

**For decision**

For discussion

For information

# Review of EITI Grievance procedures

## Summary

The Governance and Oversight Committee recommends that the EITI Board approve terms of reference for a review of the EITI's grievance procedures. The Committee also recommends that the EITI Board consider carrying out a survey of stakeholders' experience with the EITI's grievance procedures building on the findings of the review.

## Supporting documentation

None

## Has the EITI competence for any proposed actions been considered?

Article 12 of the Articles of Association mandates the EITI Board to "consider general and specific policy issues affecting the EITI Association" (i) and "adopt more detailed procedures and rules for the management and operation of the EITI Association..." (x).

## Financial implications of any actions

If the Board decides to make use of a consultant to support this work, it would have a cost which the Secretariat estimates at USD 20,000.

## Document history

Options paper submitted to the Governance and Oversight Committee	20 June 2017
Draft Board paper submitted to the Governance and Oversight Committee	5 September 2017
Draft Board paper re-submitted to the Governance and Oversight Committee	1 October 2017
Board paper approved by the Governance and Oversight Committee	5 October 2017
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New paper submitted to the Governance and Oversight Committee	13 December 2017
Board paper approved by the Governance and Oversight Committee	20 December 2017
Submitted to the EITI Board	16 January 2018

# EITI GRIEVANCE PROCEDURES

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## 1. Summary

The Governance and Oversight Committee recommends that the EITI Board approve terms of reference for a review of the EITI’s grievance procedures taking into account among other things the findings from Validations, the issues that have been raised to the Rapid Response Committee in the past, the background to EITI Board papers 37-3-D and 38-7-B on common governance challenges in EITI Implementing countries and the ongoing constituency consultations.

The Committee also recommends that the EITI Board consider carrying out a survey of stakeholders’ experience with the EITI’s grievance procedures building on the findings of the review.

## 2. Terms of Reference for a review of grievance mechanisms

Validation has brought to light common challenges in implementing countries that the Board can use to gain a better understanding of how grievance mechanisms are being used around the world or where they may be failing. The constituency consultation carried out by the Board in February 2017 touched on the issue of grievance within constituencies, while Board paper 37-3-D introduced the Board to some of the common governance challenges that implementing countries face that also have a grievance component. Drawing on these, the Governance and Oversight Committee has drafted terms of reference (TORs) for a review of grievance mechanisms (annex A) to better understand the current status of grievance mechanisms and propose recommendations for improvement.

The objectives behind the review are to:

- Assess stakeholder awareness and use of existing grievance mechanisms.
- Identify ways to increase stakeholder awareness of existing grievance mechanisms.
- Evaluate the effectiveness of existing grievance mechanisms.
- Provide feedback to the Board ahead of any possible revisions.

The terms of reference for the review proposes to address these objectives through three phases:

- Phase 1: Review of existing mechanisms
- Phase 2: Review of current practice
- Phase 3: Assessment and recommendations

### 3. Stakeholder survey

Subsequent to the review, the Governance and Oversight Committee’s working group on grievance mechanisms has prepared a stakeholder survey with the following objectives:

- Assess the level of awareness in EITI constituencies on the current grievance and rapid response mechanisms.
- Increase the awareness of EITI constituencies on the current grievance and rapid response mechanisms.
- Evaluate the effectiveness of the current mechanisms.
- Scope the grievances related to the EITI process.
- Identify areas for improvement in the current mechanisms to make EITI more effective and responsive to the needs of the constituencies related to the EITI process.
- Provide feedback that will inform any revisions to the current mechanisms.

The Governance and Oversight Committee proposes that the survey (annex B) could be sent to multi-stakeholder group (MSG) representatives and civil society representatives who are substantively involved in the EITI process.

### 4. Background

The 2017 Governance and Oversight Committee (GOC) work plan states that the GOC should “continue to make progress on the EITI’s grievance mechanisms, including raising stakeholder awareness of existing mechanisms and identifying possible gaps or areas for improvement (*timeframe: second half of 2017*)”. Among other things this has already translated into clearer explanations of the EITI grievance mechanisms on the EITI’s website (Annex C), a review of the grievance mechanisms to the Board by the EITI’s legal counsel at the Board meeting in Oslo in May 2017 and an annex to the Board manual explaining the Board’s internal grievance mechanisms (Annex D).

## Annex A: Terms of Reference

### Review of the EITI’s grievance mechanisms

Approved by the EITI Board on [date]

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### 1. Background

The concept of “grievance” refers to stakeholders’ ability to seek recourse to a higher body where they consider that they or their interests have been treated wrongly or unfairly.

The EITI takes decisions in many different ways, and different decisions can be appealed in different ways. The EITI distinguishes between the EITI Association, which is governed by the Articles of Association, EITI implementation, which is governed by the EITI Standard, and constituencies, which are governed by their own internal rules. The highest body of the EITI under the Articles of Association is the EITI Members’ Meeting.

The EITI’s governance structure provides stakeholders with a number of ways to address possible grievances or raise concerns. This includes procedures for seeking redress to decisions or actions taken by the EITI Members’ Meeting, by the EITI Board or the International Secretariat. It also includes procedures for seeking redress to decisions or actions in implementing countries and by multi-stakeholder groups (MSGs). Constituencies are encouraged to also have their own grievance mechanisms, and the EITI Board is currently looking at ways to help them develop these. There is also an EITI Code of Conduct that applies to all EITI office holders, and EITI International Secretariat staff have procedures outlined in the EITI International Secretariat Staff manual. The EITI’s existing

grievance mechanisms are all available online at <https://eiti.org/voicing-concerns>.

The EITI's Governance and Oversight Committee (GOC) has as one of its priorities for 2017 to review the EITI's existing grievance procedures. At the same time, the EITI Board is discussing a number of issues that directly or indirectly reflect or influence stakeholders' experiences with the EITI's grievance mechanisms. This includes recent experiences from Validation, common governance challenges that have been raised to the Board's attention and the findings of an EITI constituency consultation carried out in 2017.

Building on these discussions, the EITI Board seeks to carry out a review of the EITI's grievance mechanisms.

## 2. Objectives of the review

The objectives of the review are:

- To assess stakeholder awareness and use of existing grievance mechanisms.
- To identify ways to increase stakeholder awareness of existing grievance mechanisms.
- To evaluate the effectiveness of existing grievance mechanisms.
- To provide feedback to the EITI Board ahead of any possible revisions.

## 3. Scope of the review and expected deliverables

The review has three phases:

### *Phase 1 – Review of existing mechanisms*

This phase includes the following activities:

- Review existing grievance mechanisms and pertinent presentations by the EITI's Legal Counsel concerning these. This may include an interview with the EITI's Legal Counsel.

### *Phase 2 – Review of practice*

This phase includes the following activities:

- Review the findings of Validations in 2016 and first half of 2017 as concerns Requirement 1.1-1.4 to identify common challenges faced by stakeholders and the extent to which they have made use of existing grievance mechanisms to address these.
- Review existing analysis of the EITI's grievance mechanisms, including MSI Integrity's 2015 report, "Protecting the cornerstone" and the EITI's 2015 Governance review.
- Review the findings of the constituency consultations carried out in Q1 of 2017 and assess views on constituencies' grievance procedures.
- Review past cases brought to the EITI Board's Rapid Response Committee over the last three years. This could include reaching out to those directly affected and gathering their views on how their case was addressed.
- Should it be deemed necessary, a sample of stakeholders could be consulted to identify gaps not addressed by the above. These could be conducted through online webinars.

### *Phase 3 – Assessment and recommendations*

This phase includes the following activities:

- Review how other multi-stakeholder organisations such as the Global Fund to Fight HIV-AIDS, Tuberculosis and Malaria address grievances.
- Present a report that provides an assessment of existing grievance mechanisms, including agree any recommendations to the Board for how to improve them.

#### 4. Review schedule and resources

The assignment is expected to commence on [date], and finish by [commencement date + 3 months]. The proposed schedule is set out below:

Approval of the ToRs by the EITI Board	[date]
Phase 1: Review of existing mechanisms	[date] - [date]
Phase 2: Review of practice	[date] - [date]
=> Update to the GOC	[date]
If necessary, carry out focus group discussions	[date]
Phase 3: Assessment and recommendations	[date] - [date]
=> Draft report and presentation of findings to the GOC	[date]
=> Final report	[date]

It is proposed that the review be carried out by the EITI International Secretariat together with GOC members, including Cielo Magno. It may be decided that a consultant in addition to the EITI legal counsel is necessary, in which case funding needs to be allocated.

#### Annex1 – Supporting documentation

- EITI Grievance mechanisms (<https://eiti.org/voicing-concerns>)
- Presentation on grievance mechanisms by EITI Legal Counsel Christian Fredrik Michelet
- Board paper 37-3-D on “Common governance challenges in MSGs”
- MSI Integrity, “Protecting the Cornerstone” (<http://www.msi-integrity.org/assessing-eiti-msg-governance/>)
- EITI 2015 Governance Review (<https://eiti.org/sites/default/files/documents/eiti-governance-review-2015.pdf>)
- EITI constituency consultations aggregated results
- Preliminary assessment reports for Validations of the following countries: Mali, Liberia, Tajikistan, Solomon Islands, Sao Tomé and Príncipe, Mauritania, Kyrgyz Republic, Ghana, Timor-Leste, Peru, Nigeria, Mongolia, Azerbaijan (<https://eiti.org/document/validation-schedule-decisions>)

## Annex B: EITI Grievance Mechanism Assessment - Draft Survey Tool

### Objectives:

Pending on the findings of the review, the objectives of this survey would be to:

- Further assess stakeholders' awareness of the current grievance and rapid response mechanisms.
- Increase the awareness of EITI stakeholders about the current grievance and rapid response mechanisms.
- Evaluate the effectiveness of the current mechanisms
- Identify areas for improvement in the current mechanisms to make EITI more effective and responsive to the needs of stakeholders.
- Provide feedback to any proposed revisions to the current mechanisms.

### Target respondents:

- EITI stakeholders in implementing countries, first and foremost members of multi-stakeholder groups and the constituencies that they represent as well as members of national secretariats.
- EITI Board members, alternates and observers
- Members of the EITI International Secretariat

### Confidentiality Provisions:

- *No names of individuals or organizations who participate in this survey will be collected or identified.*
- *Potentially identifying information in open response answers (e.g. names, cities, countries etc...) will be removed or anonymized before information is shared.*

### 1. Background Questions

1.1 In what country are you based? (drop down menu)

1.2 In what way are you a stakeholder of the EITI?

- I am an active member of an EITI Multi-stakeholder group (MSG)
- I am a former participant of an EITI MSG
- I am a stakeholder of a constituency represented in the EITI MSG in my country but have not participated in it directly
- I am a member of a national secretariat
- I am a Board member, alternate or observer
- I am a member of the EITI International Secretariat
- Other (please specify)\_\_\_\_\_

1.3 With which sector do you identify?

- Government (implementing country)
- Government (supporting country or observer in an MSG)
- Industry
- Civil Society
- Other (please specify)\_\_\_\_\_
- None, I am a member of the EITI International Secretariat

## 1.4 How familiar are you with the EITI's Code of Conduct?

- Very familiar
- I know that it exists but I have not read it
- I don't know what the EITI's Code of Conduct is

(If very familiar, proceed with 2. Otherwise, a pop up screen will appear informing the participant about <https://eiti.org/document/eiti-association-code-of-conduct> and then redirect the respondent to proceed with the survey)

**2. Experience with the current EITI grievance mechanisms**

## 2.1 How familiar are you with the EITI's grievance mechanisms?

- Very familiar
- I know that the EITI has grievance mechanism, but I don't know what it entails
- I am not familiar with the EITI's grievance mechanism

(If very familiar, proceed with 2.2. Otherwise, a pop up screen will appear informing the participant about <https://eiti.org/voicing-concerns> and then redirect the respondent to proceed with the survey)

## 2.2 Have you ever filed a complaint or raised a concern through the EITI's grievance mechanisms procedure?

- Yes
- No

(If no, proceed to #2.10)

## 2.3 Please select all that apply to the concern that you raised through the EITI's grievance procedure:

- Concern about your constituency's representation in the EITI International Board (for example that your constituency is not adequately represented in the International Board)
- Concern about the accountability of your representative on the EITI International Board (for example that your representative does not adequately represent your constituency's interests in the EITI International Board or inform you of their deliberations)
- Concern about your constituency's representation in the Multi-Stakeholder Group (MSG) in your country (for example that your constituency is not adequately represented in the MSG).
- Concern about the accountability of your representative on the MSG towards your constituency (for example that your representative does not adequately represent your interests in the MSG or inform you of their deliberations).
- Concern about your country's application of the EITI Standard (for example if you believed a Requirement of the EITI Standard was being grossly ignored).
- Concern about a decision made by the EITI Board
- Concern about a violation of the EITI Code of Conduct
- Concern with the actions of the national secretariat or National Coordinator in your country
- Others, please specify \_\_\_\_\_

## 2.4 Please elaborate your response in 2.3. What was your concrete concern? \_\_\_\_\_



2.5 Select the actions you took in response to your concern/s. You may choose more than one action.

- Contacted your representative on your country's Multi-Stakeholder Group (MSG)
- Contacted the Chair of your MSG
- Contacted the national secretariat or National Coordinator in your country
- Contacted the EITI International Secretariat
- Contacted a representative of your constituency on the EITI International Board
- Contacted the Chair of the EITI
- Other, please specify\_\_\_\_\_

2.6 What were your expectations or requested actions? [Open response]

2.7 What happened in response to your actions? [Open response]

2.8 Were you satisfied with the outcomes after having voiced your concern?

- Very satisfied
- Somewhat satisfied
- Dissatisfied
- Very dissatisfied

2.9 Please assess the EITI grievance mechanism based on your experience of the procedure:

SA = Strongly agree; A = Agree, N= Neutral, D= Disagree, SD= Strongly Disagree

Questions	SA	A	N	D	SD
1. The grievance procedure was responsive.					
2. The grievance procedure was fair.					
3. The outcome of the grievance procedure was fair.					

2.10 If you have not made use of the EITI grievance mechanism, what is the main reason?

- I have not had any reason to do so.
- I did not know how.
- I thought it too cumbersome a process.
- I did not think it would lead anywhere.
- I was concerned about the confidentiality of the process.
- Other, please specify\_\_\_\_\_

### 3. Views on improving EITI Grievance and Rapid Response Mechanisms

Given the current EITI grievance mechanism/rapid response mechanisms (see <https://eti.org/voicing-concerns>), rate how important you believe it to be for the EITI Board to improve the following features.

Features	Strongly agree	Agree	Somewhat agree	Disagree	Specific Recommendations [Open response]
It is important that the EITI provide more clarity on how to file a					

complaint.					
It is important that the EITI provide more clarity on who can file a complaint.					
It is important that the EITI improve the procedures for ensuring anonymity/confidentiality in filing a complaint.					
It is important that the EITI improve the procedures to ensure that grievances are addressed by an impartial body.					
It is important that the EITI improve the timeframe for resolution of grievances and complaints.					
It is important that the EITI improve the transparency of the process of decision-making and outcomes of discussion on grievance and rapid response mechanisms.					
It is important that the EITI provides additional clarity on possible remedies.					

Describe any other suggested improvements:

## Annex C: EITI grievance procedures - how to voice your concern

**Retrieved from** <https://eiti.org/voicing-concerns>.

The EITI's [governance](#) structure provides stakeholders with a number of ways to address possible grievances or raise concerns.

The EITI takes decisions in many different ways. Different decisions can be appealed in different ways. In the below an overview is provided of how redress can be sought to decisions by different EITI bodies.

### Decisions by the Members' Meeting

The governing body of the EITI is the [Members' Meeting](#), which meets at least once every three years. It takes the most important decisions and significant rights and obligations are associated with being a Member. Anyone wishing the Members' Meeting to reconsider its decisions or otherwise consider EITI policy or implementation, should communicate this to the Chair.

According to Article [8.1.iv](#)) The EITI Members' Meeting shall:

Consider any other matters pursuant to requests from a Member. Such requests shall be submitted in writing to the EITI Chair in time for any such matters to be included in the agenda for the EITI Members' Meeting stated in the summons."

Given the significant role of the Members' Meeting, it is important to determine who the members are. It is the constituencies who appoint the members, but the [Board can terminate membership](#) if a member does not comply with the EITI Articles of Association or if they are considered to have conducted themselves in a way prejudicial to the EITI principles. Any stakeholder whose membership has been terminated by the EITI Board in accordance with [Article 5.5](#) in the Articles of Association can appeal the decision to the EITI Members' Meeting in accordance with [Article 5.6](#) in the Articles of Association.

**In summary, any stakeholder can write to the Chair requesting that the Members' Meeting considers a matter. If the Board has terminated someone's membership, this can be appealed to the Members' Meeting.**

### Decisions by the Board or the Secretariat

The executive body of the EITI is the [EITI Board](#). It takes a wide range of decision, related to the implementation of the EITI Standard and to the running of the EITI as an organisation. Anyone wishing the Board to reconsider its decisions or otherwise consider EITI policy or implementation, should communicate this to the Board. This can be done by writing to the Board Chair, ([freinfeldt@eiti.org](mailto:freinfeldt@eiti.org)) or the Board Secretary ([secretariat@eiti.org](mailto:secretariat@eiti.org)). The Chair may then decide that the Board should address the matter and may ask one of the EITI [Board committees](#) to consider the issue before the Board does so.

For countries implementing the EITI, there are particular provisions set out in the EITI Standard. Countries who disagree with a decision by the EITI Board on their status can appeal the decision in accordance with [requirement 8.8 in the EITI Standard](#):

"The implementing country concerned may petition the EITI Board to review its decision regarding suspension, delisting or the country designation as EITI Candidate or EITI Compliant following Validation. In responding to such petitions, the EITI Board will consider the facts of the case, the need to preserve the integrity of the EITI and the principle of consistent treatment between countries. The EITI Board's decision is final. The country concerned may, prior to the notice periods under Article 8 of the Articles of Association, appeal a decision of the EITI Board to the next ordinary Members' Meeting."

**In summary, any stakeholder can write to the Chair also requesting that the Board considers a**

**matter, action or decision taken by the Board or Secretariat.**

### Implementation and EITI multi-stakeholder groups

The EITI requires effective multi-stakeholder oversight, including a functioning multi-stakeholder group ([overview to EITI Standard Requirement 1](#)). Issues related to implementation should therefore first be addressed to the multi-stakeholder group.

There are particular provisions related to civil society in the [Protocol: Participation of civil society](#), which forms an integral part of the EITI Standard. The protocol states that the Board through its Rapid Response Committee may be called to investigate particular cases and address alleged breaches ([Section 3 of Protocol: Participation of civil society](#)).

**In summary, issues related to EITI implementation in a country should in the first instance be brought to the attention of the multi-stakeholder group of that country.**

**If there are concerns related to civil society participation, there are particular provisions providing for stakeholders to contact the Board. This is best done by writing to its Chair at ([freinfeldt@eiti.org](mailto:freinfeldt@eiti.org)). If it is an urgent matter, the Board's deliberations are likely to begin with the Board's [Rapid Response Committee](#) being convened.**

### Code of Conduct

The EITI has adopted a Code of Conduct, seeking to ensure that EITI office holders observe the highest standards of integrity. This code applies to all EITI office holders.

Stakeholders who believe there is a violation of the EITI Association [Code of Conduct](#) can address this in accordance with [Article 12 of the code](#):

“EITI Office Holders with a concern related to the interpretation, implementation or potential violation of this Code of Conduct shall bring such issues to the attention to the immediate EITI body. Where matters are brought to the attention of the EITI Board, the Board will consider the circumstances and consider whether action is necessary in accordance with the EITI Principles, the EITI Standard and the Articles of Association. Anybody who is uncomfortable to raise any such concerns with the immediate EITI body may bring their concerns to the attention to the EITI Board through its Governance [and Oversight] Committee and its chair.”

### The EITI's Draft Constituency Guidelines

[The EITI's Draft Constituency Guidelines](#), which are meant to assist constituencies in the development of their own guidelines, have the following advice for addressing complaints within constituencies:

“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 Board.”

### EITI Secretariat internal

Should a member of staff have any concerns they do not consider appropriate to address to the Head of the Secretariat, they should contact the Chair. Norwegian law and in particular the Working Environment Act applies. Further details are found in the EITI International Secretariat Staff Manual.

## Annex D How to voice your concern as a Board member

*This information is annexed to the EITI Board manual*

### Introduction

The EITI's governance structure provides stakeholders with a number of ways to address possible grievances or raise concerns. The EITI's grievance procedures are publicly available here:

<https://eiti.org/voicing-concerns>.

This annex lays out the steps that Board members can take to voice any concerns that may arise in the course of conducting the Board's business.

### Voicing a concern

#### *Voicing a concern about a Board decision*

The EITI Board takes all decisions collectively. Any Board member wishing the Board to reconsider its decisions or otherwise consider EITI policy or implementation, should communicate this to the Board. This can be done by writing to the Board Chair, ([freinfeldt@eiti.org](mailto:freinfeldt@eiti.org)) or the Board Secretary ([secretariat@eiti.org](mailto:secretariat@eiti.org)). The Chair may then decide that the Board should address the matter and may ask one of the EITI Board committees to consider the issue before the Board does so.

#### *Voicing a concern about the Secretariat*

The Head of Secretariat is responsible for the activities of the Secretariat (Article 16.1 in the Articles of Association). Any Board member wishing to voice a concern about the way in which the Secretariat supports the Board has an opportunity to do so at the regular assessments of the Head of Secretariat's performance. Board members can also write to the Chair with any concerns that they may have about the activities of the Secretariat.

#### *Raising a concern to the Members' Meeting*

If a Board member does not feel that his or her concern has been satisfactorily addressed, the concern can be raised to the Members' Meeting, the governing body of the EITI. Anyone wishing the Members' Meeting to reconsider its decisions or otherwise consider EITI policy or implementation, should communicate this to the Chair.

### Background

A central tenet of the Board's procedures is that the Board takes all decisions collectively, and the Articles of Association require that Board members make every effort to adopt resolutions by consensus (Article 14.3). It is the responsibility of the EITI Chair under Article 11.2 to "foster collaborative relationships between EITI stakeholders". Board members should therefore let the EITI Chair know if they have concerns about the way in which a Board decision has been reached. The rules and procedures approved by the EITI Members' Meeting or decided by the Board are set out in the [EITI Board Manual](#) for easy reference.

The EITI Board is supported by a Secretariat which is "responsible for the day-to-day running of the EITI Association under the direction of the EITI Board through its Chair" (Article 15.2). The Head of Secretariat is responsible for the activities of the Secretariat and serves as "Secretary to all EITI Board Meetings, EITI Members' Meetings and EITI Conferences" (Articles 16.1 and 16.2). The Head of Secretariat reports to the EITI Board through the Chair (article 16.1). Board members should therefore let the EITI Chair know if they have concerns about the way in which the Secretariat conducts itself. There is an institutionalised way of doing this through the regular reviews of the Head of Secretariat's performance. An introduction to some of the procedures of the Secretariat is available in the EITI Board Manual.

The EITI Chair is elected by – and responds to – the EITI Members' Meeting (Article 11.1). The

Members' Meeting is the governing body of the EITI Association (Article 7.1). It is consequently the highest instance available to EITI stakeholders for raising concerns. According to Article 8.1(iv), the EITI Members' Meeting shall "Consider any other matters pursuant to requests from a Member. Such requests shall be submitted in writing to the EITI Chair in time for any such matters to be included in the agenda for the EITI Members' Meeting stated in the summons." Board members should therefore let the EITI Chair know if they wish to raise a concern to the Members' Meeting.