

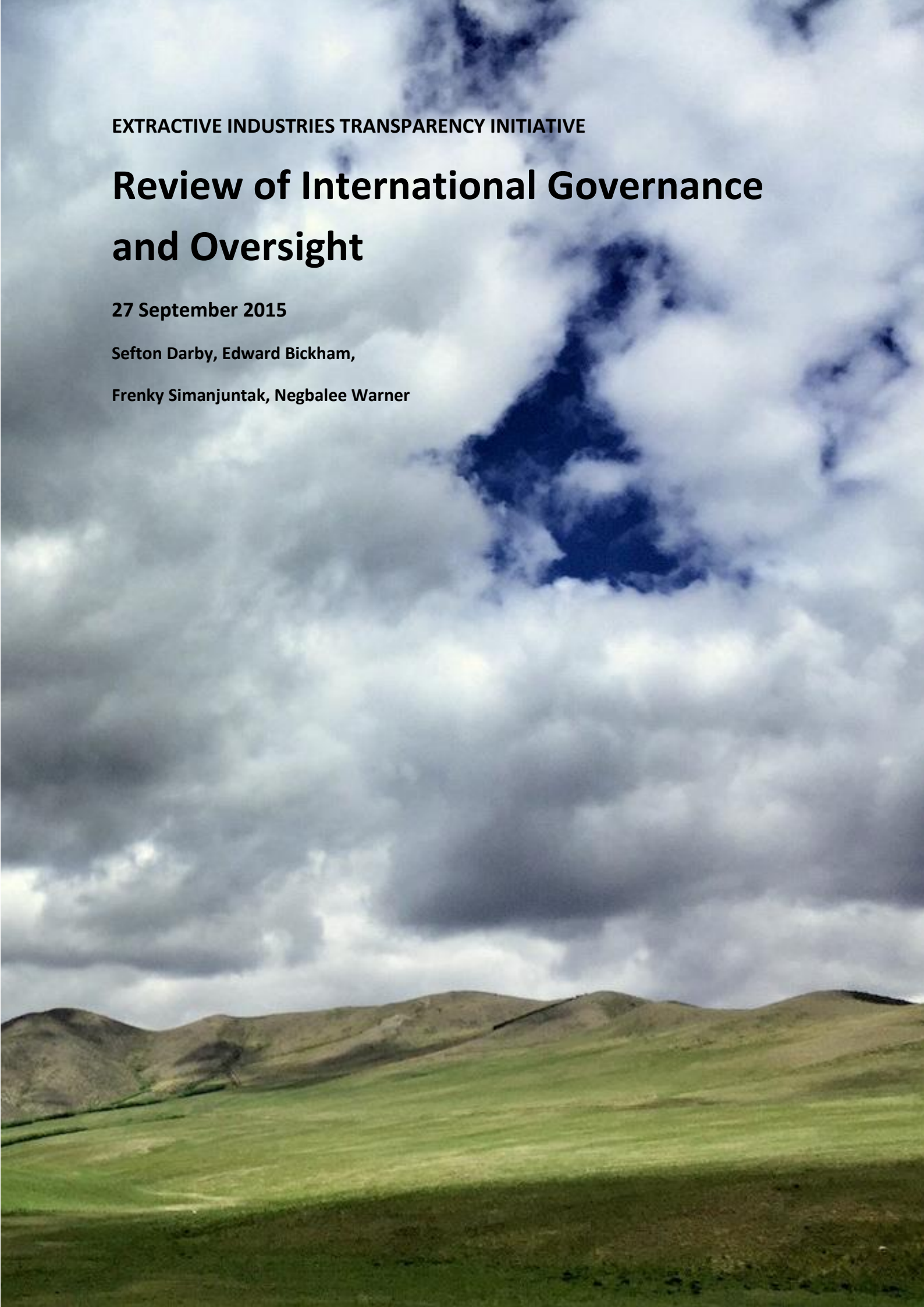
**EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE**

# **Review of International Governance and Oversight**

**27 September 2015**

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## 1. Executive summary

Multi-stakeholder processes are by definition loud, difficult, and argumentative creatures. They require constant attention to relationships, formal and informal. They are in part defined by the tension that exists between the governments, civil society organisations and companies that sit at their core. They only work when the relevant constituencies are clear about the areas where they share sufficient common ground to create a framework for progress and when sufficient trust has been built to facilitate a widening of areas for co-operation. EITI is no exception to that.

Where EITI is exceptional is in the extent of its success. What has been striking in this review of EITI's governance has been the degree of passion and commitment that people have for it. It is an initiative that now has more than four times as many implementing countries as when its international governance structure was created. EITI may not be able to 'escape a degree of fuzziness about what the fulfilment of its mission ought to look like'<sup>1</sup>, but for a relatively small cost it is able to maintain a discussion in those countries about a topic that was previously either off-limits or not understood – how are the oil and mining sectors governed; how are revenues generated and how is that money used? Who benefits?

Delivering that success has required an enormous amount of effort and it is fair to say that this review has found significant 'wear-and-tear' that that concerted effort has left on EITI's international governance institutions – i.e. the Board and the Secretariat. That wear-and-tear is not simply cosmetic – in many cases it is substantial and urgent action is required to address it.

Some of the tensions and issues identified in this report can be attributed to the fact that EITI has evolved significantly over the past decade. The EITI of a decade ago was a loose initiative of a dozen countries considering how to implement a set of broad principles, which is very different from the EITI of almost 50 countries implementing the EITI Standard which is notable for its breadth and complexity. And yet there are core aspects of EITI's governance as laid out in the Articles of Association – the structure of the Board; the lines of accountability in between the Board and Secretariat – that have not changed during that time but over which there seems to be increasing unease. Moreover, there is an obvious tension created at all levels by the fact that two and a half years after the agreement of the new Standard, there is some risk that many implementing countries will struggle to pass validation against that Standard. That raises questions of whether the governance structure of EITI has not effectively represented the voice of implementing

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<sup>1</sup> From O'Sullivan, D. *What's the Point of Transparency*, 2013, p. 41.

**countries in the design of the Standard, and/or whether the organisation's focus on supporting implementation has been insufficient.**

**Some of the issues identified in this report come from fundamental differences of opinion as to what the role of EITI is and what the theory of change is that drives it – should the locus of EITI be at the international level or at the national level; should the Standard be applied strictly; should it be expanded; or should it be applied flexibly and new innovations kept to a minimum? Moreover, in the course of the review we came across very diverse views within and beyond the Board and Secretariat as to what the role of each of those organisations should be.**

**With regards to the structure and operation of the Board, this review makes a number of recommendations around:**

- **Ensuring that a process of continuous Board development is in place.**
- **Considering whether Board members should be subject to term limits, as well as whether sanctions for non-participation should be applied.**
- **Restructuring the committee system and ensuring that all Board members participate in that system.**
- **Considering the creation of a new Deputy Chair position to assist future Chairs in their work given that the Chair has an increasingly onerous role in relation to their ambassadorial role; in leading and consulting with the Board so as to build its 'social capital' and in ensuring that there is proper scrutiny and accountability of the Secretariat.**
- **The importance of improving the transparency of key governing processes and documents.**

**At the heart of a lot of the challenges in EITI's governance lays the question of how best to strengthen the voice of implementing countries in EITI's international governance. At present that voice is arguably weaker than that of other constituencies and that is creating a number of risks across the organisation. This review recommends:**

- **A small increase in the number of implementing country representatives on the EITI Board, as well as consideration of how those representatives can best be supported in their work.**
- **The establishment of an EITI Implementation Forum that would sit separately from the Board but have the explicit role of strengthening the flow of information between implementing countries and the Board and counselling the Board on policy initiatives and the challenges of implementation.**

**The review also looks at the role of the International EITI Secretariat and finds that there is a need to look more closely at how oversight is exercised and how it is managed. Specifically, we recommend:**

- **Broadening the accountability relationship between the Board and Secretariat through the creation of an Oversight and Coordination Committee of the Board that would act as the ‘senior’ committee of the Board and have EITI governance, finance and accountability of the Secretariat at the heart of its responsibilities.**
- **Initiating a deeper organisational review of the Secretariat following the Lima conference in 2016.**

**This is a substantial list of issues to address stretching across all aspects of EITI’s governance. The potential pay-off, however, is that if successfully implemented these recommendations should address some of the tensions identified. It should also allow EITI’s international governance institutions to effectively deal with the increasing information flows and decisions that they need to make. At present the weight of the added breadth and depth of EITI is placing significant strain on the cohesion and social capital required to maintain the organisation.**

**Finally, we would make an observation on the nature of the governance review itself. Such reviews are essentially processes in which organisations look in the mirror to see whether they like what they see. That in turn creates a challenge for reviewers, which is that of navigating the fine line between the obligation to reflect back what has been found, while at the same time managing the fact that not everyone is going to like what they see. For recipients it is a process that can stall in a mire of defensiveness – the hardest task is to move beyond that to implementing the findings.**

## 2. Background

### 2.1 Methodology and sources

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The primary source of information for this review has been interviews carried out with a variety of stakeholders involved in different aspects of the EITI. While we were contracted to carry out a maximum of 55 interviews in total, we have in fact come close to carrying out closer to 85. Some of that has come about because we were able to speak to groups of people; some because of a greater than expected number of people who proactively sought us out and asked to contribute to the review. A full list of interviewees can be found at **Annex B** which also notes those that provided feedback on earlier versions of this report. Broadly, those interviewees can be broken down into the following groups:

- Current full or alternate members of the EITI Board.
- Current members of the International EITI Secretariat.
- Former members of the Secretariat or Board.
- People involved in all aspects of EITI implementation in a selection of countries.
- People involved indirectly in EITI – for example, as advisers to participating organisations or staff in supporting / donor organisations.

Those interviewed by the team were determined by an initial set of suggestions provided by the Secretariat that was then discussed extensively and amended and added to by members of the Board's Governance Committee. All members of the Board were invited directly to be interviewed, though not all responded despite some prompting. Some interviewees were added to the list when they were identified by other interviewees as good sources of information. Others proactively sought out the review team when they heard that the review was taking place. While there were a small number of interviews that we were unable to carry out due to the lack of time or logistical difficulties, we are not aware of any interviewees who were turned away from the process. All interviewees were assured that their input would be anonymised in the review.

Where possible we have tried to give an indication as to how regularly issues were raised by interviewees by providing indicators such as **'no one'**, **'a few'**, **'some'** (enough to be significant, but still less than half), **'approximately half'**, **'many'** (more than half, but still far from all), **'most'** (almost all) and **'all'**. It should be noted, however, that these are not always accurate indicators for the obvious reason that not all interviewees commented on the same issues, and we did not stick to a fixed or formulaic list of questions. In the report we have also attempted to give additional weight to issues that were raised by people across all stakeholder groups – i.e. if it was a broadly held concern, not just a particular issue for all the people in one constituency.

In addition to interviews, the team carried out a small amount of in-country work covering Indonesia, the Philippines, Liberia and attending a regional meeting of Anglophone and Lusophone EITI coordinators held in Ghana. This was combined with visits to the EITI Secretariat in Norway, as well as to civil society, company and donor representatives in the United Kingdom and the United States.

A limited literature review was carried out, with a particular focus on:

- Whether there were lessons that could be learned from the governance of other international multi-stakeholder initiatives.<sup>2</sup>
- The principles of good organisational governance.
- Publications related specifically to the EITI (see **Annex C**)

Finally, a review of internal EITI documents was carried out that included looking at:

- Core governance documents such as the EITI Standard and its predecessors
- Board papers
- Committee papers
- Secretariat work programmes
- Secretariat budgets and accounts.

We have carried out a limited amount of quantitative analysis based on some of these documents, in particular to focus on:

- Attendance rates in Board and committee meetings
- The weight of work that is carried out by the Board

The review was guided by the Governance Committee<sup>3</sup> of the EITI Board. Three meetings of the Committee were held during the review and these helped to shape its direction, as well as to identify potential interviewees and sources of information. The EITI Secretariat<sup>4</sup> provided considerable comments on various drafts of the report as well as logistical support to help arrange interviews and travel.

## 2.2 The Review Team

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The review was carried out by a team of four consultants. Collectively the team have worked in management level positions in all of EITI's constituencies (governments, companies and civil society) and all of them have extensive prior experience of working with EITI at both the national and international level. Two members of the team are former members of the International EITI Board, and one has been a members of national level EITI multi-stakeholder groups, and another an observer of a national level EITI process.

**Sefton Darby** is the principal consultant and author. He was involved in the development of the EITI between 2003 and 2009, initially working for the then DFID-hosted Secretariat, then in the World

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<sup>2</sup> That said, we largely found this part of the research to be somewhat of a dead end – international multi-stakeholder initiatives of the breadth of EITI are not common and the difference in focus, structures and institutions varied so much that we concluded that it was difficult to find analogous experiences and solutions.

<sup>3</sup> Alan Mclean (Chair), Marinke van Riet (Deputy Chair), Florent Michel Okoko, Maria Inmaculada Montero-Luque, Nico Van Dijck, Carine Smith Ihenacho, Ian Wood, Natalia Yantsen.

<sup>4</sup> Particular acknowledgement is due to Shemshat Kasimova, Leah Krogsund and Pablo Valverde who made it possible to get through a large number of interviews and travel in a very short amount of time.

Bank working EITI programmes in West Africa and Central Asia, and then on a number of different EITI assignments for various supporting governments and international civil society groups. More recently he has held a site-based management position with a major international mining company, and was then responsible for managing all minerals permit allocation and compliance as the National Manager of Minerals for the New Zealand Government.

**Negbalee Warner** is a senior partner in a law firm in Monrovia, Liberia and has worked for a wide variety of corporate, civil society and government clients. Between 2007 and 2010 he was Head of the Liberia EITI Secretariat, and in this role served on the International EITI Board for two years.

**Frenky Simanjuntak** is an experienced researcher with a strong civil society background. Based in Indonesia, he was involved in EITI implementation there in his previous role as manager of the economic governance department in Transparency International Indonesia.

**Edward Bickham** is a former Executive Vice President at Anglo American, and in this and subsequent roles represented them and latterly ICMM on the EITI's International Advisory Group and then Board between 2006 and 2013. Prior to his work with Anglo American he worked as a Special Advisor to the British Foreign Secretary. He has been involved in the governance of two other multi-stakeholder initiatives; the Voluntary Principles on Security and Human Rights and the OECD Working Group on Due Diligence on the Responsible Sourcing of Minerals from Conflict Affected and High Risk Areas. He works in a number of senior advisory roles in the oil, gas and mining sectors.

Coordination of a team spread out across four countries and different time-zones has had its own EITI-like challenges, but all of the team has been able to feed into and contribute extensively to the report. All mistakes and omissions are, however, the responsibility of the Principal Consultant, and for that reason any questions or comments on this report can be sent to him at [sefton.darby@gmail.com](mailto:sefton.darby@gmail.com)

### 2.3 Terms of Reference of the Review

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The Terms of Reference for the Review<sup>5</sup> were published on 11 May 2015. Those Terms of Reference stated that the review should assess and make recommendations on the following issues:

- Is the Members' Meeting providing meaningful oversight and ensuring proper accountability? How can the role of the EITI Members' Meetings in the overall governance of the EITI be improved?
- Is the current operation of the Board and its committees adequate to support implementation of the Standard? Should the Board meet more often, less frequently, for longer, shorter, take less or more decisions through circulars, and focus more or less on procedural, current implementation progress or longer term strategic issues? Could more be done to ensure improved participation in committee work by a larger group of Board members, their alternates or be strengthened by other EITI stakeholders? The consultant should outline recommendations that will result in an improved participation in Board

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<sup>5</sup> <https://eiti.org/files/TOR-Review-of-governance-and-oversight-of-the-EITI%20.pdf>



committee work, and better interaction among committees and between committees and the Board.

- Are the various stakeholders reasonably represented on the Board? With 48 implementing countries, is the implementing country Board representation appropriate? Are the constituency guidelines adequate and are the practices within each constituency appropriate, ensuring transparency and accountability? The consultant should include options to solve the problems deriving from the fact that an increasing number of countries belong to more than one constituency and recommendations to avoid conflicts of interest. Is the funding formula for voluntary contributions adequate or would it be advantageous with alternative arrangements, including fees?
- Are the Articles of Association and the current ToR for the Chair sufficient to assure oversight of the Secretariat as well as vis-à-vis the rest of the Board? - Is there an adequate system for setting goals and evaluating performance of the Head of the International Secretariat? Is the Board providing effective oversight of the International Secretariat? - Is the Board adequately supported by the International Secretariat? Does it wish to have greater resources devoted to its own decision-making?
- Is it adequate from an EITI governance perspective that significant support to EITI implementation is channelled through the World Bank and other agencies, outside the EITI's management? What governance issues are raised by this parallel, and sometimes integrated working model?
- Does the Board have sufficient oversight of governance arrangements across the EITI, including in national MSGs? What can be done to ensure compliance with the Code of Conduct?
- Are the roles and responsibilities of Board members, their alternates, and others engaged in and associated with the EITI clear and appropriately monitored? Are the arrangements for 'on-boarding' those new to the EITI sufficient to support them in their roles?
- Is the number of Board committees adequate? Do they have the right scope and is the division of duties between the Board committees clear and optimal?
- From a governance perspective, is the capacity of the Secretariat and Board adequate? Consultant should take into account the assessment of the Scanteam Report and governance issues arising from the strategy review. The consultant should also consider the findings of the Board survey completed in February 2015.
- Are there any other risks to the 'brand or reputation of the EITI where governance needs to be improved or better communicated?
- The review could look at the visibility of supporting countries which is important for sustained support.

## 2.4 Limitations

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In our proposal of 21 June 2015 responding to the Terms of Reference we noted four key project assumptions:

- That a maximum of 55 interviews would be carried out.

- That two of the three questions raised in the proposal (those related to support mechanisms and EITI financing) will be covered briefly but not in depth by the review.
- That there will be only one substantive review of the draft before production of the final report.
- That there would be minimal slippage of the timeline.

It is important to note these assumptions as there has been some subsequent misunderstanding as to what was agreed to with regards to how much or how little the review would look at the issue of financing and funding. The timetable for carrying out this report has been extremely tight - a total of seven weeks was allowed between the first invitations being sent out for interviews and the production of the first draft report. A total of only 53 working days (across 4 consultants) was available to:

- Travel to 5 countries (the Philippines, Ghana, Norway, the UK and the US)
- Carry out interviews by phone with people in almost twenty countries
- Review internal and external documents related to the EITI
- Draft and receive comments on several versions of this report.

The project timeline has slipped by 13 days from the original due date of 14 September, though we would note that this has allowed the inclusion of a much greater than expected number of interviews as well as for two (instead of one) rounds of review of the report.

It is difficult to see how it would have been possible to do this any other way in the timetable provided without a very significant increase in the resourcing of the review. We make these observations because this report has at times become a mini-case study of what is wrong with some aspects of EITI governance – it was rushed, circulated at short-notice, and not able to be discussed in draft with key members of the Board and Secretariat as much as would be desirable – there were many other interviews (particularly with implementing country representatives) that we tried hard to set up but which proved difficult to pin down in such a short space of time.

Beyond the fact that it has been rushed, we have received comments suggesting yet more possible interviewees and more documents to review. There is no doubt that the ability to do this would have improved the quality of this report, but it was beyond the time and resources available to the review.

One other limiting issue needs to be addressed here is that of the difficult balance that we had to strike between being precise and specific about the way in which some issues have been described, versus the opposing need to guarantee the confidentiality of interviewees, as well as to not write a report that simply became a litany of collective angst that would damage the cohesiveness of the organisation. Governance reviews are necessarily qualitative and subjective assessments that we have tried to complement with data (e.g. from the Board survey and Board and committee participation rates) where possible. Earlier reviewers of this draft did in some places ask for more specific descriptions or ‘proof’ of the issues raised. In many cases we have refused to do that because we believe that it would fail on the confidentiality and cohesiveness issues raised above. What we have tried to do, however, is give clearer indications of where views were strongly or weakly held.

## 2.5 What is a governance review?

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Defining what a governance review is or is not has also proved difficult throughout the process of developing this report. At a strategic level, it is fair to observe that it is difficult to separate questions of how EITI is governed, from what its overall business model is – what it does; where and how it does it. The problem with this observation is that it would make the governance review a review of everything, and therefore infinitely longer than this report already is.

At the other end of the spectrum, there were those who wanted the governance review to perform the role of looking at the detailed structure and processes of how various parts of the EITI work. This report certainly does that on one level, but it does not get into the level of making detailed recommendations on – for example – performance management or accounting practices. It is also important to state that this review is not nor should it be used as some sort of proxy assessment of either how specific individuals involved in EITI have performed, or whether EITI itself is a success or a failure. If that's the review that you're looking for, then stop reading here.

What the report does try to do is focus on are some governance basics: does the structure of the organisation make sense? Do the systems and processes that govern how those structures allow them to deliver on their mission? And, with much more difficulty, are the people working in these structures and with these systems able to exercise their responsibilities – to effectively participate in the EITI; to hold others to account as well as to be held to account.

Perhaps one of the most striking impressions that we encountered in carrying out this review was the very large number of interviewees whose thinking on EITI was dominated by recent policy or country-specific concerns, and who saw the governance review as something that should comment on or solve those issues. While those issues were interesting examples of how the various governance institutions raised issues, discussed, implemented, and resolved (or didn't resolve) problems, this review has tried as much as possible not to address these issues – they are the legitimate prerogative of the Board, not of a governance review.

There were also inevitably some issues that were raised that were less issues of governance, but more related to the basic and enduring tensions that exist between the three main stakeholder groups that make up the Initiative. This is not particularly different now from when the EITI was first being developed in the early to mid-2000s – albeit the 2013 Standard was a triumph inasmuch as its breadth demonstrates a substantial broadening in the number of areas in which the constituencies broadly feel comfortable in seeking to work together. This is not to say that there are not some legitimate governance issues that came from these kinds of observations, but that they needed to be carefully filtered in order to separate stakeholder or even personal tensions from more systemic governance problems. We found the best way of filtering these kinds of inter-stakeholder and personal tensions out of the review was to ask interviewees to propose a structural or procedural fix to the issue that would be acceptable to the rest of the EITI Board.

For those who did comment to us on governance issues and were able to make recommendations on what to do about it, there was a strong focus on structural fixes. This review certainly makes a number of recommendations in this area, but it is important to complement that aspect of

governance with two other aspects – the systems and processes that shape how governance occurs, and the people who populate it and how they interact with those structures and processes. We have tried to make recommendations that address all three.

Finally, there are some recommendations in this review that have been previously considered by the EITI Board or relate to aspects of EITI governance that have been changed previously. That they have come up again does not invalidate them, rather it simply reflects that there is still concern in the organisation about the issue.

## 2.6 Remembering where EITI has come from

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The other challenge of this review has been to move beyond the apportioning of responsibility and blame for perceived weaknesses and failures, to finding recommendations that we believe will help EITI to evolve. And that is perhaps the key message of this review – EITI is a successful multi-stakeholder organisation. But it is stuck with a governance arrangement that was designed almost a decade ago. In order to understand the extent of that transformation, it is worth looking back at the 2006 report of the International Advisory Group that designed the current governance structure of the Initiative.<sup>6</sup> Notable in that report are the following facts:

- It lists 26 countries that had at that time expressed some degree of support for the Initiative, of which only 10 had met the then four indicators of membership.
- Those membership requirements were very basic: a public statement; a commitment to work with civil society; the appointment of a senior champion; and publication of a costed work programme.
- The governance structure was described in the following way: *‘It was recognised that an international structure was required to channel advice and financial support and to exchange lessons learnt. However, such a structure should be light touch and designed with an eye on the ultimate goal for EITI be ‘mainstreamed’, with its criteria and principles becoming the normal way of working in all the relevant extractive industries within three to five years’*
- The Board would be provided with a budget of \$120,000 per year, which would be sufficient for four meetings annually.

From that the following observations can be made:

- Despite the wishes of the International Advisory Group, EITI did not achieve all of its goals between 2009 and 2011 and then fade from existence.
- The EITI website now lists 48 implementing countries, 31 one of which are deemed compliant, thirteen of which are candidate countries, and four of which are currently suspended. Not only has there been a more than four-fold increase in implementing countries but those countries are now to be found in all regions; range from having very little extractive resources to very large resources; and occur at all levels of economic development.

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<sup>6</sup> <https://eiti.org/document/iagreport>

- In its first full year of operation (2008) the international institutions of EITI (i.e. the Secretariat and Board combined) spent a total of US\$2.9 million, with Secretariat staff costs accounting for USD \$1.5 million. By 2014 total expenditure was US\$ 5.0m, with Secretariat staff costs accounting for USD \$2.3m – an increase that is modest given the growth of the Initiative.
- The scale of change in EITI policy – from the six simple EITI Criteria of 2005 to the EITI Standard of 2013 – is immense.

## 2.7 A note on terminology

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EITI has its own ‘language’ and at times one must be careful to stick carefully to it, while at other times it is useful shorten or abbreviate certain terms in order to keep the report more readable and less clunky. There are three in particular that we would note here:

- The report often refers to Board members as short-hand for both Full Board members and Alternate Board members. We comment on the distinction (and at times lack of distinction) between the two in Section 3.11 below.
- The report also talks about the various constituencies of the Board, when this is in fact short-hand for constituencies and sub-constituencies. While one constituency – civil society – does not contain any formal sub-constituencies, the country constituency is split into two sub-constituencies (supporting and implementing), while the company constituency is split into three sub-constituencies (oil companies, mining companies, investors). At times the distinction between the two is important, but at other times we abbreviate to ‘constituencies’ in order to simplify the language of the report.
- Finally, and perhaps more philosophically, the report alternates between referring to EITI as an Initiative and as an Organisation. In some ways it is both – the Secretariat and Board give the impression of an organisation, whilst the wider global movement of implementing countries, companies and civil society organisations would be characterised by some as being supporters of an initiative. We discuss this distinction a little more in **Chapter 3** below.

### 3. The Board

#### 3.1 What is EITI? What is the role of its Board?

The title of this section is a seemingly obvious question, but it is one worth exploring because it is our view that some of the tensions that exist within EITI come about because of a confusion of roles. One of the interesting themes to come out of a lot of the interviews was that there are two broad debates that are occurring as to how EITI should proceed, and what the Board's role should be in guiding the organisation. It is worth describing these two debates as doing so helps to explain some of the areas of tension that currently exist within the EITI.

Firstly, as one interviewee noted, when the Board meets 'EITI means something different to everyone in the room'. That debate even comes down to EITI's name – an 'initiative' sounds inherently time-bound and something that individual organisations and countries can choose to join or leave as they see fit. An organisation, on the other hand, seems more permanent, more rule-bound. EITI has long outlived its original lifespan (see 2.6 above) and is falling somewhat in between the two.

The current manifestation of this debate occurs on the same spectrum – should EITI (to paraphrase comments received from the Chair on an earlier draft of this report) be an expanding set of compulsory rules on which countries should report or be excluded, or should it be one where the engine of change is much more driven by local reformers and their need to shape EITI accordingly. That would be an EITI that would naturally lead to one of much greater diversity (for both better and worse) in the standard of implementation. This debate is less one of two 'camps' and more one in which different members of the Board and organisations involved in EITI find themselves at various points in a spectrum of views between these two broad positions. However, it is important to note that the organisation deliberately chose the title 'Standard' for its 'rule-book' in 2013, and that word implies minimum standards, objective analysis of achievement and commonality of practice.

The second broad debate that then overlaps this regards what the role of the Board is. The Articles of Association (specifically Article 13 – shown below) define a Board with very broad responsibilities. The debate that this review picked up in interviews is the question of how hands-on or hand-off (or strategic/tactical, interventionist/non-interventionist) the Board should be. In this regard we could find points of view that fall at almost every point on this spectrum. Many interviewees expressed frustration with what they perceived to be a Board that was too tactical and spent hour upon hour discussing issues in specific countries as well as detailed point-by-point policy discussions. At the other end of the debate there were many who saw this kind of work as being the core mandate of what the Board exists to do – to define (and where necessary add to or redefine) what it means to 'do EITI' and to focus strongly on performance by individual countries.

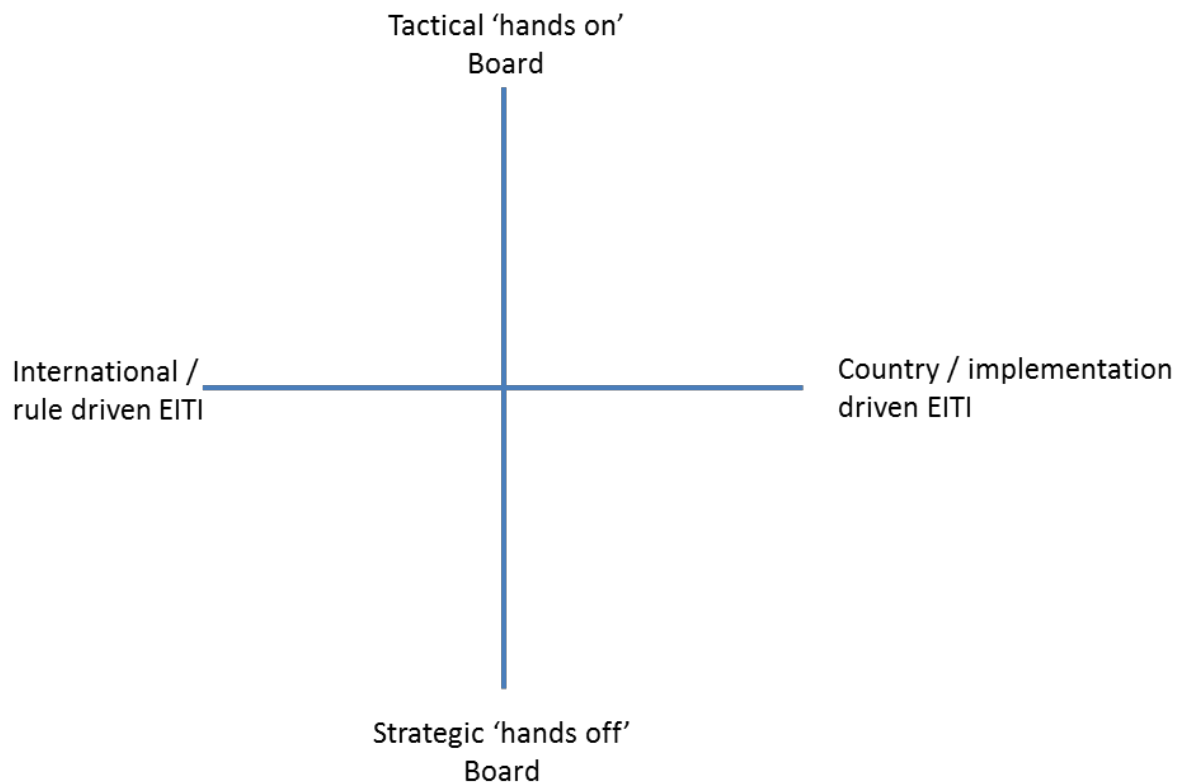
## ARTICLE 13 FUNCTIONS OF THE EITI BOARD

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- 1) The EITI Board shall act in the best interests of the EITI Association at all times. The EITI Board shall exercise the executive powers of the EITI Association subject to the resolutions of the EITI Members' Meeting, including the following key functions:
  - i) Consider general and specific policy issues affecting the EITI Association;
  - ii) Agree on the work plans and budget of the EITI Association;
  - iii) Agree on the arrangements for the EITI Conferences and the EITI Members' Meetings;
  - iv) Present (through the EITI Chair) the activity report and the activity plan to the EITI Conference and obtain approval of the same from the EITI Members' Meeting;
  - v) Present (through the EITI Chair) the annual accounts and the audit reports for the accounting periods since the last ordinary EITI Members' Meeting;
  - vi) Engage the Head of the Secretariat;
  - vii) Oversee and direct (through the EITI Chair) the work of the EITI Secretariat;
  - viii) Ensure that the multi-stakeholder nature of the EITI Association is maintained and fully reflected in the EITI Association at all levels, including in its Committees;
  - ix) Establish its procedures regarding the validation process, including complaints, resolving disagreements, the question of de-listing a country and appeal procedures;
  - x) Adopt more detailed procedures and rules for the management and operation of the EITI Association including the contents of country work plans and company work plans, the validation process, the management of funds, payments for projects, goods and services, auditing and reporting and the approval of projects;
  - xi) Recommend a candidate for the EITI Chair prior to each ordinary EITI Members' Meeting; and
  - xii) Adopt a code of conduct.

Combining these two debates and you get a rich diversity of views as to what the role of the EITI Board actually is. **Diagram 1** below shows that combination of debates. While we accept this is a simplified description of tensions and changes within the EITI, the point that we make here is that it is possible to find members of the Board, Secretariat and others involved in EITI who would place themselves and their aspirations for EITI at virtually every single place on this diagram – from those who see EITI as being a highly country-driven process in which the primary job of the Board is to support and discuss specifics of day-to-day implementation, to those who would prefer to see EITI as being much more rule driven, with governance that is much more hands-off.

**Diagram 1: Tensions in EITI's governance**



The make-up of the EITI Board is very different to that found in most other organisations and for Board members it creates a three-way tension of loyalties between their obligations to their sponsoring organisation (i.e. the individual government, company or civil society group, as the case may be, that employs them); their broader constituency; and to the EITI Association as a whole. We make this observation because a number of the tensions that exist within the EITI have come about because for some that division of loyalties is not evenly balanced – some feel little loyalty to their constituency; some feel that their constituency demands too much loyalty at the cost of their individual views and obligations; others feel that decisions are being made that give little consideration to the overall well-being of the EITI; and some feel that their obligations to the EITI as a whole are synonymous with upholding their constituency's interests since EITI is about achieving balance between three different perspectives.

Those conflicting loyalties will always exist on multi-stakeholder governing bodies and the best way that an organisation such as EITI can hope to manage them is by regularly reminding Board members of the general duties of all Board directors everywhere, namely, to:

- be attentive and diligent – i.e. to read documents and to represent those views in person rather than via proxies;
- be attendant – i.e. present at all Board and committee meetings;
- be deliberative – i.e. to make decisions based on good information, discussion, and without conflict of interest; and
- hold confidences.



Variations of these rules of conduct or obligations are reasonably standard in most organisations – EITI reflects them in the induction that is provided at the beginning of a new Board term<sup>7</sup> as well as in the EITI Association Code of Conduct.<sup>8</sup> As we note below, these basic duties need to be regularly revisited and practices and we make a recommendation on this below.

### 3.2 How does the Board perceive itself?

At the beginning of 2015 the Board carried out a ‘self-assessment’ based around 24 questions with a five-point scale<sup>9</sup> with the opportunity to also add written comments on each broad section. The response rate was good – 32 out of 39 members of the Board responded<sup>10</sup> – though not all members answered all questions. The use of the ‘comment’ function was limited – a total of 64 comments were received, i.e. an average of two short comments per respondent. Looking at the responses to the survey it is possible to categorise responses as follows:

- Areas where the Board believes that performance is good – i.e. most respondents agree or strongly agree with the statement.
- Areas where the Board believes that performance is good but where there is opportunity for improvement or better explanation of how things work – these are the questions where the total number of ‘agree and strongly agree’ responses is high, but where there is a large number of people using the middle score of ‘somewhat agree’.
- Areas where the Board appears to hold views that diverge – i.e. that there are groups of people who both ‘agree and strongly agree’ as well as those who ‘disagree and strongly disagree’ with little middle ground (i.e. few who scored it ‘somewhat agree’).
- Areas where the Board believes the performance is poor – i.e. where the ‘disagree and strongly disagree’ responses outweigh the ‘agree and strongly agree’ responses.

Upfront it is worth noting that there is only one area in which the Board believed its performance fits the last category – i.e. poor performance, and that relates to whether committee meetings are well attended or not (this is discussed in **Chapters 3 and 5** below, which reinforces this finding). Of the remaining 23 questions, the following were areas of perceived good performance:

1. Board member assignments to committee work.
2. Attendance of Board meetings
3. Board meetings being held in a way that encourages open discussion and debate
4. Effective chairing and facilitation of Board meetings
5. Frequency of committee meetings
6. Committee meetings being held in a manner that encourages open discussion and debate

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<sup>7</sup> <https://eiti.org/files/roles-and-responsibilities-eiti-board-members.pdf>

<sup>8</sup> [https://eiti.org/files/Code\\_of\\_Conduct\\_FINAL\\_EN.pdf](https://eiti.org/files/Code_of_Conduct_FINAL_EN.pdf)

<sup>9</sup> Strongly disagree, disagree, somewhat agree, agree, strongly agree.

<sup>10</sup> Though no breakdown of responses is provided, so it is not possible to know if those who did not respond were spread across all constituencies and board member types, or if they were disproportionately represented in one particular group.

7. The Board exercising its governance role by ensuring that the Secretariat supports EITI principles, codes of conduct, etc.
8. Appropriate representation of each constituency on the Board
9. Appropriate number of committees and committee mandates
10. Appropriate division of responsibilities between the Board and committees
11. The Board being informed of the work of committees
12. Strong and clear communication between the Board and Secretariat
13. Secretariat follow-up of actions from Board meetings
14. Support from the Secretariat around Board meetings

The areas where the Board perceives there to be good performance but where perhaps improvements could be made (i.e. a large number of middle 'somewhat agree' marks) are:

15. The Board operating under policies, procedures and guidelines.
16. Newly nominated Board members receiving adequate orientation.
17. Frequency of Board meetings
18. Committee members fully and positively participating and adding value.
19. Effective management of the Head of Secretariat by the Chair.

The areas where there appear to be divergent views - i.e. still more positive than negative, but with notable numbers on each side of the question are:

20. The nomination and appointment of Board members following clearly established and well known procedures.
21. Board meetings allowing sufficient time for discussion of substantive matters.
22. Each member of the Board fully and positively participating in discussions.
23. Board members working within and across constituencies to reach consensus prior to Board meetings.

All-in-all the survey paints a reasonably positive picture of Board life, and it is for that reason that we were surprised to discover in our review more disquiet than was indicated in the self-assessment.

Reasons for this divergence in findings might be:

- Interviews for this review were quite long (approximately an hour per interviewee) and allowed more time for detailed qualitative comment rather than quantitative scoring.
- The interviews included a number of questions asking interviewees to specifically identify areas that were of greatest concern and would benefit most from improvement.
- Interviews were drawn from a much broader range of stakeholders – Board members, Secretariat members, former members of both, people outside of the Board but involved in national level EITI processes, people in organisations involved with EITI at the international level.

### 3.3 Understanding of Board governance

One of the interesting discoveries of this review has been how little reference is made to the key documents that set out the governance arrangements for the initiative. The Articles of Association

were referred to by virtually no interviewees, nor did a single interviewee in any part or level of the EITI organisation mention the existence of the Board Manual until a week before the production of the first draft of this report. The Board Manual – updated as recently as August 2014 – is a relatively simple document that lays out the governance arrangements, legal status and organisation of the EITI. And yet along with the Articles of Association – i.e. the document that is in effect the constitution of the Initiative – it appears to be distant from the minds of those responsible for the governance and management of the Initiative.

Given the divergent views on how EITI should proceed, as well as what the role of the Board should be, it would seem that the need for these documents is even greater. We make recommendations in **Chapter 9** regarding the transparency of key EITI processes, but that recommendation needs to be developed alongside one of the areas where Board members themselves identified in their survey that there was room for improvement – i.e. Board induction. Some Board members noted in the interviews that they felt that they had been thrown in the ‘deep end’ when they first joined and largely had to figure out how EITI worked for themselves.

**Recommendation 1.** It is for this reason that the first recommendation of this report is that an appropriate programme of Board development needs to be initiated. That programme should have the objectives of ensuring that:

- all Board members are familiar with the governing documents and processes of the EITI;
- the Board manual is regularly updated with details of how the EITI works and the processes and customs that guide its operations;
- once a year the Board holds a dedicated governance session in which it reviews Board survey results (assuming that surveys are made an annual event); discusses where it is sitting and needs to sit in the spectrum described in Diagram 1 above; reviews attendance levels; and takes time to review and sign off on the Code of Conduct; and
- that a programme of Board induction exists, not only at the start of each term, but also for any members who join mid-term (our review found that inductions for such new members was poor and seemed to assume that this would primarily be done by the new member’s constituency).

### 3.4 Board Constituencies

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One of the interesting aspects of EITI’s governance structure is that the Board collectively takes little responsibility for who sits on the Board – the Articles of Association in essence devolve responsibility for this to different constituencies and sub-constituencies. In the process of carrying out this review, a number of concerns were raised by Board members about both how their own constituencies were s/elected, as well as how other constituencies were managed, and these concerns are backed up by the Board’s own self-assessment.

This poses the difficult question of whether the Board wishes to adopt a more interventionist policy – i.e. for the Board collectively to take an interest in the nomination processes used by each constituency to identify candidates for the Board. It is fair to say that there is a great deal of sensitivity in this issue. Some Board members clearly want the Board to have a greater role in

ensuring that all constituencies are functioning well and deliver exceptional candidates to the Board. Others, however, are strongly against any move that would see Board interference in the self-governance of each constituency.

It should be noted that in general the review found good levels of coordination and communication within each constituency, as well as between Board members and members of their constituency who are involved in EITI but who do not sit on the Board. Most constituencies hold regular meetings or teleconferences in order to consult with one another on issues being considered by the Board and in some cases key committees; these processes are to be commended.

One concern raised with regard to how constituencies and sub-constituencies operate is that of whether constituencies can or should impose discipline on individual board members in order to maintain a common position, irrespective of the actual views of individual Board members. While there are obviously tactical advantages to constituencies adopting common positions (since they can thereby exercise a 'veto' over change), it is important to reiterate here that all board members must necessarily navigate a complex three-fold division of loyalties between their own individual organisation; their constituency; and to EITI as a whole.

In this regard we would emphasise here that the Articles of Association make no provision for 'block voting', and that there is a risk that such behaviour would be seeking to relegate a Board member's loyalties to EITI as a whole, as well as to their individual sponsoring organisation. Indeed, the very fact that EITI has a qualified majority voting system (albeit one that is not explicitly used) acknowledges that on some issues there are likely to be divergent views within constituencies, and it is important that that principle of being a Board member first and a constituency member second is honoured.

This concern around intra-constituency discipline and position taking is considered by the current Chair to be one of the most fundamental challenges to EITI's governance, and we found that concern replicated in a small number of interviews. What we struggled to identify, however, is what would be the structural or process change that would address this perceived problem? Whenever we detected strongly held views on an issue we generally tried to ask the interviewee to frame up a recommendation that would address the problem that they had identified, and it is difficult to see what such a recommendation would look like here. Moreover, there is a risk that any such recommendation (which would presumably involve more regular intervention in the self-governance of constituencies) would run the risk of causing more damage than it would seek to cure.

In the absence of a recommendation, and indeed in the absence of there being a widely held view that this is one of the crucial issues for EITI's governance, we can but conclude that this issue is more reflective of a breakdown in personal relationships, with responsibility for that needing to be shared by all involved.

At the opposite end of the spectrum there is an issue in the implementing country constituency of there not being enough coordination, and we deal with this extensively in **Chapter 4**. For now, however, we believe that there is a relatively simple way to address some of these concerns and that it already exists. In looking at the issue of constituency guidelines, the EITI Standard published in 2013 included useful principles that should guide the development of individual constituency guidelines. Those principles are worth reiterating here:

- *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 a 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. While it may not be possible to determine that an international body such as the EITI Board be gender balanced, the constituency groups are encouraged to ensure that both genders are adequately represented.*

In carrying out this review we have found sporadic evidence that these principles have been acted upon since they were adopted in 2013. As noted in **Chapter 9** it is difficult to find publicly available constituency guidelines and contact persons for each constituency. Moreover, while there is good regional balance within the implementing country and civil society constituencies, some noted that that was less the case with company representatives since their representation tends to be drawn from the corporate head offices of multinational companies.

The gender balance of the Board is also particularly poor – eight out of 38 of the Board are women i.e. 21% - plus the Chair. In the current term there are no women in the implementing country constituency, though there have been in the past.

**Recommendation 2:** This report therefore recommends that there is a need for those constituency guidelines that exist but which are not currently accessible, to be published as soon as possible. More importantly, while individual constituencies will no doubt take ownership of the refinement of their individual guidelines, we also recommend that the current Governance Committee establish a clear timetable for the process. Finally, the Governance Committee should also review constituency guidelines in draft to ensure alignment with the principles already noted in the EITI Standard before they are finally agreed and published.

Approximately half of Board members interviewed also raised concerns regarding the increasingly blurred line within the country constituency between implementing countries and supporting countries. This is, of course, a problem that has come about because of a success of the organisation – namely EITI countries are now to be found in all regions, as well as at all levels of economic development. Notably, there are now three EITI countries - Norway, the United Kingdom and the United States – that are both implementing the EITI domestically, as well as making significant financial contributions towards EITI implementation around the world, and this makes them eligible to be both implementing as well as supporting countries. We understand that there are several more supporting countries that are actively considering implementing the EITI. There is a rich debate underway within EITI as to what this duality of role / status means and how to resolve it.

**Recommendation 3:** We recommend that this potential dual role is explicitly recognised within the constituency guideline that is developed for supporting governments and that some process is developed that acknowledges this dual role. We would also recommend that for the purposes of calculating Board seats that each country that has such a dual status decides in which constituency it wishes to sit, as it would seem odd for a country to be eligible for election in two separate processes. Alternatively the Board could consider separating the constituency into two distinct constituencies, though that would also require changes to the Board's voting rules.

### 3.5 Board attendance and participation

Many interviewees noted a problem with the participation of Board members in both full Board meetings and in particular Board committee meetings. Indeed, attendance of committee meetings was the only question in the Board survey where negative sentiment outweighed positive sentiment. While attendance is far from a perfect tool for determining how effective or ineffective a governance system is, we believe that it is good to examine because it serves as a useful proxy for either how engaged Board members are, or how able they are to be engaged – i.e. where they might wish to be more involved but are unable to be for a variety of reasons.

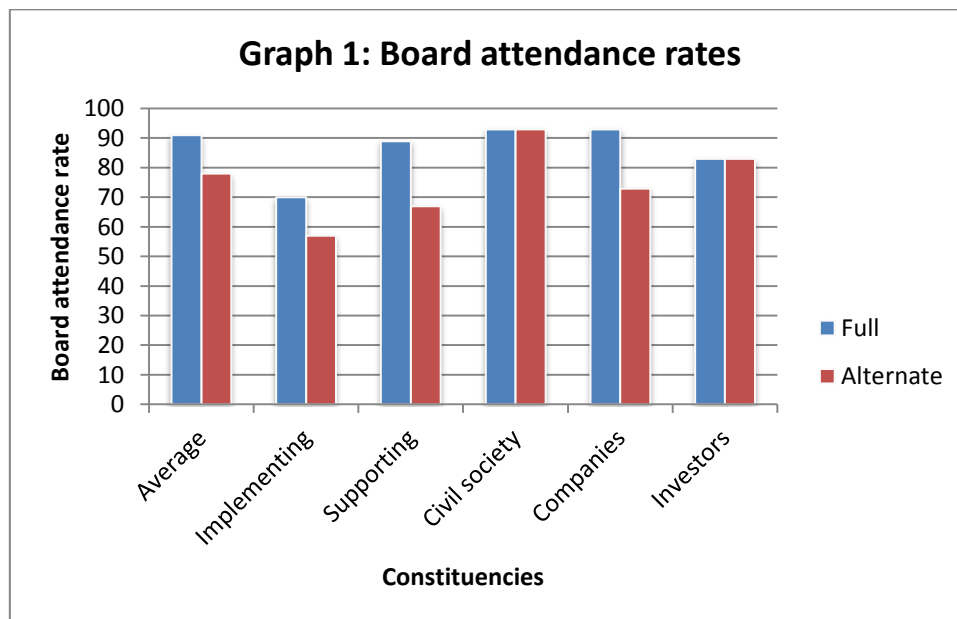
In a multi-stakeholder initiative looking at attendance data is also useful to see whether there is any imbalance between the how much different constituencies are able to participate and influence the direction of the organisation. If there is an imbalance in participation rates, that imbalance becomes a risk in itself as one constituency might feel excluded from governance and/or that other constituencies are exerting undue influence on the organisation. Finally, in a process that is as subjective and qualitative as a governance review, it is useful to be able to complement that qualitative assessment with some hard data where possible.

Testing the validity of this concern with data from the minutes of Board and committee meetings should in practice be relatively straight-forward, but is complicated by the following factors:

- The availability of all Board and Committee papers and minutes on the internal section of the EITI website is patchy, and the practice for recording participation varies somewhat. While most of the data is available, the gaps are numerous enough to make the data far from reliable.
- There are several cases of Board and committee memberships changing mid-term. This poses the question as to whether one should assess the level of attendance of the individual, or the level of attendance of the organisation.
- There is some variation in the number of committees that different Board members sit on – some sit on none, some sit on as many as three. This creates the difficulty in that it is possible for a Board member to attend all Board meetings but sit on no committees, and therefore have a 100% attendance rate, whereas members who sit on more committees may have a greater chance of missing some meetings.
- There is enormous variability in the weight of work required by different committees. The implementation and validation committees meet very regularly and deal with a considerable weight of paperwork, whilst the nominations and audit committees meet infrequently.

With these provisos noted, we have attempted an analysis of Board attendance rates. The key points to emerge from this analysis are as follows.

Levels of attendance in Board meetings range from 17% (i.e. only one out of six of the meetings that have been held thus far this term) to 100% and this of course demonstrates the limitations of a data set of only six – missing only one meetings has a very high impact on attendance rates, particularly in small sub-constituencies. That said, when we averaged Board attendance rates out across the different constituencies and different types of Board membership there is a wide variation – at the bottom end alternate board members from implementing countries attend on average 57% of board meetings, compared to (at the top end) 93% participation by both full and alternate civil society members, as well as full company members.



The attendance rate in committees again varies immensely. At the bottom end of the scale, members from implementing countries attended only 54% of the meetings of committees that they sat on, whilst at the top end members from companies attended 87% of committee meetings. The themes that come through all of the data are as follows:

- Low participation by implementing countries is a major issue. Members from this constituency on average attend the lowest number of Board meetings, sit on the fewest committees, and are the least likely to attend the meetings / calls of those that they do sit on.
- Participation by civil society members, on the other hand, is extremely high – they have the highest rate of board attendance and sit on so many committees that even though their committee participation rate is relatively low, they still account for 36% of all committee attendances, despite making up only 26% of the Board.
- Whilst making up the smallest sub-constituency on the Board, rates of participation by investor representatives are particularly noticeable. Whilst making up little more than 5% of

the total board membership, they accounted for an impressive 13% of all committee attendances.

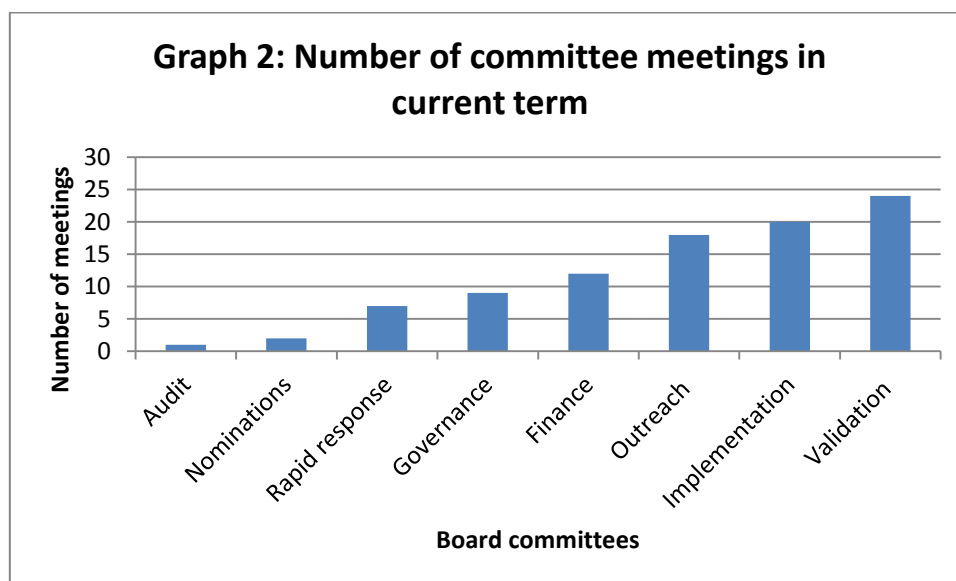
### 3.6 Board committee attendance and participation

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The work of the Board is, of course, but one aspect of its decision-making process. Over the current term (i.e. since the Sydney conference) while there have been six meetings of the full Board, there have been close to a hundred meetings of various committees, and it is at these meetings that a huge amount of the day-to-day work of the Board takes place, even if their role is to propose and recommend rather than make actual decisions.

The observations that follow are, similar to those made on attendance rates for Board meetings, influenced by a number of factors that need to be acknowledged up front, namely:

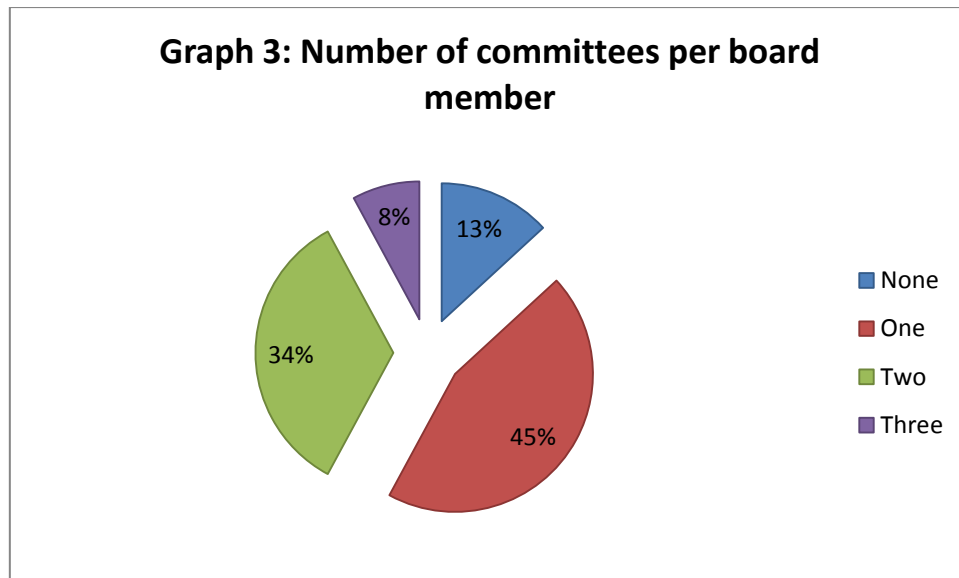
- Minutes and attendance records for committee meetings are at times patchy.
- As **Graph 2** shows, there is a wide range in terms of how often different committees convene. The two committees with the greatest workload (validation and implementation) have met almost as many times as the other six committees combined.
- Participation rates are skewed by the variation in committee membership by different board members, as is shown in **Graph 3**. At one end of the spectrum, some Board members may have attended less than 10 committee meetings during their term, but by virtue of attending all of those meetings achieve an attendance rate of 100%. At the other end of the spectrum, there are four board members who sit on committees that have collectively met more than 30 times per board member, but because of the weight of committee meetings their attendance rates range from 66 – 75%, which on the surface looks worse than those who sit on relatively few or less time consuming committees, even though their commitment of time and contribution to the organisation is actually much greater.



Those limitations acknowledged, it is worth making the following observations. First, as **Graph 3** shows, there is some variation in committee membership: 5 Board members appear to sit on no

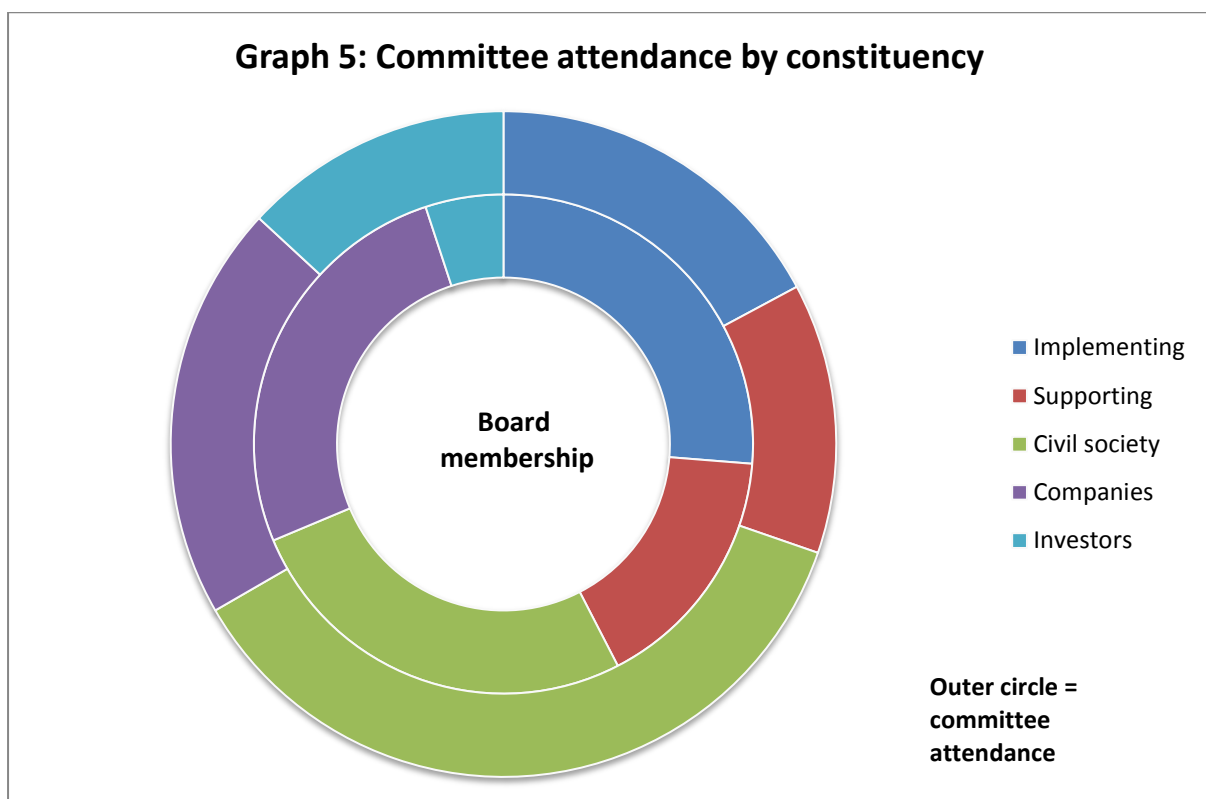
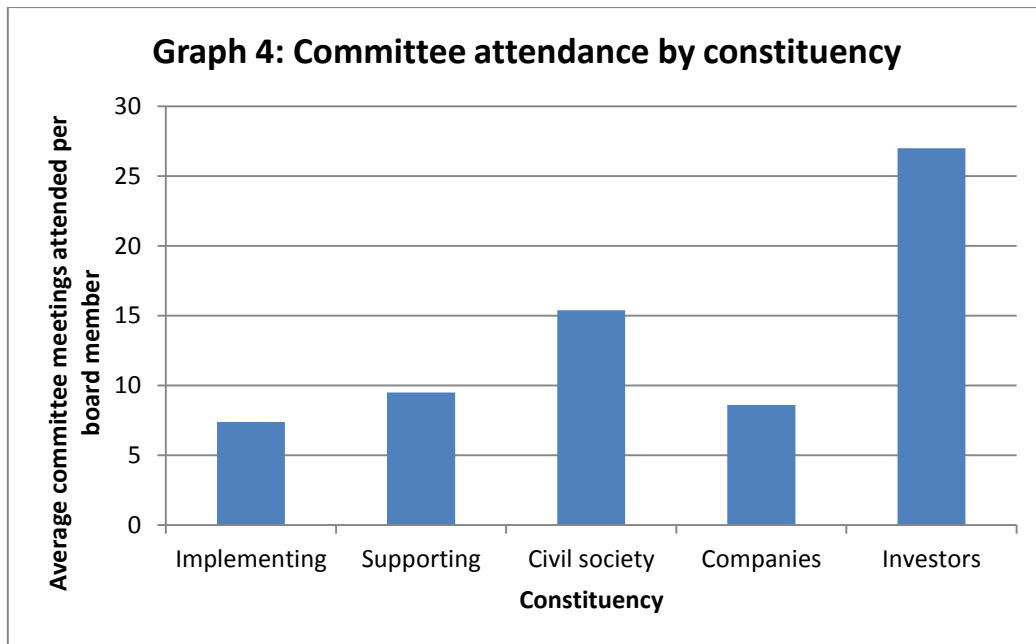


committees; 17 sit on one committee; 13 sit on two; and three sit on three committees. The division of committee membership by type of board membership is more even – the 18 full members hold a total of 30 committee places, compared to 22 for alternate members. It is notable that while the number of committees served on by implementing country, supporting country and company representatives are all roughly the same (1.1 to 1.3 committees per member), committee membership is much higher amongst civil society (1.7 committees per member) and investor (2 per member) representatives.

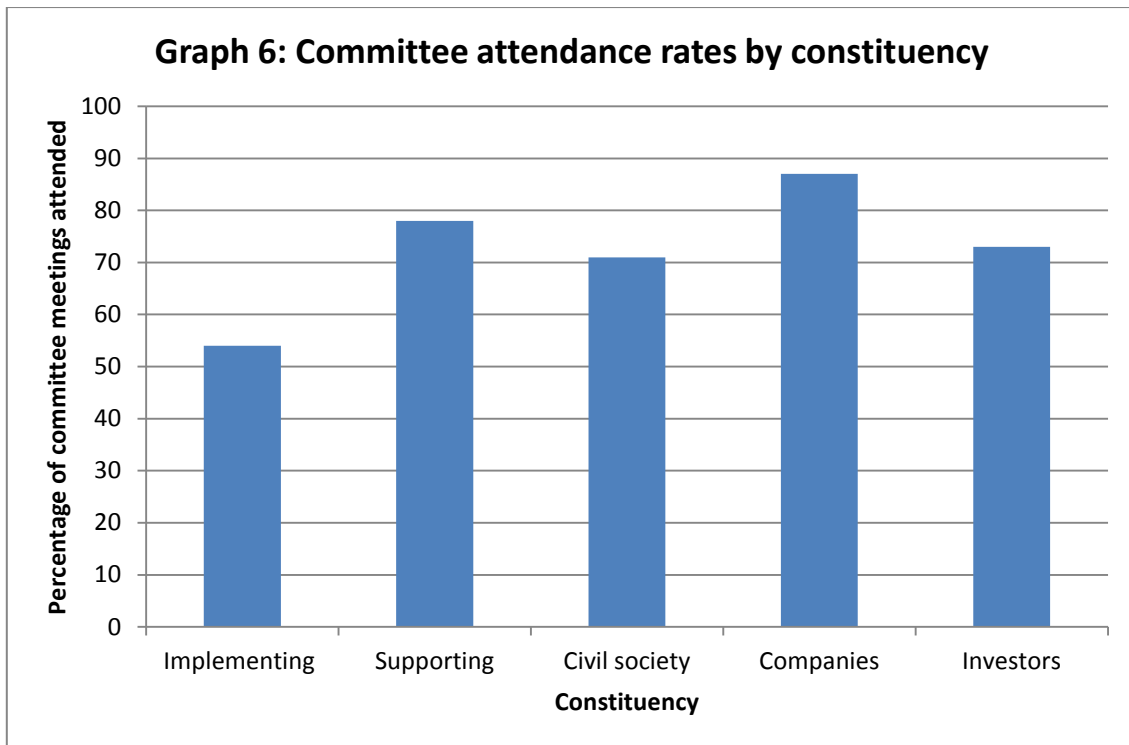


While the majority of Board members (79%) sit on 1-2 committees, at the margins there are members who sit on either no committees at all or on three committees. These run very different risks – firstly, that there are some Board members who will not be sufficiently aware of the full complexity of decisions that are being made in committees between meetings of the full Board; and secondly, that a relatively small number of Board members are able to exercise disproportionate influence through their high level of committee participation.

**Graph 4** shows that while members from implementing countries, supporting countries and companies all attended roughly the same average number of committee meetings during this term (7.4 – 9.5 meetings per member), civil society representatives attended on average 15.4 committee meetings per member, while investors attended on average 27 meetings per member. As **Graph 5** shows, while civil society and investors collectively account for only 32% of all board members, they were responsible for 49% of all committee attendance.



Finally, when we look at actual attendance rates – i.e. the attendance rate by different constituencies for the committees on which they sit, we can see in **Graph 6** that the problem identified earlier in terms of rates of attendance on the Board, are replicated at the committee level – i.e. that implementing country representatives are the least likely to attend committee meetings, whilst representatives from companies and supporting countries are most likely to attend.



### 3.7 An imbalance at the heart of EITI

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What the data presented in the two previous sections clearly shows is that there is an imbalance of power emerging in the EITI. Implementing countries have real and significant concerns about their role in EITI governance – as the number of countries implementing the EITI has increased more than four-fold over the past decade, those very countries appear to be the least able (or willing to devote the time) to participate in the core governance institutions of EITI. The recommendation that has been proffered by some has been that there should be an increase or reweighting of Board seats in favour of implementing countries. We investigate this and other options in **Chapter 4**, but it is important to state here that we find this imbalance one of the crucial risks to EITI as a whole and we find the concern about the role of implementing countries in EITI to be real and substantial. It may be, for example, that the relatively quiescent role played by implementing countries during much of the negotiation of the Standard is one of the reasons why implementing countries have seemingly had such difficulty in attaining the standard required for validation.

### 3.8 Board processes: papers, meetings and translation

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While it is easy to simply look at governance structures, there are practical ways to improve governance through the processes that those structures use. A number of Board members who were interviewed noted that the dates for committee meetings and sometimes even Board meetings were not agreed or scheduled a long time in advance and that this might be impacting on participation, particularly amongst members who had EITI as but one of several responsibilities, as well as those Board members who hold senior positions in their organisations. Some of this lack of scheduling is understandable – the process of developing this review, for example, has necessitated

the scheduling and rescheduling of several committee meetings. At the same time it is worth noting this as an issue here and encouraging the Chair, Committee Chairs and the Secretariat to schedule meetings as far in advance as possible.

Another process issue relates to that of translation between the multiple languages that EITI operates in – French, Russian, English, Spanish and Portuguese. In many interviews the issue of effective translation came up, with a strong view amongst non-English speakers that they operated at a disadvantage within EITI. This is particularly the case with committee meetings, as the majority of them are held using teleconference facilities with translators also on the phone. Almost all Board members based in non-OECD countries noted that the erratic quality of teleconference facilities, as well as translation during such meetings, makes attendance and participation particularly challenging.

Certainly, in the process of carrying out interviews for this review it was very apparent that interviews carried out with Board members in such countries and in translation had a much higher fail rate (e.g. abrupt disconnection; fading in and out of speech; basic misunderstandings due to translation) and were able to cover fewer issues than those interviews that were carried out either in person; carried out in the same language; and/or carried out using phone or internet connections between countries with good telecommunications networks.

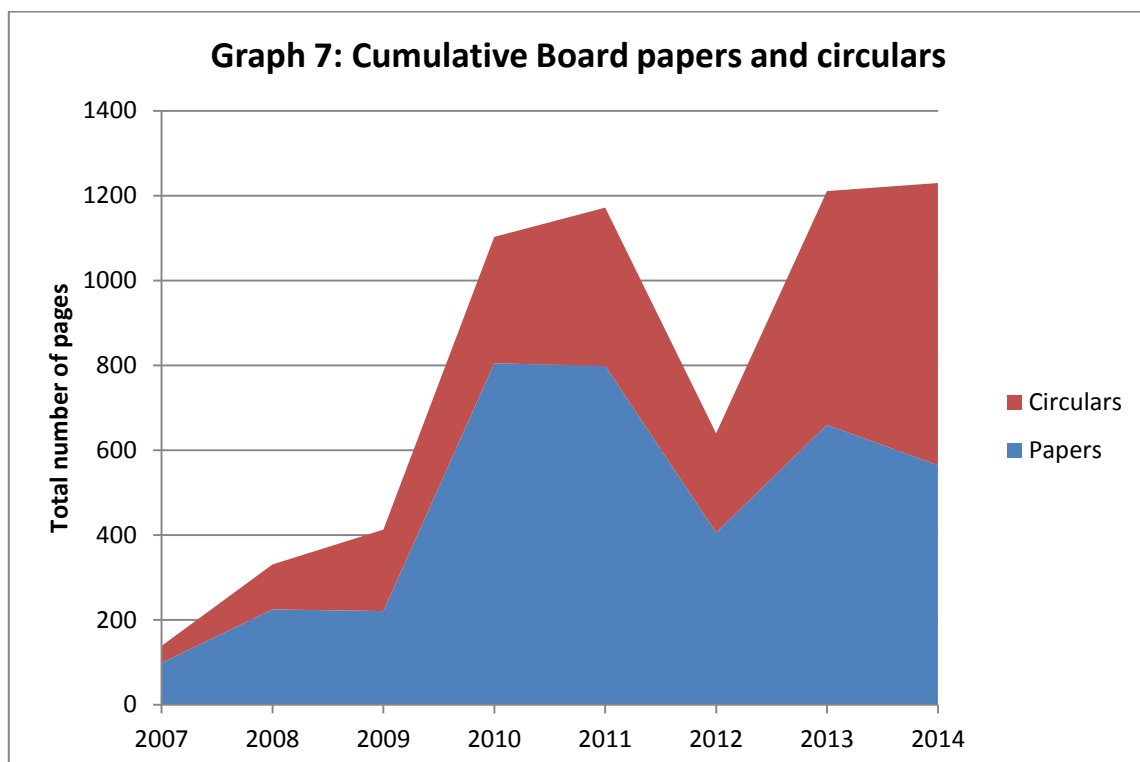
This phenomenon is not only borne out by comparing, for example, attendance rates between implementing and supporting countries, but it also comes out when one compares committee attendance rates between the four civil society representatives based in OECD countries, as opposed to the six based in non-OECD countries. Those based in OECD countries were able to attend 83 of a possible 100 committee meetings that they collectively could have attended (so an attendance rate of 83%) compared to the six based outside of the OECD who were only able to attend 71 of a possible 117 committee meetings, making for a participation rate of only 61%. That 22% gap in attendance rate is similar to the 25% gap in committee attendance between implementing and supporting country board members.

It is difficult to know what to recommend here – as reviewers we are not experts as to whether better teleconference and translation facilities are available than those that are currently being used by EITI. Certainly, the Secretariat already spends a considerable amount of money in these areas, so we can but recommend that they review their providers at an appropriate time. The other obvious solution, and one that was requested by a large number of interviewees, was more in-person committee meetings. As noted above, however, by the end of this current term of the Board there will have been more than a hundred meetings of various committees – making even a small number of these meetings in person rather than by phone would have a significant impact on costs as well as on time commitments.

The middle road here could perhaps be meetings that are less frequent but longer, i.e. the sandwiching of the contents of 3-4 teleconference committee meetings into one full day in-person committee meeting at which translation would be easier. There would obviously be a trade-off here – i.e. committee meetings might become better attended and language barriers might be lower, but at the same time a decreased frequency of meetings might slow down the business of the Board and EITI more generally.

Amongst those who were interviewed for this review who were also serving Board members, there was one point of almost near universal unanimity with regard to a particular aspect of Board process. That near unanimity regarded the weight, timeliness and general availability of Board and Committee papers. Virtually every single Board member interviewed noted that the weight of papers was quite significant, particularly if one was a member of the ‘big two’ committees (implementation and validation). This concern related not only to the weight of papers, but also about the timeliness of those papers. Those Board members interviewed for whom English was not a first language were of the view that they were disadvantaged by often receiving papers in their native language later than English speakers.

**Graph 7** below maps the total number of pages of Board papers and circulars issued since the creation of the EITI Board in 2007. Again, it is important to note that there are both gaps and overlaps in the data – i.e. there are some meetings where papers appear not to be available, and there are also instances of the same papers being circulated as both Board papers as well as Board Circulars. Perhaps the greatest omission, however, is that this review has not had time to add in the total weight of committee papers. Doing this would clearly show that the weight of validation and implementation committee papers is probably as significant as Board papers themselves.



Interviewees noted that a number of risks were created by the circulation of substantial papers with insufficient time for Board members to properly consider them:

- In Board and committee discussions it advantages those Board members who work full time on EITI, or have staff reporting to them who work full time on EITI. Correspondingly, it disadvantages Board members for whom EITI is but one of many responsibilities and who do not have dedicated EITI staff to brief and support them.

- It made it less likely that Board members would have time to consult with other members of their constituency – both within and outside of the Board – in order to inform their position.
- When Board members are unable to find the time to read papers in advance of meetings, they are likely to engage with an issue from whatever their default position is on similar issues, rather than focus on the specifics of the issue being discussed in the paper. These default positions are more likely to lead to conflict between Board members and make finding consensus more difficult and more time consuming.
- When Board members fail to read Board Circulars – which are a crucial mechanism for decision-making between Board meetings – there is a risk that Board meetings can sometimes waste time re-debating issues when others felt that decisions had already been made.
- At best it places the Secretariat in the position of having to explain the finer detail of papers and/or defend papers, which in turn creates the perception that the Secretariat is a partisan player rather than a neutral supporter of the business of the Board. At worst, if there is a gap between the amount of decisions that the Board is *able* to make and *needs* to make, then some interviewees perceive that there is a risk that the Secretariat will take decisions instead of the Board, simply in order to keep the organisation functioning.

None of the options for addressing these risks are easy ones, but it is useful to list them here in order to best understand the trade-offs. One solution would be to ask all Board members to dedicate more time to Board business, but it is difficult to see how this might be facilitated beyond defining a minimum number of hours that Board members need to spend on EITI per year and where necessary to support that. Not only would this be impossible to achieve with a voluntary Board, it might inadvertently drive down the seniority of Board representatives, which would in turn have a negative impact on EITI since it might then significantly lose its leverage and influence within the relevant constituencies.

The next obvious solution is to be much tighter in the amount of documents that are distributed and their readability. Good progress has already been made in this area, with most documents considered by the Board and Committees containing clear summaries of both the content as well as the decisions that need to be made, though as the graph above shows this does not appear to have diminished the weight of Board papers and circulars over time.

Another option, and one that was suggested in earlier drafts of this report, would be to increase the lead time for all committee and Board documents – i.e. to expand the circulation standard for Board documents from two weeks to four weeks in advance of meetings, and to establish a minimum standard for committee documents as well. We understand that some see that this kind of recommendation would simply paralyse the work of committees and the Board – i.e. it would ultimately reduce the amount of information and decisions that they could consider.

Indeed, perhaps the easiest to implement but perhaps the most controversial option would be simply to reduce the number of decisions that the Board has to make. This could only be done by devolving particular types of decision making to committees (i.e. expanding their role beyond simply making recommendations to the Board), which would necessitate a very high level of trust between all Board members and an effectively functioning committee system. Given that poor committee attendance is perhaps the most easily proven problem in EITI's current governance that does not

seem like a viable option. The other option would be to allow a greater number of decisions to be taken by the Chair, a Deputy Chair or the Secretariat but this is problematic if decision-making should be accountable to representatives of all constituencies. On the latter, **Chapter 7** identifies that there are already substantial concerns around the accountability of the Secretariat, so again it does not seem viable for them to take on more decision-making powers.

In short, none of the options identified above seem either desirable or possible at present. It is for this reason that we are of the view that some of these options need other things to happen before they can be realistically considered. This report, for example, makes recommendations on the structure and functioning of the committee system. If these recommendations lead to better attendance of committee meetings, it might be possible for committees to make some decisions rather than simply make recommendations to the Board. Similarly, if a strong system of oversight of the work of the Secretariat is successfully implemented, Board members might be more comfortable with delegating more decisions to them.

It is for these reasons that at this stage this report makes no definitive recommendations in this area beyond those made elsewhere regarding the committee system and Secretariat oversight. But it is an area of risk that is real and which a future Governance Committee or (as proposed later in this report) Oversight and Coordination Committee should pick up again.

### 3.9 Sanctions for non-participation

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**Chapter 4** presents a number of recommendations on ways in which implementing country participation can be improved. At the same time, a large number of interviewees also raised the issue of whether there should be sanctions for non-participation across all constituency groups. In short – if a member of the Board from any constituency regularly fails to attend Board and Committee meetings, should there be a mechanism for replacing them?

A running record of participation in committee meetings across the term is kept for most but not all committees in committee minutes. The minutes of board meetings note attendance, apologies and absences, but not in the same (helpful) consolidated form that many committee minutes do. While the Articles allow for Alternates to speak and participate fully in the absence of any full Board member, there appears to be no mechanism in the Articles that address the issue of non-attendance.

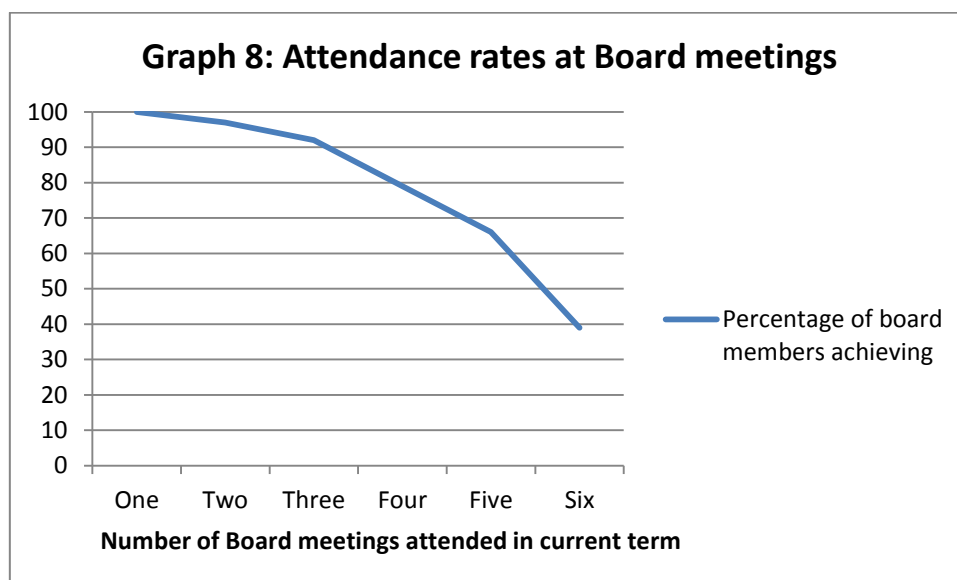
When asked to consider whether there should be some way of removing Board members who simply fail to attend meetings, many interviewees felt that it was a necessary addition to the Articles. The Board could agree an acceptable level of participation in Board business. It would not be possible to make this applicable to committee work unless the way in which committees are constituted is changed (this is a recommendation that is made later in this report), but a simple requirement to attend a minimum level of Board meetings would seem advisable. This would not be applicable in the first year of any term (otherwise members could be removed simply for failing to attend the first and/or second meeting in any term), but thereafter a rolling percentage average of participation could be kept. Once a Board member's attendance fell below the agreed attendance rate the Chair could write to the member concerned, possibly copied to all other members of their

constituency, inviting them to address the issue through attendance at the next meeting of the Board, or to resign.

The level of impact that this would have on the Board would of course depend on what level the participation rate was set at. **Graph 8** below is a way of demonstrating what the impact of minimum attendance levels would be based on the number of meetings attended by current board members in the current term (i.e. since their election in Sydney in 2013). Since then six board meetings have been held and 100% of Board members have attended at least one meeting. The two 'cliffs' at which there are significant declines are:

- between setting an attendance rate at 50% (i.e. 3 meetings) – something that was achieved by 92% of board members; and 67% (i.e. 4 meetings) which was achieved by 79% of board members.
- between setting an attendance rate of 83% (i.e. 5 meetings), which was achieved by 66% of board members; and 100% (i.e. all 6 meetings) which was achieved by only 39% of board members.

In short – a requirement to attend a simple majority (50%) would lead to the removal of a very small number of particularly poor attendees, albeit it might well concentrate the minds of Board members; a two-thirds requirement would lead to the removal of one in 5 board members. This analysis does of course assume that neither this measure nor any other measure proposed in this report changes attendance rates. It is entirely possible that implementation of other measures (e.g. financing) would improve participation rates.



**Recommendation 4:** The Board should consider adding new provisions to the Articles of Association that allow constituencies to remove and replace a Board member if their level of attendance drops below a certain level.



### 3.10 Term limits for Board members

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Approximately half of current and former members of the Board and Secretariat interviewed raised the issue of term limits for members of the Board. Of those who raised the issue, there was a reasonably even division between those emphasising the need for minimum term limits, and those wishing to cap the number of years that Board members serve.

It is of course difficult to establish minimum term limits – governments change, people move and change jobs, other personal and professional priorities come to the fore and it is for that reason that the recommendation on this below creates only a ‘general expectation’ rather than a mandatory requirement. That said, there is evidence that rapid rotation of Board membership is a policy within some constituencies on the Board in order to give different members of the constituency ‘turns’ at representation, and some other Board members have found this frustrating.

**Recommendation 5: Given the relative complexity of EITI this report recommends that the general expectation of Board membership should be that an individual Board member should endeavour to serve for the full ‘term’ (i.e. the period between two EITI conferences). While an arrangement might be made for an alternate to trade places with a full member during that term, the over-riding objective should be to ensure as that as many Board members as possible serve full terms and service of less than that period (2-3 years) should be strongly discouraged.**

At the other end of the issue, some interviewees raised the issue of the need for term limits for Board members – it was noted that some individuals and/or organisations had sat on the Board for many terms, and this made it difficult for the Board to reflect the increasing number and diversity of countries and organisations involved in the Initiative. This review has not had the time to do a full analysis of the average length of Board service either by individuals or organisations (such an analysis would require retrospectively developing an attendance record from the minutes of all 29 Board meetings).

Anecdotally, however, it is interesting to note that in the first available record of a Board meeting (from the 3<sup>rd</sup> meeting of the Board held in Oslo in September 2007), 11 of the 38 organisations that held Board seats at the time are still represented on the Board today: two implementing countries (Azerbaijan and Kazakhstan); two supporting countries (France and the United States); three civil society groups (Global Witness, Publish What You Pay, Revenue Watch – now the Natural Resource Governance Institute); and four companies (ExxonMobil, Shell, Chevron and Total). Three (the Government of Azerbaijan, Chevron, Total) of those eleven were represented at the 29<sup>th</sup> Board meeting by the same individuals as represented them at the 3<sup>rd</sup> Board meeting, though these two data points alone do not demonstrate unbroken service. Given that later in the review we note the concern that the balance of ‘power’ (in the sense of ‘expertise’) has shifted from the Board to the Secretariat, having some relatively experienced members may offer some protection to the overall influence of the Board.

There is a balance to be struck here between having a sufficient cadre of senior Board members who understand EITI well and are able to steer it over time and chair Board committees, and the need to ensure that Board members do not serve for such a long time that they lose their ability to provide

effective independent oversight of the organisation, as well as to make room for individuals and organisations new to EITI but keen to be involved in its governance.

**Recommendation 6: With that in mind it is a recommendation of this report that the Board should consider whether they wish to adopt some form of term limits for Board members.**

### 3.11 Classes of Board membership

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The review examined the issue of whether the distinction between full and alternate members of the Board was worth preserving. The general feeling of those interviewed was that the distinction was a useful one in that in some constituencies (such as the companies and civil society groups) it allowed new Board members to ‘understudy’ more experienced Board members before perhaps taking on a full Board seat during their term or in subsequent terms. This was, however, not the case for Board representatives from implementing countries. The other advantage of the two classes of Board membership was that it was felt by many that it created a necessary constraint on the number of Board members who could speak on any particular issue being considered by the Board.

It is fair to say that we came across a diverse set of experiences amongst alternate Board members themselves. Some felt that it had not significantly constrained their ability to participate in meetings at all and because of that they did not entirely understand the point of maintaining the distinction. A very small number of others, however, found the two classes of membership to be condescending to those selected as alternate members. Across all constituencies there is a notable gap in attendance levels between the two classes of membership – Board attendance was 91% for full members of the Board, as opposed to 78% for alternate members of the Board. As noted above, the full/alternate system generally seems to have worked only where the two bracketed Board members are able to speak and meet regularly.

That said, some interviewees expressed discomfort with how members were replaced if there was a change in personnel mid-term. There have apparently been some instances of an individual full member of the Board stepping down and being replaced by another individual from the same organisation, rather than their alternate board member being promoted to full board membership.

In the course of this review it would be fair to say that the issue of membership classes was not raised to the degree that we feel that it is a major point of dysfunction or unhappiness on the Board, and it is for this reason that we have not chosen to make strong recommendations in this area. Indeed, what is perhaps most notable about the different classes of Board membership was how few people differentiated between full and alternate members of the Board when they were describing and discussing them during interviews.

**Recommendation 7: While the Articles are flexible on this point<sup>11</sup> the Board may wish to consider whether it strengthens the language in this Article to make the replacement of full**

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<sup>11</sup> Article 10(6) of the Articles suggest that the normal process should be for an alternate board member to replace a full board member, the Article also allows for constituency to nominate a new member directly to the Board.

**members who leave mid-term by their Alternates to be the mandatory position, with a possible option that the organisation represented by the departing full member be offered an Alternate position on the Board.**

## 4. Implementing country participation

### 4.1 The causes and risks of low implementing country participation

As we have noted in the previous chapter, we find that low levels of implementing country participation is one of the greatest risks present in EITI's governance. Indeed, it is at the heart of at least four broad risks that we can detect in EITI's current governance and we discuss these below. Before accepting this proposition too uncritically, however, it is worth noting that the term 'implementing countries' rather blurs the distinction between EITI as a multi-stakeholder process (involving governments, civil society organisations and companies) and those who see it as more of an inter-governmental/international initiative. Implementing country representation is often conducted by senior government representatives, while in other cases the representation is carried out by someone who represents the totality of a national multi-stakeholder group and are, in some senses, the embodiment of multi-stakeholder interests. It can also be argued that Board members from civil society may also be from implementing countries and so may give voice to views from the 'coalface' of implementation as well.

We have already touched on some aspects of why it might be that implementing country representatives are engaging less with the Board in **Chapter 3** and we cannot understate how much of a role issues of translation and technology affect the ability of those based in implementing countries to participate in Board business. There is also another reason why implementing country representatives might feel less engaged with Board business: while the representatives from supporting countries (almost all of whom are based in outward-facing development agencies or foreign ministries), four out of ten civil society representatives, and all company representatives all work on global issues as part of their 'day job', all implementing country representatives work on issues in a single country and are therefore more inward looking when it comes to EITI issues. As a result it is logical that they show less interest in an issue if it is not going to impact on their specific country and their way of implementing EITI.

The first risk by this problem is that a gap will develop between a policy debate between companies and civil society at the international level (though it is worth noting that some board members from supporting countries informally see their role as trying to act as a moderator between the two), and what is actually happening on the ground in implementing countries. Indeed, it could lead to the inadvertent adoption of policies that place unsustainable demands on implementing countries.

One of the notable successes of EITI as an organisation has been the fine balance between top down policy innovations from the Board, and bottom up policy innovations from implementing countries. If implementing countries continue their low rates of attendance, that balance could be changed for the worse, or countries could simply drift away from the Initiative if it ceases to serve their needs.

The second risk that low attendance from implementing countries creates is that there is some perception that the International Secretariat has taken on the burden of trying to represent implementing country voices in Board and committee meetings. While this move, if true, is an extremely laudable attempt to correct a power imbalance in the Board, it creates a *perception* that

the Secretariat is a partisan participant in policy discussions rather than the supporter and facilitator of the Board's business – which is the role assigned to it by the Articles of Association.

The third risk is that implementing country representatives are not only failing to represent themselves at Board meetings, but they are also failing to represent the wider constituency of those countries which are implementing the EITI but which are not Board members. More than half of Board members interviewed raised the issue of a perceived lack of communication and coordination within the implementing country constituency. While we could detect various formal and informal coordination mechanisms within all other constituencies, there seemed to be few attempts by implementing countries to discuss issues in advance of board and committee meetings and, where possible, to develop a more united position at meetings.

Recently some attempts have been made within the Francophone Africa constituency to address this, and it is good to see this happening – the Board should find ways of supporting this kind of activity. At the other end of the spectrum is the challenging example of the bracketing of Peru and Timor Leste as full and alternate board members – a situation in which the Board members come from countries 16,000km and 14 time zones apart, with no language in common. When speaking to national coordinators of EITI processes in countries which did not sit on the Board, we found very few examples of implementing country board members reaching out in order to inform them of or consult them on Board issues.

The final risk is one of the ability of the Board and the Board's committees being able to achieve a quorum. It is a simple issue, but one of the factors that needs to guide the number of directors in an organisation is the ability to maintain quorum. While this has not been a problem in Board meetings, it is a regular problem in committee meetings and we discuss this further below.

#### 4.2 Changing implementing country representation on the Board

A possible solution to this imbalance would be to increase the number of implementing country representatives on the Board. Indeed, some interviewees suggested increasing either the total number of representatives from this constituency, or to increase the number of representatives by decreasing the number of supporting country representatives. A small number of Board members as well as the Secretariat have criticised earlier drafts of this report for not making a stronger recommendation in this direction. As a review team we have considered this issue with great caution, not because it is not an important one, but because there is virtually no consensus within the Board as to what should be done. The basic allocation of Board seats amongst the various constituencies and sub-constituencies has remained unchanged since the Board was first created, and in the process of carrying out this review, we found perhaps more resistance to any proposed change in this area that we found support. It is for that reason that the advantages and disadvantages of such a move need to be considered very carefully.

The strong feelings around this issue reflect one of the tensions identified in section 3.1 above around the role of EITI and the Board itself. The variation here is perhaps an even more fundamental one – should EITI be an evenly balanced multi-stakeholder initiative, or should implementing governments be given a role in the initiative's governance that is greater than that of

companies, civil society groups and supporting countries? Some interviewees noted that implementing governments are 'not just another stakeholder' and that their status as the representatives of sovereign countries should be reflected in a much greater role in EITI's governance. This would be a very significant change in governance emphasis if it were to happen – it would shift EITI to being a more traditional inter-governmental organisation with less powerful company and civil society members. Or put another way – implementing governments have the most important role and influence over how EITI is implemented at the national level – the question is should that importance and influence be recognised and acknowledged in EITI's governance structure, or should implementing governments continue as one of three to four (depending on whether you consider implementing and supporting governments to be separate or related constituencies) broad and (roughly) equal stakeholder groups?

The primary advantage of increasing the number of implementing country representatives is that it would reflect the fact that there has been a more than four-fold increase in the number of countries implementing the EITI since the EITI Board was first established. There has no doubt also been an increase in the numbers of supporting countries, companies and civil society groups involved in EITI, though as noted above there appears to have been greater continuity in Board representatives from the company and civil society constituencies.

Increasing the number of representatives from implementing countries would also compensate for the relatively lower levels of attendance in Board and committee members. While more representatives would do nothing to increase relative rates of participation, it would allow for a greater number of implementing country Board members to make up for low rates of participation in their constituency. Looking at the very simple metric of participation of Board meetings (i.e. ignoring the more unreliable committee attendance data), the company and civil society constituencies attended on average 53 out of the 60 possible board meetings in the current term (i.e. 6 meetings for each of the 10 full and alternate members). By contrast, implementing country members attended only 38 of 60 possible board meetings. If we were to assume absolutely no change in this low attendance rate, the implementing country constituency would need to increase from 10 to 14 (i.e. 2 more full members and 2 more alternate members) in order to generate the same level of absolute representation at the Board as the other two constituencies.

The disadvantages of increasing implementing country board members is that on a Board that is already very large, it might upset the relatively delicate even balance that exists between implementing countries, civil society and company representatives. Moreover, as already noted it does nothing to address relative attendance rates, and it would be increasing the number of representatives around an already crowded table. Indeed, some could perceive an increase in Board seats as an endorsement of poor attendance.

With regards to the specific suggestion to increase implementing country representation at the expense of supporting government representation, it is perhaps unsurprising that those supporting country board representative who discussed this in their interviews for this report were universally against the proposal. One of the notable features of EITI's governance compared with that of say a company or an international financial organisation, is that while supporting countries accounted for only 16% of Board representation, in the most recent financial year they accounted for 62% of the budget of the Board and Secretariat, and 100% of the budget of the World Bank's trust fund support

to the EITI. This doesn't make their level of representation on the Board right or wrong, but that gap is a tension that needs to be acknowledged and managed. If they are not represented on the Board they will need to be represented somewhere. This issue is discussed further in **Chapter 8**.

Another option to increase participation rates would be to look at the difficult issue of financial support, which is one that we understand that Board has debated extensively in the past. At present the international EITI Board only provides financial support to the seven members of civil society that come from implementing countries. Civil society representatives based in supporting countries, implementing and supporting governments, company and investor representatives are all responsible for funding their costs of participation (i.e. flights, accommodation, etc.). Some interviewees noted that low levels of attendance by implementing country representatives was related to this lack of funding, though others noted that some implementing governments received funding for participation in international meetings through funds from the World Bank or bilateral donors.

In considering the options around implementing country representation, it is worth noting that since the last EITI conference and members meeting, there has been a noticeable shift in the regional distribution of countries implementing the EITI. **Table 1** below shows the current regional distribution of EITI implementing countries. Those countries shown in **bold** are countries that have joined since the last members meeting. Those which are ~~struck out~~ are countries that have left since 2013.

What the table shows is:

- The inclusion of implementing countries that are also supporting countries is starting to skew the issue of how implementing country board representation is determined. We have already made a recommendation that countries that have both supporting and implementing status should choose one. If all three such countries (Norway, UK, US) were to be excluded from the above analysis, it could have some impact in seat distribution – for example, the percentage of seats in the 'Eurasia' grouping would drop from 20.83% (10/48) to 17.78% (8/45).
- Any scenarios that would involve increasing the number of seats for implementing countries would necessitate some changes to the current regional groupings.
- The Americas / Asia Pacific / Middle East region is now significantly under-represented (even if the USA is excluded from this analysis) and has a regional combination that – as noted above – makes coordination between Board members from this region virtually impossible.

| <b>Table 1: Implementing country representation</b> |                       |  |  |  |                       |
|---|-----------------------|--|--|--|-----------------------|
|   | <b>Euroasia</b>       | <b>Asia-Pacific / Americas / Middle East</b>   | <b>Africa I</b>                              | <b>Africa II</b>                             | <b>Africa III</b>     |
|   | Afghanistan           | Indonesia                                      | Ghana  | Burkina Faso                                 | Cameroon              |
|   | Albania               | Solomon Islands                                | Liberia                                      | Cote d'Ivoire                                | CAR                   |
|   | Azerbaijan            | Timor Leste                                    | Nigeria                                      | Guinea                                       | Chad                  |
|   | Kazakhstan            | Iraq   | Sierra Leone                                 | Mali   | Congo                 |
|   | Kyrgyz Republic       | Yemen  | Tanzania                                     | Mauritania                                   | DRC                   |
|   | Mongolia              | Guatemala                                      | Zambia                                       | Niger  | <del>Gabon</del>      |
|   | Norway                | Peru   | Mozambique                                   | Togo   | Madagascar            |
|   | <b>Tadjikistan</b>    | Trinidad and Tobago                            | Sao Tome I Principe                          | <b>Senegal</b>                               | <b>Seychelles</b>     |
|   | <b>Ukraine</b>        | <b>Myanmar</b>                                 | <b>Ethiopia</b>                              |  |                       |
|   | <b>United Kingdom</b> | <b>PNG</b>                                     |  |  |                       |
|   |                       | <b>Philippines</b>                             |  |  |                       |
|   |                       | <b>Colombia</b>                                |  |  |                       |
|   |                       | <b>Honduras</b>                                |  |  |                       |
|   |                       | <b>United States</b>                           |  |  |                       |
| % in 2013   | 18.92                 | 21.62  | 21.62  | 18.92  | 18.92                 |
| Current board                                       | 1 full<br>1 alternate | 1 full<br>1 alternate                          | 1 full<br>1 alternate                        | 1 full<br>1 alternate                        | 1 full<br>1 alternate |
| % in 2015   | 20.83                 | 29.17  | 18.75  | 16.67  | 14.58                 |
| % if 2015 if supp countries excluded                | 17.78                 | 28.89  | 20.00  | 17.78  | 15.56                 |
| If current structure is retained*                   | 1 full<br>1 alternate | 1 full<br>1 alternate<br>1 full or alternate   | 1 full<br>1 alternate                        | 1 full<br>1 alternate<br>1 full or alternate |                       |
| Implementing country seats increased to 6*          | 1 full<br>1 alternate | 1 full<br>1 alternate<br>1 full or alternate** | 1 full<br>1 alternate                        | 1 full<br>1 alternate                        | 1 full<br>1 alternate |
| Implementing country seats increased to 7*          | 1 full<br>1 alternate | 2 full<br>2 alternate                          | 1 full<br>1 alternate<br>1 full or alternate | 2 full<br>2 alternate<br>1 full or alternate |                       |

\* Assumes that supporting countries which are also implementing countries are excluded from consideration as per Recommendation 3.

\*\* All of the other constituencies round-down in this scenario, thus creating a 'spare' full or alternate board position. One option would be to shift EITI's two Middle East countries to the 'Euroasia' constituency. This would increase their percentage of implementing countries to 22.22%, which would resolve this issue of a 'spare' seat.

We would emphasise that there is no 'clean' recommendation to be made here, all options including maintaining the status quo are considered to be unacceptable by at least some members of the



existing Board. We do not think that changing the allocation or number of seats on the Board is the only governance issue worthy of consideration, nor do we think that it is the only thing that will improve implementing country participation in EITI. That said, it is impossible not to conclude that the massive growth in countries implementing EITI has taken the current model to its limits. In the opinion of the reviewers the thing that tips it over the limits is the significant change in the regional distribution over the past two years. It is difficult to see how the current diversity of organisation can be reflected in a 5/10 seat structure.

**Recommendation 8: For that reason, we recommend that the Implementing Country constituency on the Board is increased by 1 full and 1 alternate member in order to better reflect the significant growth of EITI in the Asia-Pacific and Americas regions. As per Recommendation 3 the Board may also wish to consider splitting the country constituency into two separate constituencies.**

**Recommendation 9: It also seems inescapable that low levels of participation by Board members from implementing countries is in part related to the level of resources available to them. The Board should therefore consider providing some form of funding that would partly or fully fund travel and accommodation costs related to the participation of implementing country representatives who do not receive funding from this from any other source. Support might also be provided – perhaps from the World Bank or by other donors – that would help these Board members to meet discuss and meet with other members of their regional group. We appreciate that this is a controversial option. If it is adopted we would recommend that the levels of support, class and rules of travel be identical to those laid down in the Board Manual for civil society representatives from implementing countries.**

#### 4.3 A new mechanism for improving implementing country participation in EITI governance

This report has, thus far, looked primarily at the existing governance structures and ways in which they might be improved. The problem with this analysis is that it advances on the supposition that the cure to all problems with the Board is to change the Board itself. It is our view that a new structure could be added to the EITI in order to complement the recommendations made above.

Beyond the Board and Secretariat this review also interviewed a number of stakeholders involved in national level EITI programmes. When asked to comment on the work of the EITI Board and indeed the process by which policy and implementation issues are resolved at the international level, the majority of people interviewed at the national level appeared either disinterested and/or were simply not aware of the work of the Board.

When we combine this observation with those already made about the relative weakness of implementing country voice on the Board, it raises the issue of whether this gap between international governance and national level implementation could be addressed through a new forum. Indeed, with close to 50 implementing countries, it seems that there needs to be some form of channelling the voice from those countries up to the Board, and for the Board decisions to be disseminated back to countries.

For that reason, we recommend that a new **EITI Implementation Forum** is created that would draw in a small number of the strongest and most experienced participants in EITI processes around the world. This Forum should have the following functions:

- It should act as a consultative group to be used by both the Board and Secretariat on any proposed changes or additions to the EITI Standard, or the development of best practice guidelines, i.e. they should give a clear ‘view from the ground’ as to how realistic or otherwise any proposed changes are.
- Provide peer support to countries in their respective regions that have only recently joined the EITI or are struggling with implementation.
- Provide a pool of EITI experts who could be coopted to advise and observe committee business.
- Assist in the planning and delivery of any regional EITI events.
- Help to communicate any concerns or problems in their regions to the Board and Secretariat.
- Help to communicate any decisions made by the Board that impact on national level implementation.
- To share best practice in EITI implementation at the national level with the EITI Board and Secretariat.

While the Implementing Country constituency on the EITI Board has consisted primarily of representatives from governments, the Implementation Forum could reflect the multi-stakeholder nature of the EITI by consisting of 18 representatives – one from each stakeholder group from each EITI region. These experts could be joined by other technical advisors from organisations that have considerable EITI (or broader governance or extractive industry experience) experience but which do not sit on the Board such as the World Bank.

A selection process could be developed in which individuals from national level multi-stakeholder groups could be nominated to serve on the Forum. Where there were more nominations than available positions, a committee of the Board could develop criteria to assess the best candidates for the Forum. At a minimum, nominees for the Forum would need to:

- Have the full support of their national level MSGs
- Be fully or substantially involved in local EITI implementation – i.e. have the time to engage.
- Not come from countries already serving on the EITI Board.
- Be acknowledged by the Board as already having made a significant impact on their national EITI programmes.
- Be willing to engage with others involved in EITI across their region.

It is important to note that what is proposed here is not some form of ‘mini-board’, nor should the Forum have the ability to make policy or veto decisions by the Board itself. It would exist to strengthen the relationship between the International and National levels of the EITI, as well provide forum that can be consulted on emerging policy and issues. In order to be successful such a forum would have to remain relatively small, and indeed would probably only meet in person infrequently.

**Recommendation 10:** It is for this reason that this report recommends the creation of an EITI Implementation Forum in order to strengthen the voice of implementing countries in EITI governance.

## 5. Board committees

### 5.1 Committee participation

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**Chapter 3** has provided details on levels of participation in committee business. It has also identified that EITI faces something of an information and decision-making logjam, in which an increasing weight of papers is placing more and more pressure on all parts of EITI's governance. In light of this, having a committee system that appears not to be working as well as it could is actually a significant area of weakness, as well as a major opportunity for the Board to improve its governance systems in a way that might eventually address this issue.

As noted previously, there are disparities in the number committees that different Board members sit on (anywhere from none to three), as well as the levels of participation by each constituency group. Certainly having a sizable minority of the Board who sit on no committees would appear to risk having a group in the Board that is disengaged with the day-to-day business of EITI and the kind of decisions that are being considered before being brought to the Board. Moreover, operating in multi-stakeholder environments is not a skill that comes naturally – it needs to be practiced, and committee meetings are a good place to do that. It is our view that a more even distribution of committee assignments would allow:

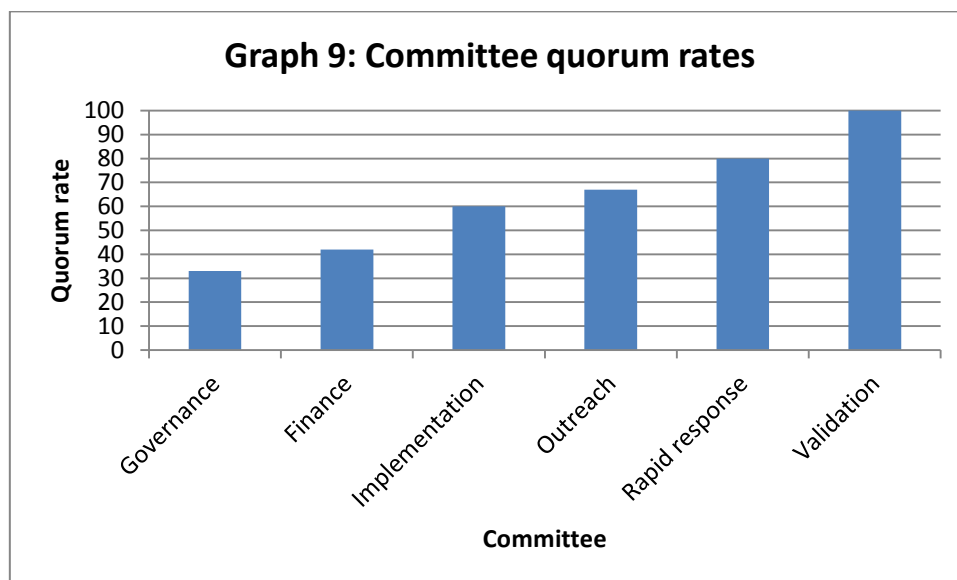
- A better understanding by all Board members of the business of the organisation as a whole, as well as greater opportunities to participate in multi-stakeholder deliberations outside of the major Board meetings.
- Increase the likelihood that committee meetings are quorate and are able to make recommendations to the Board.
- Avoid any perceptions of dominance of the agenda by particular individuals or constituencies.
- Less need for the Secretariat to fill a decision-making void through there being inadequate engagement by Board members in preparatory committee work.

**Recommendation 11:** It is for this reason that we recommend that it should be mandatory for all full and alternate Board members to sit on at least one committee in order to be able to maintain their position as a member of the Board. If this is successful in increasing committee participation, the Board may wish at a future date to consider adopting a maximum number of committees that members can sit on, but at present the committee system is somewhat reliant on a small but dedicated group of Board members who sit on a large number of committees.

In the course of the interviews of Board members, a majority of members noted that the Implementation Committee was increasingly seen as being the 'Board within the Board' with wide ranging influence across all aspects of EITI policy, validation and implementation. This perception of power is borne out by the range of papers considered by the Committee; by the frequency with which it meets; and by the fact that it is the only committee that is headed by the Chair of the EITI Board. It is also worth noting that there is a very high degree of overlap between the membership of the Implementation and Nominations committees – half of the members of the nominations committee also sit on the implementation committee.

It is not uncommon for initiatives such as the EITI to have some sort of committee that is in effect *primus inter pares* and has responsibility for overall coordination of the organisation. Both the Open Government Partnership and the Global Fund<sup>12</sup> have such groups – the Governance and Leadership Committee and the Coordinating Group respectively. The problem with the Implementation Committee, therefore, is not that it exists, but that its role as the ‘senior committee’ has not been transparently communicated or its senior status seemingly endorsed and recognised by the Board. The Committee has done some excellent work in, for example, overseeing the production of a wide variety of Guidance Notes to help with interpretation of the new Standard for MSGs. However, the Committee focuses on policy or country-specific issues, rather than those of the governance and coordination of the organisation as a whole.

We make recommendations on simplifying the committee structure below. This structure would group the work of the Board into a slightly smaller number of larger committees that we hope will in turn make achieving quorum of committees easier. Ensuring that committees are quorate is essential to any move that might (as suggested in previous chapters) eventually delegate some decision-making to committees. A majority of interviewees noted that some committees struggled to achieve quorum in their meetings, and indeed this area was one that was picked up in the Board survey earlier in the year. **Graph 9** below shows significant variation on this front (again, based on incomplete data from committee minutes), from a low of 33% quorum, to a high of 100%.<sup>13</sup> Our view is that changing the committee structure (see below) and addressing broader Board member attendance issues should improve committee quorum rates, so we make no specific recommendations on this point.



<sup>12</sup> <http://www.opengovpartnership.org/> and <http://www.theglobalfund.org/>

<sup>13</sup> The Nominations and Audit Committees have been excluded from this analysis due to the relatively small number of times that they have met.

**Recommendation 12: It is for these reasons – the need for a greater focus on oversight and coordination of the organisation as a whole, as well as the need to balance the workload across the various standing committees better – that we recommend the creation of a new standing committee structure as outlined below.**

By reducing the number of standing committees from 8 to 5 (plus Audit), the average number of members for each committee could be increased, which would in turn make achieving quorum easier. The structure recommended below would allow for a more even distribution of workload as well as responsibility and influence across all members of the Board.

The proposed new standing committee structure is as follows:

- **Oversight and Coordination Committee:** This committee would combine most of the roles of the current finance and governance committees. It would have responsibility for the crucial role of agenda setting for Board meetings – i.e. establishing which issues are in most urgent need of attention, and which could be addressed later on or outside of Board meetings. It would have the explicit role of overseeing the work of the Secretariat (this is discussed in **Chapter 7** of the report below). It would also be responsible for finance, budgets, fundraising, risk management and assessing the impact of the Initiative. It would be the only committee headed by the Chair or possibly a Deputy Chair (this is discussed in **Chapter 6** below). Membership could be drawn from across the Board, or it could consist of the Chairs and Vice Chairs of each of the other committees.
- **Validation committee:** This committee would carry out the functions currently carried out by the validation committee.
- **Implementation and Policy Committee:** This committee would be focused on all country and policy specific issues, from the delivery of technical assistance and financial support to implementing countries; to addressing any specific disputes that are occurring in countries. Where it felt that existing policy or guidance was insufficient it could consider additions to existing policy or guidance. To ensure effective co-ordination with the implementation of technical assistance programmes, it would be necessary to have representatives of the World Bank as permanent co-optees on this committee. It could also draw on experts in the proposed EITI Implementation Forum (see **Chapter 4**) and would in any case need to have a close relationship with Forum.
- **Nominations, Candidacy and Communications Committee:** This committee would absorb the roles of the current outreach and nominations committees. It could be responsible for not only recruiting the Chair (and potentially a Deputy Chair), but could also be responsible for oversight of all constituency nomination processes (see **Recommendation 2** above). Finally, it would be responsible for outreach to and communication with any potential or new member countries, supporters, companies or civil society groups and for the EITI's overall external communications strategy.

- **Rapid Response Committee** should continue as it currently does. There was some consideration of combining its functions with that of other committees, but given the sensitivity and urgency of the issues that it often deals with, it would seem dangerous to try to sandwich these issues in with the significant workload of these committees.
- The **Audit committee** would continue as it currently does, i.e. meeting once or twice per year to appoint and receive reports from EITI's auditors.

## 6. The Chair

As one of only two *individual* positions identified in the Articles of Association (the other being the Head of Secretariat), reviewing the governance features of the Chair is fraught by the fact that only two individuals have ever held the post – commentary on the Chair inevitably runs the risk of being perceived as being personal. Making recommendations on the governance role of the Chair is also complicated by the fact that a nomination process for a new Chair has already been advertised for and the process of narrowing down a long-list of candidates is far advanced.

The Articles of Association place the Chair in a particularly powerful position. Broadly the Chair has three main roles:

- To chair, facilitate, and to ensure the effectiveness of the business of the Board, as well as to represent it externally.
- To oversee the operations of the Secretariat.
- To maintain and build the EITI Association – i.e. to bring in more countries, companies and civil society groups and to support those already involved.

It is fair to say that both Chairs have, in their own ways, been controversial figures with strong personal views of the direction in which EITI should travel. This strong leadership of the organisation is almost certainly one of the key factors that has allowed EITI to expand from a small group of stakeholders focused on some broad principles, to the global standard that it is today. There is no doubt that both Chairs have given an enormous amount of personal time to the Initiative, and it is doubtful the EITI would have been as successful as it has been without this level of effort.

In the Board Survey carried out earlier in the year, two out of three of the questions related to the role of the Chair received high ratings<sup>14</sup> though the third question – relating to the management of the Head of the Secretariat received positive, but not overwhelming support and this is commented on both here but more extensively in the following chapter.

The two areas of tension that this review detected in the course of interviews were as follows:

- An ongoing and unresolved dispute has opened up between the Chair and some members of the Civil Society constituency. We have commented on this dispute in **Chapter 3**, but we repeat here that this review does not find this dispute amenable to institutional change since it seems to involve a combination of different theories of political change, as well as a breakdown in personal working relationships, for which both sides share responsibility.
- There is some concern regarding the extent to which the Chair exerts effective and structured oversight of the Head of Secretariat on the Board's behalf.

Given that the Articles place the Chair in a crucial role regarding the oversight of the Secretariat – Articles 16 and 17 establish that the Secretariat is directed by the Board *via the Chair*, and reports to the Board *via the Chair* – this is a key issue. In the following Chapter we make explicit

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<sup>14</sup> Those relating to Board business being carried out in a manner that encourages open discussion and healthy debate; and effectively leading and facilitating Board meetings and governance.



recommendations to change these aspects of the Articles and to share the responsibility for the oversight of the Secretariat beyond the Chair whilst still granting the Secretariat an appropriate level of personal management responsibility.

It is notable that in the recent announcement seeking nominations for a new Chair, only one small reference was made to their role in overseeing the work of the Secretariat. Indeed, under the 'required qualifications' section no mention is made of management and finance competencies or experience. Given that the Secretariat is the key 'engine' of the organisation, this is an unfortunate omission and one that this report suggests that the nominations committee and Board consider during the short-listing process currently underway. This is not to say that the Chair should take on an executive management role, but rather that the best candidates will be those who can fulfil all three of the key functions identified above.

As noted above, what the present and previous Chair of EITI have given voluntarily to the organisation is remarkable. This should be acknowledged and there are no grounds for criticism of the personal commitment made by either. But as the membership of the initiative approaches close to 50 countries, we are doubtful whether the role of the chair can be met by a single, unremunerated individual spending 1-2 days per week. Wide consultation amongst almost 40 individual Board members and alternatives in advance of Board meetings in order to navigate the difficult path of building the sort of consensus that is required to ensure that a multi-stakeholder process is run efficiently, is enormously time consuming, especially if deep-seated divisions exist. Add to that the need for outreach to current and potential countries and stakeholders, keeping across the substantial output of Board committees, as well as the demands of oversight of the work of the Secretariat, and one has a particularly challenging job.

We are concerned that there are very real risks to EITI if the demands of the role of the Chair are not recognised and some form of provision is not made to either (i) expand the amount of time that future chairs give to the organisation, or (ii) that some of the tasks of the Chair are spread across more members of the Board (or a combination of both). Those risks are:

- Concentration of leadership and oversight functions: at present a large amount of responsibility rests with the Chair and the Chair alone.
- Inappropriate blurring of the roles of the Chair and Head of Secretariat: as discussed in **Chapter 7** below, there are occasions on which the Head of Secretariat is being asked to act in a way that is more like that of a Chair, than of a senior manager. The task of reconciling different Board constituencies ahead of meetings, for example, is clearly a role that is currently often being exercised by the Secretariat, and that is leading to perceptions of partisanship, and that is arguably inappropriate for an organisation that is intended to be the Board's support mechanism (it is notable that the Articles do not nominate the Head of Secretariat to be a member of the Board).
- Decreased board cohesion: the simple task of calling around relevant Board members in advance of Board meetings is vital in order to minimise conflict, build consensus and identify concerns.
- Failure to carry out appropriate oversight of the International Secretariat.

In terms of expanding the amount of time that the Chair spends, previous drafts of this report recommended that having a remunerated Chair should be more actively considered. We made this recommendation in recognition of the very considerable amount of time that chairs have spent on the organisation and in the knowledge that future Chairs will likely have to spend even more time. It is good that remuneration remains an option that can be considered by the nominations committee and Board, though obviously if an adequate pool of candidates is able to devote the necessary commitment for the future of EITI without remuneration, then that is of course ideal.

In terms of spreading the responsibilities of the Chair more widely, we see two options which we believe should be strongly considered. Firstly, the Board should consider creating a new position of Deputy Chair which could take on some of the increasing need for more senior Board-level leadership. There are of course a number of different models for a Deputy Chair that could be adopted. In some cases Deputy Chairs are elected from within the ranks of an organisation's existing Board. In other cases they are separate and externally recruited positions. The preference of this review would be for the Deputy Chair to have a status similar to that of the Chair – i.e. an individual not recruited from within any one particular constituency on the Board, though in order to ensure a diversity of leadership it would obviously make sense to try to recruit a Deputy Chair from a different background from that of the Chair (so if the Chair came from a mainly government background, a Deputy Chair could be sought from a civil society or corporate background), as well as a different region than that of the Chair. Indeed, on the latter point there could be an explicit expectation that if the Chair was based in a supporting country, that the Deputy Chair should be based in an implementing country (note – 'based' should not be equated with being from an implementing or supporting country *government*) or vice versa.

That said, we recognise that this would impose an additional cost on the organisation, and for that reason the Board could consider selecting a Deputy Chair from within the ranks of the Board itself. Such a candidate would need to be a senior member of the Board (i.e. have served at least one full term), with a good understanding of all aspects of EITI implementation, and with the full support of all Board constituencies. Moreover, they would have to be able to dedicate a similar amount of time to overseeing the work of the Board and Secretariat as the Chair currently does.

**Recommendation 13: Given the increasing weight of responsibilities on the Chair, it is our view that that Board should consider creating a position of Deputy Chair.**

If the Board decides to not go ahead with the appointment or recruitment of a Deputy Chair, we would recommend that the expected workload of future chairs of 1-2 days per week be explicitly increased to 3-4 days per week.

The second recommendation in this area has already been highlighted in **Chapter 5** and is discussed in greater detail in **Chapter 7** regarding the role of the International Secretariat, namely the recommendation to create an Oversight and Coordination Committee. If adopted it is envisaged that this committee would assist future chairs in the management of Board business and oversight of the operations of the Secretariat.

A very small minority of interviewees raised the issue of term limits for the Chair. On one end of the spectrum there seemed to be some who were not aware that the Articles already proscribe a maximum of two terms for the Chair. At the other end of the spectrum there were again a very

small number of individuals who wondered whether a term limit was necessary. All-in-all we found little desire amongst most interviewees to change term limits for the Chair either by reducing or increasing the amount of time that a Chair might serve.

Finally, as already noted, amongst the Board members who were interviewed, approximately half expressed disquiet with the current practice of the Chair also leading the Implementation Committee. Commentary has already been made on this in **Chapter 5** with regards to the role and structure of Board committees, but if the recommendation of this report regarding the adoption of a new committee structure is adopted, then the Chair should only ever head one Board committee – the proposed Oversight and Coordination Committee – and no others. If, however, a Deputy Chair is appointed with responsibility for this committee, then the Chair could continue in a more outward facing role.

## 7. The International Secretariat

### 7.1 The state of the Secretariat

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The most difficult issue to be considered by this review is that of the oversight, role and operations of the International EITI Secretariat based in Oslo. If commenting on the Chair is difficult because only two individuals have held the role, then commenting on the Secretariat is even more difficult because only one individual has held the role of Head of Secretariat since it was moved from the UK to Norway and made into an independent entity. It is for that reason that it is worth reiterating a point made at the start of this report: this review should not be used as some poor proxy for a performance review process. The review was not tasked to do that, and it would be highly inappropriate for anyone to use it as such.

A clear majority of those interviewed (including from all constituencies, those on the Board as well as outside of it) expressed a curious mixture of positive and negative views of how the Secretariat currently operates. The ‘average comment’ about the Secretariat expressed deep admiration for their hard work, dedication and abilities; tempered with significant concern that they are erring too much on the side of seeking to lead the organisation and therefore run the risk of operating outside proper lines of accountability

This is a note-worthy variance from the results of the Board survey from earlier in the year in which the Secretariat performed well on four out of the five questions relating to its operations<sup>15</sup>, though this survey had a much smaller sample size<sup>16</sup> and was not able to get into more detailed questions unless respondents wrote them in as comments.

Broadly we can categorise these concerns in the following way:

- Many feel that the Secretariat is a partisan stakeholder in the EITI process – that it has independent views on the direction in which EITI should travel and seeks to promote those views both overtly and covertly. Because of this many feel that the Secretariat is not appropriately accountable to the Board. Indeed, again and again interviewees expressed the view that the position taken by the Secretariat on an issue was often perceived to be more important than the position taken by the Board or Chair.
- There are concerns regarding aspects of management practice in the Secretariat.

But there is a but. That ‘but’ is that while the Secretariat has emerged as the focal point for some criticism by interviewees, they also made the following observations:

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<sup>15</sup> Those related to appropriate Board oversight of the Secretariat; communication with the Board; following up actions from Board meetings; and support before, during and after Board meetings.

<sup>16</sup> The Survey was of Board members only and received 32 responses. This review interviewed 28 Board members, and received written comments from a further two, in addition interviews and discussions with a further 57 individuals involved in the EITI but outside of the Board.

- That EITI is a successful international initiative, and that the credit for much of that success rests with the Secretariat, and in particular with senior members of the Secretariat who have been with the organisation since it was first established in 2007.
- Many interviewees noted that the Secretariat had maintained a drive, passion and determination to deliver that was very difficult to find in other international organisations.
- People involved in national level EITI processes find the Secretariat extremely responsive to demand – again and again we heard that questions were answered very quickly; that help was always forthcoming. Given that supporting national level EITI processes makes up approximately half of the Secretariat’s work, this high level of satisfaction with their work at the national level is important to recognise.
- There was an acknowledgement by many that as the focal point for supporting both the global governance as well as national implementation of a multi-stakeholder initiative, the Secretariat was often in the unenviable position of being shouted at by all sides. A number of interviewees noted for this reason they themselves would not want to work in the Secretariat, and that they admired those that do for being able to survive in such an environment.

Given the amount of concern generated by this issue, it is incumbent on this review to try to understand what it is that is driving this peculiar combination of both admiration as well as concern with the work of the Secretariat, so as to identify appropriate remedies. We make this analysis because it is our view that where the Secretariat is perceived to be overstepping, it is doing so for mostly rational reasons, albeit reasons that need to be addressed. This review is able to find seven broad issues that appear to be driving this phenomenon.

Firstly, a power imbalance is emerging between the Board and the Secretariat, and that imbalance comes primarily from levels of knowledge and understanding of the Initiative. The EITI Standard is a complex set of policies and recommendations; dealing with complex industries; being implemented in a large and diverse group of countries. Simply keeping on top of where issues and ideas have come from and gone to requires significant investment of time and attention to detail – the Secretariat keeps track of this information and in doing so helps to ensure consistency in Board decision-making.

While there are a very small number of Board members who have been involved with EITI since the beginning, the majority of the Board have been involved in the international governance of the Initiative for only a few years. In the Secretariat, on the other hand, there is a core of approximately half a dozen staff - including the majority of the Senior Management Team - who have been involved since the Secretariat was established in 2007. Some interviewees observed that there was at times a culture of ‘the Secretariat knows *best*’, and the simple fact is that due to the length of service of this inner team it is indisputable that the Secretariat in most cases does know *more* about most EITI issues than others. In the earlier years of the EITI’s life this was not the case and there was a more equal relationship between the two as each learned ‘on the job’.

Secondly, there is actually a subtle but significant debate as to the appropriate role of the Secretariat. To provide a clear starting point for this debate it is worth revisiting the Articles of Association that define the role of the Secretariat as being ‘*responsible for the day-to-day running of the EITI Association under the direction of the EITI Board through its Chair*’. The subtlety of the

debate appears to come back to what this means, and in particular whether the Secretariat should have a role in *proposing* policy and ideas, finding support for those ideas, and generally *leading* the EITI Association, or whether those roles of proposing and leading should sit with the Board, and the Secretariat should primarily exist to service the activities and processes of the Board and to implement its decisions. Throughout the course of our interviews we could find proponents for both models, and it is fair to say that that diversity of views is driving some of the tension around the role of the Secretariat.

The difference can perhaps best be summarised by the confusion around the Head of Secretariat role. The first model (proposing, leading) is that which you would expect to be carried out by a Chief Executive Officer, and indeed throughout the review there were numerous references to the role being analogous to that of a CEO, particularly within the Senior Management Team itself. The second model (facilitates, implements) is one in which the organisation would carry out secretariat functions and would be led by a Head of Secretariat. Multi-stakeholder initiatives probably need a model that exists somewhere in between – too assertive leadership risks the fact that mandates come from inter-constituency dialogue, not the Secretariat. But at the same time it is the messiness of that dialogue that also requires a Secretariat that doesn't simply sit back and wait to be formally tasked to do things.

The third cause of tension in respect of the role of the Secretariat relates to propose/lead vs. facilitate/implement tension, and comes from the challenging demands that are placed on the Chair of EITI. As noted previously in **Chapter 6**, this review found that the job of chairing the EITI is now so great and so challenging, that it is nigh on impossible for it to be carried out by one individual working in a voluntary capacity 1-2 days per week. Because of this, senior staff in the Secretariat have taken on roles that many believe are more appropriately those of a Chair – e.g. calling around Board members in advance of committee and board meetings in order to try to find consensus and identify issues; publicly defending the EITI when they perceive that it is being attacked. The management of the Secretariat see that as one of their core functions, and yet it is precisely that behaviour that is driving some of the perception that the Secretariat is not appropriately objective and accountable to the Board.

The fourth cause of problems that we have been able to identify is the perception that both the Board and Chair are currently failing to exercise appropriate oversight of the work of the Secretariat. The Articles of Association very clearly give those responsibilities to the Chair and Board, and yet during this review we struggled to detect the *formal* exercise of that oversight function. We are told that the Chair is in very regular contact with the Secretariat and provides regular guidance to and feedback on their work. That regular contact is excellent, but it needs to be formalised, including around the issue of performance assessment. The Head of Secretariat, for example, appears to have no job description beyond that found in the Articles of Association, and it is not clear whether any performance appraisal process exists for the position. The weakness of this oversight appears to be reflected in the fact that the only Secretariat-related question in the Board survey that raises concerns is that relating to whether the Chair effectively manages the Head of Secretariat.<sup>17</sup> That responsibility for exercising appropriate oversight of the Head of Secretariat and Senior

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<sup>17</sup> Fourteen out of 29 respondents agreed or strongly agreed that effective management was taking place. While only a small number of respondents actively disagreed that effective management of the Head of Secretariat, a large number rated this question 'somewhat agree' – the middle 'mark'

Management Team is not a failing of the Secretariat itself, but rather of the Board and we make recommendations on this below.

Fifthly, the Secretariat appears to have increasingly taken on the responsibility for trying to compensate for one of the major challenges of EITI governance – that of ensuring that the voice of implementing countries is heard at all levels of the Initiative. Because virtually all of the representatives of implementing countries are in fact implementing *governments*, this has created the perception that the Secretariat sometimes errs in favour of one of EITI's three stakeholder groups. This report has already dealt with this issue extensively, but it is worth repeating here that the weakness of implementing countries in EITI's international governance appears to have led to the Secretariat trying to informally redress that imbalance itself, and some perceive that as the Secretariat having a partisan position on policy issues. Again the Secretariat sees reconciling the national and international levels of EITI as being a core part of their job, but the recommendations that we have made with regards to improving national level EITI voice in the international EITI institutions should allow those voices to come through more strongly and independently.

Sixth, as EITI has expanded, so has the weight of information that needs to be distributed and decisions that need to be made. The weight of papers and number of Board and committee meetings has already been discussed in previous chapters, but it is worth noting that there appears to be a gap between amount of information that the Board *is able to* digest and decisions that it *is able to* make, and the amount of information that it *needs to* digest and decisions that it *needs to* make. Some interviewees felt that it was because of this gap in the capacity of the Board to make decisions, that the Secretariat sometimes felt the need to take actions or decisions to simply keep the organisation moving.

Finally, EITI has been in a state of near constant expansion since its very inception. The relentless pace of policy evolution (from the EITI Principles of 2002 through many iterations of the EITI Rules to the EITI Standard of 2013), as well as the massive expansion and diversity of implementing countries and other stakeholders seems to have created a culture at the International level in which there has always been a need for the Secretariat to run at full pace in order to keep the Initiative alive and responsive to all challenges and demands. It has also placed a premium on both the chairs and senior Secretariat staff being heavily focused on outreach, managing external relationships, and finding ways to resolve deeply complex issues and policy in a high conflict environment. Those have been the right skills and right areas of focus to take EITI from very fragile beginnings to the successful global organisation that it is now, and they are skills that will continue to be needed. But it is also the view of a large number of those interviewed by this review (again across all stakeholder groups) that those skills and that focus, need to be complemented by a stronger focus on internal processes and management within the Secretariat itself.

The Secretariat has recognised this itself, and it should be commended for strengthening its management of human and financial resources through the creation and staffing of a new HR and Finance Manager position. It has also bought in a professional management coach to work with the Senior Management Team to help them to improve those management skills. The Secretariat notes that it has also commissioned two previous internal (i.e. carried out by Secretariat staff) reviews and one external review. Documents from one of those internal reviews appear to focus explicitly on

this need to focus more on internal process and management, though it is clear that there has been great debate within the Secretariat regarding the results of those internal reviews.

What is clear is that there is a very real tension within EITI regarding the role, influence and accountability of the Secretariat. In previous drafts of this report we were asked by the Secretariat to substantiate some of these concerns. As noted in **Chapter 2**, there is a real risk that being more specific about these concerns will compromise the confidentiality of those who spoke to us as reviewers. We also believe that it would run the risk of creating dozens of he-said-she-said conversations, in which specific disputes and tensions both current and past would be dragged up and re-debated, and that would not help either the Board or the Secretariat. Of course these concerns are ones of *perception* but we reiterate that what is striking is how consistent and wide-spread those concerns and perceptions are.

Given the significant pressure under which it operates, the Senior Management Team is understandably defensive about commentary on its performance and accountability. We are, however, concerned that any issues raised in this area have tended to be attributed to being disputes with specific individuals and/or agendas pursued by specific organisations, and that they can therefore be dismissed as ‘attacks’ on the Secretariat by a small number of aggrieved individuals and organisations. **The breadth of concern raised in interviews simply does not support this view.** What this review has tried to do is to identify systemic causes for this state of affairs and we believe that the above analysis achieves this.

## 7.2 Improving oversight of the International Secretariat

It is for these reasons that one of the principal recommendations of this report is that oversight of the work of the Secretariat needs to be formalised and broadened beyond what is currently an extremely narrow accountability link focused heavily on two individuals – i.e. the Chair overseeing the work of the Head of the Secretariat, with occasional high-level discussions of the Secretariat workplan. At a minimum it will provide a place for conversations regarding the role and work for the Secretariat to happen. It is also a good way of ensuring that more members of the Board fully understand how the Secretariat operates. Finally, it is good risk management – at present EITI is arguably too vulnerable to an enormous amount of influence being concentrated in a few hands.

A number of recommendations flow from these observations. They are as follows:

**Recommendation 14: This recommendation should be read in conjunction with Recommendation 12 made above. An Oversight and Coordination Committee of the Board should be created. It should be headed by either the Chair or a newly created Deputy Chair position. The Article of Association should be changed in order to provide this committee with the responsibility for oversight of the work of the Secretariat, as opposed to that role sitting mainly with the Chair. The new committee should subsume the roles of the Governance and Finance Committees and with regards to the work of the Secretariat it should take on the following roles:**

- Oversight of the role of the Secretariat, including the development of Secretariat work programmes and budgets.



- Supporting the Chair and/or a Deputy Chair in their exercise of the high-level performance management processes necessary for the Board to exercise appropriate oversight of the Secretariat, specifically:
  - To ensure that the Head of Secretariat has a clearly defined job description as well as annual objectives (beyond ‘deliver the work programme’) that are measured through an agreed performance appraisal process.
  - To negotiate the Head of Secretariat’s contract and remuneration as and when required.
  - Mentoring and supporting the Head of Secretariat in his work, and training and development aspirations.
- Support the Head of Secretariat in the recruitment of members of the Senior Management Team. While we suggest that the Articles of Association remain unchanged with regards to recruitment (i.e. it should remain the responsibility of the Head of Secretariat), and there should in no way be any move that might lead to Board members attempting to politicise the Secretariat by seeking to secure appointments for specific individuals, the Board *should* have a clear interest in what kinds of skills, competencies and experiences are brought into the Senior Management Team and where they are located. They should also have a clear role in ensuring that succession planning processes exist at all levels of the organisation.
- Identifying an individual member of this committee who could act as a confidential staff liaison point for any Secretariat staff should they wish to express concerns with any aspect of EITI’s governance and management, whether that be with the Board or the Secretariat. That individual would have to have clear management experience, including some understanding of the broad principles of employment law. While we understand that the HR Manager already fills this role internally, the absence of any formal staff liaison role has meant that in the past some members of Secretariat staff have felt the need to express concerns to various Board members. Creating a staff liaison point will create a mechanism by which any such concerns can be addressed by the Oversight and Coordination Committee, rather than becoming the subject of Board meetings and discussions.

The Committee could be formed by individual Board members who have senior level management experience, or it could be formed by the Chairs and/or Vice Chairs of the various standing committees of the Board.

Related to this recommendation, there would need to be changes to the Articles of Association that establish the role of this management committee. At present the Articles state that:

- the Board oversees and directs the work of the Secretariat *through the Chair* (Article 13-1vii);
- the EITI Secretariat acts under the direction of the Board *through the Chair* (Article 16-2); and
- the Head of Secretariat reports to the Board *through the Chair*.

### 7.3 Organisational development issues

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As stated earlier in this report, there has been some demand for this governance review to get into the detailed recommendations regarding the structure, operational systems and staffing of the Secretariat. Our view is that this is largely outside of the scope of this review, and that we should only comment or make recommendations on it where we felt that they impacted on the governance and accountability of the EITI as a whole, or that they were important enough to be creating significant risks for the organisation.

That said, what is of concern is that issues with the way in which the Secretariat is organised and managed are being raised by more than a small number of interviewees – a reasonable sized and diverse group of interviewees hold concerns on this front. Again we have been asked (in previous drafts of this report) to be more specific what these concerns are, and our view is that getting into the specifics of the concerns raised with the review team would be counter-productive – what matters most is that concerns appear to be held by more than just a few individuals, including (but not limited to) past and current members of the Secretariat, and are largely focused on issues of management style.

This review, as explained earlier in the report, was able to spend only three days in Oslo. It was not, within the constraints of this review, able to look at the specifics of Secretariat systems, performance management structures, internal procedure and documentation. And while the review team consists of individuals who have all held management positions in a number of organisations, we are not HR or performance management specialists. What we have been able to do in the course of this review is detect the tension and stress in the organisation and suggest ways of addressing it in greater detail. Part of that would be through the creation of the Oversight and Coordination Committee mentioned above, that would help the Secretariat better explain to the Board how they operate on a day-to-day basis.

But we also believe that the number of concerns raised with us warrant a separate organisational review process to look specifically at management practice and systems within the Secretariat.

**Recommendation 15: Following the Lima Conference in February 2016, a separate external organisational review should be carried out by a firm of appropriately qualified human resources professionals to look at structures, performance management systems, feedback mechanisms (e.g. 360 degree feedback tools) and training and development processes. Commissioning, managing the procurement of and overseeing this review should be one of the first tasks of a newly constituted Oversight and Coordination Committee.**

Outside the need for this review, there is one aspect of the current structure of the Secretariat that we would like to address, which is the location of the Secretariat. Our review has found both centralising and decentralising pressures on the EITI Secretariat – some interviewees expressed concerns that the Secretariat was not concentrated enough; while others expressed a desire for more regional representation. That view was expressed strongly by those national coordinators that we spoke to – they almost universally admired the work of the Secretariat and one of their greatest wishes was for them to be closer to hand and able to visit implementing countries more often. The ScanTeam report on technical support also seemed to anticipate a greater regional presence for EITI either directly or operating through partner organisations.

We are concerned, however, that at the time of writing it appears that of the four member senior management team, only half are based in Oslo, with the rest of the senior managers working remotely. While we appreciate that this has come about in order to allow members of the management team to work in ways that better suit their personal and family circumstances, it does place an unfair management burden on the Head of Secretariat. It has also left many staff in the Secretariat with not as much support from their managers as is desirable. There is a need for all members of the Senior Management Team to ensure that they are able to spend good amounts of time together as a team. This is challenging given the location of half of the team as well as the extensive travel demands placed on them, but it is also clear that some of the tensions identified in this review would benefit from much more management team time together in Oslo.

## 8. Funding

This review was not tasked with looking at the specifics of EITI's funding model, not because it is not relevant to the issue of governance, but because reviewing the model and making detailed recommendations would have required more time and focus than was available for this review. This limitation was noted in our proposal, as well as at the first meeting of the Governance Committee attended by consultants on 8 July. That said, it is impossible not to make some broad comments on the current funding model, particularly given that this review coincided with considerable debate between one sub-constituency of the Board (most but not all of the mining companies) and the International Secretariat with regards to how the organisation is funded.

The funding of EITI is distinct in a number of ways:

- Globally, the majority of EITI-related funding occurs outside of the formal oversight of the EITI Board – i.e. it is provided by the governments of implementing countries; by bilateral donors through trust funds administered by the World Bank; and directly by bilateral donors and international civil society organisations operating in various EITI countries.
- The majority of the funding of EITI's international institutions – i.e. the Board and Secretariat – comes from the Supporting Country sub-constituency on the Board. In the last financial year, those countries provided 62% of EITI's funding while holding only 16% of the seats on the EITI Board.
- All funding for EITI is technically voluntary for each supporting entity even though the funding formula implies that collectively for the supporting governments and supporting countries it is not.

During the course of our interviews it would be fair to say that a number of people involved in EITI implementation at the national level raised the issues regarding the operation of technical and financial assistance provided to EITI implementers by the World Bank, with the key issue being how long it took to access funding and how that often had a significant impact on the timeline of EITI implementation in various countries. Some interviewees, including the EITI Secretariat, have asked us to comment on whether the current level of funding is adequate, and whether the EITI Board should provide some form of greater monitoring of those funds. Many of these issues have already been considered at length in a report produced by ScanTeam earlier in this year, and it is for this reason that we make no recommendations in this area.<sup>18</sup> We are aware, however, that it has seemingly generated some continuing friction.

The concentration of funding for EITI's international institutions in the Supporting Government sub-constituency does pose an interesting challenge to the EITI when it comes to reconciling its equal tripartite process, with its unequal funding situation. This review could find no evidence that supporting countries were abusing their funding power to exert excessive influence over the Board or Secretariat, but at that same time representatives from the sub-constituency were quite emphatic that there should not be a reduction in the size of their representation on the EITI Board.

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<sup>18</sup> <https://eiti.org/document/scanteam-evaluation-eiti-technical-assistance-and-funding-mechanisms-2015>

Certainly a broad feature of governance is that risk can be created when there is a large gap between power and influence, and the formal representation thereof. If a powerful group feels that it is not adequately represented in a governance structure, it may choose to withdraw from that structure, or to exercise their influence elsewhere and in a less transparent manner. We would reiterate that we find no evidence of this, but it is precisely this dynamic that makes this review reluctant to recommend reducing the level of supporting country representation on the EITI Board in order to increase implementing country representation, as has been suggested by the Secretariat.

Certainly, as resource companies continue to experience what may be an extended period of low commodity prices and quite substantial cuts in costs and employment, it might simply be good risk management for EITI to expand the kinds of member organisations (or even non-member organisations such as large charitable foundations) from which it draws its funding. In the description of the funding formula on the EITI website<sup>19</sup> it is stated that one of the three principles of the formula is that *'no single constituency or stakeholder dominates the level of funding'* and yet with 62% of funding coming from supporting countries and development agencies, that is exactly what has happened.

With regards to the funding of EITI's international institutions, good information on previous audited accounts on the EITI website as well as a broad description of how EITI is funded can be found on the EITI website. We understand that the financial systems of the Secretariat have been progressively reviewed and improved over time. That said, we find it peculiar that the actual funding model (i.e. how it is determined what each supporter should be asked to pay) is not publicly available on the EITI website. This should be rectified.

In the course of our review we found relatively few members of the Board who appeared to be interested in finance and fundraising and that that lack of interest is a governance issue in itself. Of those whom we asked about how finance issues were discussed at the Board, we were told that in general while conversations about country-specific issues or policy could be given hours at Board meetings, issues of finance and fundraising appear to be relegated to the end of Board meetings; very rarely received significant attention; and that attempts by Board members to discuss specific line items can be either rushed or ignored.

There is also some dispute as to how effective the current work programming and budgeting process is, and it is perhaps this dispute that is contributing to the tension between some in the mining sub-constituency (most of whom channel their funding via ICM) and the International Secretariat. There is a perception that rather than the Board establishing a target budget and the Secretariat then constructing a work programme within that budget, that the Secretariat instead constructs a work programme and then seeks funding for it. This perception and description of the process is heavily disputed, and this review does not seek to adjudicate on it.

What this dispute does throw up, however, is whether the way in which the Board exercises oversight of funding issues should be changed, and whether the funding model itself should be changed. While issues related to funding might not be as engaging as country or policy issues, we would argue that a plus or minus ten percent variation in budget execution or fundraising is actually

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<sup>19</sup> <https://eiti.org/about/funding>

a far greater material risk to EITI than gaining or losing a member country or two. It is for that reason that we believe that creating an Oversight and Coordination Committee (as discussed in **Chapters 5 and 7**) of the Board with responsibilities covering both finance and governance, and lead by either the Chair or a new Deputy Chair will also help, should help address this lack of attention.

We also would also strongly recommend that the Board revisit the issue of whether funding should remain voluntary. Indeed, the fact that there is a dispute over how much one particular sub-constituency should pay suggests that funding is not in practice actually voluntary. That status of funding being at some undefined point between voluntary and mandatory appears to be creating tension within EITI, not to mention it makes it very difficult to predict future income. It also poses the interesting challenge that some organisations can commit to supporting the EITI but at the same time make no financial contribution to its upkeep. Indeed, there are companies currently listed on the EITI website as supporters that have made no financial contribution to EITI in recent years. With that in mind we make the following recommendation.

**Recommendation 16: The EITI Board should consider the following reforms to its funding model, including:**

- **Shifting to a mandatory minimum funding model, in which all supporting countries and companies (at the international level of EITI) would be charged a minimum annual fee. Those fees could be aggregated through broader organisations (such as ICMM), and companies and countries would of course be encouraged to make additional voluntary contributions to EITI beyond the mandatory annual fee.**
- **Setting out a strategy to avoid its current over-reliance on one sub-constituency, including reviewing whether additional funding could be secured from foundations, international civil society organisations and investors.**
- **In line with the recommendation made in Chapter 9 on process transparency, the current funding model as well as any future models should be published on the EITI website and in the EITI Standard.**

## 9. Transparency of key processes

One of the unexpected findings of this review was a (no doubt unintentional) lack of transparency around how EITI works. On several occasions we discovered that key documents were difficult to locate or not publicly available. Important processes were known to most of those already involved in the EITI, but often not to those outside of the key international institutions – i.e. the Board and Secretariat. This lack of transparency is of course a strange situation for a transparency organisation to find itself in and creates the following risks:

- It might make it difficult for outsiders (or even the very large number of people involved in national level EITI programmes) to understand how international governance is carried out.
- It may increase the difficulty that newcomers to those international EITI institutions have in understanding the rules and processes that they now need to understand in order to be a good member of the Board or Secretariat. It places a strong emphasis on good induction processes and documentation.
- It could inadvertently concentrate power in the hands of those who do know the history and the ins and outs of process and governance – i.e. a relatively small number of Board members and Secretariat staff.
- It opens up the possibility that the organisation inadvertently drifts away from the core principles and rules that guide it, as laid out in the Articles of the EITI Association.

Core documents should be easily accessible and publicly available. The obvious starting point for this process should be with the Articles of Association themselves. The Articles are the defining governing document of the organisation, and yet at present they are buried at the back of the EITI Standard – available only from page 44 onwards. They can be found as a standalone document in the publication section of the EITI website, but only if one digs. As noted in **Chapter 3** we were struck during the review how little reference there was to the core governing documents and principles of EITI by all of those interviewed, including Board members.

Secondly, at present the question of how the EITI Board itself is s/elected is at present known to Board and Secretariat members but is not known publicly beyond reference to constituency processes made in the aforementioned Articles of Association. Under the Articles of Association, each stakeholder constituency (and in some cases sub-constituencies) develop their own guidelines for s/electing people to serve as full and alternate members of the Board, as well as to describe how the constituency itself works. At present none of those guidelines appear to be publicly available. We understand that they are being reviewed in advance of the next EITI Conference, but it is the recommendation of this review that the most current guidelines are always publicly available.

Thirdly, while the EITI website contains good information on EITI funding and accounts, it does not currently explain what the formula is for, *how* it is determined or what funding requests are made of supporting countries and companies. Further discussion of whether the funding of EITI is truly ‘voluntary’ is discussed in **Chapter 8**, but regardless of what decisions are made regarding EITI’s funding, details of how it is funded should be made more publicly available. At present it appears that this information can be found in Board minutes, but given that those minutes now total

hundreds of pages spread out across almost a decade of Board meetings, we find it peculiar that one should have to be knowledgeable about Board history in order to fully understand an issue as simple as funding.

Finally, and similarly, we came across some instances in which simple pieces of internal Board procedure – e.g. the quorum rule for committees – have been captured in minutes of previous Board or Committee meetings. An effort should be made here to unearth these and to ensure that the Board Manual includes all of these pieces of agreed procedure.

Individually these may seem like small things, but collectively we are left with the fact that there is a lack of accessibility – and, therefore, in effect, transparency – around the basic facts of how EITI is governed; how Board members are s/elected and the rules that govern their work; and how the organisation is funded.

**Recommendation 17:** It is for this reason that we recommend that the Governance Committee and Secretariat undertakes a review of core governance documents and processes and ensures that all of them are (to borrow wording from the EITI Standard related to national level EITI reports) *'comprehensible, actively promoted, publicly accessible and contribute to public debate'*.



## 10. Other issues

### 10.1 Dispute resolution

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One question to emerge during this review is a relatively simple one: who should determine what it means to 'do EITI'? A number of interviewees from all constituencies expressed concern that at various times both the Board and the Secretariat were attempting to be the organisation that answers that question.

To make a comparison with an extremely traditional governance structure, one could make the following analogy. The EITI Board acts as the 'legislature' of the organisation – a broad range of constituencies are represented, and the Board is responsible for considering, debating and passing or rejecting EITI policy (or 'laws and regulations'). The Chair (and Committee Chairs and Vice Chairs) help to supervise and direct the work of the organisation as a whole. The Secretariat acts as the Executive of the organisation – i.e. it carries out the work programme set agreed by the Board, and is responsible for implementing the policy of the organisation. Finally, EITI Validators in effect act as audit bodies – i.e. they are there to ensure that countries implementing the EITI are actually doing what they say they are doing, albeit only every couple of years.

To continue this highly imperfect analogy, the missing function in this mix is that of some form of judiciary – i.e. when there is a dispute over what the 'law' of EITI actually means, who considers and adjudicates that dispute, especially if it occurs when a validation is not due for some time? In the first instance the Board should undoubtedly be responsible for the interpretation of the Standard, but the Board does not appear to have any procedure for reviewing its own decisions if they are challenged.

The absence of some form of mediation, arbitration or dispute resolution mechanism means that the role is falling to both the Board and the Secretariat. Our view is that in most circumstances that they *are* the right organisations to address day-to-day disputes – EITI has succeeded by being nimble and responsive to challenges, and as this report already makes a number of recommendations that, if adopted, will add greater process and rigidity to the Initiative, caution should be exercised when suggesting more.

That said a number of interviewees did raise two sets of concerns that are pertinent to this point. Firstly, there is some concern that when the Secretariat and / or the Board are asked to mediate on some form of dispute at the national level, they bring concerns and influences to that task that have nothing to do with the dispute itself – the Secretariat, for example, may worry about resourcing or timeline impacts of a decision, or find itself conflicted in its role as provider of technical assistance to countries while at the same time providing opinions on (often contentious) validation reports. Board members may be concerned about how a particular interpretation of EITI policy might impact on their own organisations if it becomes new policy. In these circumstances, neither body is coming to the issue with an entirely clear and unbiased mind.

The second concern is that some Board members are worried that the agenda of the Board is increasingly dominated by adjudicating country specific disputes and that this has three negative

consequences: it can be enormously time consuming; it detracts from strategic management of the organisation as a whole; and it rapidly depletes the social capital and trust that is required for the Board to get on with business.

Earlier drafts of this report recommended that the Board consider establishing some form of dispute resolution mechanism that might address these issues. The idea received a luke-warm response at best and many felt that dispute resolution was one of the key functions of the Board. Ultimately more people seemed confused as to what role such a mechanism might serve, than the number of people who had suggested the idea in the first place – and for that reason this issue is taken no further and no recommendation is made. We suggest that the Governance Committee (or Oversight and Coordination Committee if that recommendation is adopted) consider this issue at a future date.

## 10.2 The Members' Meeting

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One of the fascinating features of EITI is that its governing body was mentioned by almost none of those interviewed for this review. The EITI's Articles establish it as an Association under Norwegian law. That Association has members who meet at the same time as the EITI conference (i.e. every 2-3 years) and that meeting (effectively an AGM) is responsible for (in summary) approving the activities and accounts of the EITI Board; electing the Board and Chair; and addressing any other issues raised by members.

While there is apparently no strict requirement under Norwegian law for the Association to have such a structure, we understand that it would be unique if it did not. In reality the members of the EITI Association meets too infrequently to meaningfully participate in governance and exercise accountability over the Board.

That said, we detected absolutely no demand to change the current state of affairs, nor any suggestions as to how it might be managed otherwise. The very small number of people who mentioned it observed that it was a bit of a 'fait accompli' and that it was difficult to encourage members to attend. Given the absence of concern about this aspect of EITI's governance, we make no recommendations in this area beyond suggesting that the Board might wish to consider how it might make members meetings more meaningful in future.

## Annex A: Aggregated Recommendations

**Recommendation 1:** A programme of Board development needs to be initiated. That programme should have the objectives of ensuring that:

- All Board members are familiar with the governing documents and processes of the EITI;
- The Board manual is regularly updated with details of how the EITI works and the processes and customs that guide its operations;
- Once a year the Board holds a dedicated governance session in which it reviews Board survey results (assuming that surveys are made an annual process); discusses where it is sitting and needs to sit in the spectrum described in Diagram 1 above; reviews attendance levels; and takes time to review and sign off on the Board Code of Conduct; and
- That a programme of Board induction exists, not only at the start of each term, but also for any members who join mid-term (our review found that inductions for such new members was poor and seemed to assume that this would primarily be done by the new member's constituency).

**Recommendation 2:** There is a need for the constituency guidelines that exist and are not currently accessible to be published as soon as possible. More importantly, while individual constituencies will no doubt take ownership of the refinement of their individual guidelines, we also recommend that the current Governance Committee establish a clear timetable for the process. Finally, the Governance Committee should also review constituency guidelines in draft to ensure alignment with the principles already noted in the EITI Standard before they are finally agreed and published.

**Recommendation 3:** We recommend that the potential dual role of some countries that are both supporters as well as implementers of EITI is explicitly recognised within the constituency guideline that is developed for supporting governments and that some process is developed that acknowledges this dual role. We would also recommend that for the purposes of calculating Board seats that each country that has such a dual status decides in which constituency it wishes to sit, as it would seem odd for a country to be eligible for election in two separate processes. Alternatively the Board could consider separating the constituency into two distinct constituencies, though that would also require changes to the Board's voting rules.

**Recommendation 4:** The Board should consider adding new provisions to the Articles of Association that allow constituencies to remove and replace a Board member if their level of attendance drops below a certain level.

**Recommendation 5:** Given the relative complexity of EITI this report recommends that the general expectation of Board membership should be that an individual Board member should endeavour to serve for the full 'term' (i.e. the period between two EITI conferences). While an arrangement might be made for an alternate to trade places with a full member during that term, the over-riding objective should be to ensure as that as many Board members as possible serve full terms and service of less than that period (2-3 years) should be strongly discouraged.

**Recommendation 6:** The Board should consider whether they wish to adopt some form of term limits for Board members.

**Recommendation 7:** The Board may wish to consider strengthening the language in the Articles of Association to make the replacement of full members who leave mid-term by their Alternates to be the mandatory position, with a possible option that the organisation represented by the departing full member be offered an Alternate position on the Board.

**Recommendation 8:** We recommend that the Implementing Country constituency on the Board is increased by 1 full and 1 alternate member in order to better reflect the significant growth of EITI in the Asia-Pacific and Americas regions.

**Recommendation 9:** The Board should therefore consider providing some form of funding that would partly or fully fund travel and accommodation costs related to the participation of implementing country representatives who do not receive funding from this from any other source. Support might also be provided – perhaps from the World Bank or by other donors – that would help these Board members to meet discuss and meet with other members of their regional group. We appreciate that this is a controversial option. If it is adopted we would recommend that the levels of support, class and rules of travel be identical to those laid down in the Board Manual for civil society representatives from implementing countries.

**Recommendation 10:** The creation of an EITI Implementation Forum is recommended in order to strengthen the voice of implementing countries in EITI governance.

**Recommendation 11:** We recommend that it should be mandatory for all Board members to sit on at least one committee in order to be able to maintain their position as a member of the full Board.

**Recommendation 12:** We recommend the creation of a new standing committee structure, with a particular focus on the creation of a new Oversight and Coordination Committee headed by the Chair or a Deputy Chair.

**Recommendation 13:** Given the increasing weight of responsibilities on the Chair, it is our view that that Board should consider creating a position of Deputy Chair.

**Recommendation 14:** This recommendation should be read in conjunction with Recommendation 12 made above. An Oversight and Coordination Committee of the Board should be created. It should be headed by either the Chair or a newly created Deputy Chair position. The Article of Association should be changed in order to provide this committee with the responsibility for oversight of the work of the Secretariat, as opposed to that role sitting only with the Chair.

**Recommendation 15:** Following the Lima Conference in February 2016, a separate *external* organisational review should be carried out by a firm of appropriately qualified human resources professionals to look at structures, performance management systems, feedback mechanisms (e.g. 360 degree feedback tools) and training and development processes. Commissioning, managing the procurement of and overseeing this review should be one of the first tasks of a newly constituted Oversight and Coordination Committee.

**Recommendation 16:** The EITI Board should consider the following reforms to its funding model, including:

- **Shifting to a mandatory minimum funding model, in which all supporting countries and companies (at the international level of EITI) would be charged a minimum annual fee. Those fees could be aggregated through broader organisations (such as ICMM), and companies and countries would of course be encouraged to make additional voluntary contributions to EITI beyond the mandatory annual fee.**
- **Setting out a strategy to avoid its current over-reliance on one sub-constituency, including reviewing whether additional funding could be secured from foundations, international civil society organisations and investors.**
- **The current funding model as well as any future models should be published on the EITI website and in the EITI Standard.**

**Recommendation 17:** We recommend that the Governance Committee and Secretariat undertakes a review of core governance documents and processes and ensures that all of them are (to borrow wording from the EITI Standard related to national level EITI reports) *'comprehensible, actively promoted, publicly accessible and contribute to public debate'*.

## Annex B: Interviews and feedback

\* Those marked with an asterisk also provided written feedback on earlier drafts of this report

### Members of the EITI Board

1. Clare Short, Chair\*
2. Didier Vincent Kokou Agbemadon, National Coordinator, EITI Togo
3. Florent Michel Okoko, Chairman of EITI Committee, Republic of Congo\*
4. Senator Gbehzohngar Findley, Liberia
5. Shahmar Movsumov, Executive Director of the State Oil Fund, Azerbaijan
6. Mark Pearson, Director General, Natural Resources Canada\*
7. Mary Warlick, Principal Deputy Assistant Secretary of State, United States\*
8. Nils Grimlund, Desk Officer, Ministry of Foreign Affairs, Sweden
9. Marine de Carne de Trécesson, Ministry of Foreign Affairs, France
10. Gubad Ibadoglu, Senior Researcher, Economic Research Centre, Azerbaijan
11. Natalia Yantsen, Director, PA Tax Standards Formation, Kazakhstan
12. Faith Nwadishi, Executive Director, Koyeneum Immalah Foundation, Nigeria
13. Daniel Kaufmann, President, Natural Resource Governance Institute, United States
14. Fabby Tumiwa, Executive Director, IESR, Indonesia
15. Marinke Van Riet, International Director, Publish What You Pay, United Kingdom\*
16. Matthew Bliss, Director – Extractives, Cordaid, The Netherlands
17. Jean-Francois Lassalle, Vice President Public Affairs, Total, France
18. Carine Smith Ihenacho, Vice President Legal, Statoil, United Kingdom\*
19. Stuart Brooks, Manager International Relations, Chevron, United Kingdom
20. Guillermo Garcia, Head of Revenue Transparency, ExxonMobil, United States
21. Jim Miller, Vice President Safety and Environmental Affairs, Freeport-McMoRan, United States
22. Laurel Green, Chief Adviser Policy, RioTinto, United Kingdom
23. Ian Wood, Vice President, BHP Billiton, Australia\*
24. Alan McLean, Executive Vice President, Royal Dutch Shell, The Netherlands\*
25. Dominic Emery, Vice President, BP, United Kingdom
26. Alan Knight, General Manager, ArcelorMittal, United Kingdom
27. David Diamond, Global Co-head of ESG, Allianz Global Investors, France
28. Manuel Adamini, Head of ESG Research, ACTIAM, The Netherlands

The following people were unavailable to be interviewed but did provide written comments on the review:

29. Maria Inmaculada Montero-Luque, Policy Officer, European Commission

30. Brendan O'Donnell, Oil Campaign Leader, Global Witness

Some constituencies also provide collective written comments on earlier drafts of this report, notably:

- The European Commission, France, Germany, Switzerland, Italy and the Netherlands provided group comments on the second draft of this report.
- The Civil Society constituency of the Board provided collective comments on the second draft of this report.

### **Members of the EITI Secretariat**

31. Jonas Moberg, Head of Secretariat\*
32. Eddie Rich, Deputy Head of Secretariat\*
33. Sam Barlett, Technical and Regional Director\*
34. Dyveke Rogan, Policy Director\*
35. Christina Berger, Communications Officer\*
36. Gisela Granado, Country Officer\*
37. Shemshat Kasimova, Country Officer\*
38. Anders Krakenes, Digital and Media Relations Manager\*
39. Leah Krogsund, Administration Manager\*
40. Francisco Paris, Regional Director\*
41. Samson Tokpah, Regional Director\*
42. Pablo Valverde, Country Manager\*

The Senior Management Team provided collective feedback on the first and second drafts of this report. The Staff Committee of the Secretariat provided collective feedback on the second draft of this report.

### **Former members of the EITI Board and Secretariat**

43. Woulter Biesteros, former Regional Director in the Secretariat.
44. Tim Bittiger, former Regional Director in the Secretariat.
45. Richard Dion, former Regional Director in the Secretariat.
46. Siri Farstad, former Regional Director in the Secretariat, now Manager Corporate Sustainability, Statoil
47. Tony Hodge, formerly of ICMM, United Kingdom
48. Karina Litvack, formerly of F&C Asset Management, now Non-Executive Director ENI, United Kingdom
49. Julie McDowell, formerly of Standard Life, now Independent Director and Adviser, United Kingdom
50. Radhika Sarin, formerly of Publish What You Pay, now Oxfam, United Kingdom

## **Participants in national level EITI processes**

51. Maryatti Abdullah, Publish What You Pay Coordinator, Indonesia
52. Zainab Ahmed, Executive Secretary of NEITI, Nigeria
53. Selvi Ali, SKK Migas, Indonesia
54. Gro Anundskaas, Deputy Director, Ministry of Petroleum and Energy, Norway
55. Franklin Ashiadey, National EITI Coordinator, Ghana
56. Gerald Brimo, CEO, Nickel Asia Corporation, The Philippines
57. Teresa S. Habitan, Chair – EITI, The Philippines
58. Henry Harmon, Vice President, Golden Veloleum, Liberia
59. Victor Hart, Chair – EITI, Trinidad and Tobago
60. Andrés Hernández, Director, Transparency International, Colombia
61. Mina Horace, National Coordinator, Sierra Leone
62. Eric Joyce, Civil society representative – EITI MSG, United Kingdom
63. Kona Karmo, National EITI Coordinator, Liberia
64. Merga Kenea, National EITI Coordinator, Ethiopia
65. Marie-Anne Mackenzie, Chair – EITI, Department of Business, Industry and Skills, United Kingdom
66. Cielo Magno, Bantay Kita Coordinator, The Philippines
67. Alessandra Gay Ordenes, National EITI Coordinator, The Philippines
68. Eduardo Rubio, External Affairs Manager, Anglo American, Peru.
69. Elfreda Tamba, Commissioner General, Liberia Revenue Authority, Liberia
70. Elisabeth Ungar, Executive Director, Transparency International, Colombia

## **Others**

71. Luke Bellany, EITI Coordinator, ICMM, United Kingdom
72. Jessica Collingwood, Policy Officer, Department of Foreign Affairs and Trade, Australia
73. Diana Corbin, Senior Operations Officer, The World Bank, United States
74. Umesha De Silva, Policy Analyst, Ministry of Foreign Affairs, Trade and Development, Canada
75. Amelia Evans, MSI Integrity, United States
76. Dylan Gerlard, Ministry of Foreign Affairs, France\*
77. Alex Gillies, Director of Governance Programmes, Natural Resource Governance Institute, United States
78. Helle Klavenes, Animare Futurum AS, Norway\*
79. Asmara Klein, EITI Coordinator, Publish What You Pay, United Kingdom
80. Christian Fredrik Michelet, Partner, Arntzen de Besche, Norway\*
81. Sarah Owens, Global Witness, United Kingdom
82. Hayley Rice, Department of State, United States
83. Duncan Robertson, Director, ICMM, United Kingdom
84. Paulo De Sa, Practice Manager, The World Bank, United States
85. Andrew Schloeffel, Senior Mining Specialist, The World Bank, United States



86. Colin Tinto, Oil Campaigner, Global Witness

87. Erica Westenberg, Senior Governance Officer, Natural Resource Governance Institute

## **Annex C: Selected documents reviewed**

Bickham, Edward, *Mining and the Extractive Industries Transparency Initiative*, paper commissioned by the ICMM President, August 2015

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

O'Sullivan, D, *What's the Point of Transparency*, April 2013.

Rich, E. and Moberg, J, *Beyond Governments - Making Collective Governance Work – Lessons from the Extractive Industries Transparency Initiative*, 2015.

Scanteam, *Technical and Financial Support to an Evolving Global Governance Mechanism*, joint review by the EITI and the World Bank Multi-Donor EITI Trust Fund, January 2015.