



# EITI RULES, 2011 EDITION

including the Validation Guide

This publication brings together the EITI's requirements for implementing the EITI. It includes the EITI Principles, Criteria, Requirements, Validation Guide, and Policy Notes issued by the EITI Secretariat, conveying decisions taken by the EITI Board.

EITI International Secretariat Oslo  
VERSION: 4 April 2011

**EITI Rules**

including the Validation Guide

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### **Transitional arrangements**

As of 16 February 2011, the EITI Board had not yet established how the new edition of the EITI Rules would come into force. The current issue (dated 24 February 2010) prevails until the transitional arrangements are agreed.



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## PREFACE to the first edition February 2009



**W**elcome to EITI Rules, including the Validation Guide. As with any governance institution, the rules of the EITI have developed over time and will be subject to continued interpretation and refinement in the future. As our body of rules evolve and improve, the EITI Board remains committed to providing effective guidance to our implementing countries.

These rules provide a framework that seeks to ensure consistency and credibility, while also maintaining the country-owned nature of EITI implementation. The rules provide a clear global minimum standard, while also retaining the flexibility to accommodate local challenges and opportunities inherent in each implementing country.

As the EITI Chair it has been a privilege to lead the sometimes complex work of our multi-stakeholder group. We have all worked hard on reaching compromises that support effective implementation and deliver meaningful impacts at the country level.

Over the last couple of years, we have also worked hard to put in place rules and a governance structure for the EITI itself. I am pleased that the EITI Board has agreed a proposal for articles of association. I look forward to the EITI stakeholders agreeing a clear and simple governance structure by adopting these articles of association for our not profit members association under Norwegian law.

A handwritten signature in black ink, appearing to read 'Peter Eigen', with a long horizontal flourish extending to the right.

**Peter Eigen**  
Chairman of the EITI Board

## PREFACE to the 2011 edition



**D**uring the two years since February 2009 and the first edition of EITI Rules was published, the EITI has come a long way. The number of countries implementing the EITI has grown rapidly, and the EITI is being applied in new and innovative ways. Over 50 EITI reports have been published, and the majority of countries have completed a Validation exercise to assess their compliance. Through Validation, several countries have been designated as Compliant; others have identified the steps needed to achieve that goal.

This edition of EITI Rules sees the introduction of a new chapter on EITI requirements. This chapter – coming after EITI Principles and Criteria and before the Validation Guide – sets out with greater clarity the requirements that implementing countries and their stakeholders have to meet in order to become EITI Compliant. The requirements were previously embedded in the Validation Guide. They are now more clearly articulated, and include a number of new requirements to ensure the quality and consistency of the EITI process. The Validation Guide has also been extensively reworked and clarified, providing validators with instructions on how they should validate that the EITI requirements have been met.

Since the Validation Guide was agreed in 2006, the EITI Board has agreed a number of clarifying rules, which have been communicated in EITI Policy Notes. The first four Policy Notes were included in the previous edition of EITI Rules and this edition includes a fifth note, on voluntary suspension. Some of the key clarifications communicated through the Policy Notes can now also be found in either the chapter on requirements or in the Validation Guide. To give an example, the EITI Board agreed in May 2008 the Validation deadlines and these were communicated in EITI Policy Note 3. Information regarding these deadlines has now been incorporated into the new chapter on requirements and in the Validation Guide.



With improved clarity about the expectations on those implementing the EITI being a main reason for updating EITI Rules, every effort has been made to ensure that the new structure does not create any inconsistencies between this and earlier versions of the EITI Rules. As the new version of the rules comes into effect, the Board will take steps to address any inconsistencies in close consultation with implementing countries. It is expected that the rules will continue to evolve over time, taking into account new challenges and building on lessons learned in implementing countries.

In 2009 in Doha, the EITI Members Association was established through the adoption of the EITI Articles of Association. The early experience confirms that the Articles of Association have worked well. Following a governance review undertaken at the end of 2010, some minor changes have been proposed by the Board and are reflected in this edition of EITI Rules. The constituency guidelines have also been updated.

As the implementation of the EITI has grown, so too has of the number of stakeholders involved with the EITI. Even if the changes to our rules communicated through this edition of the EITI Rules are mainly of a clarifying nature, they are the results of extensive consultations and deliberations by the EITI Board and other stakeholders. To everyone that has been involved I express tremendous gratitude on behalf of all of those we hope will benefit from the implementation of the EITI.

A handwritten signature in black ink, appearing to read 'Peter Eigen', with a long horizontal line extending to the right.

**Peter Eigen**  
Chairman of the EITI Board

# INTRODUCTION

The EITI began as a campaign of civil society organisations for publication by extractive companies of their payments to host governments, taken up in a speech made by the then British Prime Minister, Tony Blair, in 2002. Following this, the British Government convened a group of resource-rich countries, extractive companies and civil society organisations. This group started to develop the EITI methodology. At a conference in London 2003, a set of principles (the EITI Principles) were agreed and a pilot phase was launched. Based on some of the experiences gained during this pilot implementation phase, a set of criteria (the EITI Criteria) were agreed in 2005, at a meeting at Lancaster House. This was the inaugural meeting of the EITI International Advisory Group, chaired by Peter Eigen and with the EITI's stakeholders represented. This group met five times during 2005 and 2006. In 2005 the EITI Source Book was published, which is an illustrative guide to assist countries implementing the EITI. Drawing on early experiences applying the EITI, it was agreed that implementing countries should have their implementation validated. The International Advisory Group oversaw the development of the Validation Guide, which was launched in 2006.

In time for the third EITI Global Conference in Oslo in October 2006, the International Advisory Group issued its final report (the IAG Report). In adopting this report, all of the EITI's stakeholders attending the Conference reaffirmed their support of the EITI Principles and Criteria and of the Validation Guide. A set of recommendations were also made, including that the "...EITI should establish a multi-stakeholder Board, supported by a Secretariat, to manage EITI at the international level."

The EITI International Board that was established in accordance with that recommendation has taken a number of decisions relating to both the implementation of the EITI and to the governance of the EITI itself. Decisions taken by the Board that are of relevance for the implementation of the EITI are conveyed to the EITI's stakeholders through the EITI Policy Notes that the Secretariat issues and makes available in this publication, the EITI Rules.

In this publication – EITI Rules, including the Validation Guide, the EITI Secretariat has brought together the policy documents that together make up the rules of the EITI. In doing so, this rulebook sets out the requirements for implementing countries and companies as established by the EITI Board. It is the definitive guide to the requirements for implementing countries, from 'sign-up' as a Candidate country through to Validation to establish EITI compliance.

Further policy refinements and interpretations are likely to occur and will be communicated through the EITI Policy Notes.

# 1 EITI PRINCIPLES

A diverse group of countries, companies and civil society organisations attended the Lancaster House Conference in London (2003) hosted by the UK Government. They agreed a Statement of Principles to increase transparency over payments and revenues in the extractives sector. These became known as the EITI Principles and are the cornerstone of the initiative.

## THE EITI PRINCIPLES

- 1** We share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.
- 2** We affirm that management of natural resource wealth for the benefit of a country's citizens is in the domain of sovereign governments to be exercised in the interests of their national development.
- 3** We recognise that the benefits of resource extraction occur as revenue streams over many years and can be highly price dependent.
- 4** We recognise that a public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development.
- 5** We underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability.
- 6** We recognise that achievement of greater transparency must be set in the context of respect for contracts and laws.
- 7** We recognise the enhanced environment for domestic and foreign direct investment that financial transparency may bring.
- 8** We believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure.
- 9** We are committed to encouraging high standards of transparency and accountability in public life, government operations and in business.
- 10** We believe that a broadly consistent and workable approach to the disclosure of payments and revenues is required, which is simple to undertake and to use.
- 11** We believe that payments' disclosure in a given country should involve all extractive industry companies operating in that country.
- 12** In seeking solutions, we believe that all stakeholders have important and relevant contributions to make - including governments and their agencies, extractive industry companies, service companies, multilateral organisations, financial organisations, investors and non-governmental organisations.

## 2 EITI CRITERIA

**A**fter the EITI Lancaster House Conference, the EITI continued to gather support at the international level from governments, major multinational companies, institutional investors, non-governmental organisations and international institutions. A number of countries began to interpret and implement the Principles thus playing a pivotal role in shaping the EITI. This was an important pilot phase for the EITI. Working with the Principles, implementing countries placed the EITI within the context of other domestic initiatives, formed work plans and put in place procedures towards a country-owned process.

During this phase the diversity of experiences in implementing the EITI has added to the richness of the initiative. It also contributed to a wider debate regarding the need for clear guidance for implementation which still respects the voluntary nature of the initiative and country-specific implementation. Moving beyond the pilot phase and widening the EITI to include other resource rich countries, there was a need for a mutually agreed set of EITI Criteria for all countries wishing to implement the EITI.

At the EITI London Conference (2005) participants in the EITI endorsed the criteria but also encouraged countries to go beyond these minimum requirements where possible. They recognised value in capturing lessons learned during the pilot phase to help implementing countries and supporting companies. They welcomed the guidance on best practice set out in the IMF Code of Good Practices on Fiscal Transparency and the Manual on Fiscal Transparency. Participants also welcomed The EITI Source book as an additional, illustrative guide to implementation.

### THE EITI CRITERIA

- 1** Regular publication of all material oil, gas and mining payments by companies to governments (“payments”) and all material revenues received by governments from oil, gas and mining companies (“revenues”) to a wide audience in a publicly accessible, comprehensive and comprehensible manner.
- 2** Where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.
- 3** Payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator’s opinion regarding that reconciliation including discrepancies, should any be identified.
- 4** This approach is extended to all companies including state-owned enterprises.
- 5** Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.
- 6** A public, financially sustainable work plan for all the above is developed by the host government, with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints.

### 3 REQUIREMENTS FOR EITI IMPLEMENTING COUNTRIES

The aim of EITI implementation is for countries to become EITI Compliant. This new chapter sets out the requirements that must be met by countries implementing the EITI in order to become EITI Compliant. It also contains guidance on how to best ensure that these requirements are met.<sup>1</sup> The guidance is limited given that the EITI is a robust but flexible standard, leaving national stakeholders to adapt it to local needs and context. The requirements set out here are minimum requirements and countries are encouraged to go beyond them where stakeholders agree that this is appropriate. Stakeholders are encouraged to consult additional guidance materials such as *Implementing the EITI* and the *EITI Good Practice Notes*.

The requirements for EITI implementing countries are summarised in Table 1. Countries that meet the five sign-up requirements are admitted as EITI Candidates. EITI candidacy is a temporary state which is intended to lead, in a timely fashion, to EITI Compliant status. To achieve EITI Compliance, implementing countries must complete Validation, an evaluation that independently verifies that all the requirements have been met (see chapter 4).

Compliant countries must maintain adherence to all the requirements in order to retain Compliant status. Where valid concerns exist that a Compliant country's implementation of the EITI has subsequently fallen below the standard required for compliance, then the Board reserves the right to require the country to undergo a new Validation or face delisting from the EITI (see requirement 21 and Policy Note #3).

<sup>1</sup> This chapter draws on the guidance provided in the EITI Source book, published in 2005.

# REQUIREMENTS FOR EITI IMPLEMENTING COUNTRIES

## EITI CANDIDATE

## EITI COMPLIANT

**In order to apply for EITI Candidacy:**

**Before the end of the EITI Candidacy period:**

**To retain EITI Compliance:**

### SIGN-UP REQUIREMENTS

- 1** The government is required to issue an unequivocal public statement of its intention to implement the EITI.
- 2** The government is required to commit to work with civil society and companies on the implementation of the EITI.
- 3** The government is required to appoint a senior individual to lead on the implementation of the EITI.
- 4** The government is required to establish a multi-stakeholder group to oversee the implementation of the EITI.
- 5** The multi-stakeholder group, in consultation with key EITI stakeholders, should agree and publish a fully costed work plan, containing measurable targets, and a timetable for implementation and incorporating an assessment of capacity constraints.

### PREPARATION REQUIREMENTS

- 6** The government is required to ensure that civil society is fully, independently, actively and effectively engaged in the process.
- 7** The government is required to engage companies in the implementation of the EITI.
- 8** The government is required to remove any obstacles to the implementation of the EITI.
- 9** The multi-stakeholder group is required to agree a definition of materiality and the reporting templates
- 10** The organisation appointed to produce the EITI reconciliation report must be perceived by the multi-stakeholder group as credible, trustworthy and technically competent.
- 11** The government is required to ensure that all relevant companies and government entities report.
- 12** The government is required to ensure that company reports are based on accounts audited to international standards.
- 13** The government is required to ensure that government reports are based on accounts audited to international standards.

### DISCLOSURE REQUIREMENTS

- 14** Companies comprehensively disclose all material payments in accordance with the agreed reporting templates.
- 15** Government agencies comprehensively disclose all material revenues in accordance with the agreed reporting templates.
- 16** The multi-stakeholder group must be content that the organisation contracted to reconcile the company and government figures did so satisfactorily.
- 17** The reconciler must ensure that that the EITI Report is comprehensive, identifies all discrepancies, where possible explains those discrepancies, and where necessary makes recommendations for remedial actions to be taken.

### DISSEMINATION REQUIREMENTS

- 18** The government and multi-stakeholder group must ensure that the EITI Report is comprehensible and publicly accessible in such a way as to encourage that its findings contribute to public debate.

### REVIEW AND VALIDATION REQUIREMENTS

- 19** Oil, gas and mining companies must support EITI implementation.
- 20** The government and multi-stakeholder group must take steps to act on lessons learnt, address discrepancies and ensure that EITI implementation is sustainable. Implementing countries are required to submit Validation reports in accordance with the deadlines established by the Board.

### RETAINING COMPLIANCE REQUIREMENTS

- 21** Compliant countries must maintain adherence to all the requirements in order to retain Compliant status.

# REQUIREMENTS FOR EITI IMPLEMENTING COUNTRIES

## 3.1 SIGN-UP REQUIREMENTS

A government intending to implement the EITI is required to undertake a number of steps before applying to become an EITI Candidate (see requirements 1-5, below). When the country has completed the “sign-up” steps and wishes to be recognised as an EITI Candidate country, the senior individual appointed to lead on EITI implementation should formally lodge a Candidate Application in writing to the EITI Chairman (see Box 1).

### BOX 1 – APPLYING TO BECOME AN EITI CANDIDATE

When the country has completed the “sign-up” steps and wishes to be recognised as an EITI Candidate country, the government, with the support of the MSG, should formally lodge a Candidate Application in writing to the EITI Chairman. The application should describe the activities undertaken to date and provide evidence demonstrating that each of the five sign-up requirements have been met. The application should include contact details for government, civil society and private sector stakeholders involved in the sign-up process.

The Outreach and Candidacy Committee of the EITI Board will work with the EITI International Secretariat to review the application and assess whether the sign requirements have been met. The Secretariat will contact stakeholders at the national level to ascertain their views on the sign-up process, and seek comments from supporting governments, international civil society groups, supporting companies and supporting organisations and investors. The Secretariat will work closely with the senior individual appointed to lead on EITI implementation in order to clarify any outstanding issues. The Outreach and Candidacy Committee will make a recommendation to the Board on whether a country’s application should be accepted. The EITI Board will make the final decision.

The Board has stated a preference to make decisions on admitting Candidate country at the regular EITI Board Meetings. Where there is a long period between meetings, the Board will consider making a decision via Board Circular.

When the Board admits a Candidate, it also establishes deadlines for publishing the first EITI Report and submitting a final Validation Report endorsed by the MSG to the EITI Board. A country’s first EITI Report must be published within 18 months from the date that the country was admitted as a Candidate. The final Validation Report must be submitted within two and a half years from the date that the country was admitted as a Candidate.

# REQUIREMENTS FOR EITI IMPLEMENTING COUNTRIES

## **EITI Requirement 1**

**The government is required to issue an unequivocal public statement of its intention to implement the EITI.**

- a) The statement should be by the head of state or government, or an appropriately delegated government representative.
- b) Public statements can be made at a formal launch event, publicized through the national media, placed on a dedicated EITI website.
- c) Beyond endorsement of the EITI, the statement should also indicate what measures and actions the government intends to take to meet the EITI Criteria, including ensuring sustained high-level political support.
- d) A copy of the statement should be sent to the EITI International Secretariat.

## **EITI Requirement 2**

**The government is required to commit to work with civil society and companies on implementation of the EITI.**

- a) EITI implementation requires a sustained commitment to multi-stakeholder dialogue and collaboration. Companies and civil society organisations must be substantively engaged in the design, implementation, monitoring and evaluation of the EITI process, contributing to public debate.
- b) The government must ensure there are no obstacles to civil society and company participation in the process.
- c) The government must ensure that there is an enabling framework for civil society organisations and companies, with regard to relevant laws, regulations, and administrative rules as well as actual practice in implementation of the EITI.
- d) The government must refrain from actions which result in narrowing or restricting public debate in relation to the implementation of the EITI.
- e) Civil society and company representatives can speak freely on transparency and natural resource governance issues.
- f) Civil society and company representatives who are substantively engaged in the EITI process, including but not limited to members of the multi-stakeholder group, have the right to communicate and cooperate with each other.

## **EITI Requirement 3**

**The government is required to appoint a senior individual to lead on the implementation of the EITI.**

- a) It is recommended that this appointment is publicly announced.
- b) The individual leading on EITI implementation should have the confidence of all stakeholders and be situated in relevant ministries or agencies.
- c) The appointee should have the authority and freedom to coordinate action on EITI across relevant ministries and agencies and be able to mobilize resources for country implementation.



## **EITI Requirement 4**

**The government is required to establish a multi-stakeholder group to oversee the implementation of the EITI.**

- a) It is a requirement that implementation of the EITI is overseen by a multi-stakeholder group comprising appropriate stakeholders, including – but not limited to – the private sector, civil society (including independent civil society groups and other civil society, such as the media and parliamentarians) and relevant government ministries (including government leads).
- b) EITI implementation requires an inclusive decision-making process throughout implementation, with each constituency being treated as a partner.
- c) Each stakeholder group should have the right to appoint their own representatives, bearing in mind the desirability of pluralistic and diverse representation.
- d) Civil society groups involved in EITI as members of the multi-stakeholder group must be operationally and in policy terms independent of government and/or companies.
- e) Members of the multi-stakeholder group should be able to operate freely without restraint or coercion, including by liaising with their constituency groups.
- f) Members of the multi-stakeholder group should have the capacity to carry out their duties.
- g) The multi-stakeholder group is required to agree clear public terms of reference (TORs) and to keep written records of their discussions and decisions. These TORs should at a minimum include provisions on the endorsement of the Country Work Plan and allow for revisions of the Country Work Plan following comments by the MSG, as well as procedures for choosing an organisation to undertake the reconciliation. Once the group has been formed, members should agree internal governance rules and procedures. This might include voting procedures.
- h) In establishing the multi-stakeholder group the government should:
  - i. Ensure that senior government officials are represented on the multi-stakeholder group;
  - ii. Ensure that the invitation to participate in the group was open and transparent;
  - iii. Ensure that stakeholders are adequately represented (this does not mean that they need to be equally represented);
  - iv. Ensure that there is a process for changing group members which does not include any suggestion of coercion or attempts to include members who will not challenge the status quo;The government may also wish to:
  - v. Undertake a stakeholder assessment;
  - vi. Establish the legal basis for the group.

## EITI Requirement 5

**The multi-stakeholder group, in consultation with key EITI stakeholders, should agree and publish a fully costed work plan, containing measurable targets and a timetable for implementation and incorporating an assessment of capacity constraints.**

- a) The work plan is the foundation for the implementation of the EITI. The sixth EITI criterion requires that a work plan be produced that is agreed with key EITI stakeholders, including government, extractive companies and civil society. The MSG should endorse the work plan.
- b) The work plan must:
  - i. Be made widely available, for example, published on the national EITI website and/or other relevant ministries and agencies websites, in print media or in places that are easily accessible to the public;
  - ii. Include measurable and time bound targets and objectives, and set out the specific actions that are required to meet these objectives;
  - iii. Incorporate an assessment of any potential capacity constraints in government agencies, companies and civil society that may be an obstacle to effective EITI implementation, and sets out how these will be addressed (for instance through training).
  - iv. Establish the scope of EITI reporting and include a list of all operating oil, gas and mining companies. The multi-stakeholder group may wish to extend EITI reporting to other sectors.
- c) During this phase, due consideration should be paid to identifying domestic sources of funding for timely implementation of the agreed work plan. Sufficient funding for Validation should be budgeted. The government should also formulate strategies to access technical and financial assistance from donors and international partners. The MSG is encouraged to address this issue as soon as practicable and to take account of the administrative requirements and lead times in mobilizing funding from external sources.
- d) In addition to the five sign-up requirements, governments should review the legal framework to identify any potential obstacles to EITI implementation. The EITI should fit comfortably within the legal framework alongside fiscal control mechanisms. The EITI should not involve extraordinary demands on the government. However, in some cases it may be necessary to incorporate EITI requirements within national legislation or regulation.

## REQUIREMENTS FOR EITI IMPLEMENTING COUNTRIES

- e) Implementing countries are required to produce their first EITI Report within 18 months. Thereafter, implementing countries are required to produce EITI reports annually. EITI Reports should cover data no older than the second to last complete accounting period (e.g., an EITI Report published in calendar/ financial year 2010 should be based on data no later than calendar/ financial year 2008). Should the MSG wish to deviate from this norm, this should be clearly indicated in the EITI work plan and the reasons for this communicated to the EITI Board. Countries that have not produced a report for more than two years may be subject to the temporary suspension mechanism set out in Policy Note #5. In the event that EITI reporting is significantly delayed, the multi-stakeholder group should take steps to ensure that EITI reports are issued for the intervening reporting periods so that that every year in the series is subject to reporting.
- f) MSGs are encouraged to update the workplan on an annual basis. Implementing countries should inform the Board if there are any material changes to the scope of EITI implementation. Where it is manifestly clear that the EITI Principles and Criteria are not in a significant aspect adhered to and honoured by an implementing country, the EITI Board may temporarily suspend or de-list that country.

# REQUIREMENTS FOR EITI IMPLEMENTING COUNTRIES

## 3.2 PREPARATION REQUIREMENTS

Once a country has been declared an EITI Candidate country, it has 18 months to publish an EITI Report and two and a half years to submit a final Validation Report endorsed by the MSG to the EITI Board. Securing MSG agreement on the reporting template can be time-consuming and the preparations should begin early.

### **EITI Requirement 6**

**The government is required to ensure that civil society is fully, independently, actively and effectively engaged in the process.**

- a) The EITI Criteria require that civil society be actively engaged as a participant in the design, monitoring and evaluation of the process, and that it contributes to public debate. To achieve this, EITI implementation will need to engage widely with civil society. This can be through the multi-stakeholder group, or in addition to the multi-stakeholder group.
- b) The multi-stakeholder group should undertake effective outreach activities, including through communication (media, website, letters, etc.) with citizens, civil society groups and/or coalitions, informing them of the government's commitment to implement EITI, and the central role of companies and civil society, as well as widely disseminating the public information that results from the EITI process (e.g., the national EITI report).
- c) The government must provide sufficient advance notice of meetings, ensure timely circulation of documents prior to their debate and proposed adoption, and otherwise take steps to ensure that civil society and company representatives are able to adequately prepare for full and active participation in time-sensitive discussions and decisions.
- d) Due consideration should be paid to addressing potential capacity constraints affecting civil society participation relating to the EITI, whether undertaken by government, civil society or companies, including through access to capacity-building or resources.
- e) The government must take effective actions to remove obstacles affecting civil society participation.
- f) Civil society groups involved in EITI as members of the multi-stakeholder group must be operationally, and in policy terms, independent of government and/or companies.
- g) Civil society groups and companies and their representatives must be free to express opinions on EITI without restraint, coercion or reprisal.
- h) Civil society groups involved in EITI must be free to engage in wider public debates on EITI and capture contributions and inputs from elements of civil society that are not part of the multi-stakeholder group.
- i) The fundamental rights of civil society and company representatives substantively engaged in EITI, – including but not restricted to members of the multi-stakeholder group, – must be respected.

## **EITI Requirement 7**

**The government is required to engage companies in the implementation of the EITI.**

- a) This requirement reinforces Requirement 5. EITI compliance requires that companies (oil, gas and mining) are actively engaged in implementation and that all companies report under the EITI. To achieve this, the government will need to engage widely with oil, gas and mining companies. This can be through the multi-stakeholder group, or in addition to the multi-stakeholder group.
- b) It is a requirement that the government and the EITI multi-stakeholder group have sought to engage companies (oil, gas and mining) in the implementation of the EITI. This might include:
  - outreach by the multi-stakeholder group to oil, gas and mining companies, including communications (media, website, letters) informing them of the government's commitment to implement EITI, and the central role of companies;
  - actions to address capacity constraints affecting companies, whether undertaken by government, civil society or companies.

## **EITI Requirement 8**

**The government is required to remove obstacles to the implementation of the EITI.**

- a) Where legal, regulatory or other obstacles to EITI implementation exist, it is required that the government removes these. Common obstacles include confidentiality clauses in government and company contracts and conflicting government departmental remits.
- b) There is no one way of dealing with this issue – countries will have various legal frameworks and other agreements that may affect implementation, and will have to respond to these in different ways. In order to remove such obstacles the government and multi-stakeholder group may:
  - conduct a review of the legal framework;
  - conduct a review of the regulatory framework;
  - perform an assessment of obstacles in the legal and regulatory framework that may affect implementation of the EITI;
  - propose or enact legal or regulatory changes designed to enable transparency;
  - issue waiver of confidentiality clauses in contracts between the government and companies to permit the disclosure of revenues;
  - communicate directly with companies and relevant government agencies to seek acceptance of data publication;
  - reach agreement on Memoranda of Understanding setting out agreed transparency standards and expectations between government and companies.

## EITI Requirement 9

**The multi-stakeholder group is required to agree a definition of materiality and the reporting templates.**

- a) Reporting templates are central to the process of disclosure and reconciliation, and the production of the final EITI Report. **The templates define which revenue streams are included in company and government disclosures.** It is important that the multi-stakeholder group has the capacity to engage in discussions regarding benefit streams to be included in the templates. **It is a requirement that the final templates are endorsed by the multi-stakeholder group.** Wider constituencies should also have an opportunity to comment.
- b) The EITI Criteria require that “all material oil, gas and mining payments to government” and “all material revenues received by governments from oil, gas and mining companies” are published. **EITI templates will therefore need to define by agreement of the multi-stakeholder group what these material payments and revenues comprise, and what constitutes a pre-defined, reasonable materiality threshold.** Where the MSG agrees to define specific thresholds for materiality, the MSG should document the options considered and the rationale for establishing the threshold at a particular level. It will also be necessary for the multi-stakeholder group to define the time periods covered by reporting. A revenue stream is material if its omission or misstatement could materially affect the final EITI Report.
- c) To meet these requirements, the multi-stakeholder group should agree:
  - i. The revenue streams that companies and the government must disclose;
  - ii. The companies that will report;
  - iii. The government entities that will report;
  - iv. The time period covered by the report; and
  - v. The degree of aggregation or disaggregation of data in the EITI Report.
- d) It is commonly recognised that the following revenue streams should be included:
  - i. host government’s production entitlement, e.g., profit oil;
  - ii. national state-owned company production entitlement;
  - iii. profits taxes;
  - iv. royalties;
  - v. dividends;
  - vi. bonuses (such as signature, discovery, production);
  - vii. licence fees, rental fees, entry fees and other considerations for licences and/or concessions; and other significant benefits to government as agreed by the multi-stakeholder group.

Revenue streams i-vii above should only be excluded where they are not relevant or where the MSG agrees that their omission will not materially affect the final EITI Report. In exploring the materiality of a benefit stream, the MSG is encouraged to consider its significance relative to total revenues collected in the sector. The MSG may wish to examine the size of the benefit stream relative to total revenues as indicated in the government flow of funds table (TOFE). The MSG may also wish to consider the share of revenues it represents

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for the institution or region receiving those revenues. What are relatively small revenue flows in a national context may have a high level of materiality at this level, and therefore be relevant for transparency purposes.

- e) In agreeing a definition of “material payments and revenues”, it is a requirement that the multi-stakeholder group clearly establishes whether payments to regional and local government entities are material. Where material, the multi-stakeholder group should take steps to ensure that the reconciliation of company payments to sub-national government entities and the receipt of these payments are incorporated into the EITI reporting process. The multi-stakeholder group may wish to consider extending the scope of the EITI reporting and reconciliation process to transfers between national and sub-national tiers of government, particularly where such transfers are mandated by a national Constitution or statute.
- f) Where agreements based on in-kind payments, infrastructure provision or other barter-type arrangements play a significant role in the oil, gas or mining sectors, the multi-stakeholder group is required to agree a mechanism for incorporating benefit streams under these agreements into its EITI reporting process. To be able to do so, the multi-stakeholder group needs to gain a full understanding of the terms of the contract, the parties involved, the resources which have been pledged by the State, the value of the balancing benefit stream (e.g. infrastructure works), and the materiality of these agreements relative to conventional contracts. Where the multi-stakeholder group concludes that these agreements are material, the multi-stakeholder group is required to develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams. Where reconciliation of key transactions is not feasible, the multi-stakeholder group should agree an approach for unilateral company and/or government disclosures to be attached to the EITI Report.
- g) Multi-stakeholder groups are encouraged to apply a high standard of transparency to social payments and transfers, beginning with a clear understanding of the types of payments and transfers, the parties involved in the transactions, and the materiality of these payments and transfers relative to other benefit streams. If the multi-stakeholder group agrees that social payments and transfers are material, the multi stakeholder group is encouraged to develop or modify reporting templates with a view to achieving transparency commensurate with other payments and revenues. Where reconciliation of key transactions is not possible (e.g., where company payments are “in-kind” or to a third party), the multi-stakeholder group may wish to consider unilateral company and/or government disclosures to be attached to the EITI Report
- h) Multi-stakeholder groups are encouraged to explore opportunities to include additional information in their EITI Reports that will increase the comprehensiveness of EITI reporting and public understanding of revenues and encourage high standards of transparency and accountability in public life, government operations and in business.

## **EITI Requirement 10**

**The organisation appointed to produce the EITI reconciliation report must be perceived by the multi-stakeholder group as credible, trustworthy and technically competent.**

- a) A reconciler will need to be appointed to receive the disclosed company and government figures, to reconcile these figures, and to produce the final EITI Report. It is vital that this role is performed by a reconciler that is perceived by stakeholders to be credible, impartial, trustworthy, and technically capable. It is a requirement that the multi-stakeholder group is content with the organisation appointed to reconcile figures. It is suggested that the Terms of Reference for the reconciler are agreed by the multi-stakeholder group, and that the group oversees the selection process for the reconciler.

## **EITI Requirement 11**

**The government is required to ensure that all relevant companies and government entities report.**

- a) The EITI Criteria require that all companies – public (state-owned) and private, foreign and domestic – report payments to the government, according to agreed templates, to the organisation appointed to reconcile disclosed figures.
- b) EITI reporting must apply to all extractive industry companies (including international, national, and state-owned companies) operating in that country. An entity should be exempted from reporting only if it can show with a high degree of certainty that the amounts it reports would in any event be immaterial. Where a number of small operators pay revenues which are individually not material, but collectively material, the MSG may wish to request that the government discloses the combined benefit stream from such small operators. Where revenues from small operators form a significant part of the total revenues received by the government or any individual government entity, particular care will be required to ensure that the materiality threshold has been set at an appropriate level.
- c) The government is required to do one of the following:
  - i. introduce/amend legislation making it mandatory that companies report as per the EITI Criteria and the agreed reporting templates;
  - ii. introduce/amend relevant regulations making it mandatory that companies report as per the EITI Criteria and the agreed reporting templates;
  - iii. negotiate agreements (such as Memoranda of Understanding and waiver of confidentiality clauses under production sharing agreements) with all companies to ensure reporting as per the EITI Criteria and the agreed reporting templates; and
  - iv. where companies are not participating, the government is taking generally recognised (by other stakeholders) steps to ensure that these companies report by an agreed (with stakeholders) date.
- d) It is a requirement that the government ensures that all government entities that receive material payments participate in the reporting process. An entity



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should be exempted from reporting only if it can show with a high degree of certainty that the amounts it reports would in any event be immaterial. Where this forms a significant part of the total revenues received, particular care will be required to ensure that the materiality threshold has been set at an appropriate level.

- e) MSGs are encouraged, where legally and technically feasible, to consider automated on-line disclosure of extractive revenues and payments by governments and companies on a continuous basis (for instance, in cases where extractive revenue data is already published regularly by government or where national taxation systems are trending towards on-line tax assessments and payments). Such continuous government reporting could be viewed as interim reporting, and as an integral feature of the national EITI process which is captured by the reconciled EITI Report issued annually.

## **EITI Requirement 12**

**The government is required to ensure that company reports are based on accounts audited to international standards.**

- a) The government is required to take steps to ensure that data submitted by companies is audited to international standards. This could include the following:
  - i. government passes legislation requiring figures to be audited to international standards;
  - ii. government amends existing audit standards to ensure that they are to international standards, and requires companies to operate to these;
  - iii. government agrees an MoU with all companies whereby companies agree to ensure that submitted figures are audited to international standards;
  - iv. companies voluntarily commit to submit figures audited to international standards;
  - v. where figures submitted for reconciliation are not based on accounts audited to international standards, the government has agreed a plan with the company (including SOE) to achieve international standards against a fixed time-line;
  - vi. where figures submitted for reconciliation are not to audited standards, the multi-stakeholder group is content with the agreed way of addressing this, for example, by developing a time-bound action plan for ensuring that company reports are based on audited accounts to international standards.
- b) It is recommended that the process relies as much as possible on existing procedures and institutions, and on international standards. A practical process might include companies obtaining from their external auditor an opinion that the information they are planning to submit for EITI is consistent with their audited financial statements. This could be a “special procedures” request attached to the terms of reference of the external audit. These auditors would relate the cash-base submissions by the companies to their accrual-based financial statements. This process should be done in line with appropriate international standards on auditing.

## **EITI Requirement 13**

**The government is required to ensure that government reports are based on accounts audited to international standards.**

- a) The government is required to take steps to ensure that data submitted is audited to international standards. This could include the following:
  - i. government passes legislation requiring figures to be audited to international standards;
  - ii. government amends existing audit standards to ensure they are to international standards, and ensures compliance with these;
  - iii. government takes necessary steps to ensure, and confirms at a senior level by submitting a letter of confirmation containing all necessary statements, that government reports provide a faithful representation of the extractive industry revenues received
  - iv. where figures submitted for reconciliation are not audited to international standards, the multi-stakeholder group is content with the agreed way of addressing this, for example, by developing a time-bound action plan for ensuring that government reports are based on audited accounts to international standards.
- b) It is recommended that the process relies as much as possible on existing procedures and institutions, and on international standards. A practical process might include requesting that the government auditor gives an opinion on the accuracy of the government's submissions.

## 3.3 DISCLOSURE REQUIREMENTS

### **EITI Requirement 14**

**Companies comprehensively disclose all material payments in accordance with the agreed reporting templates**

It is a requirement that:

- a. Companies make a comprehensive declaration of payments in accordance with the agreed reporting templates;

### **EITI Requirement 15**

**Government agencies comprehensively disclose all material revenues in accordance with the agreed reporting templates**

It is a requirement that:

- a. Relevant government agencies make a comprehensive declaration of revenues received in accordance with the agreed reporting templates;

### **EITI Requirement 16**

**The multi-stakeholder group must be content that the organisation contracted to reconcile the company and government figures did so satisfactorily.**

The multi-stakeholder group must be satisfied that the appointed organisation has performed in accordance with the terms of reference.

### **EITI Requirement 17**

**The reconciler must ensure that that the EITI Report is comprehensive, identifies all discrepancies, where possible explains those discrepancies, and where necessary makes recommendations for remedial actions to be taken.**

## 3.4 DISSEMINATION REQUIREMENTS

### EITI Requirement 18

**The government and multi-stakeholder group must ensure that the EITI Report is comprehensible and publicly accessible in such a way as to encourage that its findings contribute to public debate.**

- a) EITI is ultimately implemented to full requirements when the EITI Report is made public, and it is widely disseminated and openly discussed by a broad range of stakeholders. The EITI Criteria require that the Report is publicly available in a way that is publicly accessible, comprehensive and comprehensible.
- b) It is a requirement that the EITI report:
  - i. clearly sets out the multi-stakeholder group's agreed definition of "material payments and revenues", and lists and describes the revenue and benefit streams that are included in the report;
  - ii. lists all licensed or registered companies involved in the extractive sector exploration and production, noting which companies participated in the EITI reporting process and those that did not (with an indication of the relative size whether by production or revenue/payments and reasons for non-participation in EITI);
  - iii. clearly states if any companies or government entities failed to participate in the reporting process, and assesses whether this is likely to have had a material impact on the stated figures;
  - iv. describes the steps taken by government and the multi-stakeholder group to ensure that company and government disclosures to the reconciler are based on audited accounts to international standards;
  - v. describes the methodology adopted by the reconciler to identify discrepancies, and any further work undertaken by the reconciler, the multi-stakeholder group or the government to explain and if necessary address any discrepancies that have been identified.
- c) Implementing countries are encouraged to:
  - i. Summarize and compare the share of each revenue stream to total revenue accruing to the respective level of government;
  - ii. Include a list of all companies active in each extractive sector as an annex to the EITI Report (including the source of the list) and to provide additional detail regarding their activities during the reporting period (e.g. exploration; feasibility; development; construction; production; decommissioning, etc).
- d) To achieve EITI Compliant status the government and MSG are required to ensure that the EITI Report was made publicly available in ways that are consistent with the EITI Criteria, including by:
  - i. producing paper copies of the report, which are distributed to a wide range of key stakeholders, including civil society, companies, the media and others;
  - ii. making the report available on-line, and publicising its web location to key stakeholders;

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- iii. ensuring that the report is comprehensive and includes all information gathered as part of the Validation process and all recommendations for improvement;
  - iv. ensuring that the report is comprehensible, including by ensuring that it is written in a clear, accessible style and in appropriate languages; and
  - v. ensuring that outreach events – whether organised by government, civil society or companies – are undertaken to spread awareness of the EITI Report.
- e) To achieve EITI Compliant status the government and MSG are required to ensure that the EITI Report and its findings contribute to public debate.

## 3.5 REVIEW AND VALIDATION REQUIREMENTS

### **EITI Requirement 19**

#### **Oil, gas and mining companies must support EITI implementation.**

- a) All companies operating in relevant sectors should express public support for the initiative through a public statement by the chief executive or an appropriately delegated representative; taking part, or supporting, the multi-stakeholder process; disclosing agreed data, which is audited to international standards; and cooperating with the validator where they have queries over company forms.
- b) When the Validation begins, the validator will contact all the companies to fill in and return a company form. In addition, the validators will ask the companies to comment on lessons learned and best practice. Companies can do this by either filling out the space provided on the self-assessment form or by providing verbal evidence to the validator where the issue is of a sensitive nature.

### **EITI Requirement 20**

#### **The government and multi-stakeholder group is encouraged to take steps to act on lessons learned, address discrepancies and ensure that EITI implementation is sustainable. Implementing countries are required to submit Validation reports in accordance with the deadlines established by the Board.**

- a) The production and dissemination of an EITI Report is not the end of implementation of EITI. The value comes from the process as much as the product. EITI Reports lead towards the fulfilment of the EITI Principles by contributing to wider public debate. It is also vital that lessons learned in implementation are acted upon, that discrepancies identified in the EITI Report are explained and if necessary addressed and that EITI implementation is on a stable, sustainable footing.
- b) All stakeholders should be able to participate in a review of the EITI process. Civil society groups and industry involved in EITI, particularly but not only those serving on the multi-stakeholder group, should be able to provide feedback on the process and ensure that their views are reflected in the review.
- c) Implementing countries are required to submit a Validation Report in accordance with the deadlines established by the Board. Chapter 4 and EITI Policy Notes #1 and #3 provide more detailed advice to implementing countries on the Validation process and outcomes, including key steps in the process, and the roles and responsibilities of the implementing countries, the validator and the EITI Board and EITI International Secretariat.

## 3.6 REQUIREMENTS FOR RETAINING COMPLIANT STATUS

### **EITI Requirement 21**

**Compliant countries must maintain adherence to all the requirements (1-20) in order to retain Compliant status.**

- a) Compliant countries must maintain adherence to the EITI Principles and Criteria and requirements 1-20 in order to retain Compliant status, including maintaining timely and regular reporting (requirement 5 (e)).
- b) Retaining Compliant status requires that a country is revalidated within five years. Where valid concerns exist that a Compliant country's implementation of the EITI has subsequently fallen below the standard required for compliance, then the Board reserves the right to require the country to undergo a new Validation or face delisting from the EITI. Stakeholders can request another Validation before the five year deadline if they think the process needs reviewing. This request could be mediated (if necessary) through a member of his or her constituency representative(s) on the Board. The Board will review the situation and exercise its discretion as to whether to require the EITI Compliant Country to undergo a new Validation, placing a priority on the need to uphold the integrity of the EITI brand.
- c) Compliant countries are required to publish a public report annually on the previous year's activities, detailing progress in implementing the EITI and any recommendations from the validator. The report must be endorsed by the multi-stakeholder group, and should elaborate on efforts to strengthen EITI implementation, including any actions to extend the detail and scope of EITI reporting or to increase engagement with stakeholders. If a Compliant country fails to comply with this requirement the Board may request a new Validation;
- d) Compliant country multi-stakeholder groups are encouraged to explore innovative approaches to extending EITI implementation to increase the comprehensiveness of EITI reporting and public understanding of revenues and encourage high standards of transparency and accountability in public life, government operations and in business.

## 4 THE VALIDATION GUIDE

The Validation Guide has been revised to reflect the new approach to defining the EITI requirements, and to incorporate lessons from the first round of Validations. These introductory sections have been rewritten to provide an overview of the key steps in the Validation process, with references to the detailed requirements in chapter 3 and procedures as set out in the EITI Policy Notes. Previously, validators have assessed a country's compliance with Validation indicators and their corresponding indicator assessment tools. In this revised version of the EITI Rules, the preceding chapter provides a clear statement of the requirements that must be satisfied in order to achieve compliance. The task of the validator is to assess whether these requirements have been met, in consultation with stakeholder. The Validation Guide now includes standard terms of reference for validators.

### 4.1 THE PURPOSE OF VALIDATION

Validation is an essential feature of the EITI process. It serves two critical functions. First, it promotes dialogue and learning at the country level. Second, it safeguards the EITI brand by holding all EITI implementing countries to the same global standard. As noted in chapter 3, there are two groups of implementing countries: **Candidate** and **Compliant** countries.

- Countries that meet the five sign-up requirements can apply to the EITI Board to be admitted as a **Candidate**. Candidate status is for a finite period that leads, in a timely fashion, to the achievement of Compliant status. Candidate countries have 18 months to publish an EITI Report and two and a half years to submit a final Validation Report endorsed by the MSG to the EITI Board. In some circumstances, Candidacy can be extended for an additional 12 months (see Policy Note #3). If Compliant status is not achieved at the end of this period, the country will be delisted.
- Where Validation verifies that a country has fully implemented EITI (i.e., has met all of the EITI requirements), the Board will designate that country as EITI **Compliant**. Compliant countries are required to undertake a new Validation within five years.

Countries that do not complete Validation by the agreed deadlines may be delisted from the EITI. The rules for assessing a country's EITI status at these deadlines are set out in EITI Policy Note #3.



## 4.2 AN OVERVIEW OF VALIDATION

Validation is in essence an external, independent evaluation mechanism. It is intended to provide all stakeholders with an impartial assessment of whether EITI implementation in a country is consistent with the EITI Principles and Criteria. The Validation Report should also document lessons learned, as well as any concerns stakeholders have expressed, and recommendations for future implementation of the EITI.

Validation is undertaken by a validator selected by the multi-stakeholder group in the country being validated, from a list of suitable organisations or individuals pre-approved by the EITI Board. The implementing country contracts the validator, through a procurement process with guidance from the International EITI International Secretariat. This procedure has been developed to reinforce country ownership of the Validation process, while ensuring that the EITI Board, with the support of the EITI International Secretariat, exercises its mandate as the custodian of the EITI principles, criteria and Validation methodology. **EITI Policy Note #2** provides guidance to implementing countries on procuring a validator. The current **list of accredited validator firms** can be obtained from the EITI Secretariat. Validation will be paid for by the country being validated. **Policy Note #4** provides further guidance on modalities.

Given the multi-stakeholder nature of the EITI and the importance of dialogue, Validation is a fundamentally consultative process. EITI stakeholders have an opportunity throughout the Validation process to comment on the effectiveness of EITI implementation, to provide their opinions on the fulfilment of the EITI's requirements, and to make suggestions for strengthening the process. In addition to consulting with stakeholders, the validator must carefully analyse the EITI Reports and meet with the reconciler to discuss the strengths and weaknesses of the process.

The implementing country MSG plays a central role in ensuring that the Validation process is thorough and comprehensive. The multi-stakeholder group should formally approve the decision to initiate the Validation process and should oversee the process throughout. Validation is not considered complete until the final report has been endorsed by the MSG.

The EITI Board also plays an important role. In all decisions on Validation, the Board places a priority on the need for comparable treatment between countries and the need to protect the integrity of the EITI brand. It is a requirement that the Validation Committee of the EITI Board thoroughly reviews and comments on all draft Validation Reports. The validator is required to address these comments in the final report. This process ensures that the EITI Board has sufficient information in order to determine the country's status following Validation (see **EITI Policy Note #3**).

## 4.3 STEPS IN THE VALIDATION PROCESS

The EITI is a robust but flexible standard that is country-led and allows implementation adapted to local needs and circumstances. However, the quality of implementation can only be ensured with one single Validation methodology applicable to all Candidate countries. The EITI Board supervises Validation to ensure quality, consistency and sustainability of the process. The main steps of an EITI Validation are:

1. **Multi-stakeholder Group agreement to commence Validation.** The MSG should agree on when to schedule the Validation, how the process will be conducted, and oversee the process throughout.
2. **Procurement of a validator.** Policy Note #2 sets out the steps and modalities for procurement. The implementing country finances the cost Validation (see Policy Note #4).
3. **Validation.** The validator assesses the adherence to the EITI Principles and Criteria by assessing compliance with 20 EITI requirements (see section 4.4, below). Validation is a consultative process. The validator should meet with the multi-stakeholder group, the organisation contracted to reconcile the figures disclosed by companies and the government and other key stakeholders (including companies and civil society not in the multi-stakeholder group). The validator should also consult available documentation, including:
  - The EITI work plan, and other planning documents such as budgets and communication plans;
  - The MSG's terms of reference, and minutes from MSG meetings
  - EITI Reports, and supplementary information such as summary reports and associated communication materials;
  - Company forms (see attachment 4)
4. **Draft Report.** The validator should produce a draft Validation Report for comment by the MSG and the EITI Board. The EITI Board – via the Validation Committee – will review the draft Validation Report to ensure that it is comprehensive and provides an adequate basis for establishing the country's compliance with the EITI requirements. The Validation Committee's comments on the draft Validation Report must be addressed in the final version of the report.
5. **The validator produces a final Validation Report.** The final version of the report should be formally endorsed by the multi-stakeholder group and the government. The country completes payment of the validator and publishes the final Validation Report.
6. **The EITI Board analyses the report and decides on the status of the country.** The EITI Board will review the final report and decide on the status of the country in accordance with EITI Policy Note 3.

## 4.4 THE VALIDATION METHODOLOGY

Standard Terms of Reference for validators are presented in section 4.4. Validation is a consultative process. The validator should meet with the multi-stakeholder group, the organisation contracted to reconcile the figures disclosed by companies and the government and other key stakeholders (including companies and civil society organisations not represented in the multi-stakeholder group).

Based on an analysis of these documents and drawing on feedback from stakeholders, the validator should assess the countries compliance with the 20 EITI requirements. **Each requirement (except #19 and #20) should be assessed as “met” or “unmet”.** While some of the requirements lend themselves to an objective assessment, others are more complex, inter-linked and may require subjective judgement by the validator. Additional guidance is provided for a number of requirements (see section 5 in the standard terms of reference). **For each requirement, the rationale underpinning the validator’s assessment should be clearly stated, and the validator should cite key documentary evidence and stakeholder views.** Where the country has made progress but has not fully met the requirements, the validator may wish to note this progress and make recommendation for achieving compliance.

The Validation Report should contain:

- An introduction that addresses:
  - the key features of the extractive industries in the country;
  - overall progress in implementing the EITI Work Plan;
  - a summary of engagement by civil society organisations
  - a summary of engagement by companies;
- A comprehensive and detailed assessment by the validator of the country’s compliance with each requirement, taking into account stakeholder views. This should include a table summarizing the validator’s findings;
- An overall assessment of the implementation of the EITI, and the validator’s judgement on whether the country has satisfied all of the EITI requirements;
- A narrative report that address
  - the impact of the EITI in the country
  - the sustainability of the EITI process
  - any innovations and actions being undertaken by the MSG that exceed the EITI requirements, e.g., efforts to extend the depth and scope of EITI reporting upstream or downstream, or to other sectors;
- Conclusions, lessons learned and recommendations for strengthening the EITI process;
- Collated Company Forms.

The validators may also wish to comment on opportunities to clarify and strengthen the EITI rules and Validation procedures.

The EITI Board plays a key role in the finalisation of the Validation Report. The EITI Board – via the Validation Committee – will review the draft Validation Report to ensure that it is comprehensive and provides an adequate basis for establishing the country's compliance with the EITI requirements. **The Validation Committee's comments on the draft Validation Report must be addressed in the final version of the report.** The final version of the report should be formally endorsed by the multi-stakeholder group and the government. If there is any disagreement regarding Validation, then this is dealt with in the first instance locally by the validator, with the EITI Board only called in to help in cases of serious dispute (see section 4.5).

A final Validation Report must be submitted to the Board by the Validation deadline. In accordance with Policy Note #3, Validation is considered complete when:

- The Validation Report is agreed and endorsed by the multi-stakeholder group, the government and the EITI Board;
- The report has been published and is publicly available;
- Payment of the validator has been completed.

The EITI Board analyses the final report and decides on the status of the country. The different scenarios for the Board decision are set out in EITI Policy Note 3. In the event that the final Validation Report does not provide sufficiently detailed information regarding compliance with the EITI's requirements, the Board may task the International Secretariat with providing supplementary information. In all decisions on Validation, the Board will place a priority on the need for comparable treatment between countries and the need to protect the integrity of the EITI brand.

## 4.5 PETITIONS AND SETTLEMENT OF DISPUTES

An implementing country – via its multi-stakeholder group – may petition the EITI Board to review its decision regarding the country designation as a Candidate or Compliant country at any time. The Board will consider such petitions with regard to the facts of the case, the need to preserve the integrity of the EITI brand and the principle of consistent treatment between countries. The Board’s decision is final (see Policy Note #3).

Any disagreements from the government, the multi-stakeholder group or the EITI Board over the Validation Report should first be dealt with by the validator working with these groups. If the disagreement can be resolved, the validator should make the appropriate amendments in the Validation Report. If a disagreement cannot be resolved, it should be noted in the report.

Serious disagreements with regard to the Validation process should be presented to the EITI Board and Chair, who will try to resolve them. The Board and Chair have the authority to reject complaints that they consider to be trivial, vexatious or unfounded.

## 4.6 STANDARD TERMS OF REFERENCE FOR VALIDATORS

### **Validation of the Extractive Industries Transparency Initiative in [Implementing Country]**

Terms of Reference for the validator

Endorsed by the [Multi-stakeholder Group] on [Date]

The text [in brackets] provides guidance for completing the Terms of Reference. This text should not appear in the final draft.

#### **1. Background**

*[This section to be completed by the implementing country – This section should provide general background information and an overview of EITI implementation. This should include details on the key milestones in the EITI process, including: a) the establishment of the multi-stakeholder group; b) the development of reporting templates, c) the appointment of the EITI administrator, reconciler or auditor, d) information of the participation of companies, and d) the status of EITI reporting. It should also include a summary of other recent events and developments relevant to the Validation process. Current and former members of the multi-stakeholder group should be listed in Annex 1. Companies operating in the country should be listed in Annex 2. The most recent version of the EITI work plan should be included as Annex 3.]*

#### **2. Validator Procurement Process**

*[This section to be completed by the implementing country – This section should provide an overview of procedure for procuring and contracting the validator including: a) information on the contracting authority that will enter into the contract, b) the role of the multi-stakeholder group in the procurement process, c) the selection criteria and weighting for assessing proposals; d) the deadline for submitting proposals, and e) the contact persons for questions regarding the terms of reference].*

### 3. Validation Objectives

Validation is an essential feature of the EITI process. It serves two critical functions. First, it promotes dialogue and learning at the country level. Validation is intended to provide all stakeholders with an impartial assessment of whether EITI implementation in a country is consistent with the EITI Principles and Criteria. The Validation report should also document lessons learned, as well as any concerns stakeholders have expressed, and recommendations for future implementation of the EITI. Second, it safeguards the EITI brand by holding all EITI implementing countries to the same global standard. There are two groups of implementing countries: Candidate and Compliant counties.

- Countries that meet the five sign-up requirements can apply to the EITI Board to be admitted as a Candidate. Candidate status is for a finite period that leads, in a timely fashion, to the achievement of Compliant status. Candidate countries have 18 months to publish an EITI Report and two and a half years to submit a final Validation Report endorsed by the MSG to the EITI Board. In some circumstances, Candidate status can be extended for an additional 12 months (see Policy Note #3). If Compliant status is not achieved at the end of this period, the country will be delisted.
- Where Validation verifies that a country has fully implemented EITI (i.e., has met all of the EITI Requirements), the Board will designate that country as EITI Compliant. Compliant countries are required to undertake a new Validation within five years.

Countries that do not meet the deadlines as established by the Board may be delisted from the EITI. The rules for assessing a country's EITI status following Validation are set out in EITI Policy Note #3.

### 4. Scope of services and Validation methodology

The validator's task is to complete a Validation Report in accordance with the requirements and methodology as set out in the EITI Rules<sup>2</sup>, section 4.3. The main steps in the Validation process are set out in Box 1.

<sup>2</sup> Available online at: <http://www.eiti.org/document/validationguide>

## BOX 1 – MAIN STEPS IN THE EITI VALIDATION PROCESS

- 1. Multi-stakeholder group agreement to commence Validation.** The MSG should agree on when to schedule the Validation, how the process will be conducted, and oversee the process throughout.
- 2. Procurement of a validator.** Policy Note #2 sets out the steps and modalities for procurement. The implementing country finances the cost Validation (see Policy Note #4).
- 3. Validation.** The validator assesses the adherence to the EITI Principles and Criteria by assessing compliance with 20 EITI requirements (see section 4.4, below). Validation is a consultative process. The validator should meet with the multi-stakeholder group, the organisation contracted to reconcile the figures disclosed by companies and the government and other key stakeholders (including companies and civil society not in the multi-stakeholder group). The validator should also consult available documentation, including:
  - The EITI workplan, and other planning documents such as budgets and communication plans;
  - The MSG's terms of reference, and minutes from MSG meetings;
  - EITI Reports, and supplementary information such as summary reports and associated communication materials;
  - Company forms.
- 4. Draft Report.** The validator should produce a draft Validation Report, comprising:
  - An introduction that addresses:
    - the key features of the extractive industries in the country;
    - overall progress in implementing the EITI Work Plan;
    - a summary of engagement by civil society organisations;
    - a summary of engagement by companies.
  - A comprehensive and detailed assessment by the validator of the country's compliance with each requirement, taking into account stakeholder views. This should include a table summarising the validator's findings;
  - An overall assessment of the implementation of the EITI, and the validator's judgement on whether the country has satisfied all of the EITI requirements;
  - A narrative report that addresses:
    - the impact of the EITI in the country;
    - the sustainability of the EITI process;
    - any innovations and actions being undertaken by the MSG that exceed the EITI requirements, e.g., efforts to extend the depth and scope of EITI reporting upstream or downstream, or to other sectors.
  - Conclusions, lessons learned and recommendations for strengthening the EITI process;
  - Collated Company Forms.
- 5. The EITI Board's Validation Committee assesses the draft Validation Report** and provides comments.
- 6. The validator produces a final Validation Report.** The final version of the report should be formally endorsed by the multi-stakeholder group and the government.
- 7. The EITI Board analyses the report and decides on the status of the country** in accordance with EITI Policy Note 3.



Validation is a consultative process. The validator should meet with the multi-stakeholder group, the organisation contracted to reconcile the figures disclosed by companies and the government and other key stakeholders (including companies and civil society organisations not represented in the multi-stakeholder group). The validator should also consult available documentation, including:

- The EITI work plan, and other planning documents such as budgets and communication plans;
- The MSG's terms of reference, and minutes from MSG meetings
- EITI Reports, and supplementary information such as summary reports and associated communication materials;
- Company forms

Based on an analysis of these documents and drawing on feedback from stakeholders, the validator should assess the countries compliance with the 20 EITI requirements. **Each requirement (except #19 and #20) should be assessed as “met” or “unmet”.** Where the country has made progress but has not fully met the requirements, the validator may wish to note this progress and make recommendation for achieving compliance.

While some of the requirements lend themselves to an objective assessment, others are more complex, inter-linked and may require subjective judgement by the validator. Additional guidance is provided for a number of requirements (see section 5). **For each requirement, the rationale underpinning the validator's assesment should be clearly stated, and the validator should cite key documentary evidence and stakeholder views.**

## **5. Detailed guidance to the validator on assessing compliance with the EITI Requirements**

The following sections provide guidance to the validator in situations where assessing compliance with the requirement is multi-faceted and/or involve subjective judgements. In some cases, the validator should ensure that specific evidentiary requirements have been satisfied. In other cases, there are different approaches that a country might take to achieve compliance, and thus the evidentiary requirements are illustrative, and it is not necessary to see each piece of evidence in order to assess the requirement as met.

### **Requirement 2**

To assess this requirement as met, the validator must cite evidence of the government's genuine and sustained commitment to work with civil society organisations and companies on EITI issues.

This could include the following evidence:

- Companies and civil society organisations are substantively engaged in the design, monitoring and evaluation of the EITI process, contributing to public debate.

- Obstacles to civil society and company participation in the process are removed.
- An enabling framework for civil society organisations and companies, with regard to relevant laws, regulations, and administrative rules as well as actual practice in implementation of the EITI.
- Civil society and company representatives can speak freely on transparency and natural resource governance issues.
- Civil society and company representatives, including but not limited to members of the MSG, who are substantively engaged in the EITI process can communicate and cooperate with each other and relevant actors.

#### Requirement 4

Evidence: To assess this requirement as met, the validator must cite evidence that the EITI work plan has been agreed with key stakeholders and that it contains:

- measurable targets;
- a timetable for implementation;
- an assessment of potential capacity constraints;
- actions to ensure the multi-stakeholder nature of EITI, particularly in terms of the involvement of civil society;
- a timetable for Validation, including elaborating on how the government will pay for Validation.

The validator must also assess progress in implementing the work plan, based on the agreed actions and timetable, including whether the country has acted on the identified capacity constraints. If the timetable is not being met, the validator – based on evidence from key stakeholders and others – should give an opinion on whether the delays in meeting the timetable are reasonable.

#### Requirement 5

To assess this requirement as met, the validator is expected to cite evidence that a multi-stakeholder group has been formed, that it comprises the appropriate stakeholders and that its terms of reference are fit for purpose. The evidence should include:

- stakeholder assessments where these have been carried out;
- information on the membership of the multi-stakeholder group, including:
  - Was the invitation to participate in the multi-stakeholder group open and transparent?
  - Are stakeholders adequately represented? (Note: There is no requirement that stakeholders are equally represented)
  - Do stakeholders feel that they are adequately represented?
  - Do stakeholders feel they can operate as part of the multi-stakeholder group – including by liaising with their constituency groups and other stakeholders – free of undue influence or coercion?

- Are civil society members of the multi-stakeholder group operationally, and in policy terms, independent of government and/or the private sector?
- Where multi-stakeholder group members have changed, has there been any suggestion of coercion or an attempt to include members that will not challenge the status quo?
- Do multi-stakeholder group members have sufficient capacity to carry out duties?
- An assessment of whether the TORs give the multi-stakeholder group a say over the implementation of the EITI? These TORs should at least include:
  - endorsement of the EITI work plan – following revisions where necessary;
  - choosing an auditor to undertake audits where data submitted for reconciliation by companies or the government are not already based on data audited to international standards;
  - choosing an organisation to undertake the reconciliation; and
  - oversight of other activities necessary to achieve compliance.
- An assessment of whether senior government officials are adequately represented and participating in the work of the multi-stakeholder group.

## Requirement 6

To assess this requirement as met, the validator will need to see evidence that the government, and the EITI multi-stakeholder group where appropriate, has engaged civil society stakeholders in the process of implementation of the EITI. This should include the following evidence:

- effective outreach by the multi-stakeholder group to wider civil society groups, including communications (media, website, letters) with civil society groups and/or coalitions informing them of the government's commitment to implement EITI, and the central role of companies and civil society, as well as widely disseminating the public information that results from the EITI process (e.g., the national EITI report);
- civil society representatives on the multi-stakeholder group feel they are given sufficient advance notice of meetings, and timely access to documents prior to their debate and proposed adoption, and are able to adequately prepare for full and active participation in time-sensitive discussions and decisions (e.g., when are invitations to meetings circulated, is civil society adequately represented at meetings, do minutes of meetings capture their views?, etc.);
- actions to address potential capacity constraints affecting civil society participation relating to the EITI, whether undertaken by government, civil society or companies, including through access to capacity building or resources;
- the government has taken effective actions to remove obstacles affecting civil society participation;
- civil society groups involved in EITI as members of the multi-stakeholder group must be operationally, and in policy terms, independent of government and/or the companies;

- civil society groups involved in EITI are free to express opinions on EITI without undue restraint or coercion;
- civil society groups involved in EITI are free to engage in wider public debates on EITI and capture contributions and inputs from elements of civil society that are not part of the multi-stakeholder group;
- policies, practices and actions that infringe the fundamental rights of civil society representatives involved in EITI, including but not restricted to members of the MSG, substantively engaged in the EITI process are respected;

The validator must document any instances where the free, full, active, independent and effective participation of civil society civil organisations or companies has been limited or constrained, documenting the circumstances of the case and the steps taken to address the situation.

## Requirement 7

To assess this requirement as met, the validator must cite evidence that the government, and the EITI multi-stakeholder group where appropriate, have sought to engage companies (oil, gas and mining) in the implementation of the EITI. The validator should cite the following evidence:

- outreach by the multi-stakeholder group to oil, gas and mining companies, including communications (media, website, letters) informing them of the government's commitment to implement EITI, and the central role of companies;
- actions to address capacity constraints affecting companies, whether undertaken by government, civil society or companies.

## Requirement 8

To assess this requirement as met, the validator must cite evidence that the government has removed any obstacles to compliance. This might involve following a proactive assessment of obstacles, or through reactive action to remove obstacles as they arise. There is no one way of dealing with this issue – countries will have various legal frameworks and other agreements that may affect implementation, and will have to respond to these in different ways. This could include the following evidence:

- a review of the legal framework;
- a review of the regulatory framework;
- an assessment of obstacles in the legal and regulatory framework that may affect implementation of the EITI;
- proposed or enacted legal or regulatory changes designed to enable transparency;
- waiver of confidentiality clauses in contracts between the government and companies to permit the disclosure of revenues;
- direct communications with, e.g., companies, allowing greater transparency;
- Memoranda of Understanding setting out agreed transparency standards and expectations between government and companies.

## Requirement 9

The validator should provide a detailed assessment of this indicator, addressing each of the provisions set out in requirements 9 (a) through (h). The validator should record the MSG's agreed position on these issues and stakeholder views. To assess this requirement as met, the validator must cite evidence that the multi-stakeholder group was consulted in the development of the templates, that wider constituencies had the opportunity to comment, and that the multi-stakeholder group agreed the final templates. This could include the following evidence:

- draft templates provided to the multi-stakeholder group;
- multi-stakeholder group minutes of template discussions;
- communications to wider stakeholders (e.g. companies) regarding the design of the templates;
- arrangement to enable stakeholders to understand the issues involved;
- a statement by the multi-stakeholder group that they agreed the templates, including all revenue streams to be included.

## Requirement 10

To assess this requirement as met, the validator must cite evidence that the multi-stakeholder group were content with the organisation appointed to reconcile figures. This could include the following evidence:

- TORs agreed by the multi-stakeholder group;
- transparent liaison with the EITI Secretariat and Board to identify potential reconcilers;
- agreement by the multi-stakeholder group on the final choice of organisation.

## Requirement 11

To assess this requirement as met, the validator must cite evidence that demonstrates that: (1) all companies that make material payments to government are participating in the reporting process, (2) all government entities that receive material payments are participating in the reporting process. This could include the following evidence:

- introduced/amended legislation making it mandatory that companies and government entities report as per the EITI Criteria and the agreed reporting templates;
- introduced/amended relevant regulations making it mandatory that companies and government entities report as per the EITI Criteria and the agreed reporting templates;
- negotiated agreements (such as Memoranda of Understanding and waiver of confidentiality clauses under production sharing agreements) with all companies to ensure reporting as per the EITI Criteria and the agreed reporting templates;

- where companies are not participating, the government is taking generally recognised (by other stakeholders) steps to ensure that these companies report by an agreed (with stakeholders) date.

## Requirement 12

To assess this requirement as met, the validator must cite evidence that the government has taken steps to ensure that data submitted by companies is audited to international standards. This could include the following evidence:

- government passes legislation requiring figures to be submitted to be audited to international standards;
- government amends existing audit standards to ensure that they are to international standards, and requires companies to operate to these;
- government agrees an MoU with all companies whereby companies agree to ensure that submitted figures are to audited international standards;
- companies voluntarily commit to submit figures audited to international standards;
- where companies are not submitting figures audited to international standards, the government has agreed a plan with the company (including SOE) to achieve international standards against a fixed time-line;
- where figures submitted for reconciliation are not to audited standards, the group is content with the agreed way of addressing this.

## Requirement 13

To assess this requirement as met, the validator must cite evidence that the government has taken steps to ensure that data submitted is audited to international standards. This could include the following evidence:

- government passes legislation requiring figures to be submitted to be audited to international standards;
- government amends existing audit standards to ensure they are to international standards, and ensures compliance with these;
- where figures submitted for reconciliation are not to audited standards, the multi-stakeholder group is content with the agreed way of addressing this.

## Requirement 16

To assess this requirement as met the validator must cite evidence that the multi-stakeholder group is content that the organisation contracted to reconcile the company and government figures did so satisfactorily. This might include:

- formal approval or endorsement by the multi-stakeholder group of the report;
- other evidence, including minutes from multi-stakeholder group meetings and/or other stakeholder commentary, demonstrating that the multi-stakeholder group was satisfied that the appointed organisation performed its work adequately and in accordance with the terms of reference.

## Requirement 17

The validator is required to document any recommendations for remedial actions made by the reconciler, and to assess the government and MSG's progress in responding to those recommendations.

## Requirement 18

To assess this requirement as met, the validator must cite evidence that the government has ensured that the EITI Report was made publicly available in ways that are consistent with the EITI Criteria. This could include the following evidence:

- producing paper copies of the EITI Report, which are distributed to a wide range of key stakeholders, including civil society, companies, the media and others;
- making the EITI Report available on-line, and publicising its web location to key stakeholders;
- ensuring that the EITI Report is comprehensive and addresses recommendations for improvement from previous EITI Reports and Validation Reports;
- ensuring that the EITI Report is comprehensible, including by ensuring that it is written in a clear, accessible style and in appropriate languages;
- ensuring that outreach events – whether organised by government, civil society or companies – are undertaken to spread awareness of the EITI Report.

To achieve EITI Compliant status the government and MSG are also required to ensure that the EITI Report and its findings contribute to public debate. Compliance with this requirement might be demonstrated in a number of ways, for example:

- targeted briefings for government officials and parliamentarians;
- briefings at the local community level;
- engagement with journalists and academics;
- other communication and dissemination activities to explain the findings to interested stakeholders and to engage stakeholders in the implementation process;

## Requirement 19

The validator is not required to assess this requirement as met or unmet. The validator should provide a written assessment in the EITI Validation Report based on the self assessed Company Forms (see attachment 4) which each company is required to complete. Where companies do not fill in forms, the validator should note this in the final Validation Report. As well as using the forms to summarise company performance in the EITI Report, the forms should be publicly available and a table collating company responses should be included in the EITI Report.

## Requirement 20

The validator is not required to assess this requirement as met or unmet. The validator should see evidence that a review mechanism has been established, and comment on this in the Validation Report. As per requirement 17, the validator should take note of any recommendations for remedial actions made by the reconciler, and assess the government and MSG's progress in responding to those recommendations.

## Requirement 21

The validator is only required to assess this requirement as met or unmet in cases where the country being validated has attained Compliant status. The validator should document MSG discussions and stakeholder views regarding 21(d).

## 6. Reports and Time Schedule

The Validation Report should contain:

- a short narrative report on progress against the EITI work plan;
- a short narrative report on progress against the EITI requirements;
- a table summarising compliance with the EITI requirements;
- a narrative report on company implementation;
- a short narrative report on the impact of EITI based on discussions with stakeholders
- a short narrative report on the sustainability of the EITI process based on discussions with stakeholders
- collated Company Forms; and
- an overall assessment of the implementation of the EITI: is a country a Candidate, Compliant or is there no meaningful progress?

The Validation Report should also set out lessons learned, as well as any concerns people have expressed, and recommendations for future implementation of the EITI. The validators may also wish to comment on opportunities to clarify and strengthen the EITI rules and Validation procedures.

The EITI Board – via the Validation Committee – will review the draft Validation Report to ensure that it is comprehensive and provides an adequate basis for establishing the country's compliance with the EITI requirements. The Validation Committee's comments on the draft Validation report must be addressed in the final version of the report.

The final version of the Validation Report should be formally endorsed by the multi-stakeholder group and the government. The EITI Board will review the final report and decide on the status of the country in accordance with EITI Policy Note 3. The final Validation Report should be published and made widely available, including in local official languages.

If there is any disagreement regarding Validation, then this is dealt with in the first instance locally by the validator, with the EITI Board only called in to help in cases of serious dispute.



The schedule for the completion of the assignment is set out in the table, below. It is expected that the Validation Team Leader and other technical specialists will conduct their investigations and interviews with stakeholders in <place> in <date>. Draft versions of the deliverables as set out above are expected to be completed by <date>. It is expected that the Team Leader will meet with the EITI Committee in <date> to receive comments on the draft deliverables. The final Deliverables must be submitted by <date>, with copies to the EITI International Secretariat. Pending a review by the EITI Board, additional modifications to the Validation Report may be required during <date>.

|   |        |
|---|--------|
| Request for Proposal issued                       | <date> |
| Deadline for validator proposals                  | <date> |
| Contract Award                                    | <date> |
| Contract Signing                                  | <date> |
| Inception period                                  | <date> |
| Filed visit/s                                     | <date> |
| Submission of Draft Report                        | <date> |
| Comments on the draft by the MSG                  | <date> |
| Comments on the draft by the Validation Committee | <date> |
| Submission of the final report                    | <date> |

## 7. Data, Local Services, Personnel, and Facilities to be provided by the Client

*[This section to be completed by the implementing country – 1) Include details of any other documents and information that will be made available to the validators (e.g., minutes from multi-stakeholder group meetings, EITI Reports, press releases, presentations and other communication materials). 2) Provide details regarding the hosting of the validator during visits to the implementing country.]*

## 8. The Role of the International EITI Secretariat

The EITI International Secretariat, on behalf of the Board, will closely follow the Validation process. The validator is expected to maintain close contact with the EITI International Secretariat throughout the Validation exercise. Where needed, the Secretariat will provide advice and training regarding the application of the Validation methodology. The validator is obliged to report any difficulties or irregularities encountered during the Validation process to the EITI International Secretariat.

## 9. Conflicts of Interest

In order to ensure the quality and independence of the Validation exercise, validators are required to notify the client and the EITI International Secretariat of any actual or potential conflict of interest, together with recommendations as to how the conflict can be avoided.

## 10. Schedule of Payments

The schedule of payments shall be as follows:

- <x%> upon the Client’s receipt of a copy of the Contract signed by the Consultant;
- <x%> upon the Client’s receipt of the draft report, acceptable to the Client; and
- <x%> upon the Client’s receipt of the final report, acceptable to the Client.

### Attachment 1 – Multi-stakeholder Group Member

a. Current members of the Multi-stakeholder Group

| Name | Organisation | Telephone | Email | Member Since |
|------|--------------|-----------|-------|--------------|
|      |              |           |       | <date>       |
|      |              |           |       |              |
|      |              |           |       |              |
|      |              |           |       |              |
|      |              |           |       |              |
|      |              |           |       |              |
|      |              |           |       |              |
|      |              |           |       |              |

## b. Previous members of the Multi Stakeholder Group

| Name | Organisation | Telephone | Email | Member |    |
|------|--------------|-----------|-------|--------|----|
|      |              |           |       | From   | To |
|      |              |           |       |        |    |
|      |              |           |       |        |    |
|      |              |           |       |        |    |
|      |              |           |       |        |    |
|      |              |           |       |        |    |
|      |              |           |       |        |    |
|      |              |           |       |        |    |
|      |              |           |       |        |    |
|      |              |           |       |        |    |
|      |              |           |       |        |    |

### Attachment 2 – List of Companies active in Extractive Industries

*[This section to be completed by the implementing country – provide a listing of companies operating in the extractive industry sectors covered by the EITI. Include contact details where available].*

| Name | Contact | Telephone | Email |
|------|---------|-----------|-------|
|      |         |           |       |
|      |         |           |       |
|      |         |           |       |
|      |         |           |       |
|      |         |           |       |
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|      |         |           |       |
|      |         |           |       |

### Attachment 3 – EITI Work plan

*[This section to be completed by the implementing country – The most recent version of the EITI work plan should be included as an attachment].*

## EITI COMPANY SELF-ASSESSMENT FORM COUNTRY-LEVEL

### Attachment 4 – EITI Company self-assessment form

**COMPANY:**

**COUNTRY:**

Mark indicators below with a ✓

1. Has the company made public statements in support of the EITI process in this country?  
 Yes     No
2. Has the company committed to support and cooperate with implementation of the Country EITI Work Plan (as agreed by the multi-stakeholder group), including abiding by government EITI-related directives (e.g.laws and MoUs) and, where appropriate, meeting with stakeholders?  
 Yes     No
3. Have all material payments been disclosed to the organisation contracted to reconcile figures and produce the EITI Report as per agreed EITI reporting templates and pursuant to agreed timelines?  
 Yes     No
4. Was the data that was submitted to the organisation contracted to reconcile figures and produce the EITI Report taken from accounts independently audited to international standards?  
 Yes     No
5. Has the company responded to queries from the organisation contracted to reconcile figures and produce the EITI Report to assist in the reconciliation of country payments with government receipts in accordance with EITI reporting templates?  
 Yes     No

#### Narrative opinions

If any indicators above are marked "No", please provide an explanation:

Any other comments:

## 5 EITI POLICY NOTES

EITI policy and methodology are guided by the EITI Principles and EITI Criteria, and are outlined in detail in the EITI Sourcebook and EITI Validation Guide (see section 3). The EITI Board has also issued a number of clarifications and guidance notes to implementing countries. These are published as EITI Policy Notes.

Policy Note #1

**Clarification on Validation Indicator 4**

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Policy Note #2

**Guidance Note for Implementing Countries on Procuring an EITI validator**

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Policy Note #3

**Validation Deadlines**

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Policy Note #4

**Financing Validation**

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Policy Note #5

**Temporary Suspension and Delisting of EITI Implementing Countries**

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Policy Note #6

**Participation of Civil Society**

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Questions regarding EITI policy and methodologies may be directed to the EITI International Secretariat, which will refer questions to the EITI Board for decision where necessary.

## Approved by the EITI Board on 22 February 2008

Repealed by the EITI Board 16 February 2011

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EITI Policy Note #1 provided a clarification on Validation indicator 4 relating to stakeholder agreement of the work plan. The Board has subsequently replaced Validation indicators with requirements (see chapter 3), and the need for stakeholder consultation during development of the work plan is addressed at requirement 5. The original text is included below for reference purposes only.

### Introduction

#### Validation Indicator 4 reads:

“Has a fully costed Country Work Plan been published and made widely available, containing measurable targets a timetable for implementation and an assessment of capacity constraints (government, private sector and civil society).”

While the indicator itself does not make specific reference to ‘agreement with key EITI stakeholders’, the Indicator Assessment Tool (IAT) for Validation Indicator 4 states: ‘The sixth EITI Criteria requires that a work plan is produced that is agreed with key EITI stakeholders and is publicly available.’ Furthermore, the 2006 Report of the EITI International Advisory Group also makes it clear that:

“Candidate countries are those that, having signed up to implement EITI, have met all four indicators in the sign-up stage of the Validation Grid and have provided documentary evidence to the EITI Board and Secretariat to this effect. The indicators ask whether a government has:

- produced a Country Work Plan that has been agreed with stakeholders.”

The Indicator Assessment Tool also states that ‘the validator is expected to see evidence that work plan has been agreed with key stakeholders’.

Accordingly, in affirming compliance with Validation Indicator 4, the EITI board must be satisfied that the work plan has been discussed with and agreed by stakeholders. The agreement of stakeholders might be demonstrated in a number of ways, for example, in the form of minutes of a meeting and/or published and verified statements of support from various key stakeholders.

## GUIDANCE NOTE FOR IMPLEMENTING COUNTRIES ON PROCURING AN EITI VALIDATOR

**Initially approved by the EITI Board on 22 February 2008**

Revised version approved by the EITI Board on 16 February 2011

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### Preface

The EITI Board issues the following guidance to countries implementing the EITI on the process for selecting an EITI validator. This guidance note has been developed with a view to strengthening the quality, consistency and sustainability of the Validation process. A key objective has been to reinforce country ownership of the Validation process, while ensuring that the EITI Board, with the support of the EITI International Secretariat, exercises its mandate as the custodian of the EITI Principles, Criteria and Validation methodology. These procedures will be updated as lessons are learned through the first round of country Validation.

### Background

Validation is an essential feature of the EITI process. It serves two critical functions. First, it promotes dialogue and learning at the country level. Validation is intended to provide all stakeholders with an impartial assessment of whether EITI implementation in a country is consistent with the EITI requirements. Second, it safeguards the EITI brand by holding all countries implementing the EITI to the same global standard. In 2006, the International Advisory Group (IAG) recommended that:

Validation will be done by a validator selected by the multi-stakeholder group in the country being validated, from a list of suitable organisations or individuals pre-approved by the EITI International Secretariat and the EITI Board. Validation will be paid for by the country being validated.<sup>3</sup>

This Policy Note provides detailed guidance to implementing countries on the process for procuring and contracting an EITI validator. It sets out the key steps in the process, and the roles and responsibilities of the implementing countries, the validator and the EITI Board and EITI International Secretariat.

### Overview of Key Steps

The implementing country will contract the validator, through a procurement process overseen by the multi-stakeholder group and the EITI International Secretariat on behalf of the EITI Board. The following sections provide additional guidance.

<sup>3</sup> [http://www.eiti.org/files/document/eiti\\_iag\\_report\\_english.pdf](http://www.eiti.org/files/document/eiti_iag_report_english.pdf) Page 6

1

**Initiation of Validation Process.** The EITI Validation Guide states that “the first step is the appointment of a validator by the multi-stakeholder group”. The multi-stakeholder group should formally approve the decision to initiate the Validation process. This could involve establishing a sub-committee to oversee the process of selecting and contracting a validator.

2

**Informing the EITI International Secretariat at the initiation of the Validation process.** Countries implementing the EITI wishing to initiate the Validation process should inform the EITI International Secretariat in writing via their designated lead on EITI implementation. This letter should briefly outline:

- a) An indicative timetable for the completion of the Validation process
- b) The proposed procedure for procuring and contracting an approved validator, including:
  - i. the lead agency and contact person for the procurement process;
  - ii. the proposed procurement procedure including the proposed selection criteria and weighting for assessing proposals;
  - iii. the proposed contracting authority that will enter into the contract on behalf of the implementing country
  - iv. the role of the multi-stakeholder group in the procurement process
- c) the arrangements for financing the Validation process
- d) any requests for technical assistance from the EITI International Secretariat.

The EITI International Secretariat will acknowledge receipt of this letter upon arrival, and respond within ten (10) working days, highlighting any issues with respect to the proposed process. The EITI International Secretariat will also respond to requests for technical assistance, and provide available guidance notes and templates. The EITI International Secretariat will provide the lead agency and contact point for the procurement with the latest list of accredited Validators.

3

**Implementing Countries to Draft Terms of Reference.** The Terms of Reference (ToR) for the Validation process shall be developed by the implementing country and approved by the multi-stakeholder group. The EITI International Secretariat will provide implementing countries with a template ToR, drawing on international best practice. The methodology and indicator assessment tools as set out in the Validation Guide must be adhered to. However, Implementing Countries may wish to adapt the ToR to accommodate local variations in EITI implementation. Variations to the template Terms of Reference will be assessed by the EITI International Secretariat (see section 5). Stakeholders wishing to raise concerns regarding the terms of reference may contact the EITI International Secretariat, which will refer complaints to the EITI Board as warranted (see section 6).

It is in the interests of the all parties that the Terms of Reference provide a clear and unambiguous outline of the scope of the EITI Validation exercise as it applies in the country. This should include background information on the country’s participation in the EITI (including the initiation of the process, and key milestones), details on the participating agencies, companies and stakeholders, and commentary on recent events and developments of relevance to the Validation process. The ToR should also include the EITI work plan as an attachment, and an update on the status of company reporting, disclosure and auditing.



The Terms of Reference should clearly specify the timeline for the Validation process, the deliverables, and the process for reviewing and commenting of the draft Validation Report. The ToR should empower the validator to document lessons learned, as well as any concerns people have expressed, and recommendations for future implementation of EITI.

4

**Procurement and Contracting of the Validator by countries implementing the EITI.** Countries implementing the EITI must procure an EITI validator from a list of accredited organisations and individuals pre-approved by the EITI Board, via the International Secretariat. Following an international competitive bid process, including through the Official Journal of the European Union (OJEU), the UK Department for International Development (DFID), on behalf of the EITI International Secretariat, and led by a committee of the EITI Board (the Validation Committee<sup>4</sup>), seven companies and partnerships have been accredited to undertake Validation. At the discretion of the EITI Board, via the EITI International Secretariat, this list of Validators may be added to and modified, subject to the demand for Validation services.

Countries implementing the EITI shall select the most appropriate method for the procurement and contracting of an accredited validator. The EITI International Secretariat recommends a competitive bidding process open to all accredited Validators. International best practice include a range of procedures, including quality- and cost-based selection (QCBS), quality-based selection (QBS), selection under a fixed budget (FBS), least-cost selection (LCS), selection based on Consultants' qualifications (CQS), and single-source selection (SSS).

The independence of the validator is paramount, so the procurement process must include appropriate provisions to address possible conflicts of interests. The procurement process (including the proposed selection criteria and weighting for assessing proposals) should be endorsed by the multi-stakeholder group. One option is to establish a sub-committee of the multi-stakeholder group to oversee the procurement process.

The contract for the Validation process shall be between the implementing country (the lead government agency, or the multi-stakeholder group) and one of the approved validators.

5

**Quality Assurance by the EITI Board.** The EITI Board, working through the EITI International Secretariat, must review the procurement process and the validator's terms of reference and contract prior to initiation of the Validation assignment. In conducting its review, the EITI Board shall have regard to, inter alia:

- a) The overarching quality and transparency of the procurement process;
- b) The involvement of the multi-stakeholder group;
- c) The treatment of conflicts of interest;
- d) The adequacy of the terms of reference vis-à-vis the objective of Validation and the methodology as set out in the Validation Guide;
- e) The coherence of the validator's technical and financial proposals; and,
- f) The terms of the contract between the implementing country and the validator

<sup>4</sup> Comprising: Karina Litvack (F&C), Graham Baxter (BP – replaced by Mike Wilkinson, Shell); Gavin Hayman (Global Witness), John Strongman (WB – replaced by Anwar Ravat, WB); Fidele Ntissi (Government of Gabon)

Stakeholders wishing to raise concerns regarding the procurement of the Validator, the terms of reference or the contract may contact the EITI International Secretariat, which will refer complaints to the EITI Board as warranted.

Where the Board, working through the EITI International Secretariat, has concerns regarding the procurement process or the validator's contract, these will be communicated in writing including recommended remedial actions and modifications. Once these issues have been addressed to the satisfaction of the Board, the EITI International Secretariat will issue a letter of no objection sanctioning the Validation exercise. A copy of the signed contract should be forwarded to the EITI International Secretariat.

### 6

**EITI Oversight of the Validation Process.** The International EITI Secretariat, on behalf of the Board, will oversee the Validation process. Building on the Validation Guide, the EITI Secretariat will enter into a Memorandum of Understanding (MoU) with accredited Validators. The MoU will further clarify the Validator's responsibilities and obligations to the EITI Board and International Secretariat. It will include guidance on, inter alia:

- Ensuring strong communication and efficient information exchange between the EITI Secretariat and the validator during the Validation process;
- Reporting any difficulties or irregularities encountered in the Validation process;
- Dispute resolution mechanisms.

## EITI BOARD DECISIONS ON DETERMINING THE STATUS OF IMPLEMENTING COUNTRIES

**Initially approved by the EITI Board on 27 May 2008**

Revised version approved by the EITI Board on 16 February 2011

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### **Introduction**

The EITI Board sets deadlines for all implementing countries regarding reporting, Validation and achieving Compliant status. This Policy Note sets out the rules pertaining to these deadlines. In all decisions relating to the application of these rules, the Board will place a priority on the need for comparable treatment between countries and the need to protect the integrity of the EITI brand.

### **Deadlines for Candidate countries**

Candidate countries are required to publish their first EITI Report within one year and six months of becoming a Candidate and to submit a final (MSG endorsed) Validation Report to the Board within two years and six months of becoming a Candidate. Failure to meet either of these deadlines will result in delisting.

A country may apply for an extension if it is unable to meet either of the deadlines specified above. The request must be made in advance of the deadline and be endorsed by the MSG. The Board will only grant an extension if the MSG can demonstrate that it has been making continuous progress towards meeting the deadline and has been delayed due to exceptional circumstances. The exceptional circumstance(s) must be explained in the request from the MSG.

If an extension(s) is granted, in all cases a country may hold Candidate status for no more than 3 years and 6 months from the date it is admitted as a Candidate by the Board (hereafter the "maximum candidacy period"). The time period of any and all extensions that are granted will count towards the maximum candidacy period. A Candidate country which does not achieve Compliant status within the maximum candidacy period will be de-listed. The time it takes the Board to review a final Validation Report is not counted as part of the maximum candidacy period.

No extensions will be granted which would increase the maximum candidacy period.

### **Determining the status of implementing countries following Validation**

Where Validation verifies that a Candidate country has met all of the requirements, the Board will designate that country as EITI Compliant.

Compliant countries are required to undertake Validation every five years. Stakeholders may call for a new Validation at any earlier time if they think the process needs reviewing. This request could be mediated (if necessary) through a stakeholder's constituency representative(s) on the Board. The Board will review the situation and exercise its discretion as to whether to require the EITI Compliant country to undergo a new Validation at the earlier time, placing a priority on the need to uphold the integrity of the EITI brand. Where a country has become EITI Compliant, but valid concerns are raised about whether its implementation of the EITI has subsequently fallen below the compliance standard, the Board reserves the right to require the country to undergo a new Validation to avoid delisting from the EITI.

As per requirement 21, Compliant countries are also required to annually publish a public report detailing activities in implementing the EITI and progress in implementing recommendations from the validator. The annual report must be endorsed by the multi-stakeholder group, and should elaborate on efforts to strengthen EITI implementation, including any actions to extend the detail and scope of EITI reporting. If a Compliant country fails to comply with this requirement the Board may request a new Validation.

If a Candidate country has submitted a final Validation Report within two and a half years, but the Validation shows that no meaningful progress has been made toward achieving EITI Compliant status, and that there is little evidence of a sincere intention to implement EITI in line with the Principles and Criteria, the Board will de-list the country from the list of Candidate countries.

In assessing “meaningful progress” the Board will have regard to:

1. The EITI process – in particular the functioning of the multi-stakeholder group and clear, strong commitment from government; and
2. The status of EITI reporting. The Board will take into account progress in meeting the requirements for regular and timely reporting as per requirement 5(e).

The following procedures will apply if a Candidate country submits a final Validation Report within two and a half years that does not evidence compliance but does demonstrate to the EITI Board that there has been meaningful progress in accordance with the standard set out above. The Board will set out the remedial actions that the country must complete in order to achieve compliance, drawing on the findings from Validation. The Board will allow the country to retain its Candidate status for a period equivalent to the maximum candidacy period, less the time it has already spent as a Candidate. The MSG must agree and publish a work plan with the timetable for the implementation of the remedial actions, including a second Validation which must be undertaken following completion of the remedial actions. The final (MSG endorsed) Validation Report of the second Validation must be submitted to the Board before the end of the maximum candidacy period. If the second Validation verifies that the Candidate country has met all of the requirements, the Board will designate that country as EITI Compliant. In all other cases, including the failure to submit the second Validation Report by the deadline, the country will be delisted.

The MSG may request a waiver from the requirement to undergo a second Validation if the remedial actions necessary for achieving compliance are not complex and can be quickly undertaken. If the Board deems that a second Validation is not necessary for it to make a determination of whether the country has achieved compliance, then the Board will waive the requirement for a second Validation and empower the EITI International Secretariat to prepare an assessment for the Board. The waiver request must be submitted well in advance of the end of a country’s maximum candidacy period, and the country must be prepared to undertake a Validation in the event that the waiver is denied.

The Board does not envisage granting a waiver unless it is confident that the International Secretariat's assessment can be undertaken quickly and objectively.

### **Appeal process**

An implementing country – via its multi-stakeholder group – may petition the EITI Board to review its decision regarding the country designation as a Candidate or Compliant country at any time. The Board will consider such petitions with regard to the facts of the case, the need to preserve the integrity of the EITI brand and the principle of consistent treatment between countries. The Board's decision is final.

## FINANCING VALIDATION

Approved at the 6th EITI Board Meeting Athens, 29-30 October 2008

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### **Guidance on Financing Validation**

The report of the International Advisory Group, agreed at the Oslo International EITI Conference in October 2006 established the principle that “Validation will be paid for by the country being validated” (IAG Report p. 6.) This principle was reaffirmed by the EITI Board at its second meeting, in Berlin in April 2007.

The EITI Board again reiterates the importance of that this principle is adhered to. It is critical to the success of the EITI that implementing countries retain the ownership of the implementation of the EITI. It is also important that the multi-stakeholder nature of the EITI is upheld also in the way the initiative is funded.

At the same time, the EITI Board recognises that there may be circumstances in which governments may feel compelled to seek outside financial support. The EITI Board urges anyone considering providing such financial support to take the following into account:

- National ownership of EITI implementation must in no way be undermined.
  - The Board can for example not foresee any circumstances in which it would be acceptable that the contract with the validator is with anyone except the government (or the National EITI Secretariat).
  - A potential funder of Validation should seek and document assurances of government ownership. Such ownership may for example be demonstrated through a government’s commitment to co-fund the majority of the Validation.
- The respect of the EITI Principles and Criteria must in no way be undermined.
  - A potential funder of Validation should seek and document confirmation from the EITI multi-stakeholder group that it is fully supportive of the agreement the government is seeking with potential funders.
- The EITI International Secretariat should be consulted on any proposed arrangements for financial support towards Validation.

## TEMPORARY SUSPENSION AND DELISTING OF EITI IMPLEMENTING COUNTRIES

**Initially approved by the EITI Board on 17 December 2009**

Revised version approved by the EITI Board on 16 February 2011

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### **Introduction**

This Policy Note establishes a procedure on how the EITI Board, in exercising its mandate established by the EITI Articles of Association<sup>5</sup>, may resolve to temporarily suspend or de-list an EITI implementing country. Countries implementing the EITI have undertaken to abide by the EITI Principles and Criteria. Where it is manifestly clear that the EITI Principles and Criteria are not in a significant aspect adhered to and honoured by an implementing country, the EITI Board may temporarily suspend or de-list that country. The EITI Board may also temporarily suspend or delist countries that fail to publish EITI Reports on a regular and timely basis in accordance with requirement 5(e).

Suspension of an implementing country is a temporary mechanism. The Board shall set a time limit for the implementing country to address breaches of the EITI Principles and Criteria. If the EITI Board is satisfied that corrective measures have been undertaken in that period, the suspension will be lifted. If the matter is not resolved to the satisfaction of the EITI Board by the agreed deadline, the country will be de-listed.

### **Background**

The EITI Association was constituted to make the EITI Principles and Criteria<sup>6</sup> the internationally accepted standard for transparency in the oil, gas and mining sectors. The EITI Board has a mandate to consider general and specific issues affecting the EITI Association (Articles of Association – Article 13(1)(i)), including establishing procedures regarding the EITI Validation process, such as complaints, resolving disagreements, and the question of de-listing a country (Articles of Association – Article 13(1)(ix)).

The EITI Principles “affirm that management of natural resource wealth for the benefit of a country’s citizens is in the domain of sovereign governments to be exercised in the interests of their national development” (Principle 2). The EITI Principles also state that “all stakeholders have important and relevant contributions to make – including governments and their agencies, extractive industry companies, service companies, multilateral organisations, financial organisations, investors, and non-governmental organisations”. EITI Criterion 5 requires that “Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate”. Also other EITI Criteria and EITI Principles are important yardsticks for implementing countries in relation to the issues of temporary suspension and delisting.

<sup>5</sup> Implementing countries are “states that have been classified by the EITI Board as either Candidate countries or Compliant countries” (Articles 5(2)(i) of the Articles of Association).

<sup>6</sup> See pages 9 and 10 of EITI Rules, including the Validation Guide

## **Temporary Suspension and De-listing of Implementing Countries**

As a custodian of the EITI Principles and Criteria, the EITI Board places a priority on the need for comparable treatment between countries and the need to protect the integrity of the EITI.

Where the EITI Board is concerned that adherence to the EITI Principles and EITI Criteria is compromised, it shall task the EITI International Secretariat with gathering information about the situation and submit a report to the EITI Board.

**Where it is manifestly clear that the EITI Principles and Criteria are not in a significant aspect adhered to by an implementing country, the EITI Board may temporarily suspend or de-list that country.**

The EITI Board may also temporarily suspend or delist countries that fail to publish EITI Reports on a regular and timely basis in accordance with requirement 5(e).

## **Temporary Suspension**

Suspension of an implementing country is a temporary mechanism. The EITI Board shall set a time limit for the implementing country to address breaches of the EITI Principles and Criteria. If the EITI Board is satisfied that corrective measures have been undertaken in that period, the suspension will be lifted.

Suspended countries will be considered a “Candidate country (suspended)” or a “Compliant country (suspended)” for the period of suspension, with their suspended status clearly indicated on the EITI website and elsewhere.

If the matter is not resolved to the satisfaction of the EITI Board by the agreed deadline, the country will be de-listed i.e., lose its status as an EITI implementing country.

Temporary suspension will not alter reporting or Validation deadlines, unless the EITI Board agrees that an extension is warranted. The Board will not sanction the commencement of Validation during the suspension period. At all stages in the process, the EITI Board shall ensure its concerns and decisions are clearly communicated to the implementing country.

## **Voluntary Temporary Suspension**

Countries that are experiencing exceptional political instability or conflict may apply for voluntary temporary suspension for up to one year. The government should lodge an application for voluntary temporary suspension with the EITI International Secretariat, which will submit the application to the EITI Board for decision. The government’s application should note the views of the EITI multi-stakeholder group (MSG). Voluntarily suspended countries will be considered as a “Candidate country (suspended)” or a “Compliant country (suspended)” for the period of suspension, with their suspended status clearly indicated on the EITI website and elsewhere.



The government may apply to lift the suspension at any time. The application should document the steps agreed by stakeholders to re-start the EITI implementation and Validation process, and the work plan to achieve compliance. The government should lodge an application to lift a voluntary suspension with the EITI International Secretariat. The Secretariat will submit the application to the EITI Board for decision. The EITI Board will consider setting new reporting and Validation deadlines as appropriate. The Board will not sanction the commencement of Validation during the suspension period.

If the suspension is in effect for more than one year, the EITI Board will consider whether to de-list the country.

### **De-listing**

If an implementing country has been subject to voluntary suspension or temporary suspension, and the matter has not been resolved to the satisfaction of the EITI Board to the effect that such suspension has been lifted, the country will be de-listed, i.e. lose its status as an EITI implementing country. De-listing may also occur if an implementing country does not meet the Validation requirements as set out in Policy Note 3, or the reporting requirements as set out in requirement 5(e).

A de-listed country may reapply for admission as an EITI Candidate country at any time. The EITI Board will apply the agreed procedures with respect to assessing Candidate applications. It will also assess previous experience in EITI implementation, including previous barriers to effective implementation, and the corrective measures implemented.

### **Complaints and Appeals**

The implementing country concerned may petition the EITI Board to review its decision regarding temporary suspension or de-listing. The EITI Board will consider such petitions with regard to the facts of the case, the need to preserve the integrity of the EITI brand and the principle of consistent treatment between countries.

The country concerned may, prior to the notice periods under Article 8 of the Articles of Association, appeal a decision of the EITI Board made in accordance with the first paragraph to the next ordinary Members' Meeting.

## PARTICIPATION OF CIVIL SOCIETY

Approval by the EITI Board on 16 February 2011

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This Policy Note contains recommendations on civil society engagement in the EITI, building on lessons emerging from national level implementation. Implementing and applicant countries have committed to uphold the EITI requirements, including by ensuring the active involvement of civil society. Therefore, the EITI Board sees within its role to ensure that requirements regarding civil society participation are met.

**EITI Principle 2** affirms that “management of natural resource wealth for the benefit of a country’s citizens is in the domain of sovereign governments to be exercised in the interests of their national development”.

**EITI Principle 12** stipulates that “All stakeholders have important and relevant contributions to make to advance the EITI principles and standards.”

**EITI Criterion 5** requires that “Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate”.

**Requirement 6** instructs the government “...to ensure that civil society is fully, independently, actively and effectively engaged in the process.”

### The Role of Civil Society

These Principles and Criteria underline the centrality of the **free, full, independent, active and effective participation of civil society** [hereinafter participation of civil society]. Civil society organisations are central players in public debates about EITI and transparency related issues. These efforts are important and complementary to those by other stakeholders. While some countries may have signed on to the EITI with limited civil society involvement, due consideration should be paid to the fact that participation of civil society is critical at all stages of the EITI process.

In implementing countries, governments, companies and civil society are collaborating together to shape the EITI process through the multi-stakeholder group. The multi-stakeholder group mirrors the structure of the EITI International Board, whereby all relevant stakeholders play a key role in determining how the EITI should be governed.

### Lessons Learned

The EITI has encountered a range of obstacles and constraints affecting civil society engagement in the EITI, including actions that have restricted public debate about revenue transparency and the use to which resource revenues are put.

The Board has sought to address these challenges by providing a range of responses including establishing a Rapid Response Committee to deal with cases of threatened or actual harassment of civil society representatives.

In addition, the Board established a Working Group on Civil Society Participation to provide further guidance on civil society engagement in the EITI.

In several cases, governments have argued that restrictions on civil society organisations were not linked to their involvement in the EITI. This is what has been referred to as the 'linkage dilemma', meaning that it can be difficult to define to what extent certain actions by stakeholders and limitations to them were directly linked to and have hampered the implementation of the EITI. Yet, as noted, space for civil society engagement is a necessary ingredient for the EITI process to work.

Fundamental concerns raised to date have included the following<sup>7</sup>:

- Harassment and intimidation of civil society representatives participating in the implementation of the EITI.
- Denials of travel permits sought by civil society representatives to attend related meetings.
- Legal, administrative, procedural and other obstacles to the registration and operation of independent civil society.
- Impediments to the free selection of civil society representation.
- The inclusion among the "civil society" representatives of members of parliament from the ruling party or other political parties aligned with the government, in contravention of the basic principle reflected in requirement 6.
- Resource and capacity constraints.

So far, the EITI Board has often dealt with issues relating to the participation of civil society representatives in implementing countries without trying to pass judgment on the details of a case. Instead, the EITI Board, through its Rapid Response Committee has generally taken the following approach:

- reasserting the importance of compliance to the principles, criteria and rules of the EITI, and
- making it clear that these principles, criteria and rules may not have been adhered to.

Specific actions by the EITI Board have ranged from quiet and public diplomacy to country visits and recommendations for voluntary suspension from the EITI, with due regard to the fact that the responsibility for implementing the EITI always rests with national governments, in collaboration with the multi-stakeholder group. Actions by the Board have generally strengthened the implementation of the EITI, and should be regarded as complementary to other EITI stakeholders' efforts.

### **Strengthening civil society participation**

As a custodian of the EITI Principles and Criteria, the EITI Board places importance on ensuring that civil society organisations can play an active role in the design, monitoring, and evaluation of the EITI, alongside other key stakeholders.

<sup>7</sup> A list of individual cases that have been addressed by the EITI Board is available in a Secretariat Paper titled 'Review of Obstacles and Constraints to Civil Society Participation'.

## **Government commitment to work with civil society**

The EITI Criteria require national governments to commit to work with civil society on EITI implementation. Countries should address at an early stage obstacles to civil society engagement in the implementation process. In particular, they must ensure that adequate conditions exist for the participation of civil society organisations.

Issues of concern can include legal or regulatory impediments to civil society's ability to participate freely and actively in the implementation of the EITI, and whether or not civil society representatives substantively involved in the EITI process enjoy internationally-recognized fundamental rights outlined in the Universal Declaration of Human Rights.

## **Involvement in the national multi-stakeholder group**

Civil society stakeholders have reported difficulties in some in-country processes in determining how civil society groups are represented. Allowing civil society to self-appoint its own representatives on the multi-stakeholder group, and ensuring they are operationally, and in policy terms, independent from government, companies, and the parliament is crucial to guarantee that the interests of civil society stakeholders are taken into consideration.

## **Addressing capacity needs**

Capacity development for civil society may be necessary to ensure it can take on an active implementing role. Due consideration should be paid to mitigating the impacts of technical and financial constraints on adequate civil society participation, including through facilitating their access to training and resources on matters relevant to participation in the EITI.

## **Security of civil society representatives involved in the EITI**

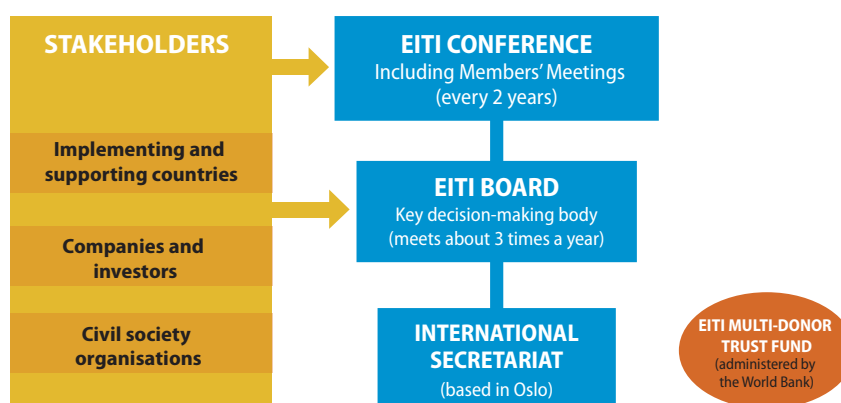
While allegations or reports of potential or actual harassment of civil society representatives in EITI implementing countries need to be primarily addressed by the national multi-stakeholder group, the EITI Board may be called to investigate particular cases and address breaches of the EITI Criteria and Principles as appropriate.

## 6 EITI GOVERNANCE, MANAGEMENT AND ADMINISTRATION

The EITI has evolved from an idea into an initiative with detailed rules and procedures. The governance of the EITI itself has also evolved: following the International Advisory Group's reporting to the Global Conference in Oslo in 2006, the EITI International Board and EITI International Secretariat were both established. Since 2006, the EITI International Board has further refined the structure and is proposing that the current structure of the EITI Association as a not-for-profit organisation under Norwegian law, be altered to include member countries and supporters. As a result, a new and expanded EITI Association is set to be adopted at the Doha Conference in February 2009.

The new arrangements will provide for the EITI to continue to hold a global conference once every two years, bringing together all stakeholders. Alongside these conferences, a smaller Members' Meeting with the three constituency groups – countries (implementing and supporting), companies (including institutional investors) and civil society organisations – will take place, with all groups equally represented. The main task of the Members' Meeting will be to appoint an EITI International Board for the next two years. Between the global conferences, the EITI International Board will continue to oversee the Initiative. The Board has 20 members, with the different constituencies being entitled to representation. The Chairman, currently Peter Eigen, should be independent. All implementing and supporting countries are entitled to be members of the EITI Association. It is up to the respective constituencies to agree among themselves their membership of the Association and who they wish to nominate to the Board.

The EITI International Secretariat will continue to operate as a not-for-profit organisation under Norwegian law, now as part of the new Association.



**Articles of Association for The Extractive Industries Transparency Initiative (EITI)**

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<sup>8</sup> Articles 5(6), 8(9) and 15(3) were amended by the EITI Members Meeting 1 March 2011.

## 6.1 ARTICLES OF ASSOCIATION

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### ARTICLE 1 NAME

- 1) The name of the association shall be “The Association for the Extractive Industries Transparency Initiative (EITI)” (hereinafter referred to as “the EITI Association”).

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### ARTICLE 2 BACKGROUND AND OBJECTIVE

- 1) The EITI Association is an international multi-stakeholder initiative with participation of representatives from governments and their agencies; oil, gas and mining companies; asset management companies and pension funds (hereinafter referred to as “Institutional Investors”) and local civil society groups and international non-governmental organisations.
- 2) The objective of the EITI Association is to make the EITI Principles (Annex A) and the EITI Criteria (Annex B) the internationally accepted standard for transparency in the oil, gas and mining sectors, recognising that strengthened transparency of natural resource revenues can reduce corruption, and the revenue from extractive industries can transform economies, reduce poverty, and raise the living standards of entire populations in resource-rich countries.

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### ARTICLE 3 LEGAL PERSON, LIMITED LIABILITY

- 1) The EITI Association is a non-profit association organised under Norwegian law (“forening”).
- 2) The Members of the EITI Association shall not be responsible, individually or collectively, for any of the EITI Association’s debts, liabilities or obligations.

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### ARTICLE 4 ORGANISATION

- 1) The permanent institutional bodies of the EITI Association are:
  - i) The EITI Members’ Meeting, which is held in connection with the EITI Conference;
  - ii) The EITI Board led by the EITI Chair;
  - iii) The EITI Secretariat led by the Head of Secretariat.
- 2) The EITI Board may establish committees in accordance with Article 14.

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### ARTICLE 5 MEMBERSHIP AND CONSTITUENCIES

- 1) A Member of the EITI Association is a personal representative of a country (meaning state), company, organisation or legal entity that is appointed by a Constituency as set out in Articles 5 (2) and (3).
- 2) 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; and
    - b) Supporting Countries, meaning states or union of states, that support the objective of the EITI Association.
  - ii) The Constituency of Companies, which comprise:
    - a) Companies in the extractive sector that have committed to support the objective of the EITI Association and associations representing these companies; and
    - b) Institutional Investors that have committed to support the objective of the EITI Association.

## 6.1 ARTICLES OF ASSOCIATION

- iii) The Constituency of Civil Society Organisations, which comprise non-governmental organisations, global action networks or coalitions that support the objective of the EITI Association.
- 3) 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 Civil Society Organisations.
- 4) A Constituency may replace any of its own appointed Members at any time. The Constituency shall inform the EITI Secretariat of its Members at any time.
- 5) The EITI Board may terminate any Member's Membership of the EITI Association if:
- i) The Member, or the country or other entity the Member represents, does not comply with these Articles of Association; or
  - ii) The Member, or the country or other entity the Member represents, has conducted his/her/ its affairs in a way considered prejudicial or contrary to the EITI Principles.
- 6) A resolution by the EITI Board in accordance with Article 5 (5) may be appealed by any Member to the Members' Meeting for final decision.

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### ARTICLE 6 SUBSCRIPTION FEE

- 1) There is no subscription fee for Members.

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### ARTICLE 7 THE EITI CONFERENCE

- 1) An EITI Conference shall be held every two years in order to provide a forum for EITI stakeholders, being all with an interest in the EITI Association, to further the objective of the EITI Association and to express their views on the policies and strategies of the EITI Association. The EITI Chair shall act as chairman for the Conference. The EITI Conference is a non-governing body of the EITI Association.
- 2) The EITI Members, the EITI Board and the EITI Secretariat have the right to attend or be represented at the EITI Conference. Other EITI stakeholders should also be invited, in each case, to the extent that it is reasonably practical to make arrangements in order to do so as decided by the EITI Board.
- 3) The EITI Conference shall be summoned by the EITI Board on the EITI website and by written notice to the Members and Constituencies with at least four weeks notice. The written notice shall include the agenda of the EITI Conference.



## 6.1 ARTICLES OF ASSOCIATION

- 4) The EITI Conference shall:
  - i) Provide an important and visible platform for debate, advocacy, continued fund raising, and inclusion of new EITI stakeholders;
  - ii) Review progress based on the activity report for the preceding two year period;
  - iii) Provide suggestions to the EITI Board as to the activities of the EITI Association for the next two years;
  - iv) Mobilise and sustain high level coordination, political commitment and momentum to achieve the objective of the EITI Association; and
  - v) Provide an informal communication channel for those EITI stakeholders who are not formally represented elsewhere in the governance structure of the EITI Association.
- 5) Views on the issues set out in Article 7 (4) above may be expressed in a non-binding Statement of Outcomes which should be agreed upon by the EITI Conference and communicated to the EITI Members' Meeting and the EITI Board. The EITI Conference shall make every effort to adopt resolutions by consensus. Taking account of the view of the EITI stakeholders, the EITI Chair may decide that a vote is required. Every EITI stakeholder, except the Members of the EITI Board in this capacity and the Secretariat, has one vote. Resolutions of the EITI Conference are adopted by simple majority of those present and voting.

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### ARTICLE 8 THE EITI MEMBERS' MEETING

- 1) The governing body of the EITI Association is the EITI Members' Meeting.
- 2) The EITI Members' Meeting is comprised of the Members of the EITI Association.
- 3) The ordinary EITI Members' Meeting shall be held every two years in connection with the EITI Conference. The ordinary EITI Members' Meeting shall be summoned by the EITI Board to the Members with at least four weeks written notice.
- 4) An Extraordinary Members' Meeting may be summoned by the EITI Board to the Members with at least three weeks written notice. The EITI Board shall ensure that an Extraordinary Members' Meeting shall be held within four weeks of the receipt by the EITI Chair of a request to hold an Extraordinary Members' Meeting.
- 5) Members who wish to take part in an EITI Members' Meeting, must give notice to the EITI Secretariat by the date stated in the summons. A Member may be represented in the EITI Members' Meeting by written proxy. The proxy may also include specific voting instructions. A duly signed proxy must be received by the EITI Secretariat by the date stated in the summons.
- 6) The EITI Chair shall act as chairman for the EITI Members' Meeting.
- 7) The quorum of a Members' Meeting shall be a minimum of half of the, Members, and must include at least one third of the Members from each Constituency.
- 8) The Members' Meeting shall make every effort to adopt resolutions by consensus. If a vote is required, resolutions are adopted by qualified majority requiring the support of at least two thirds of the total votes cast and must include the support of at least one third of the votes cast by the Members representing each Constituency. The total number of votes for the Members of each Constituency shall be equal and be determined as follows:
  - i) Members from the Constituency of Countries shall have one vote each; and

## 6.1 ARTICLES OF ASSOCIATION

- ii) The votes for Members from the Constituency of Companies and the Constituency of Civil Society Organisations shall be determined by dividing the total of Country votes by the number of Members of the Company and Civil Society Constituencies respectively.
- iii) The EITI Chair shall announce the number of votes for each Member from the different Constituencies prior to voting.

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### ARTICLE 9 THE FUNCTIONS OF THE EITI MEMBERS' MEETING

- 1) The EITI Members' Meeting shall:
  - i) Approve the activities report, the accounts and the activity plan of the EITI Board;
  - ii) Elect the Members, and Alternates for each Member, of the EITI Board, on nomination from the Constituencies;
  - iii) Elect the EITI Chair, on proposal of the EITI Board; and
  - iv) 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.

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### ARTICLE 10 THE EITI BOARD

- 1) The executive body of the EITI Association is the EITI Board, elected by the EITI Members' Meeting and operating under the guidance from the EITI Members' Meeting.
- 2) In order to reflect the multi-stakeholder nature of the EITI Association, the EITI Board shall consist of 20 EITI Board Members ("Board Members") and shall be made up as follows:
  - i) A Chair;
  - ii) 8 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.
  - iii) 6 Board Members being Members of the EITI Association from the Constituency of Companies, of which a maximum of 1 should represent Institutional Investors.
  - iv) 5 Board Members being Members of the EITI Association from the Constituency of Civil Society Organisations.
- 3) All Board Members retire with effect from the conclusion of the ordinary EITI Members' Meeting held subsequent to his or her nomination, but shall be eligible for re-nomination at that EITI Members' Meeting.
- 4) In the case of a vacancy on the EITI Board between two EITI Members' Meetings, this vacancy shall be filled with the Board Member's Alternate from the Constituency of the Board Member that no longer holds office. If there is no Alternate, the relevant Constituency may nominate a new Board Member and Alternate to be elected by the Board.
- 5) The Constituencies may nominate, and the EITI Members' 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.
- 6) If a Board Member is absent from a Board Meeting, that Board Member's Alternate may attend,

## 6.1 ARTICLES OF ASSOCIATION

participate in discussions, vote and generally perform all the functions of that Board Member in the Board Meeting.

- 7) The EITI Association shall obtain liability insurance for Board Members. The terms and conditions should be approved by the EITI Board.

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### ARTICLE 11 EITI OBSERVERS

- 1) Representatives from relevant international organisations, such as the World Bank, the International Monetary Fund and other relevant stakeholders, should be invited by the EITI Board to attend EITI Board Meetings and Members' Meetings as observers, when this can be practically accommodated. They have no voting rights, but may be invited to express their views on specific matters. The EITI Board may decide that certain items should be discussed without observers present.

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### ARTICLE 12 THE EITI CHAIR

- 1) The EITI Chair shall be elected at the ordinary EITI Members' Meeting. The EITI Board shall, prior to each ordinary EITI Members' Meeting, recommend a candidate for the EITI Chair for the two-year period following that EITI Members' Meeting. The term of an EITI Chair's may be renewed once.
- 2) The EITI Chair shall:
  - i) Act as chairman of the EITI Members' Meeting;
  - ii) Act as chairman of the EITI Board Meeting;
  - iii) Present the EITI Board report to the EITI Conference and the EITI Members' Meeting;
  - iv) Represent the EITI Board in external matters;
  - v) Follow-up with the EITI Secretariat regarding the implementation of the resolutions of the EITI Board; and
  - vi) Seek to foster collaborative relationships between EITI stakeholders.
- 3) If the EITI Chair is unable to preside over a Board Meeting, the Board Members present may appoint another Board Member to chair that Meeting.

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### ARTICLE 13 FUNCTIONS OF THE EITI BOARD

- 1) The EITI Board is the executive body of the EITI Association and 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;

## 6.1 ARTICLES OF ASSOCIATION

- 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; and
- xi) Recommend a candidate for the EITI Chair prior to each ordinary EITI Members' Meeting.

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### ARTICLE 14 COMMITTEES OF THE EITI BOARD

- 1) The EITI Board may create committees to further specific issues. Any such committee should include two or more Board Members or their Alternates, and its composition should, as far as is reasonable, reflect the multi-stakeholder nature of the EITI Association. The terms on which any such committee shall operate should be recorded in the Minute Book.

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### ARTICLE 15 EITI BOARD OPERATIONS AND PROCEEDINGS

- 1) The EITI Board should meet at least twice a year. If the circumstances so necessitate, EITI Board Meetings can be held by simultaneous telephone conference. At least one EITI Board Meeting per year shall be in person.
- 2) A Board Meeting shall be convened by written notification from the EITI Chair with at least 14 days notice. Any shorter period of notice requires the written consent of all Board Members.
- 3) Board Members shall make every effort to adopt resolutions by consensus. Taking account of the view of the Board Members, the EITI Chair may decide that a vote is required. Every Member of the EITI Board has one vote. Voting can be done by written proxy.
- 4) No resolution may be made by a Board Meeting unless a quorum is present at the time of passing the resolution. At least two-thirds of the Board Members, with at least two Board Members from the Constituency of Countries (one Implementing Country and one Supporting Country), one Board Member from the Constituency of Civil Society Organisations and one Board Member from the Constituency of Companies, establish a quorum.
- 5) If a vote is required, resolutions are adopted by a qualified majority requiring 13 votes to be cast in favour of the resolution, and must include the support of at least one third of the votes of the Board Members from each Constituency.
- 6) A Board Member shall not vote in respect of any matter or arrangement in which he or she is directly interested, or if there are any other special circumstances which are apt to impair confidence in his or her impartiality. A Board Member shall declare such interests in writing to the EITI Board as soon as possible after he or she becomes aware of the same. A Board Member shall not be counted in the quorum present when any resolution is made about a matter which that Board Member is not entitled to vote upon.

## 6.1 ARTICLES OF ASSOCIATION

- 7) The EITI Board may establish procedures regarding decision-making processes outside Board Meetings.
- 8) The EITI Association can be committed externally by the joint signature of all Board Members. The EITI Board may elect two or several Board Members to carry the right of signature, of which any two can sign jointly.

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### ARTICLE 16 THE EITI SECRETARIAT

- 1) The EITI Secretariat (“the Secretariat”) shall consist of the Head of Secretariat and other necessary staff. The members of the Secretariat shall be either contracted directly or seconded by EITI Members.
- 2) The Secretariat shall be responsible for the day-to-day running of the EITI Association under the direction of the EITI Board through its Chair.
- 3) The Secretariat shall keep an updated Members’ Registry at all times.
- 4) The Secretariat shall keep a record of these Articles of Association and any amendments thereto.
- 5) The Secretariat shall keep Minutes of all EITI Board Meetings, Members’ Meetings and meetings of the EITI Conference in a Minute Book. All such Minutes shall be published on the EITI website. Such Minutes shall record the names of those present, the resolutions made at the meetings and, where appropriate, the reasons for the resolutions.

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### ARTICLE 17 THE HEAD OF THE EITI SECRETARIAT

- 1) The Secretariat shall be led by a full-time Head of Secretariat who will manage the day-to-day running of the EITI Association, including the selection of necessary staff, oversee development of the EITI Association and provide support to the EITI Board. The Head of Secretariat shall report to EITI Board through the Chair and be responsible for the activities of the Secretariat.
- 2) The Head of Secretariat, or his appointee from the Secretariat, shall serve as Secretary to all EITI Board Meetings, EITI Members’ Meetings and EITI Conferences.

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### ARTICLE 18 FUNDING

- 1) The EITI Association is a non-profit association. Its funds consist of voluntary contributions from EITI Members and grants from bilateral and multilateral donors, international financial institutions and other agencies, organisations and entities.
- 2) The EITI Association may also operate through voluntary contributions in kind.

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### ARTICLE 19 EITI ACCOUNTS, FUND MANAGEMENT AND PAYMENTS

- 1) The EITI Association holds a separate bank account in its own name, the “EITI International Management Account”. The EITI Board may elect two or several Board Members to carry the right of signature, of which any two can sign jointly. The EITI International Management Account can be used for any activity falling within the objectives of the EITI Association and the work plans approved by the EITI Board. The funds may be applied to administration and governance costs, country-specific activities and multi-country activities.

## 6.1 ARTICLES OF ASSOCIATION

- 2) The EITI Board shall appoint an external, independent auditor to annually audit the EITI International Management Account, and to present a written audit report to the EITI Board. The EITI Board shall develop reporting and auditing arrangements with respect to the EITI International Management Account which shall be set forth in the supplementary operating rules and procedures of the EITI Association.

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### ARTICLE 20 AMENDMENTS

- 1) These Articles of Association may be amended by the EITI Members' Meeting convened and held, pursuant to Article 8 by approval of at least two-thirds of the Members present. A proposal for an amendment shall be communicated in writing to all EITI Members four weeks in advance of the relevant resolution.

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### ARTICLE 21 REVIEW

- 1) A review of the governance arrangements of the EITI Association should be undertaken by the EITI Board within two years of the constitution of the Association.

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### ARTICLE 22 WITHDRAWAL AND DISSOLUTION

- 1) Any Member may withdraw from the EITI Association at any time. Such withdrawal shall become effective upon receipt of a written notification of withdrawal by the Head of Secretariat.
- 2) The EITI Association may be dissolved by the Members' Meeting in accordance with the provisions of Article 8. A proposal for dissolution shall be communicated in writing to all EITI Members four weeks in advance of the relevant resolution.
- 3) In the event of a dissolution, the assets of the EITI Association shall be applied to similar objectives to those of the EITI Association and as determined by the EITI Board subject to the approval of the EITI Members' Meeting.

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### ARTICLE 23 ENTRY INTO FORCE

- 1) These Articles of Association shall enter into force upon the constitution of the EITI Association.

## 6.1 ARTICLES OF ASSOCIATION

### ANNEXES

#### **ANNEX A The EITI Principles**

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As per section 1 in this publication.

#### **ANNEX B The EITI Criteria**

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As per section 2 in this publication.

#### **ANNEX C The EITI Validation Guide**

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As per section 3 in this publication.

#### **ANNEX D Memorandum of Understanding with Multi-Donor Trust Fund**

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Available online: <http://www.eiti.org/files/page/EITI%20MOU%20-%2027Mar2008.pdf>

#### **ANNEX E Using the EITI Logo**

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See below.

#### **ANNEX F Draft EITI Constituency Guidelines, EITI International Secretariat, 20 January 2009**

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See next below.

### ANNEX E

#### USING THE EITI LOGO

The EITI name and logo are the property of the EITI Board, though partners and local networks are encouraged to use it or derivatives in order to promote the Initiative. Using the EITI logo can help a national EITI programme by being identified with the international EITI movement. Because EITI has internationally agreed standards, independent governance, and a validation process to monitor country implementation of the Initiative, using the logo to make the link between national and international EITI programmes can be beneficial for implementing countries. More information on using the EITI Logo can be found at <http://www.eiti.org/about/logopolicy>

The EITI Logo



## 6.1 ARTICLES OF ASSOCIATION

### ANNEX F

#### DRAFT EITI CONSTITUENCY GUIDELINES, EITI INTERNATIONAL SECRETARIAT, 20 JANUARY 2009

##### **Background**

The report of the International Advisory Group, as adopted by the Oslo Conference in October 2006 agreed that a 20 person Board would be established at Oslo to serve until the next EITI Conference. The Board consists of:

- The Chair
- 5 representatives of implementing countries;
- representatives of donors;
- representatives of NGOs;
- companies; and
- 1 investor.

Everyone other than the Chair is invited to have an alternate.

It was agreed that each of the constituencies would determine how they wish to agree nominations.

A proposal for the legal incorporation of the EITI Board and Secretariat will be considered by an EITI Members' Meeting in Doha in February 2009. The proposal draws extensively on the report of the International Advisory Group. It is suggested that the different stakeholders are represented in the same way as is the case today.

According to the IAG Report 'Each of the constituencies should agree how they wish to be represented on the proposed Board. This requires prior consideration by each constituency of how they define those eligible (i) to be selected as representatives; and (ii) to be involved in the selection process'.

##### **Guidelines**

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 and 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.

Specifically, for the various constituency groups:

##### **Countries**

###### **EITI Member Association**

All implementing and supporting countries are entitled to become members of the Association.

###### **The EITI Board**

- Implementing countries: Board members might be selected from the governments of those countries who are 'demonstrably implementing EITI' i.e. invite representatives from countries that have produced at least one EITI report within the last twelve months (this wording was drawn from 5th IAG meeting minutes).



## 6.1 ARTICLES OF ASSOCIATION

### ANNEX F

As far as possible, the representation should also reflect both a geographical and sectoral distribution. A system of sub-constituencies might be considered to ensure that all implementing countries' views are represented.

- **Supporting Countries:** Board members should be selected from the government of those countries who are demonstrably giving financial, political, or technical support to EITI implementation. The supporting countries should consider a sub-constituency approach which will engage other supporting countries as they join the EITI family. It is hoped that some emerging economies might join this group over the next two years.

#### **Civil Society Organisations**

##### **EITI Member Association**

All Civil Society Organisations are entitled to become members of the Association.

##### **The EITI Board**

Board members should be selected from those who have actively supported EITI implementation – either at the international level or in-country.

The Publish What You Pay Coalition have conducted a consultation with their members about how selection for this constituency will be managed. Those civil society representatives interested in being represented on the EITI Association or Board are encouraged to contact the Publish What You Pay coalition.

#### **Companies**

##### **EITI Member Association**

All companies supporting the EITI and up to five institutional investors are entitled to become members of the Association.

##### **The EITI Board**

There are four broad categories of companies represented in the EITI company constituency: oil and gas companies, mining companies, state-owned companies and institutional investors.

ExxonMobil and Shell were in 2008 represented oil and gas companies on the Board, with Chevron and Total as alternates. These companies are encouraged to liaise with other international oil companies to agree representation for the Association and for the appointment of the next Board.

AngloAmerican and the International Council on Mining and Metals have in 2008 represented mining companies, with Areva as an alternate. These companies and the ICMM are encouraged to liaise with other mining companies to agree representation for the Association and for the appointment of the next Board.

PEMEX have represented national companies, with Petrobras as its alternate. These companies are encouraged to liaise with other mining companies to agree representation for the Association and for the appointment of the next Board.

F&C Asset Management were in 2008 representing institutional investors on the Board, recently with Standard Life as an alternate. These investors are encouraged to liaise with other investors to agree representation for the Association and for the appointment next Board.

The Secretariat remains available to facilitate all nomination processes.

#### **Grievances**

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.



### **The Extractive Industries**

**Transparency Initiative (EITI)** is a globally developed standard that promotes revenue transparency at the local level. It is a coalition of governments, companies, civil society, investors and international organisations. **Through** robust yet flexible methodology company payments and government revenues from oil, gas and mining are published and discrepancies are reduced. Although the EITI Board and the International Secretariat are the custodians of the EITI process, implementation takes place at the country level, in a process that emphasises multi-stakeholder participation. [www.eiti.org](http://www.eiti.org)

