agree to a clear, public Terms of Reference (ToR) for its work.¹ This Protocol offers guidance on how to develop the terms of reference, and recommends provisions that should be included in addition to the EITI Standard requirements to facilitate strong MSG operations. These are the key principles:

- I. ToRs for MSG governance should be developed and agreed using a participatory process that includes all MSG members, and should be subject to regular review.
- II. ToRs should address a comprehensive set of internal policies, procedures, and expectations for MSG members. At a minimum, each MSG should consider including provisions in the ToR to:
 1. Define the mandate and independence of the MSG;
 2. Clarify the selection process, roles, and responsibilities for MSG members;
 3. Create a dispute resolution mechanism to address grievances related to MSG governance rules, or breaches of member responsibilities, and public complaints regarding substantive EITI compliance and fulfillment of the MSG mandate;
 4. Establish the presumption of transparency of MSG processes, records, and decisions; and,
 5. Specify the mandate and authority of any national secretariat or other supportive institutions established by the MSG.

For newly-established MSGs, the good practices presented here should be incorporated as part of the MSG formation process, and the internal governance issues should be agreed upon by all stakeholders during the EITI candidature process and included as written terms in the ToR or other MSG governance documentation. **For existing MSGs**, it is recommended that a review of internal governance processes and documented rules should be conducted as soon as possible, and revisions should incorporate the good practices in this Protocol.

Please note that this Protocol should be read in conjunction with the EITI Standard and *EITI Guidance Note 14* (especially step 3). It is meant to supplement the existing guidance and requirements contained in those documents, and is not an exhaustive list of all the issues or concerns that should be addressed in the development of the MSG.

Section I: Process for developing the terms of reference

The initial formation of the MSG and the subsequent development of the ToR is an early opportunity to build legitimacy and credibility regarding EITI. It is a key moment for establishing trust and goodwill amongst the MSG representatives, and the MSG should seek to foster confidence by developing the ToR in a transparent and participatory process.

¹ *EITI Standard*, Requirement 1.3(g).

1. Develop the ToR in a participatory process

1.1. Ensure the process is open to all MSG members and involves each stakeholder group

The EITI Standard requires the MSG to agree to ToR.² To discharge this responsibility, the ToR development process should be open for all current or incumbent MSG members to deliberate over internal rules and procedures that will govern the operation of the MSG. While some representatives may ultimately elect not to participate in the process or to delegate a member within their stakeholder group to be responsible, it is critical that at least one person from each stakeholder group is involved.

1.2. Involve independently selected MSG representatives

The legitimacy of MSG representatives involved in developing the ToR critically depends upon whether they were independently appointed by the stakeholder group they represent. Civil society should also follow an inclusive selection process.³ If representatives are not perceived to be independent and credible, then the legitimacy of their decisions may be contested. This may cause controversy about the MSG immediately, or risk disrupting MSG proceedings when a dispute arises related to MSG governance or decision-making. More details regarding measures for guaranteeing the independence of MSG representative appointments are listed in Section II(1) of this Protocol.

1.3. Ensure all participants in deliberations are informed about the relevant issues

Prior to deliberating the provisions of the ToR, it is imperative that all members know what governance provisions the EITI Standard requires, and understand basic good practice for multi-stakeholder governance. To achieve this, wherever possible MSGs should hold an informational training session to familiarize each stakeholder group with the EITI Standard, and also with the procedures and issues relevant to good multi-stakeholder governance. This Protocol and *EITI Guidance Note 14* should, at a minimum, be disseminated to educate stakeholders regarding basic components of MSG governance. Ideally, trainings would be facilitated by, or incorporate input from, independent experts.

1.4. Offer opportunities for external input into the process

The ToR deliberation process should allow opportunities to liaise with stakeholders outside of the MSG to ensure that rules and procedures: (i) are established in the ToR transparently and legitimately in concert with those external stakeholders; and, (ii) address those stakeholders' concerns regarding MSG governance. Basic principles for liaising are discussed further below, and also in the Civil Society Guidance Note (released by MSI Integrity in 2015).

2. Ensure the ToR is agreed with the consensus of all MSG members

Even if individual delegates or sub-committees of the MSG draft the ToR, the final document must be confirmed by consensus agreement of all MSG members. This is not only a requirement in EITI⁴, it is critical to building the trust and confidence between members that will be necessary for negotiating the substantive requirements of EITI reporting arrangements. It also ensures that all stakeholder groups perceive the governance processes of the MSG to be credible, fair, and predictable.

² *EITI Standard*, Requirement 1.3(g) (which states, "[t]he multi-stakeholder group is required to agree clear public Terms of Reference (ToRs) for its work").

³ For more information about good practice for inclusive civil society selection processes, please refer to Part 3 of *MSI Integrity's Assessment of the Governance of Multi-Stakeholder Groups in the EITI*, and the Civil Society Guidance Note in Annex II of the Report.

⁴ *EITI Standard*, Requirement 1.3(g) (which states, "[t]he multi-stakeholder group is required to **agree** clear public Terms of Reference (ToRs) for its work" [emphasis added]).

3. Review at regular intervals to ensure governance policies and procedures are improved based on lessons and experiences of MSG members over time

The ToR and other documented MSG governance rules and procedures should be reviewed and updated at regular intervals to ensure that the MSG can improve its operational effectiveness, and address any deficiencies that may have developed or become apparent in practice. To plan for reviews to occur regularly, it is recommended that an explicit provision is included in the ToR that requires reviews within specified periods of time, or as deemed necessary by MSG members.

For example: *"The Terms of Reference will be reviewed and renewed by the MSG every three years from the date of signing, unless it is agreed by consensus that an earlier review is required."*

This allows the MSG to reflect on their experience, and update the ToR based on good practices and lessons learned at both the national and international level.

Section II: Issues to be addressed in the terms of reference

MSGs that establish clear, written governance processes in ToRs are able to function predictably according to defined processes that are legitimate to the stakeholders involved. When MSGs fail to establish and document critical rules, then governance procedures are developed on an ad hoc basis, which distracts MSGs from their substantive work, and is often a slow and difficult process because the need for rules often arises at a time of disagreement or conflict (see Part 1 of the Report).

The EITI Standard requires that ToRs should include certain minimum provisions,⁵ which should be adapted to the context and needs of EITI within the country. However, the experience of many MSGs has shown that a more comprehensive governance structure is necessary to ensure the MSG operates effectively. Each country is free to develop governance processes that best suit its context, and some of the core issues that should be considered are discussed below.

1. Define the mandate and independence of the MSG

The ToR must establish the roles, responsibilities, and rights of the MSG.⁶ In defining the mandate and independence of the group, it is important that ToRs:

- State explicitly that **the MSG is not limited in its mandate by the requirements in the EITI Standard**. The EITI Requirements are the minimum responsibilities that must be implemented in order to meet the government's commitment to implement the EITI in the country. It should be clear in the ToR that it is permissible and encouraged for the MSG to innovate and expand beyond the requirements of the EITI Standard. For example, MSGs could choose to use the EITI framework to include reporting on the environmental or human rights impacts of extractive industries, or to expand beyond extractive industries to include other sectors.
- Consider the **degree of independence for the MSG and EITI**. Ideally, this involves structuring the **institutional format of the MSG to ensure it is sufficiently distinct from government, and is accountable to all stakeholders**, or establishing an independent legal basis for the EITI and MSG. The MSG should consider including provisions in the ToR that allow the EITI institutions to control their financial affairs, and manage their own bank accounts. The MSG should also consider whether it is desirable and feasible to locate the MSG or any supporting institutions (e.g., the national secretariat, discussed further in section II(5) below) in offices that are physically separate from government.

⁵ EITI Standard, Requirement 1.3(g).

⁶ EITI Standard, Requirement 1.3(g)(i)-(iii).

2. Clarify the selection process, roles, and responsibilities for MSG members

The ToR must establish the process for each stakeholder group to nominate and change MSG representatives,⁷ and should clarify the roles, responsibilities, and expectations of MSG members through internal rules and governance procedures. To ensure that the selection of MSG members is transparent and credible, and that members are fully aware of the expectations of their role, the ToR should explicitly:

2.1. Guarantee the right of stakeholder groups to appoint their own representatives

The right of each stakeholder group to appoint its own representatives independently and free from coercion should be explicitly guaranteed in writing in the ToR.⁸ This is particularly important for civil society representatives, who must be credible and accountable to the constituents they are mandated to represent.

For example, the Terms of Reference for the MSG in the Philippines states:

“PH-EITI MSG will be composed of the following: ...

- *Five (5) Business Group Representatives*
- *To be selected through a process initiated by business with the support of the PH-EITI Secretariat*
- *Five (5) Civil Society Organizations*
- *To be selected through a process initiated by CSOs with the support of the PH-EITI Secretariat*

... Each organization, upon the decision of its members and through its own independent process, can replace their representatives in the MSG anytime following their own governance mechanisms.”⁹

To further safeguard the independence of stakeholder group representatives, ToRs should also require that civil society organizations (CSOs) and industry representatives must be **appointed without interference or coercion from government**.¹⁰ Provisions should explicitly state that:

- Government has no power to directly select or veto selections of representatives for other stakeholder groups; and,
- Government does not have the authority to pre-define categories or types of actors that other stakeholder groups must appoint.

2.2. Outline the selection process for appointing and changing MSG members

The internal rules and procedures addressed in the ToR should include the **agreed overall procedure for nominating and changing MSG representatives**¹¹ and require that **individual stakeholder groups set and publish their own independent procedures** (e.g., by publishing a code of conduct or code of ethics that outlines the representative selection or replacement process). To enhance transparency and credibility of MSG representatives, the ToR should outline more than the number of positions allocated for representatives of each stakeholder group. It should **explain key rules and criteria for stakeholder groups to follow in selecting representatives**. This may include provisions that:

- Require **each stakeholder group to publish their nomination procedures** for appointing representatives to the MSG.

⁷ EITI Standard, Requirement 1.3(f) and 1.3(g).

⁸ EITI Standard, Requirement 1.3(g)(ii).

⁹ Philippine Extractive Industries Transparency Initiative (PH-EITI), *Multi-Stakeholder Group (PH-EITI MSG) Amended Terms of Reference*, Ch. IV (August 2, 2013).

¹⁰ EITI Standard, Requirement 1.3(f)(ii).

¹¹ EITI Standard, Requirement 1.3(g)(vi).

- Require each stakeholder group to appoint **alternate representatives** for each MSG member. In particular, high-ranking and senior government officials should be required to appoint alternates that can commit to regularly participate in MSG meetings, such as permanent civil servants.
- Require **gender diversity** to be considered in appointments. Each stakeholder group should be required to strive to ensure that representatives include a balance of genders. In situations where it is difficult to achieve a gender balance immediately, the ToR should include provisions to encourage diversity, such as:
 - Requiring stakeholder groups that do not appoint sufficiently gender diverse representatives (e.g., less than 40% female) to issue a **public explanation** of the reasons this could not be accomplished, and the steps being taken to improve gender diversity in future; and,
 - Encouraging or requiring the **selection of alternates from the under-represented gender** in order to enhance the capacity and technical expertise of future candidates for the MSG through participation in the MSG in this secondary capacity; or,
 - Conducting a gender-sensitivity assessment or trainings in the MSG.
- Require consideration of **geographic diversity** in appointments. Particularly for appointments by the government and civil society constituencies, stakeholders should be encouraged to include:
 - Representatives from **areas directly impacted by extractive sector activities**;
 - Representatives from **entities that are focused on local or regional concerns** (e.g., local community organizations or municipal or regional governments), as appropriate.
- Establish the **duration of MSG representatives' mandate** including term limits specifying the maximum number of times each representative can be re-appointed to the MSG, and whether representatives may serve consecutive terms.¹²
- Establish **staggered appointment mandate durations** for the representatives in each stakeholder group, so that not all members are replaced at any one time or year. This will encourage continuity and institutional memory within stakeholder groups. This also allows opportunities for training and capacity building for new members to benefit from the expertise of retiring representatives.

2.3. State key expectations and rights for the participation of MSG members

The rights and expectations for the conduct and duties of individual members' to participate actively in the MSG should be outlined in the ToR, in addition to the basic roles and responsibilities identified in the EITI Standard.¹³ To establish measures of accountability and provide guidance to enhance members' capabilities to fulfill their duties,¹⁴ ToRs should:

- Outline basic expectations or responsibilities for members to **liaise with their constituencies** and other external stakeholders, and require each stakeholder group to develop comprehensive processes for liaising and outreach. MSGs should emphasize the importance of MSG members liaising with communities and organizations in areas where there is extractive industry activity. Basic expectations in the ToR could explain:
 - **How members are expected to liaise** with their constituency groups (e.g., by email, letter, newspaper announcements, public meetings, or other);
 - **When or how frequently members are expected to liaise** with their constituency groups to communicate information, and seek feedback or input (e.g., before and/or after MSG meetings, at monthly or quarterly intervals, or other); and,
 - **How members are expected to report feedback received** through their outreach and liaising efforts back to the MSG at large.

¹² EITI Standard, Requirement 1.3(g)(vi); EITI Guidance note 14: on the establishment and governance of multi-stakeholder groups, Annex 1: Model Terms of Reference for an EITI Multi-Stakeholder Group, § 3.1.

¹³ EITI Standard, Requirement 1.3(g).

¹⁴ EITI Standard, Requirement 1.3(g)(i).

- Provide procedures for **assessing, disclosing, and resolving potential and real conflicts of interest** that could arise for MSG representatives in the course of their duties. Conflict of interest provisions should include, at a minimum:
 - Disclosure requirements for current and past MSG members (within a specified period) to relate any financial or in-kind **payments they received from the MSG, or other MSG members**; and,
 - Rules governing financial or in-kind **transactions between MSG representatives** of different stakeholder groups. In particular, provisions should specify any prohibition or conditions of transactions between civil society and government or extractive industry companies during – or within a certain period before and after – MSG members’ mandates.
- Specify explicitly that each stakeholder has the **right to table issues for discussion**.¹⁵ The ToR provisions that clarify internal rules and procedures for MSG deliberations should also explain:
 - Procedures for members to table topics for the discussion agenda; and,
 - Procedures for demanding a decision or vote on matters under consideration, including the quorum of members from each stakeholder group required for a decision to be valid.
- Require MSG members to designate a national contact person for the EITI International Secretariat, and offer members the chance to opt-in to receive these communications. The contact information for each member that wishes to be included in correspondence should be sent to the EITI International Secretariat.
- Establish processes to **hold members accountable for adhering to the expectations** stated in the ToR. This may include procedures for reviewing and sanctioning members for inadequate performance of their duties, including the authority to revoke membership and request a replacement representative, either by the voluntary decision of the stakeholder group or by consensus agreement of the whole MSG.
- Establish the **meeting attendance expectations for MSG representatives**. This may be expressed as a number or percentage of meetings per year, or could be expressed as a general expectation of attendance that can trigger a review of the representatives’ mandate if valid concerns are raised. Provisions should clarify:
 - Procedures for requesting permission to be absent;
 - Permitted bases for absence from MSG meetings;
 - Whether the presence of designated alternates excuses absences of official members; and,
 - Any consequences for frequent unexcused absenteeism, and the process for applying those sanctions.

¹⁵ *EITI Standard*, Requirement 1.3(g)(vi).

3. Create a dispute resolution mechanism to address grievances related to MSG governance rules, breaches of member responsibilities, and public complaints regarding substantive EITI compliance and fulfillment of the MSG mandate

Effective implementation of the EITI depends on (i) the MSG complying with EITI requirements to fulfill its mandate, and (ii) MSG members acting in accordance with MSG governance rules and procedures. Dispute and grievance resolution mechanisms ensure that where either the MSG or individual members are breaching their obligations, they can be held accountable. The MSG should therefore establish mechanisms that are publicly accessible and designed to transparently and equitably address:

- Internal disputes reported by MSG representatives or their stakeholder group constituents related to breaches of MSG governance rules and procedures, allegations of misconduct by MSG members, or other internal disputes based on the MSG terms of reference, code of conduct, or other governance documents; and,
- Grievances reported by the public, MSG representatives or stakeholder group constituents, related to EITI reports (e.g., the reporting process, content, or insufficient dissemination of reports), or substantive non-compliance with any EITI Standard requirements or other obligations agreed by the MSG.

These mechanisms also protect the internal trust of the MSG by ensuring that disputes are resolved through a predictable and procedurally fair process agreed by all stakeholders before disputes arise. They preserve the public legitimacy of the MSG by offering an accessible avenue for concerned citizens to engage the decision-making body responsible for implementing the EITI and seek remedies for substantive concerns or misconduct related to aspects of EITI implementation.

The MSG should create the basic governance rules and procedures for these dispute resolution mechanisms by including provisions that:

3.1. Detail the rules and procedures that govern the dispute resolution process

The ToR should provide detailed provisions to govern the rules and procedures for dispute resolutions processes to ensure they are predictable, fair, and legitimate. More guidance for good practices for internal dispute resolution processes in the multi-stakeholder context are available in the *MSI Evaluation Tools*, available on the MSI Integrity website.¹⁶ They include considerations such as:

- Eligibility qualifications for who can file or report grievances, and on what grounds complaints may be reported;
- Accessible procedures for reporting grievances or complaints;
- Eligibility qualifications for evaluators of complaints, such as procedures for appointing adjudicators or tribunals that include conflict of interest provisions;
- Transparency rules regarding complaints, decisions, and the reasoning for outcomes. MSGs should consider how and when complaints and decisions should be published, taking into account the legitimacy and predictability that is gained from transparent reporting of dispute resolution outcomes and reasoning; and,
- Time requirements for each stage in the process, including a maximum period before decisions must be delivered once a complaint is resolved (e.g., “*Complaints will be resolved within three months of being filed*”).

3.2. Clarify the procedure for referring unresolved disputes to EITI International

The ToR should also clarify the available processes for elevating or referring disputes to the EITI Board or International Secretariat for resolution if the issue is not satisfactorily resolved at the national level.

¹⁶ <http://www.msi-integrity.org>.

4. Establish the presumption of transparency for MSG processes, records, and decisions

Transparency enhances the legitimacy of MSG decisions and provides the information necessary for non-member stakeholders to assess whether outcomes were the result of a fair, inclusive process that considered and incorporated their views and concerns. The ToR should establish a presumption of transparency for MSG processes, records, and decisions by:

- Requiring that **current member lists are publicly available** on the national EITI website, and include: member names, organizational affiliation, the stakeholder group they represent, and some method for contacting members. Contact details may be kept confidential for privacy reasons, but some information should be published that enables communication with MSG members, even through a generic contact point. Lists of members or staff of MSG working groups, the national secretariat, or other bodies that support the EITI should also be available.
- Establishing that **MSG meetings are open to the public by default**, at least upon request or invitation according to a public procedure accessible to any individual or organization. Where requests to observe meetings are denied, the ToR should require that responses provide the policy reasons for prohibiting attendance.
- Stating that **MSG discussions and decisions are presumed to be transparent**. This includes that meeting minutes should be available to the public promptly after being finalized. **Meeting minutes should include**, at a minimum:
 - An attendance list of meeting participants and any absent MSG members;
 - A copy of the agenda of issues to be discussed; and,
 - Outcomes for all issues decided at the meeting and, where possible, reasons for the decisions. This includes instances where consensus could not be reached or votes did not pass, and identification of members that abstained from, or disagreed with, the decision.
- Disclosing **policies for reimbursements or per diem allowances** offered to MSG members for expenses directly incurred to attend meetings. The ToR should include:
 - The amount of money allowed or offered for reimbursement or per diem allowances, and any scales or formulas applied to determine amounts; and,
 - Procedures for claiming allowances or reimbursements, including any documentation that members are required to provide.
- Requiring that **annual budgets and financial accounts of national secretariats and the MSG are publicly available**. These should be posted on the EITI website along with other public information deriving from the MSG and secretariat. Accounts should itemize:
 - Any payments to MSG members, including reimbursements or per diem allowances; and,
 - Sources of revenue, income, or funding for the MSG and secretariat, including in-kind or non-financial support provided by MSG stakeholders (e.g., office space provided by government, or staff resources provided by government, companies, or civil society groups).
- Establishing if there are any **exceptions to the presumption of transparency**. This should include an explanation of legitimate policy reasons or circumstances that allow confidentiality for a discussion, decision, meeting, or record. Procedures should also be outlined for assessing and resolving requests for confidentiality that do not fit the designated policy reasons.

5. Specify the mandate and authority of any national secretariat, or other supportive institutions established by the MSG

The majority of MSGs have established national secretariats to assist and support the MSG to implement the EITI process. Where a secretariat is created, the roles and responsibilities of the secretariat and its relationship to the MSG should be clearly expressed in writing. To accomplish this, the MSG should consider including provisions in the ToR that:

- Define the relationship between the secretariat and the MSG, and specify the secretariat is accountable to the MSG and not to the government or another institution or stakeholder group.
- Clarify the roles and responsibilities of the secretariat, including the procedure for the MSG to agree to delegate tasks and functions to the secretariat.
- Explain the process for determining and financing the operational budget and staff resources for the secretariat, and require the secretariat to transparently disclose financial accounts and annual reports.
- Specify the level of operational independence of the secretariat from the government. This includes considering whether it is appropriate or necessary¹⁷ for the secretariat to be located somewhere physically distinct from government offices, or set up as an independent legal entity such as an incorporated non-profit organization.

¹⁷ In the context of some countries it may be more desirable or necessary for the MSG to arrange the secretariat as physically and legally distinct from government as possible, whereas in other countries it may not be feasible or legally possible. In all countries, the MSG must consider the benefits for legitimacy and credibility that result from clear operational independence defined in the governance policies and procedures in the ToR.

Annex II Guidance note: Good practices for civil society participation in EITI

Who should read this guidance note?

In countries where the EITI MSG is already established, we recommend that this guidance note should be distributed and read by at least:

- All CSOs that have taken on a leadership role to initiate or implement EITI domestically;
- All CSOs that have been selected to the MSG; and,
- All MSG members.

In countries where EITI is new and the MSG is not yet formed, we recommend that this is disseminated to interested governments and any civil society organizations that are identified as active in the EITI process. Given the particular role PWYP has played in EITI in many countries, we also recommend that it is disseminated to all PWYP networks.

This guidance note outlines a selection of good practices for broad and effective participation of civil society and their constituents in EITI. Active, inclusive, and robust civil society participation is critical to the success of EITI, and enables the communities and people most affected by extractive industry activity to have a voice in the process. While the varying contexts and resources of civil society from country-to-country means there is no one-size-fits-all approach to effective civil society engagement, this guidance note recommends that civil society in every EITI country should:

- Identify the individuals, communities, and civil society organizations who may wish to be informed of EITI or participate in the process;
- Ensure MSG representatives communicate with these constituents to seek input and report feedback regularly about the MSG and EITI processes, and to develop a vision for how EITI can advance the interests of the public and communities affected by extractive industry activity;
- Establish transparent nomination and selection processes designed to select effective, legitimate, and independent representatives to the MSG; and,
- Develop a CSO code of conduct.

These practices should enhance civil society's effectiveness and ability to influence the MSG process, while demonstrating its accountability to its wider constituency.

Please note this is not a comprehensive listing of all good practices for civil society, nor is it a step-by-step guide for CSOs in EITI. The guidance note instead focuses on assisting civil society to overcome some of the major governance challenges of participating in EITI, as identified by civil society and MSGs as part of MSI Integrity's **Protecting the Cornerstone: Assessing the Governance of EITI Multi-Stakeholder Groups** in 2015.

Section I: Identifying and connecting civil society and its constituency

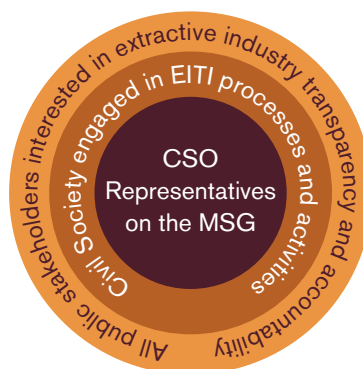
Advantages of building a wide constituency and stakeholder group

For civil society participation in the EITI process to be effective and credible, it should be inclusive of the diverse range of stakeholders interested in extractive industry transparency and accountability. In many countries, civil society involvement in EITI has been confined to just a handful of organizations, often centering around those organizations and individuals initially selected to the MSG. However, by harnessing the engagement of all interested or affected stakeholders, civil society can use the government's commitment to EITI as a mechanism to broaden national or local debates and awareness on extractive industry transparency. These activities are also then protected by the obligation to ensure an enabling environment and freedom of expression in the EITI Standard, Requirement 1.3(b)-(e).

The wider pool of stakeholders can also strengthen the choice and capacity of civil society representatives on the MSG. This helps to ensure that the CSOs on the MSG are both representative of, and accountable to, civil society's wider constituency.

Not all stakeholders interested in or affected by EITI will want the same level of participation in EITI. However, CSO representatives in the MSG should ensure that they offer opportunities for their constituents to fully understand the EITI process and provide input. There are at least three levels of potential involvement in EITI for civil society and the general population:

1. Those interested in major outcomes of EITI, and/or to provide input into the general development of EITI;
2. Those interested in regular or more detailed engagement regarding EITI and the MSG processes;
3. Those selected to represent civil society in the MSG.



An effort to identify as many interested stakeholders as possible, and to provide all potential stakeholders with information about EITI, should be undertaken at the earliest stage of EITI implementation. This increases awareness about the EITI process and opportunities for involvement. In countries where the MSG has not yet been established, stakeholders should be informed and made aware of EITI before CSO representatives have been selected to the MSG (for one example, see the Philippines case study in Box III).

Identifying the stakeholders that fit into any of the three categories listed above, and establishing processes to communicate with them, will make it easier to discharge the obligation of the MSG to liaise with their constituency groups and to undertake effective outreach activities with civil society groups to inform “stakeholders of the government’s commitment to implement the EITI and the central role of companies and civil society” (EITI Standard, Requirement 1.3(g)(i)-(ii)).

Box I: Spotlight on Azerbaijan – a large and regulated civil society network

In Azerbaijan there are three levels of formalized civil society involvement in EITI, which are confined exclusively to NGOs. This approach is just one of many possibilities for establishing a large network of active stakeholders and may not be suitable for other countries, but may offer helpful ideas of differing styles of involvement in EITI. It involves:

1. The Coalition for Improving Transparency in Extractive Industries (the “Coalition”), which has approximately 120-160 members and meets at least once a year. It has clear transparency goals and a set of regulations regarding its broad purpose and membership processes. It is restricted to NGOs but has no other major membership criteria.

2. The Coalition Council, which is an 11-person group of Coalition members elected by the Coalition during its annual general assembly meeting to guide the Coalition’s activities. The Council holds meetings every two weeks, which are documented and open to any member of the Coalition. Council members cannot undertake work or projects funded by the government or extractive industry companies in the MSG. Each Council member has a term of two years and has strict attendance requirements for Council meetings. The Council also appoints a monitoring group that essentially acts as an oversight body to monitor civil society. Its mandate includes adjudicating on alleged violations of Coalition regulations.

3. The CSO MSG members, who are selected by the Coalition Council. This formalized approach was adopted in Azerbaijan for a number of contextual reasons, particularly regarding concerns about government infiltration or the possibility of rival civil society coalitions being established. However, one weakness is that the Coalition Council does not require elected members to demonstrate their background in extractive industry activity or natural resource governance and therefore is not always well versed in relevant issues. In addition, there are concerns that the Council has not actively disseminated information back to the Coalition aside from during general assembly meetings, and that it is very focused on the capital city and little regional outreach has occurred.

1. Identifying all stakeholders potentially interested in, or affected by, EITI activities

To ensure key individuals are aware of EITI and of the opportunity to participate in the EITI process, CSO MSG representatives and/or civil society involved in leading implementation efforts should try to identify all stakeholders that: (i) are interested in the EITI process; or, (ii) may become interested after they learn about the ways that EITI could potentially impact and influence their own work. The process for identifying and connecting with these stakeholders will be highly context-specific in each country. As much as possible it should be driven by civil society and the communities most concerned or affected by the need for extractive industry transparency and accountability, however it may be desirable in some contexts to coordinate with government to undertake these activities.

1.1. Who might be interested or affected by EITI?

At the very least, civil society should try to identify all:

- **Stakeholders with expertise related to natural resource governance and/or public accountability and transparency:** The issues raised by EITI implicate a wide-range of technical knowledge, and civil society will benefit from including stakeholders willing to share such expertise or who can utilize EITI reports in their work. Examples of the types of actors to identify include research institutions or NGOs with expertise in finance, economics, accounting, and/or law (especially contract and public law focuses).

- **Stakeholders with expertise related to wider extractive industry issues:** EITI can be used to enhance transparency on non-monetary issues relevant to the extractive industry, such as requiring disclosure of extractive companies' environmental or human rights impacts, provided the MSG agrees to include such issues. Civil society should therefore include actors with expertise regarding broader extractive industry issues that are important within the country. This may include experts on human rights, health, environment, geology, gender, or labor rights.
- **Stakeholders affected by extractive activities:** A comprehensive stakeholder mapping process includes outreach to and involvement of communities, community-based organizations, and other civil society directly affected by extractive industry activity.
- **Stakeholders capable of disseminating knowledge and conducting widespread outreach:** For transparency to lead to accountability or other changes, the information must first be disseminated and understood. To assist in this process, it may be helpful to include actors with the capacity to inform the wider population about EITI, its results, and opportunities for input, such as the media and faith-based organizations.

To snowball the outreach efforts, each identified stakeholder could be encouraged to connect their networks or constituents to the outreach process. For example, requesting that members of the PWYP network conduct outreach within their network, and that they ask each member of that network to conduct outreach within their own networks; suggesting to faith-based organizations that they request active dissemination within the communities they operate in; or, asking research institutions to share information within their academic communities.

1.2. Where are all stakeholders located?

While many CSOs operate in major metropolitan areas, stakeholders affected by extractive industry activity are often based in local areas. The stakeholder identification process should highlight the geographic areas of extractive activity in the country, and ensure that special care is taken to identify any of the potential stakeholders listed above that operate in these regions.

1.3. What sort of involvement might each group want in EITI?

The stakeholders themselves should define their desired level of involvement in EITI. Those interested in regular engagement may wish to become part of a network of more active civil society (discussed below), whereas others may only want more limited involvement.

However, stakeholders should not be excluded from the EITI process simply because they do not have sufficient resources, interest, or skills to join the MSG or to regularly participate in EITI processes. Rather, civil society representatives on the MSG should try to facilitate their involvement as much as possible, and may request government or MSG support in this process. Examples of the ways wider constituents may wish to be involved in EITI include:

- Offering specific expertise and support to the MSG representatives or wider constituency on an as-needed basis;
- Providing input and feedback on the EITI process, and helping to develop a long-term vision for EITI. For example, indicating how reporting frameworks could be designed to best suit their needs and interests, such as whether transparent reporting on issues such as environmental or human rights impacts should be a goal for EITI;
- Acting as coordinators or focal points for local-level public outreach, dissemination of EITI reports, and information-sharing;
- Learning from observing the EITI process to inform their own work and/or advocacy; or,
- Widening the space for civic engagement and attention regarding extractive industry transparency and accountability.

Civil society representatives on the MSG should liaise with this broad group, or demand the government or MSG conduct or support outreach activities, to ensure they remain informed about the EITI process and are able to meaningfully contribute.

2. Identifying civil society interested in actively participating in the EITI process

In many countries there is a smaller subset of stakeholders who want to actively or regularly engage with the MSG CSO representatives, or the EITI process. In many instances, this is mostly comprised of the national PWYP coalition, but can—and should—also include any other interested civil society constituents. This group can play a key role in advancing EITI.

Some examples of how these constituents can be involved in EITI might include:

- Providing regular input, critiques, and feedback on the key issues before the MSG and recommending positions or decisions the CSO representatives should take in the MSG;
- Participating in the selection of CSO MSG representatives;
- Reviewing the effectiveness of MSG representatives and ensuring their accountability to their constituency;
- Liaising with an array of constituents or networks to obtain feedback on specific issues of importance to those groups; and/or,
- Supporting the work of MSG representatives.

CSOs should consider whether it is desirable to formalize the involvement of this group by developing a code of conduct or regulations for the group itself (distinct from the code of conduct for CSO MSG representatives), and/or by establishing regular meetings of this group. Examples of issues that could be considered when formalizing the network or participation process include:

- Whether, and how, it is required that stakeholders demonstrate that they are independent of government and extractive companies. Additional membership criteria may be permissible, but should not act as a barrier to participation in the wider civil society constituency;
- How to define the mandate and decision-making procedures for the group;
- The expected level of participation from members, and/or outreach obligations to liaise within their own constituents; and,
- Other issues more broadly addressed in the Code of Conduct in **Section III**.

In some countries, it will not be necessary or desirable to have a highly formalized network or process, as it could act as a barrier to participation. In other contexts, it may be very important to set clear expectations and parameters for participation in this group, particularly if there is suspicion of government influence or infiltration within civil society. In these instances, each group may need to be vetted to ensure it meets the definition of civil society (see **Section II**) if they are going to participate in the selection of CSO representatives, contribute to decision-making, or be privy to confidential or strategic discussions. Regardless of the approach taken, it is critical that affected community members or community-based organizations are able to participate in this group even if they are not formally incorporated as non-profit entities. The eligibility criteria for this group should therefore not be as restrictive as the selection of CSO MSG representatives.

3. The CSO MSG Representatives

The civil society constituency must strive to select independent and effective CSO representatives for the MSG that are capable of advancing civil society's goals in EITI (see **Section II**). The representatives should work together cohesively, which includes working together to prepare for MSG meetings, and strategizing to advance civil society's goals in EITI. The development of these goals should draw on the views and input of wider civil society, to whom they are accountable. To achieve this, representatives should actively liaise with the stakeholders identified above to seek their input and keep them informed of the EITI process, and should adhere to a code of conduct developed and/or approved by their constituency (see **Section III**).

3.1. Liaising with all interested stakeholders

Liaising by CSO representatives on the MSG with their wider civil society constituency is a crucial aspect of the EITI Standard (Requirement 1.3(g)(iii)). If done effectively, it can be a powerful mechanism for enhancing the effectiveness and cohesion of civil society's participation in EITI. Failing to liaise may leave CSO representatives isolated, ineffective, and lacking legitimacy (for one example, see the DRC case study in Box II). At the very least, CSO representatives should liaise with their broader constituency on issues such as:

- **Developing a long-term vision for how EITI will be utilized to promote extractive industry transparency and accountability, and updating on progress to achieve this vision.** The exact goals of such liaising will depend on the demands and context of the country or area, but they may include:
 - Discussing and receiving feedback about what information that could be included in EITI reports would be valuable for improving extractive industry governance and impacts, and how that information needs to be communicated to be most useful.
 - Explaining what types of information could required in EITI reports – while clarifying that MSGs are able to agree to processes or rules beyond the EITI Standard (which sets only the minimum standards for compliance) – such as reporting on environmental, human rights, or other issues.
- **Collecting feedback and ascertaining a mandate for how to proceed on core issues under consideration by the MSG.**
- **Delivering progress reports about the MSG and EITI.** For example, this could include regular email newsletters or in-person meetings to update activities and core issues under discussion, and to identify the topics that will be discussed soon.
- **Disseminating the public information that results from the EITI process.** For example, to promote informed analysis and debate of the contents of the EITI Report, and seek feedback for how to improve the report for future years.

Liaising, outreach, and feedback sessions should be held in a format suitable to the context and proportionate to the resources of civil society. For example, outreach to select MSG members, or to review the EITI reporting framework may be more in-depth and require seeking the input of the entire constituency, whereas feedback in advance of an ordinary monthly MSG meeting may be possible to request by email amongst the smaller network of active civil society. Where possible, civil society should collectively agree to its expectations of liaising from CSO MSG representatives, and include these principles in the code of conduct (see **Section III**). Some general issues to consider include:

- **Accessibility and scope:** Care should be taken to ensure that stakeholders from different geographic regions are aware of opportunities for involvement and are able to participate. Most EITI activities have historically taken place in major cities. However, often the actors most involved in or affected by the extractive industry are located far from such centers. Where resources do not allow for CSO MSG representatives to travel to extractive areas to get feedback directly, other approaches should be explored. For example, regional representatives could be appointed with a mandate to relay information between the communities affected by extractive activity and MSG representatives.
- **Format:** For example, whether liaising occurs by email, in-person meetings, or in other ways. This may depend on the resources of the CSO constituency, and the purpose of the consultation. For example, CSOs could email to update their networks on outcomes of MSG meetings immediately after their conclusion, but then strive for accessible in-person meetings on a semi-regular basis or when issues of strategic importance to civil society are raised.

- **Notification:** Sufficient notification should be provided to networks to allow opportunities for meaningful input. To be effective, CSOs should consider how to contact their constituents. While for many stakeholders this may be via email, in some instances rural or local actors may not be reliably contacted this way. In these cases, consider how communication can ensure sufficient time to allow for feedback or sharing information.

It should be noted that liaising with constituents is an obligation placed on all MSG members, and civil society representatives should **ensure that government MSG members also liaise with the public** and undertake some of the activities discussed above.

Box II: Democratic Republic of the Congo: Developing good practices in CSO liaising

For the first four years implementing EITI, the civil society representatives to the MSG in the DRC did not regularly liaise with their constituents to guide their participation in EITI. Instead, as was common in many of the EITI countries reviewed, CSO outreach was largely limited to publicizing the release of EITI reports.

The failure to be more inclusive came at a huge cost. Civil society outside the MSG were skeptical of the work of CSO representatives on the MSG, possibly due to unfamiliarity with the concept and collaborative nature of multi-stakeholder governance that requires CSOs to make decisions together with business and government. The release of EITI reports was often met with criticism from other CSOs, who attacked a range of issues such as the scope of the report, the choice of auditor, or concerns about the independence and effectiveness of the CSO representatives on the MSG.

In 2011, to allay these concerns, the CSO MSG representatives began to hold quarterly meetings for their wider constituency. During the two to three day meetings, the CSO representatives focus on:

- Sharing the major issues currently being discussed in the MSG, and receiving a mandate from the wider CSO participants with recommendations for the positions they should adopt regarding these issues;
- Reporting back to the constituency regarding progress in the MSG since the last meeting and whether and how they implemented past recommendations; and,
- Listening to feedback on their performance and how they can improve.

Approximately 30 CSO stakeholders regularly attend the meetings, and funding is available to reimburse travel costs for two people from each of DRC's ten provinces to attend the meetings in Kinshasa. This ensures that CSOs from across the country – and from areas where extraction takes place – are able to attend and benefit from the trainings and capacity building exercises that often supplement the meetings. Decisions at these meetings are made by consensus. While there are often disagreements and long discussions, the process has ultimately led to greater legitimacy for CSO participation in EITI, as well as more strategic decision-making and outcomes from a CSO perspective at the MSG. For example, two CSO MSG representatives were replaced with candidates that were seen as more suitable and effective by civil society overall, and recently a code of conduct was drafted for CSO representatives.

There are still possibilities for improvement in this process, such as rotating meetings so that they are held in regions with the greatest extractive activities or establishing systems to ensure all funded attendees are required, in turn, to liaise with their networks or constituents both before and after the meetings to ensure community perspectives are obtained and outcomes are relayed. However, the underlying principles of this process should be utilized by civil society in other countries, for example by asking regional CSOs to seek feedback from their regions on the same issues as is done in the DRC, and then to relay this by phone or email to CSO MSG representatives.

Section II: Nomination and selection processes for CSO representatives

Civil society should establish a transparent and inclusive process for selecting independent, skilled, and committed MSG representatives, and should consider which criteria will lead to selecting the most suitable CSOs in their domestic EITI context. This process should be developed inclusively, and with opportunities for meaningful input from the wider stakeholder group identified (see **Section I**). The Philippines case study (Box III) provides an example of how these issues can be addressed in practice.

1. Agreeing to a Transparent and Inclusive Selection Process

Selection processes should be premised upon being inclusive, accessible, and transparent. The specific context, resources, and needs of each country will ultimately lead to differing approaches, however the following considerations are critical:

- **Raising awareness of EITI and encouraging involvement from civil society and the wider population.** Because many stakeholders that could contribute to or benefit from EITI may be unfamiliar with the process, civil society should try to raise awareness and build capacity among CSOs and communities before developing the nomination process (see **Section I**). This is especially important during the early stages of EITI implementation within a country, because at this time understanding of EITI may be minimal. This could require information sessions or workshops about EITI to increase awareness of the process, and to demonstrate how it may be relevant to various CSOs (including explaining that the transparency mandate of the MSG can be expanded to include transparency of other issues, such as environmental or human rights impacts). This could either be done by civil society themselves, or by requesting that the government convenes or supports such sessions as part of their obligation under the EITI Standard to liaise with constituents and disseminate information.
- **Publicizing the nomination process, a call for candidates, and the procedures for becoming eligible to participate in selecting candidates.** It is essential that this information is received by all relevant civil society and populations (especially those operating or living in regions affected by extractive activity) with sufficient notice to allow individuals to participate. While communication may often involve word of mouth, there should also be a public notification.
- **Ensuring that there is a vetting process to screen out candidates that do not meet the eligibility criteria, and/or for candidates to demonstrate their qualifications** (relevant to the qualification criteria discussed in **Section II(2)** below). This may include selecting a committee to review the qualifications and eligibility of nominees, or developing a process for candidates to publicly demonstrate their qualifications before the voting or selection process begins. Any processes should be transparent and provide clear justifications in the event candidates are deemed ineligible.
- **Establishing an election or selection process that is fair, participatory, and transparent.** This could be through an election process, consensus decision-making, committee review stages, or some other method – provided that the process is transparent, based on fair and participatory principles, and is subject to review (see **Section III**) to ensure future selections can learn from challenges or shortcomings of past experiences.
- **Ensuring the process is free from government interference.** Civil society has the right to appoint its own stakeholders (EITI Standard, Requirement 1.3(f)(ii)). While it may sometimes be helpful to draw on the support of government in this process, civil society should ensure any involvement does not negatively impact the process (see **Protecting the Cornerstone: Assessing the Governance of EITI Multi-Stakeholder Groups**, Part 3.1.1).

2. Agreeing to qualification criteria for CSO representatives on the MSG

To ensure the most skilled and suitable candidates are selected, the CSO constituency should agree to the basic qualifications necessary to become CSO representatives. In addition to selecting primary representatives, the constituency should also select alternates.

2.1. Defining “civil society”

CSO constituencies may wish to set eligibility rules that reflect the defining characteristics of “civil society” in their domestic context for the purposes of EITI. This can offer the CSO constituency some control to maintain independence, in operational and policy terms, from government and companies. At a minimum, civil society should exclude:

- Any elected or civil servant government officials; and,
- Any organizations that advocate on behalf of, or directly benefit from, the extractive industry or the national government, whether for-profit or not-for-profit. This could include consultants, industry associations, or other entities (whether for-profit or not-for-profit) that benefit from the extractive industry.

In addition, it is good practice to presume that the following types of organizations are not suitable as civil society MSG representatives (although they may be able to participate in the wider constituency):

- For-profit organizations. This includes corporations whose revenue derives from activities other than the extractive sector. For-profit organizations may include media outlets, social enterprises, or consulting firms.
- Politically affiliated individuals or organizations, which may include individuals who have made clear their intention to run for public office.

Where the civil society constituency wishes to make an exception from these presumptions, they should publicly state the reasons for doing so, ensure they have the support of the wider constituency, and check that there is no conflict of interest (see **Section III**).

2.2. Adopting specific eligibility and qualification criteria for CSO representatives

Each CSO constituency should take care to reflect upon the critical needs in its domestic context and set criteria to ensure independent, committed, and legitimate representatives are appointed to the MSG during each term.

- **Independence and accountability.** CSO representatives should be able to show that neither companies nor governments influence their activities, and that they will remain independent during their term on the MSG. At a minimum, this requires candidates to agree to conflict of interest provisions (see **Section III**). CSO constituencies may also consider requiring disclosure of financial records by nominees, to demonstrate that they are not funded or benefited by extractive industries or the national government.
- **Commitment to attend and participate.** CSO representatives must be required to commit to the CSO code of conduct, including expectations for attendance, preparation, and participation in MSG and constituency meetings, as well as duties for liaising with constituents in consultations, which may involve travel.
- **Legitimacy and credibility as civil society.** CSO representatives should generally submit legal documents to prove charitable or non-profit status, and verify that the candidate individual and/or their organization have not been the subject of complaints or charges that call into question their integrity, for example relating to fraud or dishonesty. Additionally, CSOs could be asked to demonstrate proof that they have a domestic network or constituency for which the candidate will serve as a clear representative.

2.3. Additional selection and diversity considerations

CSO representation on the MSG should strive for diversity to ensure that key perspectives and expertise are present in MSG discussions. As a result, civil society may wish to ensure that the following attributes are considered when selecting CSO representatives. This could be done by encouraging nominees with these attributes to apply, and ensuring that at least one representative addresses each of the below issues. However, care should be taken before establishing quotas or criteria regarding these issues, as they may limit the pool of competent candidates and/or may limit the possibility of using EITI innovatively.

2.3.1. Relevant expertise, skills, or experience.

To ensure that the most competent and skilled representatives are selected, the constituency may wish to ask candidates to demonstrate relevant expertise or experience relating to issues in the extractive industries or transparency and accountability fields. For example, CSOs may wish to include representatives that specialize in various advocacy focuses (e.g., environment, human rights, natural resource governance), or industry sectors (e.g., mining, forestry), in order to ensure that representatives are capable of overseeing and implementing the EITI to reflect the important relevant issues in the country. In certain circumstances, particularly where EITI is being newly established and/or civil society is new to these issues, it may be enough to demonstrate a willingness to learn or a track record of making progress on other issues, because the pool of eligible candidates may otherwise become too limited.

Use caution in establishing quotas: Some MSGs or civil society groups have established pre-defined categories or quotas for civil society representatives based on their form or type, such as allocating specific positions for journalists, NGOs, research institutes, or faith-based institutions. This has sometimes caused difficulties long-term because it limits the pool of possible CSO representatives, and the narrower group of eligible nominees in pre-defined categories may have limited availability, expertise, or independence.

However, if a CSO constituency elects to establish pre-defined categories for representatives, the constituency should:

- Define the categories independently, with no involvement from government;
- Apply the qualifying criteria (see above) in the selection of representatives from each pre-defined category; and,
- Establish a secondary process for selecting representatives when there are no interested, committed, or available candidates from within the pre-defined category.

If these categories or quotas have been set by government or the MSG as a whole, rather than by civil society itself, they should be raised with the MSG as a breach of civil society's right to select its own representatives (EITI Standard, Requirement 1.3(f)(ii)) and new representatives should be selected by civil society at the earliest opportunity. If the MSG does not comply, the matter should be referred to EITI International or the EITI Board.

2.3.2. Geographic representation from areas affected by extractive activity

Selecting an appropriate number of representatives that are based in the areas affected by extractive activities should be strongly considered by CSO constituencies where this is possible. If it is not possible, the CSO representatives should take special care to ensure that they liaise with these communities, and include this in the Code of Conduct.

2.3.3. Gender representation

CSOs should strive to achieve gender equity in selecting representatives to the MSG. This may not always be possible, and if so, civil society should adopt policies to encourage female representation in the future. For example, by requiring female alternates or providing tailored training and capacity building programs. Whenever civil society's female representation is 40% or less, a public statement should be issued explaining how the constituency is taking steps to address this inequity in the future.

3. Documenting the selection procedure and results

For transparency and legitimacy purposes, both the procedure and outcome of the selection process should be documented and published. This should include reporting on:

- The qualification or eligibility criteria, the process for agreeing to these criteria, and highlighting any changes since the previous selection of representatives;
- The process for selecting candidates, with notes of any deviations from the planned or agreed upon procedures;
- The outcome of the process. This should include, at a minimum, the number of nominated candidates, the number of participants/voters, outcomes of the selection process; and,
- Any recommendations for future selection processes. Where possible, it may be also be helpful to identify any challenges or reflections about the selection process, to assist in improving the process in future rounds.

The MSG should be notified of the results, including the names of alternates, with a request that all communications from the MSG, national secretariat, and EITI International include the alternate as well as primary representatives.

Box III: Case study of initial CSO selection and outreach in the Philippines

In July 2012, the President of the Philippines issued an executive order that announced the country would support and participate in EITI.¹ The order stated that the government department responsible for establishing EITI should do so “in consultation and coordination with the mining industry and other concerned stakeholders”.² An interim MSG was appointed, and the national PWYP coalition, Bantay Kita, was tasked with facilitating the selection process for the five CSO representatives in the MSG. Bantay Kita’s mission, governance structure, membership criteria were publicly available, including CSOs active in extractive industry issues, thereby bolstering its credibility, and it had access to sufficient resources to facilitate a country-wide selection process.

While there were some CSOs that were already familiar with EITI, Bantay Kita elected to conduct an outreach program to inform interested CSOs across the country about EITI and seek their feedback.³ A special effort was made to include community-based organizations operating in mining-affected areas. Bantay Kita recognized these organizations as a central stakeholder group, given their focus on extractive industry issues and proximity to affected communities. The consultations’ objectives included enabling CSOs to develop a network and agenda relating to EITI, to establish suitable criteria and selection processes for the MSG representatives, and to find strong candidates.

The outreach began in October 2012 with a training event focused on EITI in Manila. In total, 27 participants received training from CSO experts from the Philippines, as well as CSOs with EITI experience in neighboring countries, such as Timor-Leste and Indonesia. The participants in the training were then asked to assist with facilitating regional meetings.

¹ The President of the Philippines, Executive Order 79, *Institutionalizing and Implementing Reforms in the Philippine Mining Sector Providing Policies and Guidelines to ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources* (6 July 2012).

² The President of the Philippines, Executive Order 79, *Institutionalizing and Implementing Reforms in the Philippine Mining Sector Providing Policies and Guidelines to ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources* (6 July 2012), § 14.

³ Cielo Magno *Report on the CSO Consultations on the EITI Implementation in the Philippines* (Bantay Kita, Undated) (which provides a detailed account of the outreach program).

The regional consultations were held in five regional centers, covering all three major island groupings in the Philippines, during November 2012. Bantay Kita announced the meetings on social media, and invited participants through its networks, as well as the networks of other accountability and advocacy coalitions. In total, over 80 people from approximately 40 different regions or provinces participated in the local consultations. Many individuals from different CSOs praised the inclusivity and structure of the consultations, including those who ultimately had concerns about EITI being established in the Philippines.

Selection Process and Criteria for CSO Representatives

After the conclusion of the consultations, a process for selecting CSO MSG representatives was facilitated by Bantay Kita that drew on the CSO and expert feedback provided during the training and consultations. It was agreed that, of the five CSO representatives, at least two should be women. In addition, at least one grassroots representative from a mining-affected community was required. It was stated that they should strive for a mix of community-based organizations and NGOs, as well as broad geographical and inter-generational representation. When the selection process took place, it was further agreed that there must be strict geographical diversity, with a CSO representative from each of the three island groupings, and two from the capital area.

The selection process was transparently recorded and can be viewed as an annex to the Philippines EITI Candidature application on the EITI International website.⁴ It was agreed that a screening committee, comprising individuals from each of the three island groupings in the Philippines, would be established to vet all nominees for compliance with the core criteria and requirements. These criteria include that:⁵

- The nominee “must not have any affiliation, any direct or indirect engagement, or conflict for interest with the extractive industries whether past or present”;⁶ and if the nominee had received any compensation or grants from a mining company, they had to provide justifications for compensation and relationship to the company.
- The nominee could demonstrate strong negotiation and public relations skills, a commitment to the principles of PWYP, and a history of and integrity in advocacy. In addition, the nominee had to hold membership in a legal organization, or be affiliated to a credible organization, and be endorsed by one of the organizations that participated in the CSO EITI consultations.

In addition, the nominees were required to provide a letter expressing their commitment to attend and be prepared for all MSG/EITI activities. The letters also had to outline their relevant expertise, as well as identify any associations or interests in the extractive industry.

In January 2013, the selection process took place. Over 65 individuals from CSOs across the country participated, and a number of international CSO representatives joined. Ultimately, however, no voting was required, as ten individuals were nominated for the ten positions (five official MSG members, five alternates). It was, therefore, agreed that the nominees should determine who would be regular versus alternate members, based on their availability and respecting the gender and geographic diversity requirements.

⁴ Cielo Magno, Report on the CSO Consultations on the EITI Implementation in the Philippines (Bantay Kita, Undated). Also, Philippines EITI Candidature Application, Annex J, available at <https://eiti.org/files/philippines/2013-04-ANNEXES-PH.pdf>.

⁵ Cielo Magno, Report on the CSO Consultations on the EITI Implementation in the Philippines (Bantay Kita, Undated), 16.

⁶ Cielo Magno, Report on the CSO Consultations on the EITI Implementation in the Philippines (Bantay Kita, Undated), 16.

Development of a CSO agenda and mandate

A clear agenda and mandate for the CSO representatives was also developed. It included a number of issues, such as: ensuring reports are disaggregated at the operational level for each company, and include political contributions; recommending that the government go beyond minimum compliance in EITI; including reporting on human rights and environmental issues; and, eventually becoming a venue for reviewing companies' compliance with contracts, and tracking expenditure of revenues from extractive industries.

In addition, community-based organizations and elected local officials also encouraged capacity-building to support implementation of a sub-national process, which would enable accountability at the local level and encourage the inclusion of small-scale mining (see Box 9 in Part 4.2 of the **Assessment of Multi-Stakeholder Governance in the EITI Report**).

Section III: A code of conduct for CSO representatives

A code of conduct clarifies the expectations for CSO representatives, enhancing their legitimacy and effectiveness to their constituency. It should apply to both alternates and primary representatives, to ensure alternates are given as much as exposure to the MSG and EITI as possible to prepare them for standing in for the primary at short notice or if they are subsequently elected as a primary member.

The code of conduct should be publicly accessible and, where possible, available in the major languages spoken in regions where extractive activities take place. While it may be most appropriately drafted by the smaller group of actively engaged CSOs identified in **Section I**, all civil society stakeholders should have the opportunity to comment or provide input before it is finalized or during review processes.

1. Specify the nomination and selection process for representatives

The code of conduct should clarify how interested individuals can get involved and become nominated or selected as CSO representatives to the MSG by documenting:

- The process for nominating candidates for selection, including the eligibility criteria and qualifications necessary for candidates to be selected;
- The methods to publicize the call for candidates and notification of the selection process;
- The process for candidates to demonstrate their qualifications. This may include a committee to review the qualifications and eligibility of nominees, or a process for candidates to publicly demonstrate their qualifications before voting or selection begins; and,
- The procedures for electing or selecting representatives, including any special requirements for determining primary versus alternate mandates. In designing selection procedures, CSOs should consider mechanisms to ensure the selection process is transparent and public.

2. Specify the duration of the mandate, and term limits for representatives

The code of conduct should specify the duration of CSO representatives' mandate appointment to serve on the MSG. CSOs should consider including term limits, specifying the number of re-appointments allowed, and whether representatives can serve consecutive terms. These limits offer opportunities to rotate representatives and allow new voices to be added to the MSG. To enhance continuity and institutional knowledge sharing within the MSG, selection to the MSG should be staggered so that only a limited number of civil society representatives' terms expire in a given year. If all CSO MSG representatives' terms expire at the same time, this may be disruptive to the institutional knowledge and stability of civil society and the MSG.

3. Set the expectations for attendance, preparation, and participation at MSG, working group, and civil society constituency meetings

It may be helpful to set clear expectations for the commitment and responsibilities of CSO representatives to the MSG. To establish these expectations, CSOs should consider including provisions such as:

- Expectations for preparing and participating actively in MSG meetings, including corresponding with other CSO representatives before and/or after MSG meetings to establish common positions and strategize;
- Duties for joining and participating in working groups related to MSG activities; and,
- Minimum requirements for permissible attendance at MSG meetings. This could be a general expectation of attendance, or could be expressed as a minimum number or percentage of meetings attended per year. Provisions should clarify permitted bases for absence from meetings, whether the presence of designated alternates excuses the absence of primary members, and any consequences for frequent absences.

4. Establish the obligation to liaise with stakeholder constituents

The code of conduct should outline the obligations of CSO representatives for liaising with stakeholder constituents, as identified in **Section I** above. The code of conduct should not be unduly prescriptive, but may want to establish general expectations regarding:

- **When liaising will take place:** This may include agreeing to hold a certain number of regular meetings each year, or before/after MSG meetings to update the constituency on progress and seek their input. Alternatively, or in addition, the code could require CSO representatives to liaise before discussing specific issues in the MSG, such as modifying EITI reporting frameworks or when core MSG processes are under review.
- **Procedures for liaising:** CSOs may wish to agree to procedures regarding: how meetings will be announced; who will be invited or welcome to attend; where they might take place; how constituents will have the possibility to provide input or how decisions will be made; and, any other logistical considerations.
- **Follow-up and documentation:** Where possible, liaising efforts should be documented, and recommendations or action points should be checked for updates at future meetings. It may be helpful to require this follow-up in the code of conduct.

5. Establishing independence provisions and codifying how to manage real and potential conflicts of interest

The code of conduct should codify the independence expected of CSO representatives, both as established during the selection process and regarding their involvement and conduct in the MSG. In addition to prohibiting direct financial or operational interests in the other stakeholder groups (government and companies), it should include establishing safeguards to mitigate and prevent conflicts of interest. There should also be clear procedures for investigating, adjudicating, and reporting suspected or confirmed conflicts of interest, including potential sanctions and expectations for representatives (see Section 6, below).

5.1. Conflict of interest provisions

- Establishing a clear definition of what constitutes a conflict of interest. This should include consideration of real or potential financial and operational conflicts, as well as direct and indirect conflicts (e.g., where benefits might accrue to family);
- An explanation of disclosure requirements for CSO representatives on the MSG or involved in the national coalition, steering committee, or network, to disclose information that may lead to perceived or actual conflicts of interest based on their role and responsibilities; and,
- The management procedures where a conflict of interest arises. These may range from requiring the CSO representative to refrain from decision-making on matters where they are conflicted, through to resigning from the MSG.

5.2. Rules regarding receiving payments or benefits from government, companies or the MSG for participating in the EITI process

To protect the credibility and independence of CSO representatives, the code of conduct should establish an official policy regarding payments to CSO representatives from government, extractive companies, the national EITI secretariat, or MSG in conjunction with their participation in the MSG. If such payments are not prohibited altogether, there should be full disclosure of any payments received from these actors. The payments should not exceed the reasonable cost of attending MSG meetings, even if they are fixed per diems or other flat-rate payments.

5.3. Disclosure of financial accounts

Ideally, CSO representatives should disclose their financial accounts for a period during and surrounding their involvement on the MSG. At the very least, there should be full disclosure of all funding received to participate in EITI, including specific grants received from external actors, such as international NGOs or donors.

6. Create procedures to handle disciplinary complaints, and review the code of conduct

Codes of conduct should also explain the process for raising and resolving potential breaches of the code of conduct, including disciplinary procedures and potential penalties where representatives are found to have violated the code. This may include suspension or expulsion from the CSO constituency of the MSG.

The code of conduct should include a provision that it will be publicly reviewed on a regular basis (for example, every three years) to ensure it is serving to bolster the legitimacy, accountability, and credibility of representatives, and yielding appropriate disclosures and reports.

Annex III Governance Document Assessment Questionnaire

Each question was answered with either “Yes / No / Unknown” and sources were cited along with clarifying comments as necessary.

Establishing the MSG: EITI Standard

Source for criteria	Questions relating to the EITI Standard
Requirement 1.3(g)	1 Is the multi-stakeholder group Terms of Reference or similar governance document for its work available to the public (e.g., on the national EITI website)?
	2 Is there evidence that the Terms of Reference was agreed upon by all members? If no, briefly describe who appears to have decided upon the documents governing MSG, if any (e.g., government decree).
Requirement 1.3(f)(ii)	3 How many government representatives are allocated membership in the MSG under the governance documentation?
	4 How many civil society representatives are allocated membership in the MSG under the governance documentation?
	5 How many private sector representatives are allocated membership in the MSG under the governance documentation?
	6 Are there any other categories of stakeholder?
Requirement 1.3(f)(iv)	7 Is the EITI multi-stakeholder group given a legal basis in the establishing document or legislation?

Governance of the MSG: EITI Standard

Source for criteria	Questions relating to the EITI Standard
Requirement 1.3(f)(ii)	Within the terms of reference or other governing documentation, are there provisions:
	8 ▪ granting each stakeholder group the right to appoint its own representatives?
	9 ▪ setting out safeguards to ensure that the nomination process for representatives of each stakeholder group is independent and free from any suggestion of coercion?
	10 ▪ setting out safeguards that require civil society groups involved in the EITI as members of the multi-stakeholder group to be independent (operationally and in policy terms) from government?
	11 ▪ requiring stakeholder groups to consider the desirability of pluralistic and/or diverse representation in appointing their own representatives?

Governance of the MSG: EITI Standard *continued*

Source for criteria	Questions relating to the EITI Standard
	Within the terms of reference or other governing documentation, are there provisions:
Requirement 1.3(f)(iii)	12 ▪ ensuring that senior government officials are represented on the multi-stakeholder group?
Requirement 1.3(g)	13 ▪ on the role, responsibilities, and rights of the multi-stakeholder group?
	14 ▪ requiring the group to oversee the reporting process and approve annual workplans, the appointment of the Independent Administrator, the Terms of Reference for the Independent Administrator, EITI reports, and annual activity reports?
	15 ▪ on internal governance rules and procedures?
Requirement 1.3(g)(i)	16 ▪ to ensure that members have the capacity to carry out their duties?
Requirement 1.3(g)(ii)	17 ▪ requiring that the group to undertake outreach activities with civil society groups and companies? (e.g., informing stakeholders of the government's commitment to implement the EIT or the role of companies and civil society in EITI)
	18 ▪ requiring the group to widely disseminate the public information that results from the EITI process (e.g., the EITI report)?
Requirement 1.3(g)(iii)	19 ▪ requiring group members to liaise with their constituent groups?
Requirement 1.3(g)(v)	20 ▪ for the group to engage in Validation in accordance with Chapter 3 of the EITI Standard?
Requirement 1.3(g)(vi)	21 ▪ for an inclusive decision-making process throughout implementation of the EITI, with each constituency being treated as a partner?
	22 ▪ granting any member of the group the right to table an issue for discussion?
	23 ▪ for procedures for nominating and changing multi-stakeholder group representatives?
	24 ▪ for procedures for decision-making (e.g., voting procedures, quorum procedures, etc.)?
	25 ▪ for the duration of the mandate of MSG members?
	26 ▪ for procedures for the frequency of group meetings?
	27 ▪ that require a certain amount of advance notice of meetings? (If yes, indicate the amount of advance notice.)
	28 ▪ that require timely circulation of documents prior to their debate and proposed adoption? (If yes, indicate the requirements for timely circulation of documents.)
	29 ▪ requiring the group to keep written records of its decisions and/or discussions?

Governance of the MSG: Supplemental Guidance

Source for criteria	Questions relating to the EITI Guidance Note 14
	Within the terms of reference or other governing documentation, are there provisions:
Guidance Note, §2.3	30 ▪ requiring members to commit to participate in and contribute effectively to multi-stakeholder group meetings?
Guidance Note, Step 2	31 ▪ requiring or encouraging stakeholder groups to consider diversity of commodities produced in the country when selecting representatives?
	32 ▪ requiring or encouraging stakeholder groups to consider geographic diversity when selecting representatives?
	33 ▪ specifying whether MSG members must or should have alternate members to the multi-stakeholder group?
Guidance Note, Step 2 and EITI Standard, Protocol: Civil Society Participation	34 ▪ that safeguard the right of civil society to self-appoint its own representatives on the multi-stakeholder group?
Guidance Note, Step 3	35 ▪ requiring decisions should be taken by consensus (collaboration and cooperation with a view to reach general agreement among all group members) when possible?
	36 ▪ provisions for allowing decisions by vote where required due to lack of consensus?
	37 ▪ provisions requiring that when a vote is required, resolutions are adopted by a qualified majority, requiring support from all constituencies?
	38 ▪ setting rules or procedures for quorum?
Guidance Note Annex, 2.5	39 ▪ requiring or encouraging stakeholder groups or the MSG to establish codes of conduct for group members?
	40 ▪ governing conflicts of interest by group members? For example, requiring that multi-stakeholder group members to refrain from voting in respect of any matter or arrangement in which they have an interest.
	41 ▪ governing the treatment of confidential information by group members?
Guidance Note Annex, 3.2	42 ▪ that specify a policy regarding the attendance of observers at MSG meetings?
Guidance Note Annex, 4.1	43 ▪ that specify the process for calling meetings?
Guidance Note Annex, 4.3	44 ▪ that require written records of the group's meeting minutes to be available to the public (e.g., on the national EITI website)?
	45 ▪ that clarify procedures for circulating and verifying MSG meeting minutes with multi-stakeholder group members?
	46 ▪ that clarify the relationship between the multi-stakeholder group and the national secretariat?
	47 ▪ that specify the role and responsibilities of the national secretariat?

Other governance practices for effective multi-stakeholder initiatives: MSI Evaluation Tool (released by MSI Integrity)

Source for criteria	Questions based on MSI Integrity's MSI Evaluation Tool
	Within the terms of reference or other governing documentation:
Internal Governance: Decision-making and Inclusivity	48 Are there criteria for membership of private sector representatives? (Yes, detail criteria / No)
	49 Does the MSG require private sector representatives to have a specified level of seniority, expertise or experience? (Yes, specify level / No)
	50 Are there criteria for NGO and civil society membership? (Yes, detail criteria / No)
	51 Are there criteria regulating payments or contributions from governments and/or extractive companies to civil society organizations? (Yes, payments or contributions are prohibited / Yes, payments or contributions are limited (specify limitations) / No)
	52 Does the MSG require the organizations' representatives to have expertise in issues relevant to EITI? (Yes, specify / No)
	53 Are affected populations or communities (e.g. those living near extractive sites) members of the MSG? (Yes / No)
	54 Does the MSI have a set of rules regarding the process for determining local community representatives? (Yes / No) If yes:
	55 ▪ Do the rules require that the local community select its own representative? (Yes / No)
	56 ▪ Do the rules require that representatives be chosen in line with human rights principles? (Yes / No)
	57 ▪ Is there provision for periodic community re-evaluation of the representative? (Yes / No)
	58 Is the appointment/election process for the MSG transparently explained? (Yes / No)
	59 Are the decisions of the body publicly available? (Yes, all / Yes, some / No)
	60 Is there a record, or policy to record, the vote or discussion that led to the decision? (Yes, all proceedings are recorded / Yes, some of the proceedings are recorded / No). If Yes, all or Yes, some:
	61 ▪ Does the record identify specific parties? (Yes, all / Yes, some / No)
62 ▪ Does the record include statements expressing disagreement with the final outcome or have a policy regarding recording such statement? (Yes, if relevant specify policy / No)	

Other governance practices for effective multi-stakeholder initiatives: MSI Evaluation Tool (released by MSI Integrity) *continued*

Source for criteria	Questions based on MSI Integrity's MSI Evaluation Tool
	63 Do the governance documents specify the percentage or number of votes required to make a decision? (Yes / No)
	64 Is there a system for taking grievances alleging a breach of the rules of internal governance? (Yes / No)
	65 Are there any provisions requiring a periodic review of the governance arrangements of the multi-stakeholder group?
	66 Are there any provisions regarding the governance and/or management of any funding or multi-stakeholder group bank accounts used to facilitate group functions?
	67 Looking at the establishing documents, Terms of Reference, or any other written policies, are there provisions requiring diversity of gender representation within each, or any, stakeholder groups for nominating members to the multi-stakeholder group?
	68 Looking at the current member lists, is there diversity of gender representation within each, or any, constituencies on the multi-stakeholder group? (Note the numerical representation of each gender overall, and each gender in each constituency.)
	69 Requiring the MSG to identify languages most widely spoken by rights-holders affected by the MSI and require that the documents about the governance of the MSI referred to above, or governance-related reports, are produced in the identified languages? (Yes, list languages / No)
	70 Requiring that meetings are able to be conducted in multiple languages when speakers of multiple languages are present? (Yes, list languages / No / Not Applicable, as the MSI only impacts regions that speak one language)
Transparency and Accessibility	Are the following publicly available on the national EITI website?
	71 A list of members; (Yes / No)
	72 A list of members of decision-making bodies such as: boards, caucuses, working groups, or other bodies, where applicable; (Yes, all bodies / Yes, some bodies (list) / No)
	73 A copy of the previous financial year's accounts; (Yes / No) If yes, specify if they are audited.
	74 Annual reporting of the MSI's key activities and developments over the previous year. (Yes / No)

