

Civil society in EITI: The challenge of genuine and accountable representation

EITI Training, Manila, October 2017



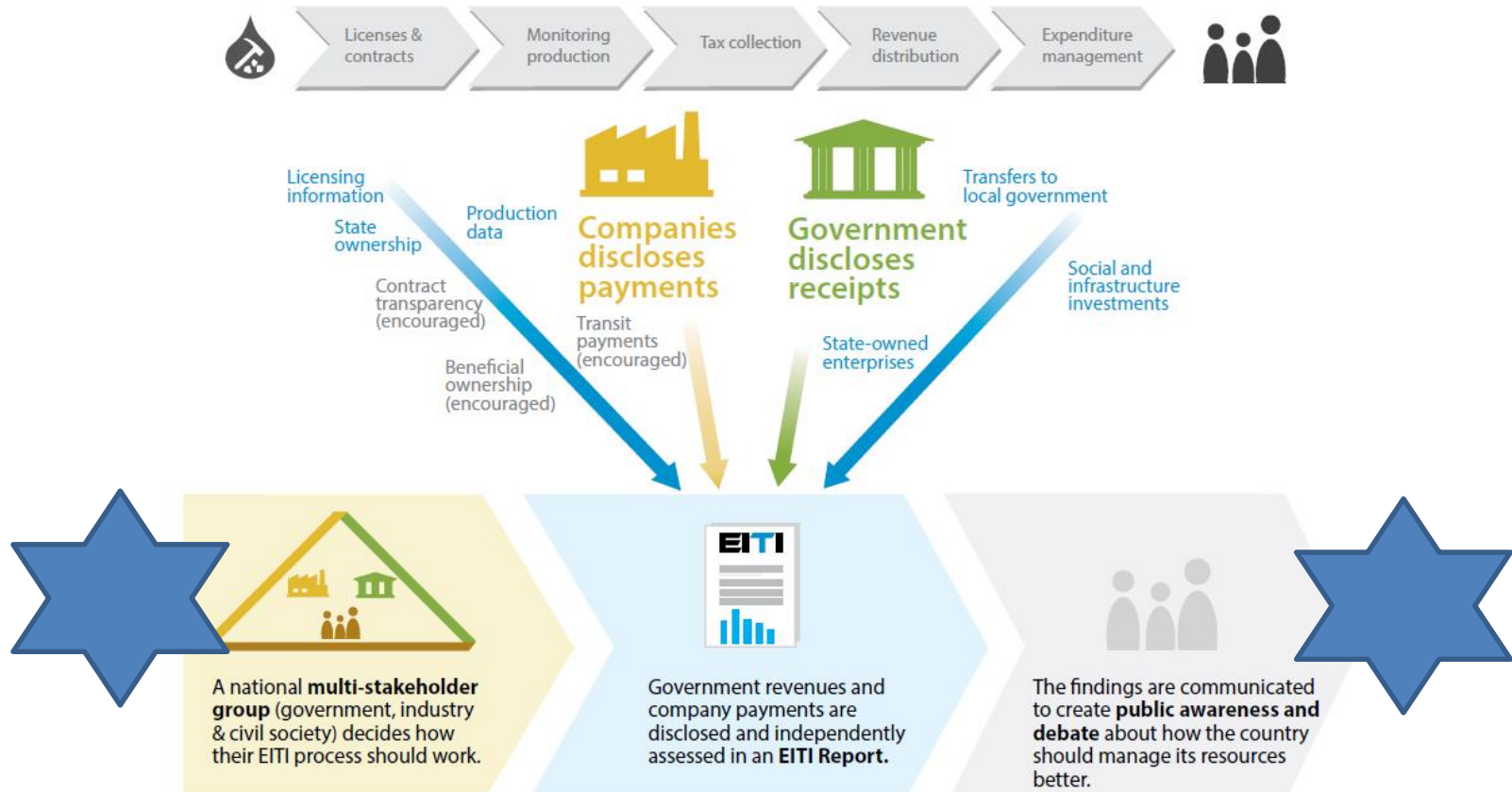
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The role of civil society

The EITI Standard





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The EITI Standard

- **The EITI Principles** : Principle 12 warrants important contribution of civil society
- **Requirement 1.3 of the EITI Standard** : enabling environment, no obstacles to active participation, no restrictions on public debate (safeguarded requirement of 2016 Standard)
- **Requirement 1.4 of the EITI Standard**: Free and independent nomination process to MSG, independence of CSOs
- **The Rapid Response Committee**: reaction in case of immediate threat
- **The Civil Society Protocol** : freedom of expression, freedom of operation, freedom of association, civil society participation, access to public decision making

The Civil Society Protocol



Expression

“Civil society representatives are able to engage in public debate related to the EITI process and express opinions about the EITI process without restraint, coercion or reprisal.”

- At Validation: Actual practices pointing towards **self-censorship** or **self-imposed restrictions** due to **fear of reprisal** or other barriers to free dissemination of information and comment on EITI process



“Civil society representatives are able to operate freely in relation to the EITI process.”

- At Validation: Wider enabling environment relating to **legal, regulatory or administrative obstacles** to civil society participation in the EITI (registration of CSOs, access to funding, holding meetings...) + **freedom of movement**.



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Association

“Civil society representatives are able to communicate and cooperate with each other regarding the EITI process.”

- At Validation: **Restrictions to communicate formally and informally** with CSOs outside the MSG+ **Restrictions to outreach to broader civil society.**



Engagement

“Civil society representatives are able to be fully, actively and effectively engaged in the design, implementation, monitoring and evaluation of the EITI process.”

- At Validation: Civil society representatives are able to fully contribute and provide input to the EITI process. **Views of CSOs are taken into account and documented in MSG meeting minutes + adequate capacity**



Access to decision making

“Civil society representatives are able to speak freely on transparency and natural resource governance issues, and ensure that the EITI contributes to public debate.”

- At Validation: Civil society representatives are **able to engage in activities and debates about natural resource governance**, including for example conducting analysis and advocacy on natural resource issues, use of EITI data, **engagement with media outlets**, development of tools to communicate the findings of the EITI reports, etc.

Common challenges and good practices



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MSI Integrity study in 2015



- MSI – Integrity: an independent consultant
- Study conducted between February and July 2014
- Governance documents assessed in 42 implementing countries; evaluation of governance practices via phone interviews in 10 countries; and field visits to 5 additional EITI countries (Azerbaijan, DRC, Cameroon, Tanzania, Philippines)



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Why focus on civil society?

- The role of civil society is crucial for two main reasons: it safeguards the integrity of the decision-making process, it liaises with citizens to go from transparency to accountability
- The difficulty to define civil society and to organise legitimate representation



Main findings

- Very few civil society constituencies have developed comprehensive qualification criteria, nomination or selection processes, or codes of conduct or governance rules.
- Many of the issues raised by interviewees in regards to the civil society constituency would be avoided if the constituency adopted clear, transparent and equitable processes.



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Nomination to the MSG

Eligibility and criteria

- Too often, civil society and other stakeholders reported that they have concerns about the civil society representatives selected to the MSG. The reasons for this ranged from concerns that government had essentially handpicked CSO representatives, to believing that the process for selecting CSO had been biased, poorly designed or never revisited.



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Nomination to the MSG

Caution against the use of pre-defined categories

- Some MSGs have created pre-defined categories or quotas for civil society based on their form: advocacy-focused NGOs (sometimes even specifically allocating a place for a PWYP representative); faith-based organizations; media; unions; academia or research organizations; parliamentarians or local government members.
- Can constitute breach of EITI Standard (when set by the government) and does usually not lead to effective CSO participation.



Nomination to MSG

Adopting formal criteria for participation in MSG

- Rather than relying solely on quotas or hoping a strong CSO candidate for the MSG will emerge organically, civil society and communities should collectively establish what factors would make a CSO representative effective in their own context.
- Countries that have adopted robust criteria appear to benefit from increased perceptions of external credibility and effectiveness.



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Nomination to MSG

Criteria

- Independence and accountability.
- Availability and commitment.
- Standing and legitimacy as civil society.
- Expertise or experience.
- Gender diversity should also be considered, along with the desirability for geographic diversity, expertise in different issues, if needed representative from that region.



DRC CSO code of conduct

3. Any candidate for the position of the civil society representative/delegate in the Multi-stakeholder Group or in any other structure in a similar domain must first fulfill the criteria hereafter:

- Be a member of a civil society organization that is active in the natural resources domain in DRC;
- Have a mandate from their organization;
- Have at least three years of experience in the domain of advocacy for the extractive industries transparency, including with state-level institutions and representatives of the private sector;
- Be knowledgeable about governance matters of extractive industries in general and have an advanced knowledge in EITI in particular;
- Have excellent interpersonal and interactional skills to deal with a wide range of role players both within the civil society as well as with the other stakeholders;
- Have excellent oral and written presentation skills in order to present the civil society's points of view in a convincing and strategic way;
- Show evidence of self-reliance vis-à-vis the firms of the extractive sector and of the state-level institutions involved in the EITI process in DRC;
- Show evidence of a high degree of morality, integrity, respect of their peers and a sense of accountability;
- Be available.

4. The signatory or member organizations of this code reiterate their full commitment to the gender questions and to take the necessary measures to guarantee a woman's representation within the Multi-stakeholder Group:



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Defining civil society

- Beyond establishing participation for civil society participation, two main definitional questions arose:

whether (1) publicly elected officials with a political affiliation (e.g. local government or opposition parliamentarians) or (2) for-profit entities, could ever be considered CSOs ?

Recommendation : NO



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Nomination to MSG

Term limits

- Rotation of representation in the MSG : importance to set term limits for credibility, democracy, generational renewal
- Good practice : the example of Azerbaijan with a yearly rotation and a maximum of two consecutive mandates.



Independence of CSOs

- The EITI Standard requires that civil society MSG members “must be operationally, and in policy terms, independent of government and/or companies”.
- No MSGs studied had provisions on the independence of civil society representatives in their available written governance policies.
- 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, though crucial for the *perceived* legitimacy of representatives. ([example from Philippines](#))



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Independence of CSOs

Payments to CSOs

The importance to mitigate the risk of actual or perceived loss of independence

→ Payment of directly incurred expenses : YES

→ Payment of per diems or flat rates: NO



Outreach and liaising by CSOs

- MSG representatives should reflect the views of their stakeholder groups, or their constituents, while participating in EITI governance. For CSOs, this means liaising not only with CSOs that are not on the MSG, but also with the wider population – particularly those communities especially affected by extractive industries, such as those living in or around extraction sites or in resource-rich areas: [the example of Colombia, EITI Board](#)
- Utilising a formal, inclusive and regularised process for outreach and engagement will not only heighten the legitimacy and effectiveness of CSO participation, it will also be helpful in widening a space beyond the MSG for civic debate : [the example of the DRC](#)