

5 Protocol: Participation of civil society

1. Introduction

The participation of civil society is fundamental to achieving the objectives of EITI, including Principle 4 which states that “public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development”. The active participation of civil society in the EITI process is key to ensure that the transparency created by the EITI leads to greater accountability. A primary motivation for the adoption of the EITI Standard was the desire to produce more relevant, more reliable and more usable information, and better link this information to wider reforms in the governance of the extractive sector or of the management of public accounting and revenue management. Citizens’ ability to work actively to make use of the information generated by the EITI is therefore a critical component of EITI implementation and civil society participation in the EITI.

The participation of civil society in the EITI process is formally assessed at two stages of EITI implementation – during the candidature assessment and during the Validation process. An assessment of civil society participation may also take place on an ad hoc basis in response to specific concerns raised with the Board about the situation in specific implementing countries. This protocol sets out the questions the EITI Board (including Committees) and validators should consider in assessing whether the provisions pertaining to civil society participation (1.3) have been met, as well as the types of evidence to be used in answering those questions. While the provisions relating to civil society participation in the EITI process remain consistent at every stage of EITI implementation, the evidence the EITI Board uses to evaluate the provisions will of necessity vary depending on the circumstances of the country, stage of implementation, and availability of information. It should be noted that the questions posed and the suggested types of evidence set out in 2.1-2.5 below do not constitute provisions, nor is the list exhaustive. However, it provides an assessment framework for the provisions related to civil society.

2. The EITI’s interpretation of the provisions on civil society

For purposes of this protocol, references to ‘civil society representatives’ will include civil society representatives who are substantively involved in the EITI process, including but not limited to members of the multi-stakeholder group. References to the ‘EITI process’ will include activities related to preparing for EITI sign-up; MSG meetings; CSO constituency side-meetings on EITI, including interactions with MSG representatives; producing EITI Reports; producing materials or conducting analysis on EITI Reports; expressing views related to EITI activities; and expressing views related to natural resource governance.

In assessing the civil society provisions, the Board and validators will apply the following tests:

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

The EITI Board and validators will consider the extent to which:

- Civil society representatives are able to speak freely in public about the EITI process including for example during MSG meetings, EITI events including for the promulgation of EITI Reports, public events, in the media, etc.
- Actual practice, including diverse stakeholder views or substantive evidence provided by independent third parties, indicates that self-censorship or self-imposed restriction by civil society representatives has taken place related to the EITI process due to fear of reprisal and whether such barriers have impacted civil society representatives' dissemination of information and public comment on the EITI process.

2.2 Operation: Civil society representatives are able to operate freely in relation to the EITI process.

The EITI Board and validators will consider the extent to which the legal, regulatory, administrative and actual environment has affected civil society representative's ability to participate in the EITI process. This could for example include:

- The extent to which legal, regulatory or administrative obstacles affecting the ability of civil society representatives to participate in the EITI process. This could include legal or administrative procedures related to the registration of CSOs that have adversely affected their ability to participate in the EITI process; legal or administrative restrictions on access to funding that have prevented CSOs from undertaking work related to the EITI process; legal or administrative issues preventing CSOs from holding meetings related to the EITI process, legal or administrative barriers to the dissemination of information and public comment on the EITI process, etc.
- Any evidence suggesting that the fundamental rights of civil society representatives have been restricted in relation to the implementation of the EITI process, such as restrictions on freedom of expression or freedom of movement.

2.3 Association: Civil society representatives are able to communicate and cooperate with each other regarding the EITI process.

The EITI Board and validators will consider the extent to which:

- Civil society MSG representatives may seek and are not restricted from engaging other CSOs that are not part of the MSG, including capturing their input for MSG discussions and communicating outcomes of MSG deliberations.

- Formal or informal communication channels between civil society MSG members and the wider civil society constituency have not been restricted.
- Civil society MSG representatives have not been restricted from engaging in outreach to broader civil society, including related to discussions about MSG representation and the EITI process.

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

The EITI Board and validators will consider the extent to which:

- Civil society representatives are able to fully contribute and provide input to the EITI process. This could for example include evidence of input and advocacy related to key MSG deliberations on issues such as work plan objectives and activities, the scope of the EITI reporting process, approval of EITI Reports, annual self-assessment of the EITI process through the annual progress reports, Validation etc. It could also include evidence that civil society is regularly participating in MSG meetings, MSG working groups and other EITI events, and that the views of CSOs are taken into account and documented in MSG meeting minutes.
- Civil society representatives consider that they have adequate capacity to participate in the EITI. This should include evidence that technical, financial or other capacity constraints affecting civil society have been considered and that plans for addressing such constraints have been agreed upon and/or effectuated including by providing access to capacity building or resources.

2.5 Access to public decision-making: Civil society representatives are able to speak freely on transparency and natural resource governance issues, and ensure that the EITI contributes to public debate.

The EITI Board and validators will consider the extent to which:

- Civil society representatives are able to use the EITI process to promote public debate for example through public events, workshops and conferences organised by or with participation of civil society to inform the public about the EITI process and outcomes.
- Civil society representatives are able to engage in activities and debates about natural resource governance, including for example conducting analysis and advocacy on natural resource issues, use of EITI data, engagement with media outlets, development of tools to communicate the findings of the EITI Reports, etc.

2.6 Available documentation from the MSG and CSOs engaged in the EITI process as well as outcomes from direct consultation with relevant stakeholders, including but not limited to members of the MSG, should be taken into account when gathering the above evidence. For contextual purposes, the EITI Board will review the broader environment in which the EITI operates for example by reference to indicators or other types of assessments relevant to the issues addressed in 2.1-2.5 above.

3. Ad hoc restrictions on civil society representatives

- 3.1 Ad hoc allegations or reports of potential or actual restrictions on civil society representatives in EITI implementing countries should in the first instance be discussed and addressed by the multi-stakeholder group, subject to any safety concerns that an impacted party may have regarding directly raising such issues domestically.
- 3.2 The EITI Board through its Rapid Response Committee may be called to investigate particular cases and address alleged breaches of the EITI Principles and Provisions as appropriate. The EITI Board will consider such requests with regard to the facts of the case, the need to uphold the Principles of the EITI as well as the principle of consistent treatment between countries. In accordance with provision 8.6.a, “where the EITI Board is concerned that adherence to the EITI Principles and Provisions is compromised, it may task the International Secretariat with gathering information about the situation and submitting a report to the EITI Board”. Where concerns related to the participation of civil society are raised, the EITI Board will as appropriate strive to establish whether there is a direct link to the EITI process, including by (i) documenting the facts of the case; (ii) gathering stakeholders’ views; and (iii) applying the test set out in section 2 above.
- 3.3 Depending on the circumstances of the case including the extent to which it can be established that there is a direct link between the concerns raised and the EITI process, the Board will consider an appropriate response. This could for example include a letter from the Chair or the EITI Board to the government concerned, EITI Board or International Secretariat missions to the country, commissioning independent assessments, issuing Board declarations, agreeing to remedial actions including monitoring of implementation, or calling for a validation of a country’s adherence to the provisions concerned. In accordance with provision 8.6.a, “where it is manifestly clear that a significant aspect of the EITI Principles and Provisions are not adhered to by an implementing country, the EITI Board will suspend or delist that country.” In cases where the Board concludes that the concerns observed do not breach a provision or are not sufficiently linked to the EITI process, it will exercise its discretion as to whether to take any action, placing priority on the need to uphold the Principles of the EITI and to ensure consistent treatment between countries.