Constituency guidelines for civil society

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1   Background

The members of the EITI Association (Article 7.2) are organised in three constituencies (Article 5.2): governments, companies and civil society. Constituencies decide on their rules governing appointment of Members (Article 5.3) and nominate Board members and their alternates for the Members' Meeting to elect (Article 8.1(ii)).

The EITI Board agreed on the guidance and principles for constituencies on 26 April 2013. On 14 February 2018, the EITI Board agreed that EITI constituencies should conduct a review of their guidelines and modify as needed.

In 2018, Publish What You Pay (PWYP), serving as a coordinating body for the nominations process for civil society EITI Board members as per The Selection Criteria and Process of Civil Society Representatives to the EITI International Board (2016-2019), commissioned the Consensus Building Institute (CBI) to develop recommendations for the civil society constituency. The EITI CSO Board members conducted extensive consultations amongst the CSO constituency from June to September 2018. These guidelines are based on

the consultations around the CBI recommendations and endorsed by the EITI CSO Board members 2016-2019 in February 2019.

This document defines the CSO constituency membership, the application process, the management of the registry, and the renewal of membership. It also outlines the nomination process of the CSO board members. An "independent organization" may be contracted by the EITI Secretariat and/or the CSO Coordination Focal Point (CFP) to facilitate the selection process which will be done by a "Civil Society Advisory Group" (CSAG) composed of civil society representatives. It contains the responsibilities of the CSO Board members which include regular consultation with CSO constituencies, and identification of the "Constituency Coordination Focal Point". The CFP will be an organization that will assist the Board members in delivering their obligations to the EITI and the CSO constituencies. The CSO board members will also serve as the sub-constituency contact points. Finally, this document provides a grievance mechanism for the constituency.

2. Constituency Guidelines

For the purpose of this document, "constituency" is understood to mean the civil society sub-constituency as defined by Article 5.2(iii) unless otherwise stated.

2.1. Membership of the EITI Association

➢ Article 5.2.iii of the EITI Articles of Association defines civil society constituency as follows: "The Constituency of Civil Society Organisations, which comprise non-governmental organisations, global action networks or coalitions that support the objective of the EITI Association".

These Guidelines aim to encourage the participation and inclusion of a broad range of civil society organizations whose interests are aligned with the EITI. The guidelines aim to achieve broad geographic and substantive representation. The guideline shall aim to be inclusive to achieve a broad array of civil society organizations coming from different paradigms and governance models. At the same time, the independence and legitimacy of the CSO constituency must be safeguarded. To this end, members are encouraged to abide by the Civic Society Expectations paper.

To ascertain whether a civil society organization is qualified to be a member of the CSO Constituency, the organization must support "the objectives[1] of the EITI Association". The following factors will be considered:

- The organization should specialise on issues related to extractive industries, such as good governance, open budget, and other related areas. Its mission, vision, and track record should reflect these interests.
- The organization should demonstrate commitment to transparency principles, providing evidence of non-governmental status and independence in operation and policy from governments and/or companies.

➢ The Article 5 of the EITI Articles of Association "Membership and Constituencies" states:

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[1] *The objective of the EITI Association is to make the EITI Principles and the EITI requirements the internationally accepted standard for transparency in the oil, gas and mining sectors, recognising that strengthened transparency of natural resource revenues can reduce corruption, and the revenue from extractive industries can transform economies, reduce poverty, and raise the living standards of entire populations in resource-rich countries.*

(1) "A Member of the EITI Association is a personal representative of a country (meaning state), company, organisation or legal entity that is appointed by a Constituency as set out in Articles 5 (2) and (3).

(3) Each Constituency decides on its rules governing appointments of Members of the EITI Association. The Membership shall be limited to the following: (iii) From the Constituency of Civil Society Organisations, up to one representative from each Civil Society Organisation.

(4) A Constituency may replace any of its own appointed Members at any time. The Constituency shall inform the EITI Secretariat of its Members at any time.

(5) The EITI Board may terminate any Member's Membership of the EITI Association if: i) The Member, or the country or other entity the Member represents, does not comply with these Articles of Association; or ii) The Member, or the country or other entity the Member represents, has conducted his/her/its affairs in a way considered prejudicial or contrary to the EITI Principles.

(6) A resolution by the EITI Board in accordance with Article 5 (5) may be appealed by any Member to the Members' Meeting for final decision."

➢ The individual representatives of the civil society organization, when applying for EITI membership, should provide the following information in order to confirm their adherence to the objectives of the EITI Association:
  ● The name of the individual who will represent the organisation as a member of the EITI Association
  ● The name and basic organizational profile information (size, governance, mission, areas of activity and geographic reach)
  ● Evidence of non-profit status
  ● Civil society organizations and their representatives should be operationally, and in policy terms, independent of governments and/or companies
  ● A statement explaining how the organisation supports the objectives of the EITI" (in line with Article 5.2iii)
  ● The position an individual currently holds in the organization
  ● Signed personal statement of commitment to adhere to the EITI Code of Conduct
  ● Signed personal statement of commitment to actively contribute to the EITI CSO constituency, including through sharing experiences and lessons learned and engaging in policy dialogue.

➢ Process of Application:
  ● Applications are submitted to the Coordination Focal Point. Applications will then be compiled and forwarded to outgoing CSO Board members on a monthly basis.
  ● The outgoing CSO Board Members, not seeking a second term, shall review the applications to ensure alignment with the objectives and principles of the EITI, and that the organization is an independently operating NGO.
  ● Once approved, the contact and organizational details will be forwarded to the EITI Secretariat, which shall keep a registry of current CSO members and applicants to the EITI Association, indicating the name of the members and their corresponding organizations.
  ● If a rejected organization wishes to appeal they may file a grievance to the CSO Board Members by sending an official communication to an email address (to be defined for CSO board members for purposes of grievance).

➢ The EITI Secretariat is tasked with keeping an updated Members' Registry at all times (Article 15.3).

➢ The membership renews ahead of every global conference (to permit more active scrutiny of changes in member organizational profiles and presence)

➢ The Coordination Focal Point and CSO Board members will send out notifications to CSO members of the Association reminding them to update their membership by sending the name of the individual representative of the organization and the most recent information regarding their operations to demonstrate their independence from governments and companies and commitment to EITI objectives.

- The updating of the registry should ideally be completed one month before the Members' Meeting.

➢ Nomination of Board Members

The Articles of Association state that civil society constituency should nominate 5 Board Members and 5 alternates from the Constituency of Civil Society Organisations. EITI Board members are elected at EITI Members' Meetings, regularly held every three years.

2.1.1. Principles governing the nominations procedures for CSO Board Members

Based the EITI Board's guidance from 2013 and the EITI's checklist for constituencies [Annex 1], it is proposed that the following principles apply for the nomination procedures:

1. The nomination process should be open and transparent.
2. Applications are welcome from members of independent civil society organizations from both implementing and non-implementing countries.
3. Women are especially encouraged to apply as well as representatives from organizations working directly with communities affected by extractive industries. The process is based on merit.
4. The Call for applications, which will include selection criteria, the timeframe, process and other details, is announced on the EITI, independent organization (IO)[2], and Coordination Focal Point (CFP)[3] websites.
5. The selection process for the EITI CSO Board members is managed by an Independent Organization (IO). Board members are selected by a civil society advisory group (CSAG) which the IO will convene.

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[2] Defined below

[3] Defined below

6. The CSAG will use the selection criteria[4] below to inform their decision. The current[5] criteria remain the same (including exclusion of anyone who has served 2 terms at any time, whether consecutive or not), with the following additions and modifications:
    - Demonstrable record of strong connection to, and experience actively liaising with, national and regional CSO networks and MSIs
    - Demonstrable expertise in topics such as, but not limited to, transparency, the extractives industries, and good governance.
    - Experience in working with extractives communities.
    - A signed letter of commitment from candidates to dedicate the requisite amount of time.
7. In determining the final list of CSO representation to the Board, the CSAG shall consider the following to ensure the success of Board members as a group (as per current practice):
    - Geographic balance and diversity
    - Gender
    - Experience working directly with communities affected by extractive industries
    - Substantive and diplomatic skills needed to proactively take on complex policy issues
    - Representation of local and international CSOs.
8. Upon completion of the process, the candidates (as well as a final readout of the process) are announced on the EITI, Independent Organization, and Coordination Focal Point websites.
9. EITI Board membership is personal and not institutional. If a full Board member moves on from her/his job, s/he can retain her/his Board membership as long as the new position remains within civil society. Should that not be the case, then the full EITI Board member has to resign and his/her alternate is consulted to step up. The CSAG will be recalled to run an independent selection process to fill the open seat.

2.1.2. Independent Organization (IO)

➢ The Independent organization (IO) may be contracted through an open bidding process by the Coordination Focal Point and/or EITI Secretariat based on the following criteria:
    - Ability to facilitate an independent and transparent selection process and convene the CSAG
    - Independence from governments, and industry
    - Track record to show familiarity on governance principles
    - Familiarity with EITI
➢ The IO shall facilitate the process establishing the CSAG.

- [4] Knowledge of and experience with key components of the EI value chain particularly those that are part of the EITI Standard 2016
- Active engagement in the EITI and knowledge of EITI policies and rules relating to the implementation and validation processes
- Ability to apply long-term strategic thinking and to balance organisational, national and regional interests while maintaining a strong EITI Standard
- Sufficient time and willingness to consult widely with other civil society organisations and representatives in order to canvass views and opinions in a timely, responsive and open manner
- Sufficient time and willingness to report back regularly to wider civil society audiences on Board decisions and outcomes of meetings
- Sufficient authority and ability to speak with conviction on behalf of civil society at Board and Committee meetings
- Sound experience in and interest to work with a wide spectrum of stakeholder groups (private sector, donors, IFIs, governments, media etc.) and related dialogue and negotiation skills
- Experience working with civil society organisations and local communities in extractive regions will be a much-appreciated asset
- Demonstrable record of engagement in civil society and public life in a manner consistent with the EITI Code of Conduct.

[5]The current process is described here: http://www.publishwhatyoupay.org/selection-criteria-and-process-of-civil-society-representatives-to-the-eiti-international-board-2016-2019/

➢ The IO shall provide logistical support to the CSAG in the process of selecting and nominating the CSO Board members.

➢ The IO shall produce the final report/documentation of the selection process. The IO shall publish the results and the summary of the selection process in their website and shall forward the same to the EITI International Secretariat and the Coordination Focal Point for publication in their website.
  ● The results shall be open for contestation for two (2) weeks after the posting of the results in the website
  ● The results will be deemed final if there are no objections to the nomination within 10 working days after the list of the nominated CSO Board members is published
  ● In case of objections or disputes to the nomination, the IO shall consult the CSAG on the resolution of the issue(s) raised.

2.1.3. Civil Society Advisory Group (CSAG)

➢ A civil society advisory group will be established every three years before the nominations process begins.

➢ The CSAG is responsible for the selection process of the EITI CSO Board members (initial candidates' screening, interviewing, short- listings, final selection based on criteria).

➢ The CSAG is also responsible for resolving grievance(s) against incumbent CSO Board member.

➢ The CSAG consists of ten members to oversee the selection process:

i. CSO members of the EITI multi-stakeholder groups (MSGs) in Implementing countries and CSO members of the EITI Association in non-implementing countries will select (by vote or consensus) six representatives who are members of the EITI Association within their region to serve on the CSAG as follows (the allocation roughly reflects the numeric distribution of EITI Implementing Countries across regions):
  1. Eurasia Region: 1 member
  2. Francophone Africa Region: 1 member
  3. Anglophone and Lusophone Africa: 1 member
  4. SE Asia and Pacific: 1 member
  5. Latin America and Caribbean: 1 member
  6. Europe, North America and MENA: 1 member

ii. The current EITI CSO Board members (outgoing board members not seeking the next term) will select:
  7. Representatives of 2 international civil society organizations
  8. Two former EITI CSO Board members or current EITI CSO Board members not intending to present a candidacy.

The final composition of the CSAG will be announced on the EITI, independent organization (IO) and Coordination Focal Point (CFP) web sites.

2.2. Roles and responsibilities of civil society Board representatives
➢ Board members are expected to abide by the EITI Association's Code of Conduct. Board members exercise the functions of the EITI Board as set out in Article 12 of the Articles of Association of the

EITI. The EITI Board shall act in the best interests of the EITI Association at all times. The role and responsibilities of the CSO Board members were defined and described in the Selection Criteria and Process of Civil Society Representatives to the EITI International Board (2016-2019) including the Board's key functions, the EITI International Secretariat' support, description of the "Full" (five) and "Alternate" (five) members, a frequency of the EITI Board and committees' meetings, a necessity to consult with constituency.

➢ In addition to that, these Guidelines institutionalize a support infrastructure (CSO Coordination Focal Point- CFP) to assist Board members.

➢ Before taking office, Board Members sign a Statement of Commitment to attend and engage constructively in Board and Committee meetings. These commitments are registered in a message to the Constituency on the Independent Organisation (IO) and CFP's website.

➢ The Board members are supported by:
  ● The EITI International Secretariat provides Board members with the relevant updated membership lists for their region when they assume office
  ● Each Board member is responsible for holding consultative webinars/teleconference calls before board meeting (a minimum of two a year), advertised on the EITI and CFP websites and via social media, open to all constituent members in the respective regions, with communications and facilitation support from the CFP as requested by the Board members.

➢ Board members issue a consolidated update after every Board, posted on the CFP website and summarizing discussions, decisions, and key issues from a CSO perspective. This can be drafted by the Coordination Focal Point and refined and approved by all Board members (current practice).

➢ Performance reviews of Board members will be held on a yearly basis and involve the following:

  ● Each Board Member fills out a self-assessment tool individually, outlining accomplishments as well as challenges and action points for addressing the latter. Plans are shared with the CSO Advisory Group (CSAG). The final assessment includes Lessons Learnt section to be shared within the CSO constituency (via the CFP website).
  ● A special session at the end of the year devoted to a joint reflection about the CSO Board members' collective achievements and adjustments required to enhance effectiveness in areas requiring improvement. Lessons learnt conveyed to the next CSO Board member.

➢ In exercising their responsibilities, Board members are expected to accept a workload outlined in the EITI Board manual. While it is not possible to quantify this work, it is anticipated that normally it would involve a commitment of up to 3-4 days a month as a minimum.

➢ The Articles of Association include provisions on what to do in the event of Board members failing to attend three consecutive Board meetings or resigning before the term is over (Articles 9.5 and 9.6).

2.3. Constituency Coordination Focal Point (CFP) and sub-constituency contact points
➢ The Board recommends that each constituency should establish a position of constituency coordinator.

➢ Upon election of each new board, the Civil Society Board Members will agree on the Coordination Focal Point (CFP) to assist Board members in delivering on their strategic guidance and policy making functions at the Board.

➢ A basic MoU will be signed on technical/financial cooperation and accountability lines between each incoming CSO Board and the CFP.

➢ Civil Society Board members function as sub-constituency contact points.

2.4. Complaints

➢ The EITI has recommended the following guidance on addressing complaints within the constituency:

"If an EITI stakeholder wishes to complain about the processes his/her constituency has followed to agree its representation on the EITI Association or Board, those complaints should firstly be directed towards the members of that constituency. If a satisfactory solution cannot be agreed, a written report should be made to the EITI International Secretariat. Within three weeks of receiving such a report, the Secretariat will investigate the complaint and make a report of its findings to the EITI".

➢ Complaints arising from within the EITI CSO Constituency, other than those against a Board member, are referred to the civil society Board members for inquiry, issuing recommendations, and acting as the final decision-makers.
➢ The complaints against the EITI Board members are addressed by the CSAG.

Annex 1: EITI Checklist for constituencies

Guidance to EITI constituencies

EITI International Secretariat Oslo, May 2018

The members of the EITI Association are organised in constituencies (Article 5.2 of the EITI Articles of Association). There are three constituencies in the EITI: The constituency of countries, which comprises implementing countries and supporting countries, the constituency of companies, which comprises companies in the extractive sector and institutional investors, and the constituency of civil society organisations. Each constituency decides on its rules governing appointments of Members of the EITI Association (Article 5.3).

The EITI Board agreed the following guidance and principles for constituencies on 26 April 2013 (the full text is available here: https://eiti.org/sites/default/files/documents/draft-constituencey-guidelines2013.pdf):

"Recognising the important principle that the EITI's various constituencies have the right to determine their own internal processes, this document offers some guidelines of the internal working of constituency processes.

The constituencies are defined in the EITI Articles of Association, which also determine the size of the constituencies' membership on the association and the number of seats on the EITI Board. (Much of the inspiration and language in these guidelines has been taken from the Global Fund to Fight AIDS, Tuberculosis and Malaria's guidelines on constituency processes.)

Some of the EITI constituencies, not least the company constituency, are informally sub-divided. Currently, for example, mining companies organise themselves relatively independently from the oil and gas companies. The following principles should apply to the processes applied by these sub-sets:

- The processes the different constituencies follow should be open and transparent.
- Information on the processes should be made available on the EITI website, including a contact person for any stakeholder wishing to be involved.
- The process should be flexible and open to new members. The constituencies should bear in mind the need to balance the need for continuity against the need for renewal and broadening of the ownership of the EITI.
- Recognising the important role, the Board has for the EITI, countries and organisations are encouraged to be represented at senior level.

The constituencies are urged to bear in mind how important it is that the EITI Association and Board are representative of all of the EITI's stakeholders. It is, for example, expected that countries from different regions, companies, and civil society organisations with strong links to different regions, are represented. The constituency groups are encouraged to ensure that both genders are adequately represented.

On 14 February 2018, the EITI Board agreed recommendations for EITI constituencies to develop their guidelines. The Board's recommendations are annexed to this paper and are available online.[6] To support constituencies in developing their guidelines, the EITI International Secretariat has produced the following checklist. For the purpose of this document, the term "constituency" is understood to mean the three constituencies identified in Article 5.2 of the EITI Articles of Association (countries, companies and civil society) as well as any sub-groups in which the constituencies divide themselves in accordance with the sub-divisions specified under Article 5.2 (e.g., implementing and supporting countries or companies and institutional investors) or through generalised practice (e.g., oil and gas and mining companies, etc.).

1 Membership of the EITI Association

- Has the constituency agreed rules governing the appointment of Members of the EITI Association? (Article 5.3)
- Are the rules governing the appointment of membership in accordance with the limitations spelled out in Article 5.3 of the EITI Articles of Association?
- Is the process open and transparent? Is information on the process available on the EITI website, including a contact person for any stakeholder wishing to be involved, in accordance with the principles agreed by the Board in 2013?

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[6] Board decision 2018-17/BM-39/BP-39-6, https://eiti.org/sites/default/files/documents/board_decision_2018_17.pdf.

- In accordance with the same principles and recommendation 5 in Board decision 2018-17/BM39/BP-39-6, is the process inclusive?

Background: Article 5.1 of the EITI Articles of Association states that "A Member of the EITI Association is a personal representative of a country (meaning state), a company, organisation or legal entity that is appointed by a Constituency as set out in Articles 5.2 and 5.3". Article 5.2 states that "The Members are organised in three Constituencies, which are i) the Constituency of Countries, which comprise: a) Implementing countries…b) Supporting countries; ii) The Constituency of Companies, which comprise: a) Companies in the extractive sector… and Institutional Investors…; iii) The Constituency of Civil Society Organisations…". Article 5.3 states that "Each Constituency decides on its rules governing appointments of Members of the EITI Association. The Membership shall be limited to the following: i) From the constituency of countries, up to one representative from each Implementing Country and each Supporting Country (or their unions); ii) From the Constituency of Companies, up to one representative from each company and associations representing them, and a maximum of five representatives from Institutional Investors; iii) From the Constituency of Civil Society Organisations, up to one representative from each CSO".

3 Nomination of Board members

- The EITI Board is elected by the Members' Meeting on nomination from the constituencies (Article 8.1(ii)). Has the constituency agreed rules for the nomination of Board members for election by the EITI Members' Meeting?
- In accordance with the principles agreed by the Board in 2013, o Is the process open, transparent and inclusive? o Does the process seek to ensure that both genders are adequately represented?
  - o Does the process ensure that constituencies are represented on the Board at sufficiently senior level?

- Has the constituency considered provisions on term limits? At its meeting in Oslo in February 2018, the Board recommended that, taking into account the circumstances in each constituency, each constituency should have an aspiration to renew 50% of Board members (including alternates) with the intention that Board members should serve a full term (3 years). (Board decision 2018-17/BM-39/BP-39-6, recommendation 16).
- At the same meeting in 2018, the EITI Board recommended that, especially for implementing countries, guidelines should require nominees to obtain a confirmation in writing that the necessary resources will be made available for their participation on the EITI Board. (Board decision 2018-17/BM-39/BP-39-6, recommendation 21)

Background; Article 8.1(ii) states that the EITI Members' Meeting shall…"Elect the Members, and Alternates for each Member, of the EITI Board, **on nomination from the Constituencies**". Article 9.4 states "The Constituencies may nominate, and the EITI Member's Meeting may elect, one alternate Board Member (an "Alternate") for each Board Member that the Constituency has nominated. An Alternate may deputise for the Board Member. If there is no Alternate, the relevant Constituency shall nominate a new Board Member and Alternate".

4 Replacement of Board members and vacancies

- Do the guidelines establish a process to address the consequences of Board members failing to attend three or more consecutive Board meetings? (Article 9.5 and Board decision 2018-17/BM39/BP-39-6, recommendation 19).

- Do the guidelines include instructions on how new Board members and alternates will be nominated between EITI Members' Meetings? (Article 9.6 and Board decision 2018-17/BM-39/BP39-6, recommendation 23).

Background: Article 9.5 states: "If a Board Member is absent from a Board Meeting, that Board Member's Alternate may attend, participate in discussions, vote and generally perform all the functions of that Board Member in the Board Meeting. Should a Board Member fail to attend three consecutive Board meetings, the Board may, after consultation with his or her constituency, require the constituency to replace the Board Member. Article 9.6 states "In the case of a Vacancy on the EITI Board between two EITI Members' Meetings, this vacancy shall be filled by the resigning Board Member's Alternate, with the concerned Constituency nominating a new Alternate to be elected by the Board.
Alternatively, the concerned Constituency may nominate a new Board Member to be elected by the Board."

5 Constituency coordinators and sub-constituency contact points

- Has the constituency established a position of constituency coordinator (recommended)? (Board decision 2018-17/BM-39/BP-39-6, Recommendation 7)

- If so, what are the terms of reference of the coordinator (proposed roles, responsibilities, systems of feedback and role in handling complaints) and selection/election procedures?[7] (Board decision 2018-17/BM-39/BP-39-6, Recommendation 7)

- Have sub-constituencies appointed contact-points (recommended)? (Board decision 2018-17/BM39/BP-39-6, Recommendation 8)

- How are constituency coordinators and sub-constituency contact points communicated to the public?

Background: The EITI Board decided at its meeting in Oslo in February 2018 that "each constituency should establish a position of constituency coordinator", that "Constituency Coordinators need not be EITI Board members" and that "there should be sub-constituency contact points".

6 Procedures for ensuring consultations within the constituency

- Do the guidelines explain what procedures are in place to ensure consultation within the constituency on strategic policy issues? Board decision 2018-17/BM-39/BP-39-6, Recommendation 12)

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[7] Constituency Coordinators can be – but do not need to be – EITI Board members.

Background: The EITI Board decided at its meeting in Oslo in February 2018 that the EITI's guidance to its constituencies should "encourage consultations on strategic policy issues".

7 Complaints

- Do the guidelines set out what procedures are in place for stakeholders to express and address concerns within the constituency? (Board decision 2018-17/BM-39/BP-39-6, Recommendation 25).

Background: The EITI's guidance to its constituencies of 2013 recommended the following: "If an EITI stakeholder wishes to complain about the processes his/her constituency has followed to agree its representation on the EITI Association or Board, those complaints should firstly be directed towards the members of that constituency. If a satisfactory solution cannot be agreed, a written report should be made to the EITI International Secretariat. Within three weeks of receiving such a report, the Secretariat will investigate the complaint and make a report of its findings to the EITI"