EITI
Extractive Industries Transparency Initiative

Constituency guidelines for implementing countries

EITI International Secretariat Oslo, December 2018

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1.   Summary

Like all other constituencies and sub-constituencies in the EITI, implementing countries need to update and agree guidelines for their constituency ahead of the EITI Members' Meeting in June 2019. The below draft guidelines have been prepared by the EITI International Secretariat in consultation with implementing country representatives and in particular Board member Victor Hart, who has volunteered to coordinate efforts across the constituency. National Coordinators received the draft guidelines through National Secretariat Circulars in August and October 2018. They were asked to discuss with their governments and convey any comments to the International Secretariat by the in-person meeting of National Coordinators on 29 October in connection with the Board meeting in Dakar. As no additional edits have been submitted, it is proposed that the process for nominating members to the Board begin in accordance with the procedures set out below.

2.   Draft constituency guidelines

The EITI Member's Meeting, the governing body of the EITI Association (Article 7.1), is comprised of the Members of the EITI Association (Article 7.2) which are organised in constituencies (Article 5.2). Constituencies decide on their rules governing appointment of Members (Article 5.3) and nominate Board members and their alternates for the Members' Meeting to elect (Article 8.1(ii). These constituency guidelines are meant to help the implementing country sub-constituency carry out both of these important tasks.

For the purpose of this document, "constituency" is understood as meaning the implementing country sub-constituency as defined by Article 5.2(i)a unless otherwise stated.

2.1 Membership of the EITI Association

The Articles of Association state that **one representative from each implementing country** is entitled to be a member of the EITI Association (see box below).

Unless otherwise communicated to the International Secretariat, implementing country members of the EITI Association will be understood to be the **National Coordinator**, Head of Secretariat or its equivalent of the countries that are listed as implementing countries at any given time on the EITI website, including countries that may be temporarily suspended but not countries that may have been delisted or in the process of applying for EITI Candidature.

> "A Member of the EITI Association is a personal representative of a country (meaning state), company, organisation or legal entity that is appointed by a Constituency as set out in Articles 5.2 and 5.3" – Article 5.1
>
> "The members are organised in three constituencies which are: i) The constituency of Countries, which comprise a) implementing countries, meaning states, that have been classified by the EITI Board as either Candidate Countries or Compliant countries…" – Article 5.2
>
> "Each Constituency decides on its rules governing appointments of Members of the EITI Association. The membership shall be limited to the following: i) From the constituency of countries, up to one representative from each implementing country and each supporting country (or their unions) …". – Article 5.3

2.2 Nomination of Board members

The Articles of Association state that implementing countries should nominate up to six people to represent the sub-constituency on the Board. Implementing countries can also nominate 6 alternates, one for each Board member. EITI Board members are elected at EITI Members' Meetings, regularly held every three years (see box below).

2.2.1 Principles governing the nominations procedures

Based on previous nominations procedures, the EITI Board's guidance from 2013 and the EITI's checklist for constituencies (annexed), it is proposed that the following principles apply for the nomination procedures:

1. The nomination process should be open and transparent.
2. Each implementing country's vote in the selection process will have the same weight.
3. Board seats are only available for implementing countries.
4. There is a need to balance continuity against the need for renewal and rotation to broaden the ownership of the EITI. The process should be flexible and open to new implementers, with an aspiration to renew at least 50% of Board members.
5. Recognising the important role of the EITI Board, countries are encouraged to be represented at senior level.
6. Implementing country Board members represent the interests of the constituency and of their country. They should have the institutional backing from their government to act in this manner.
7. Board members should aim to serve a full term (3 years).
8. It is important that the Board is representative of all implementing countries. It is, for example, expected that countries from different regions and representing different natural resource sectors are represented.
9. The constituency is encouraged to ensure that both genders are adequately represented.

As far as possible, representation should also reflect both a geographical and sectoral distribution.

Special note on attendance at Board and committee meetings

Elected Board members and their alternates are expected to be able and available to participate regularly and actively in all meetings of the Board and its committees. **Nominees will need to obtain a confirmation in writing from their government that the necessary resources will be made available for their participation on the EITI Board.**

Board members make decisions at Board meetings or through Board circulars only. In order to facilitate its work, Article 14(1) in the Articles of Association allows the EITI Board to create committees to further specific issues. These committees meet more regularly than the Board, although generally not in person, to discuss matters under their responsibility and to make recommendations to the Board. The Board's normal procedure is to only consider papers for discussion that have first gone through Board committees, so active participation in committees is important. Board committees reflect the multi-stakeholder nature of the Board and attendance by Board members is important to ensure a quorum. Attendance in committee meetings is registered and expected from Board members. The Board currently has the following committees: Audit Committee, Finance Committee, Governance and Oversight Committee, Implementation Committee, Outreach Committee, Rapid Response Committee and Validation Committee. **All Board members should expect to participate in at least one Board committee.**

2.2.2   Regional groupings

At the time of writing, there are 51 countries implementing the EITI. There are many ways in which implementing countries may decide to divide themselves to ensure adequate representation, including considerations of language, geography, size and key industries. The following grouping is proposed on the basis of previous regional groups and feedback received since the last Members' Meeting:

Region 1	Region 2	Region 3	Region 4	Region 5	Region 6
Eurasia	**South-East Asia**	**Africa 1**	**Africa 2**	**Africa 3**	**Latin America and the Caribbean**
Afghanistan	Indonesia	Ethiopia	Burkina Faso	Cameroon	Colombia
Albania	Mongolia	Ghana	Côte d'Ivoire	Central African Republic	Dominican Republic
Armenia	Myanmar	Liberia	Guinea	Chad	Guatemala
Germany	Papua New Guinea	Malawi	Mali	Democratic Republic of Congo	Guyana
Iraq	Philippines	Mozambique	Mauritania	Madagascar	Honduras
Kazakhstan		Nigeria	Senegal	Republic of the Congo	Mexico
Kyrgyz Republic	Timor-Leste	Sao Tome and Principe	Togo	Seychelles	Peru
Norway		Sierra Leone			Suriname
Tajikistan		Tanzania			Trinidad and Tobago
Ukraine		Zambia			
United Kingdom					
Netherlands					
12	6	10	7	7	9

Three of the countries in Region 1 are both implementing countries and supporting countries; others are expected to follow shortly. Unless otherwise communicated to the International Secretariat, it is understood that countries that are categorised as both implementing and supporting countries will be represented on the EITI Board through the supporting country sub-constituency.

2.2.3   Roles and responsibilities of implementing country Board representatives

Board members are expected to abide by the EITI Association's Code of Conduct. Board members exercise the functions of the EITI Board as set out in Article 12 of the Articles of Association of the EITI. These functions include consideration of general and specific policy issues affecting the EITI Association and ensuring that the multi-stakeholder nature of the EITI Association is maintained and fully reflected in the EITI Association at all levels, including in its Board committees.

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 Board 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 workplans and company workplans, 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.

In exercising these responsibilities, Board members are expected to accept a workload comprising the following (from the EITI Board manual):

- Two to four Board meetings a year, each normally of two days, with a rotating location. Interested candidates should note that implementing country representatives currently cover their own costs associated with these meetings.
- Contributing to committee and working group meetings, the number and nature of which will depend on circumstances, but which will normally be held by teleconferences or on the fringes of Board meetings.
- Reading and preparation for Board meetings and, when appropriate, committee and working group meetings.
- Communicating with – and coordinating input from – their constituency and sub-constituency regularly, including ahead of Board and, where appropriate, Board committee meetings. Implementing countries have expressed a strong focus on each representative building and working with their regional block and alternate in the coming Board period.
- Reading and responding to e-mail communications from the Chair, Board committee chairs and other Board members and from the International Secretariat.

While it is not possible to quantify this work, it is anticipated that normally it would involve a commitment of up to 3-4 days a month.

2.2.4 Procedure for nominating Board members

Some regional groups have already agreed or are in the process of agreeing to variations on these procedures. For example, National Coordinators and Board members from the French-speaking regional groups have discussed a process whereby current alternates on the EITI Board would become Board members and new alternates would be selected. No further regional variations have been proposed.

The following steps are proposed:

1. **Approval of the constituency guidelines.** National Coordinators were invited to send comments and proposed amendments on this proposal to the Secretariat by 29 October. These have been integrated by the Secretariat and a final version of this paper is being sent though National Secretariat Circular for approval by no objection by 20 December 2018.

2. **Proposal of nominees.** Each country wishing to nominate a representative to the Board will be invited to propose a nominee to the Secretariat by 20 January 2019 through the country's National Coordinator (or equivalent). Nominees must be individuals (physical persons) and not countries or institutions (legal persons). In accordance with the principles listed above, the nomination should be accompanied by a confirmation in writing from the government that the necessary resources will be made available for their participation on the EITI Board. The International Secretariat may ask for additional information to be provided wherever it is not clear that the principles listed above are otherwise fulfilled.

3. **Voting within regional groups.** From 21 January 2019 to 20 February 2019, the countries within each of the six groups in 3.2.2 will be asked to vote for the nominee that will represent their regional group on the EITI Board. Voting should be done by the National Coordinator on behalf of the country but can be done by proxy by whomever the National Coordinator assigns to this purpose. Countries may vote for their own candidate

   When casting votes, countries have the right to rank up to four nominees in their respective groups. Four points will be attributed to a country's first choice, three to the second, two to the third and one to the fourth.

   If there is an insufficient number of nominees and they indicate clearly whether they wish to be Board Members or Alternates, voting can be waived.

4. **Tally and nomination to the EITI Members' Meeting**. Voting will take place by email. The EITI Secretariat will guarantee the individual votes are not disclosed. Records will be kept for claims or a recount.

   The Secretariat will count and tabulate the results. The Secretariat will then post the list of the cumulated results on its website and send it to all National Coordinators. The nominee with the highest score in each group will receive the first member's seat in this group, the second ranking nominee the alternate member seat.

   It is proposed that at least two-thirds of the total number of eligible country representatives in the respective groups cast a vote in order for the selection to be considered valid. If countries from a group are not able to select their nominees by 25 February, the Secretariat will initiate a selection by lot, observed by neutral third parties.

"The EITI Members' Meeting shall…: ii) Elect the members, and alternates for each member, of the EITI Board on nomination from the constituencies" – Article 8.1

"In order to reflect the multi-stakeholder nature of the EITI Association, the EITI Board shall consist of 21 EITI Board members and shall be made up as follows…: ii) 9 Board members being members of the EITI

Association from the Constituency of Countries, of which a maximum of 3 Board members should represent supporting countries and the remainder should represent implementing countries. When possible, implementing countries should be represented by at least 3 compliant countries" – Article 9.2

"All Board members retire with effect from the conclusion of the ordinary EITI Members' Meeting held subsequent to their nomination, but shall be eligible for re-nomination at that EITI Members' Meeting" – Article 9.3

"The constituencies may nominate, and the EITI Members' Meeting may elect, one alternate Board Member for each Board member that the Constituency has nominated. An alternate may deputise for the Board Member. If there is no alternate, the relevant constituency shall nominate a new Board member and alternate". – Article 9.4

2.3   Replacement of Board members and vacancies

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

If it should be necessary for the constituency to consider replacing a Board member, for example because a Board member fails to attend three consecutive Board meetings or because the Board member no longer represents the government of the implementing country, it will be the responsibility of the regional group to nominate a new Board member for election by the Board. If the government of the Board member being replaced wishes to nominate a replacement, the regional group should consider this option first. If no replacement is proposed, the regional group should consider nominating the person who received third (or, if not possible, fourth) place in the votes that led to the nomination of the Board member being replaced. If neither of these options are possible, the regional group may wish to initiate a new vote following the procedures spelled out above.

If a Board member fails to attend three consecutive Board meetings, the Constituency Coordinator (see below) will write to the Board member and ask him or her to explain the reasons for failing to attend and suggest a way forward to ensure his or her participation. The Constituency Coordinator will inform the Board. If no response is received or if a way forward is not found, the Constituency Coordinator may ask the regional group to begin the procedures for replacing the Board member within a given timeframe.

"If a Board Member is absent from a Board Meeting, that Board Member's Alternate may attend, participate in discussions, vote and generally perform all the functions of that Board Member in the Board Meeting. Should a Board Member fail to attend three consecutive Board meetings, the Board may, after consultation with his or her constituency, require the constituency to replace the Board Member." – Article 9.5

"In the case of a Vacancy on the EITI Board between two EITI Members' Meetings, this vacancy shall be filled by the resigning Board Member's Alternate, with the concerned Constituency nominating a new Alternate to be elected by the Board. Alternatively, the concerned Constituency may nominate a new Board Member to be elected by the Board." – Article 9.6

2.4   Constituency coordinators and sub-constituency contact points

The Board recommends that each constituency should establish a position of constituency coordinator and establish sub-constituency contact points.

For implementing countries, the EITI International Secretariat carries out the functions of a coordinating the constituency through National Secretariat Circulars and similar. Implementing country Board members from the six regions function as sub-constituency contact points.

2.5   Procedures for ensuring consultations within the constituency

The EITI Board recommends that constituencies should encourage consultations on strategic policy issues.

Implementing countries meet regularly ahead of Board meetings and are kept aware of strategic policy issues through National Secretariat Circulars. Implementing country Board members are expected to reach out regularly to the National Coordinators of the countries in their region. At a minimum this should happen ahead of every Board meeting. The International Secretariat will provide contact information for all National Coordinators by regions and is available to set up webinars and teleconferences to facilitate discussions upon request.

2.6   Complaints

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

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

Annex 1: EITI Checklist for constituencies

Guidance to EITI constituencies

EITI International Secretariat Oslo, May 2018

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

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

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

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

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

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

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

On 14 February 2018, the EITI Board agreed recommendations for EITI constituencies to develop their guidelines. The Board's recommendations are annexed to this paper and are available online.[1] To support constituencies in developing their guidelines, the EITI International Secretariat has produced the following checklist. For the purpose of this document, the term "constituency" is understood to mean the three constituencies identified in Article 5.2 of the EITI Articles of Association (countries, companies and civil society) as well as any sub-groups in which the constituencies divide themselves in accordance with the sub-divisions specified under Article 5.2 (e.g., implementing and supporting countries or companies and institutional investors) or through generalised practice (e.g., oil and gas and mining companies, etc.).

1   Membership of the EITI Association

- Has the constituency agreed rules governing the appointment of Members of the EITI Association? (Article 5.3)
- Are the rules governing the appointment of membership in accordance with the limitations spelled out in Article 5.3 of the EITI Articles of Association?
- Is the process open and transparent? Is information on the process available on the EITI website, including a contact person for any stakeholder wishing to be involved, in accordance with the principles agreed by the Board in 2013?
- In accordance with the same principles and recommendation 5 in Board decision 2018-17/BM-39/BP-39-6, is the process inclusive?

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

3   Nomination of Board members

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

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

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

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

4   Replacement of Board members and vacancies

- Do the guidelines establish a process to address the consequences of Board members failing to attend three or more consecutive Board meetings? (Article 9.5 and Board decision 2018-17/BM-39/BP-39-6, recommendation 19).
- Do the guidelines include instructions on how new Board members and alternates will be nominated between EITI Members' Meetings? (Article 9.6 and Board decision 2018-17/BM-39/BP-39-6, recommendation 23).

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

5   Constituency coordinators and sub-constituency contact points

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

- If so, what are the terms of reference of the coordinator (proposed roles, responsibilities, systems of feedback and role in handling complaints) and selection/election procedures?[2] (Board decision 2018-17/BM-39/BP-39-6, Recommendation 7)
- Have sub-constituencies appointed contact-points (recommended)? (Board decision 2018-17/BM-39/BP-39-6, Recommendation 8)
- How are constituency coordinators and sub-constituency contact points communicated to the public?

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

6 Procedures for ensuring consultations within the constituency

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

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

7 Complaints

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

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

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