

Guidance note:  
Good practices for civil  
society participation in EITI



February 2015



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## Who should read this guidance note?

In countries where the EITI MSG is already established, we recommend that this guidance note should be distributed and read by at least:

- All CSOs that have taken on a leadership role to initiate or implement EITI domestically;
- All CSOs that have been selected to the MSG; and,
- All MSG members.

In countries where EITI is new and the MSG is not yet formed, we recommend that this is disseminated to interested governments and any civil society organizations that are identified as active in the EITI process. Given the particular role PWYP has played in EITI in many countries, we also recommend that it is disseminated to all PWYP networks.

This guidance note outlines a selection of good practices for broad and effective participation of civil society and their constituents in EITI. Active, inclusive, and robust civil society participation is critical to the success of EITI, and enables the communities and people most affected by extractive industry activity to have a voice in the process. While the varying contexts and resources of civil society from country-to-country means there is no one-size-fits-all approach to effective civil society engagement, this guidance note recommends that civil society in every EITI country should:

- Identify the individuals, communities, and civil society organizations who may wish to be informed of EITI or participate in the process;
- Ensure MSG representatives communicate with these constituents to seek input and report feedback regularly about the MSG and EITI processes, and to develop a vision for how EITI can advance the interests of the public and communities affected by extractive industry activity;
- Establish transparent nomination and selection processes designed to select effective, legitimate, and independent representatives to the MSG; and,
- Develop a CSO code of conduct.

These practices should enhance civil society's effectiveness and ability to influence the MSG process, while demonstrating its accountability to its wider constituency.

Please note this is not a comprehensive listing of all good practices for civil society, nor is it a step-by-step guide for CSOs in EITI. The guidance note instead focuses on assisting civil society to overcome some of the major governance challenges of participating in EITI, as identified by civil society and MSGs as part of MSI Integrity's **Protecting the Cornerstone: Assessing the Governance of EITI Multi-Stakeholder Groups** in 2015.

## Section I: Identifying and connecting civil society and its constituency

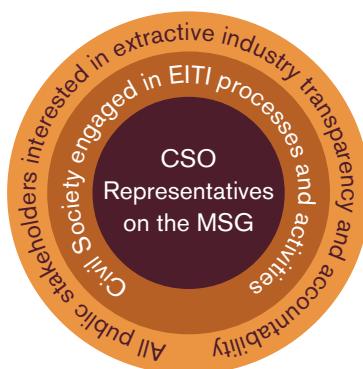
### Advantages of building a wide constituency and stakeholder group

For civil society participation in the EITI process to be effective and credible, it should be inclusive of the diverse range of stakeholders interested in extractive industry transparency and accountability. In many countries, civil society involvement in EITI has been confined to just a handful of organizations, often centering around those organizations and individuals initially selected to the MSG. However, by harnessing the engagement of all interested or affected stakeholders, civil society can use the government's commitment to EITI as a mechanism to broaden national or local debates and awareness on extractive industry transparency. These activities are also then protected by the obligation to ensure an enabling environment and freedom of expression in the EITI Standard, Requirement 1.3(b)-(e).

The wider pool of stakeholders can also strengthen the choice and capacity of civil society representatives on the MSG. This helps to ensure that the CSOs on the MSG are both representative of, and accountable to, civil society's wider constituency.

Not all stakeholders interested in or affected by EITI will want the same level of participation in EITI. However, CSO representatives in the MSG should ensure that they offer opportunities for their constituents to fully understand the EITI process and provide input. There are at least three levels of potential involvement in EITI for civil society and the general population:

1. Those interested in major outcomes of EITI, and/or to provide input into the general development of EITI;
2. Those interested in regular or more detailed engagement regarding EITI and the MSG processes;
3. Those selected to represent civil society in the MSG.



An effort to identify as many interested stakeholders as possible, and to provide all potential stakeholders with information about EITI, should be undertaken at the earliest stage of EITI implementation. This increases awareness about the EITI process and opportunities for involvement. In countries where the MSG has not yet been established, stakeholders should be informed and made aware of EITI before CSO representatives have been selected to the MSG (for one example, see the Philippines case study in Box III).

Identifying the stakeholders that fit into any of the three categories listed above, and establishing processes to communicate with them, will make it easier to discharge the obligation of the MSG to liaise with their constituency groups and to undertake effective outreach activities with civil society groups to inform “stakeholders of the government’s commitment to implement the EITI and the central role of companies and civil society” (EITI Standard, Requirement 1.3(g)(i)-(ii)).

## Box I: Spotlight on Azerbaijan – a large and regulated civil society network

In Azerbaijan there are three levels of formalized civil society involvement in EITI, which are confined exclusively to NGOs. This approach is just one of many possibilities for establishing a large network of active stakeholders and may not be suitable for other countries, but may offer helpful ideas of differing styles of involvement in EITI. It involves:

**1. The Coalition for Improving Transparency in Extractive Industries** (the “Coalition”), which has approximately 120-160 members and meets at least once a year. It has clear transparency goals and a set of regulations regarding its broad purpose and membership processes. It is restricted to NGOs but has no other major membership criteria.

**2. The Coalition Council**, which is an 11-person group of Coalition members elected by the Coalition during its annual general assembly meeting to guide the Coalition's activities. The Council holds meetings every two weeks, which are documented and open to any member of the Coalition. Council members cannot undertake work or projects funded by the government or extractive industry companies in the MSG. Each Council member has a term of two years and has strict attendance requirements for Council meetings. The Council also appoints a monitoring group that essentially acts as an oversight body to monitor civil society. Its mandate includes adjudicating on alleged violations of Coalition regulations.

**3. The CSO MSG members**, who are selected by the Coalition Council. This formalized approach was adopted in Azerbaijan for a number of contextual reasons, particularly regarding concerns about government infiltration or the possibility of rival civil society coalitions being established. However, one weakness is that the Coalition Council does not require elected members to demonstrate their background in extractive industry activity or natural resource governance and therefore is not always well versed in relevant issues. In addition, there are concerns that the Council has not actively disseminated information back to the Coalition aside from during general assembly meetings, and that it is very focused on the capital city and little regional outreach has occurred.

## 1. Identifying all stakeholders potentially interested in, or affected by, EITI activities

To ensure key individuals are aware of EITI and of the opportunity to participate in the EITI process, CSO MSG representatives and/or civil society involved in leading implementation efforts should try to identify all stakeholders that: (i) are interested in the EITI process; or, (ii) may become interested after they learn about the ways that EITI could potentially impact and influence their own work. The process for identifying and connecting with these stakeholders will be highly context-specific in each country. As much as possible it should be driven by civil society and the communities most concerned or affected by the need for extractive industry transparency and accountability, however it may be desirable in some contexts to coordinate with government to undertake these activities.

### 1.1. Who might be interested or affected by EITI?

At the very least, civil society should try to identify all:

- **Stakeholders with expertise related to natural resource governance and/or public accountability and transparency:** The issues raised by EITI implicate a wide-range of technical knowledge, and civil society will benefit from including stakeholders willing to share such expertise or who can utilize EITI reports in their work. Examples of the types of actors to identify include research institutions or NGOs with expertise in finance, economics, accounting, and/or law (especially contract and public law focuses).

- **Stakeholders with expertise related to wider extractive industry issues:** EITI can be used to enhance transparency on non-monetary issues relevant to the extractive industry, such as requiring disclosure of extractive companies' environmental or human rights impacts, provided the MSG agrees to include such issues. Civil society should therefore include actors with expertise regarding broader extractive industry issues that are important within the country. This may include experts on human rights, health, environment, geology, gender, or labor rights.
- **Stakeholders affected by extractive activities:** A comprehensive stakeholder mapping process includes outreach to and involvement of communities, community-based organizations, and other civil society directly affected by extractive industry activity.
- **Stakeholders capable of disseminating knowledge and conducting widespread outreach:** For transparency to lead to accountability or other changes, the information must first be disseminated and understood. To assist in this process, it may be helpful to include actors with the capacity to inform the wider population about EITI, its results, and opportunities for input, such as the media and faith-based organizations.

To snowball the outreach efforts, each identified stakeholder could be encouraged to connect their networks or constituents to the outreach process. For example, requesting that members of the PWYP network conduct outreach within their network, and that they ask each member of that network to conduct outreach within their own networks; suggesting to faith-based organizations that they request active dissemination within the communities they operate in; or, asking research institutions to share information within their academic communities.

## 1.2. Where are all stakeholders located?

While many CSOs operate in major metropolitan areas, stakeholders affected by extractive industry activity are often based in local areas. The stakeholder identification process should highlight the geographic areas of extractive activity in the country, and ensure that special care is taken to identify any of the potential stakeholders listed above that operate in these regions.

## 1.3. What sort of involvement might each group want in EITI?

The stakeholders themselves should define their desired level of involvement in EITI. Those interested in regular engagement may wish to become part of a network of more active civil society (discussed below), whereas others may only want more limited involvement.

However, stakeholders should not be excluded from the EITI process simply because they do not have sufficient resources, interest, or skills to join the MSG or to regularly participate in EITI processes. Rather, civil society representatives on the MSG should try to facilitate their involvement as much as possible, and may request government or MSG support in this process. Examples of the ways wider constituents may wish to be involved in EITI include:

- Offering specific expertise and support to the MSG representatives or wider constituency on an as-needed basis;
- Providing input and feedback on the EITI process, and helping to develop a long-term vision for EITI. For example, indicating how reporting frameworks could be designed to best suit their needs and interests, such as whether transparent reporting on issues such as environmental or human rights impacts should be a goal for EITI;
- Acting as coordinators or focal points for local-level public outreach, dissemination of EITI reports, and information-sharing;
- Learning from observing the EITI process to inform their own work and/or advocacy; or,
- Widening the space for civic engagement and attention regarding extractive industry transparency and accountability.

Civil society representatives on the MSG should liaise with this broad group, or demand the government or MSG conduct or support outreach activities, to ensure they remain informed about the EITI process and are able to meaningfully contribute.

## 2. Identifying civil society interested in actively participating in the EITI process

In many countries there is a smaller subset of stakeholders who want to actively or regularly engage with the MSG CSO representatives, or the EITI process. In many instances, this is mostly comprised of the national PWYP coalition, but can—and should—also include any other interested civil society constituents. This group can play a key role in advancing EITI.

Some examples of how these constituents can be involved in EITI might include:

- Providing regular input, critiques, and feedback on the key issues before the MSG and recommending positions or decisions the CSO representatives should take in the MSG;
- Participating in the selection of CSO MSG representatives;
- Reviewing the effectiveness of MSG representatives and ensuring their accountability to their constituency;
- Liaising with an array of constituents or networks to obtain feedback on specific issues of importance to those groups; and/or,
- Supporting the work of MSG representatives.

CSOs should consider whether it is desirable to formalize the involvement of this group by developing a code of conduct or regulations for the group itself (distinct from the code of conduct for CSO MSG representatives), and/or by establishing regular meetings of this group. Examples of issues that could be considered when formalizing the network or participation process include:

- Whether, and how, it is required that stakeholders demonstrate that they are independent of government and extractive companies. Additional membership criteria may be permissible, but should not act as a barrier to participation in the wider civil society constituency;
- How to define the mandate and decision-making procedures for the group;
- The expected level of participation from members, and/or outreach obligations to liaise within their own constituents; and,
- Other issues more broadly addressed in the Code of Conduct in **Section III**.

In some countries, it will not be necessary or desirable to have a highly formalized network or process, as it could act as a barrier to participation. In other contexts, it may be very important to set clear expectations and parameters for participation in this group, particularly if there is suspicion of government influence or infiltration within civil society. In these instances, each group may need to be vetted to ensure it meets the definition of civil society (see **Section II**) if they are going to participate in the selection of CSO representatives, contribute to decision-making, or be privy to confidential or strategic discussions. Regardless of the approach taken, it is critical that affected community members or community-based organizations are able to participate in this group even if they are not formally incorporated as non-profit entities. The eligibility criteria for this group should therefore not be as restrictive as the selection of CSO MSG representatives.

## 3. The CSO MSG Representatives

The civil society constituency must strive to select independent and effective CSO representatives for the MSG that are capable of advancing civil society's goals in EITI (see **Section II**). The representatives should work together cohesively, which includes working together to prepare for MSG meetings, and strategizing to advance civil society's goals in EITI. The development of these goals should draw on the views and input of wider civil society, to whom they are accountable. To achieve this, representatives should actively liaise with the stakeholders identified above to seek their input and keep them informed of the EITI process, and should adhere to a code of conduct developed and/or approved by their constituency (see **Section III**).

### 3.1. Liaising with all interested stakeholders

Liaising by CSO representatives on the MSG with their wider civil society constituency is a crucial aspect of the EITI Standard (Requirement 1.3(g)(iii)). If done effectively, it can be a powerful mechanism for enhancing the effectiveness and cohesion of civil society's participation in EITI. Failing to liaise may leave CSO representatives isolated, ineffective, and lacking legitimacy (for one example, see the DRC case study in Box II). At the very least, CSO representatives should liaise with their broader constituency on issues such as:

- **Developing a long-term vision for how EITI will be utilized to promote extractive industry transparency and accountability, and updating on progress to achieve this vision.** The exact goals of such liaising will depend on the demands and context of the country or area, but they may include:
  - Discussing and receiving feedback about what information that could be included in EITI reports would be valuable for improving extractive industry governance and impacts, and how that information needs to be communicated to be most useful.
  - Explaining what types of information could required in EITI reports – while clarifying that MSGs are able to agree to processes or rules beyond the EITI Standard (which sets only the minimum standards for compliance) – such as reporting on environmental, human rights, or other issues.
- **Collecting feedback and ascertaining a mandate for how to proceed on core issues under consideration by the MSG.**
- **Delivering progress reports about the MSG and EITI.** For example, this could include regular email newsletters or in-person meetings to update activities and core issues under discussion, and to identify the topics that will be discussed soon.
- **Disseminating the public information that results from the EITI process.** For example, to promote informed analysis and debate of the contents of the EITI Report, and seek feedback for how to improve the report for future years.

Liaising, outreach, and feedback sessions should be held in a format suitable to the context and proportionate to the resources of civil society. For example, outreach to select MSG members, or to review the EITI reporting framework may be more in-depth and require seeking the input of the entire constituency, whereas feedback in advance of an ordinary monthly MSG meeting may be possible to request by email amongst the smaller network of active civil society. Where possible, civil society should collectively agree to its expectations of liaising from CSO MSG representatives, and include these principles in the code of conduct (see **Section III**). Some general issues to consider include:

- **Accessibility and scope:** Care should be taken to ensure that stakeholders from different geographic regions are aware of opportunities for involvement and are able to participate. Most EITI activities have historically taken place in major cities. However, often the actors most involved in or affected by the extractive industry are located far from such centers. Where resources do not allow for CSO MSG representatives to travel to extractive areas to get feedback directly, other approaches should be explored. For example, regional representatives could be appointed with a mandate to relay information between the communities affected by extractive activity and MSG representatives.
- **Format:** For example, whether liaising occurs by email, in-person meetings, or in other ways. This may depend on the resources of the CSO constituency, and the purpose of the consultation. For example, CSOs could email to update their networks on outcomes of MSG meetings immediately after their conclusion, but then strive for accessible in-person meetings on a semi-regular basis or when issues of strategic importance to civil society are raised.

- **Notification:** Sufficient notification should be provided to networks to allow opportunities for meaningful input. To be effective, CSOs should consider how to contact their constituents. While for many stakeholders this may be via email, in some instances rural or local actors may not be reliably contacted this way. In these cases, consider how communication can ensure sufficient time to allow for feedback or sharing information.

It should be noted that liaising with constituents is an obligation placed on all MSG members, and civil society representatives should **ensure that government MSG members also liaise with the public** and undertake some of the activities discussed above.

## Box II: Democratic Republic of the Congo: Developing good practices in CSO liaising

For the first four years implementing EITI, the civil society representatives to the MSG in the DRC did not regularly liaise with their constituents to guide their participation in EITI. Instead, as was common in many of the EITI countries reviewed, CSO outreach was largely limited to publicizing the release of EITI reports.

The failure to be more inclusive came at a huge cost. Civil society outside the MSG were skeptical of the work of CSO representatives on the MSG, possibly due to unfamiliarity with the concept and collaborative nature of multi-stakeholder governance that requires CSOs to make decisions together with business and government. The release of EITI reports was often met with criticism from other CSOs, who attacked a range of issues such as the scope of the report, the choice of auditor, or concerns about the independence and effectiveness of the CSO representatives on the MSG.

In 2011, to allay these concerns, the CSO MSG representatives began to hold quarterly meetings for their wider constituency. During the two to three day meetings, the CSO representatives focus on:

- Sharing the major issues currently being discussed in the MSG, and receiving a mandate from the wider CSO participants with recommendations for the positions they should adopt regarding these issues;
- Reporting back to the constituency regarding progress in the MSG since the last meeting and whether and how they implemented past recommendations; and,
- Listening to feedback on their performance and how they can improve.

Approximately 30 CSO stakeholders regularly attend the meetings, and funding is available to reimburse travel costs for two people from each of DRC's ten provinces to attend the meetings in Kinshasa. This ensures that CSOs from across the country – and from areas where extraction takes place – are able to attend and benefit from the trainings and capacity building exercises that often supplement the meetings. Decisions at these meetings are made by consensus. While there are often disagreements and long discussions, the process has ultimately led to greater legitimacy for CSO participation in EITI, as well as more strategic decision-making and outcomes from a CSO perspective at the MSG. For example, two CSO MSG representatives were replaced with candidates that were seen as more suitable and effective by civil society overall, and recently a code of conduct was drafted for CSO representatives.

There are still possibilities for improvement in this process, such as rotating meetings so that they are held in regions with the greatest extractive activities or establishing systems to ensure all funded attendees are required, in turn, to liaise with their networks or constituents both before and after the meetings to ensure community perspectives are obtained and outcomes are relayed. However, the underlying principles of this process should be utilized by civil society in other countries, for example by asking regional CSOs to seek feedback from their regions on the same issues as is done in the DRC, and then to relay this by phone or email to CSO MSG representatives.



## Section II: Nomination and selection processes for CSO representatives

Civil society should establish a transparent and inclusive process for selecting independent, skilled, and committed MSG representatives, and should consider which criteria will lead to selecting the most suitable CSOs in their domestic EITI context. This process should be developed inclusively, and with opportunities for meaningful input from the wider stakeholder group identified (see **Section I**). The Philippines case study (Box III) provides an example of how these issues can be addressed in practice.

### 1. Agreeing to a Transparent and Inclusive Selection Process

Selection processes should be premised upon being inclusive, accessible, and transparent. The specific context, resources, and needs of each country will ultimately lead to differing approaches, however the following considerations are critical:

- **Raising awareness of EITI and encouraging involvement from civil society and the wider population.** Because many stakeholders that could contribute to or benefit from EITI may be unfamiliar with the process, civil society should try to raise awareness and build capacity among CSOs and communities before developing the nomination process (see **Section I**). This is especially important during the early stages of EITI implementation within a country, because at this time understanding of EITI may be minimal. This could require information sessions or workshops about EITI to increase awareness of the process, and to demonstrate how it may be relevant to various CSOs (including explaining that the transparency mandate of the MSG can be expanded to include transparency of other issues, such as environmental or human rights impacts). This could either be done by civil society themselves, or by requesting that the government convenes or supports such sessions as part of their obligation under the EITI Standard to liaise with constituents and disseminate information.
- **Publicizing the nomination process, a call for candidates, and the procedures for becoming eligible to participate in selecting candidates.** It is essential that this information is received by all relevant civil society and populations (especially those operating or living in regions affected by extractive activity) with sufficient notice to allow individuals to participate. While communication may often involve word of mouth, there should also be a public notification.
- **Ensuring that there is a vetting process to screen out candidates that do not meet the eligibility criteria, and/or for candidates to demonstrate their qualifications** (relevant to the qualification criteria discussed in **Section II(2)** below). This may include selecting a committee to review the qualifications and eligibility of nominees, or developing a process for candidates to publicly demonstrate their qualifications before the voting or selection process begins. Any processes should be transparent and provide clear justifications in the event candidates are deemed ineligible.
- **Establishing an election or selection process that is fair, participatory, and transparent.** This could be through an election process, consensus decision-making, committee review stages, or some other method – provided that the process is transparent, based on fair and participatory principles, and is subject to review (see **Section III**) to ensure future selections can learn from challenges or shortcomings of past experiences.
- **Ensuring the process is free from government interference.** Civil society has the right to appoint its own stakeholders (EITI Standard, Requirement 1.3(f)(ii)). While it may sometimes be helpful to draw on the support of government in this process, civil society should ensure any involvement does not negatively impact the process (see **Protecting the Cornerstone: Assessing the Governance of EITI Multi-Stakeholder Groups**, Part 3.1.1).

## 2. Agreeing to qualification criteria for CSO representatives on the MSG

To ensure the most skilled and suitable candidates are selected, the CSO constituency should agree to the basic qualifications necessary to become CSO representatives. In addition to selecting primary representatives, the constituency should also select alternates.

### 2.1. Defining “civil society”

CSO constituencies may wish to set eligibility rules that reflect the defining characteristics of “civil society” in their domestic context for the purposes of EITI. This can offer the CSO constituency some control to maintain independence, in operational and policy terms, from government and companies. At a minimum, civil society should exclude:

- Any elected or civil servant government officials; and,
- Any organizations that advocate on behalf of, or directly benefit from, the extractive industry or the national government, whether for-profit or not-for-profit. This could include consultants, industry associations, or other entities (whether for-profit or not-for-profit) that benefit from the extractive industry.

In addition, it is good practice to presume that the following types of organizations are not suitable as civil society MSG representatives (although they may be able to participate in the wider constituency):

- For-profit organizations. This includes corporations whose revenue derives from activities other than the extractive sector. For-profit organizations may include media outlets, social enterprises, or consulting firms.
- Politically affiliated individuals or organizations, which may include individuals who have made clear their intention to run for public office.

Where the civil society constituency wishes to make an exception from these presumptions, they should publicly state the reasons for doing so, ensure they have the support of the wider constituency, and check that there is no conflict of interest (see **Section III**).

### 2.2. Adopting specific eligibility and qualification criteria for CSO representatives

Each CSO constituency should take care to reflect upon the critical needs in its domestic context and set criteria to ensure independent, committed, and legitimate representatives are appointed to the MSG during each term.

- **Independence and accountability.** CSO representatives should be able to show that neither companies nor governments influence their activities, and that they will remain independent during their term on the MSG. At a minimum, this requires candidates to agree to conflict of interest provisions (see **Section III**). CSO constituencies may also consider requiring disclosure of financial records by nominees, to demonstrate that they are not funded or benefited by extractive industries or the national government.
- **Commitment to attend and participate.** CSO representatives must be required to commit to the CSO code of conduct, including expectations for attendance, preparation, and participation in MSG and constituency meetings, as well as duties for liaising with constituents in consultations, which may involve travel.
- **Legitimacy and credibility as civil society.** CSO representatives should generally submit legal documents to prove charitable or non-profit status, and verify that the candidate individual and/or their organization have not been the subject of complaints or charges that call into question their integrity, for example relating to fraud or dishonesty. Additionally, CSOs could be asked to demonstrate proof that they have a domestic network or constituency for which the candidate will serve as a clear representative.

### 2.3. Additional selection and diversity considerations

CSO representation on the MSG should strive for diversity to ensure that key perspectives and expertise are present in MSG discussions. As a result, civil society may wish to ensure that the following attributes are considered when selecting CSO representatives. This could be done by encouraging nominees with these attributes to apply, and ensuring that at least one representative addresses each of the below issues. However, care should be taken before establishing quotas or criteria regarding these issues, as they may limit the pool of competent candidates and/or may limit the possibility of using EITI innovatively.

#### 2.3.1. Relevant expertise, skills, or experience.

To ensure that the most competent and skilled representatives are selected, the constituency may wish to ask candidates to demonstrate relevant expertise or experience relating to issues in the extractive industries or transparency and accountability fields. For example, CSOs may wish to include representatives that specialize in various advocacy focuses (e.g., environment, human rights, natural resource governance), or industry sectors (e.g., mining, forestry), in order to ensure that representatives are capable of overseeing and implementing the EITI to reflect the important relevant issues in the country. In certain circumstances, particularly where EITI is being newly established and/or civil society is new to these issues, it may be enough to demonstrate a willingness to learn or a track record of making progress on other issues, because the pool of eligible candidates may otherwise become too limited.

**Use caution in establishing quotas:** Some MSGs or civil society groups have established pre-defined categories or quotas for civil society representatives based on their form or type, such as allocating specific positions for journalists, NGOs, research institutes, or faith-based institutions. This has sometimes caused difficulties long-term because it limits the pool of possible CSO representatives, and the narrower group of eligible nominees in pre-defined categories may have limited availability, expertise, or independence.

However, if a CSO constituency elects to establish pre-defined categories for representatives, the constituency should:

- Define the categories independently, with no involvement from government;
- Apply the qualifying criteria (see above) in the selection of representatives from each pre-defined category; and,
- Establish a secondary process for selecting representatives when there are no interested, committed, or available candidates from within the pre-defined category.

If these categories or quotas have been set by government or the MSG as a whole, rather than by civil society itself, they should be raised with the MSG as a breach of civil society's right to select its own representatives (EITI Standard, Requirement 1.3(f)(ii)) and new representatives should be selected by civil society at the earliest opportunity. If the MSG does not comply, the matter should be referred to EITI International or the EITI Board.

#### 2.3.2. Geographic representation from areas affected by extractive activity

Selecting an appropriate number of representatives that are based in the areas affected by extractive activities should be strongly considered by CSO constituencies where this is possible. If it is not possible, the CSO representatives should take special care to ensure that they liaise with these communities, and include this in the Code of Conduct.

#### 2.3.3. Gender representation

CSOs should strive to achieve gender equity in selecting representatives to the MSG. This may not always be possible, and if so, civil society should adopt policies to encourage female representation in the future. For example, by requiring female alternates or providing tailored training and capacity building programs. Whenever civil society's female representation is 40% or less, a public statement should be issued explaining how the constituency is taking steps to address this inequity in the future.

### 3. Documenting the selection procedure and results

For transparency and legitimacy purposes, both the procedure and outcome of the selection process should be documented and published. This should include reporting on:

- The qualification or eligibility criteria, the process for agreeing to these criteria, and highlighting any changes since the previous selection of representatives;
- The process for selecting candidates, with notes of any deviations from the planned or agreed upon procedures;
- The outcome of the process. This should include, at a minimum, the number of nominated candidates, the number of participants/voters, outcomes of the selection process; and,
- Any recommendations for future selection processes. Where possible, it may be also be helpful to identify any challenges or reflections about the selection process, to assist in improving the process in future rounds.

The MSG should be notified of the results, including the names of alternates, with a request that all communications from the MSG, national secretariat, and EITI International include the alternate as well as primary representatives.

#### **Box III: Case study of initial CSO selection and outreach in the Philippines**

In July 2012, the President of the Philippines issued an executive order that announced the country would support and participate in EITI.<sup>1</sup> The order stated that the government department responsible for establishing EITI should do so “in consultation and coordination with the mining industry and other concerned stakeholders”.<sup>2</sup> An interim MSG was appointed, and the national PWYP coalition, Bantay Kita, was tasked with facilitating the selection process for the five CSO representatives in the MSG. Bantay Kita’s mission, governance structure, membership criteria were publicly available, including CSOs active in extractive industry issues, thereby bolstering its credibility, and it had access to sufficient resources to facilitate a country-wide selection process.

While there were some CSOs that were already familiar with EITI, Bantay Kita elected to conduct an outreach program to inform interested CSOs across the country about EITI and seek their feedback.<sup>3</sup> A special effort was made to include community-based organizations operating in mining-affected areas. Bantay Kita recognized these organizations as a central stakeholder group, given their focus on extractive industry issues and proximity to affected communities. The consultations’ objectives included enabling CSOs to develop a network and agenda relating to EITI, to establish suitable criteria and selection processes for the MSG representatives, and to find strong candidates.

The outreach began in October 2012 with a training event focused on EITI in Manila. In total, 27 participants received training from CSO experts from the Philippines, as well as CSOs with EITI experience in neighboring countries, such as Timor-Leste and Indonesia. The participants in the training were then asked to assist with facilitating regional meetings.

<sup>1</sup> The President of the Philippines, Executive Order 79, *Institutionalizing and Implementing Reforms in the Philippine Mining Sector Providing Policies and Guidelines to ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources* (6 July 2012).

<sup>2</sup> The President of the Philippines, Executive Order 79, *Institutionalizing and Implementing Reforms in the Philippine Mining Sector Providing Policies and Guidelines to ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources* (6 July 2012), § 14.

<sup>3</sup> Cielo Magno *Report on the CSO Consultations on the EITI Implementation in the Philippines* (Bantay Kita, Undated) (which provides a detailed account of the outreach program).

The regional consultations were held in five regional centers, covering all three major island groupings in the Philippines, during November 2012. Bantay Kita announced the meetings on social media, and invited participants through its networks, as well as the networks of other accountability and advocacy coalitions. In total, over 80 people from approximately 40 different regions or provinces participated in the local consultations. Many individuals from different CSOs praised the inclusivity and structure of the consultations, including those who ultimately had concerns about EITI being established in the Philippines.

### **Selection Process and Criteria for CSO Representatives**

After the conclusion of the consultations, a process for selecting CSO MSG representatives was facilitated by Bantay Kita that drew on the CSO and expert feedback provided during the training and consultations. It was agreed that, of the five CSO representatives, at least two should be women. In addition, at least one grassroots representative from a mining-affected community was required. It was stated that they should strive for a mix of community-based organizations and NGOs, as well as broad geographical and inter-generational representation. When the selection process took place, it was further agreed that there must be strict geographical diversity, with a CSO representative from each of the three island groupings, and two from the capital area.

The selection process was transparently recorded and can be viewed as an annex to the Philippines EITI Candidature application on the EITI International website.<sup>4</sup> It was agreed that a screening committee, comprising individuals from each of the three island groupings in the Philippines, would be established to vet all nominees for compliance with the core criteria and requirements. These criteria include that:<sup>5</sup>

- The nominee “must not have any affiliation, any direct or indirect engagement, or conflict for interest with the extractive industries whether past or present”;<sup>6</sup> and if the nominee had received any compensation or grants from a mining company, they had to provide justifications for compensation and relationship to the company.
- The nominee could demonstrate strong negotiation and public relations skills, a commitment to the principles of PWYP, and a history of and integrity in advocacy. In addition, the nominee had to hold membership in a legal organization, or be affiliated to a credible organization, and be endorsed by one of the organizations that participated in the CSO EITI consultations.

In addition, the nominees were required to provide a letter expressing their commitment to attend and be prepared for all MSG/EITI activities. The letters also had to outline their relevant expertise, as well as identify any associations or interests in the extractive industry.

In January 2013, the selection process took place. Over 65 individuals from CSOs across the country participated, and a number of international CSO representatives joined. Ultimately, however, no voting was required, as ten individuals were nominated for the ten positions (five official MSG members, five alternates). It was, therefore, agreed that the nominees should determine who would be regular versus alternate members, based on their availability and respecting the gender and geographic diversity requirements.

<sup>4</sup> Cielo Magno, Report on the CSO Consultations on the EITI Implementation in the Philippines (Bantay Kita, Undated). Also, Philippines EITI Candidature Application, Annex J, available at <https://eiti.org/files/philippines/2013-04-ANNEXES-PH.pdf>.

<sup>5</sup> Cielo Magno, Report on the CSO Consultations on the EITI Implementation in the Philippines (Bantay Kita, Undated), 16.

<sup>6</sup> Cielo Magno, Report on the CSO Consultations on the EITI Implementation in the Philippines (Bantay Kita, Undated), 16.

### Development of a CSO agenda and mandate

A clear agenda and mandate for the CSO representatives was also developed. It included a number of issues, such as: ensuring reports are disaggregated at the operational level for each company, and include political contributions; recommending that the government go beyond minimum compliance in EITI; including reporting on human rights and environmental issues; and, eventually becoming a venue for reviewing companies' compliance with contracts, and tracking expenditure of revenues from extractive industries.

In addition, community-based organizations and elected local officials also encouraged capacity-building to support implementation of a sub-national process, which would enable accountability at the local level and encourage the inclusion of small-scale mining (see Box 9 in Part 4.2 of the **Assessment of Multi-Stakeholder Governance in the EITI Report**).

## Section III: A code of conduct for CSO representatives

A code of conduct clarifies the expectations for CSO representatives, enhancing their legitimacy and effectiveness to their constituency. It should apply to both alternates and primary representatives, to ensure alternates are given as much as exposure to the MSG and EITI as possible to prepare them for standing in for the primary at short notice or if they are subsequently elected as a primary member.

The code of conduct should be publicly accessible and, where possible, available in the major languages spoken in regions where extractive activities take place. While it may be most appropriately drafted by the smaller group of actively engaged CSOs identified in **Section I**, all civil society stakeholders should have the opportunity to comment or provide input before it is finalized or during review processes.

### 1. Specify the nomination and selection process for representatives

The code of conduct should clarify how interested individuals can get involved and become nominated or selected as CSO representatives to the MSG by documenting:

- The process for nominating candidates for selection, including the eligibility criteria and qualifications necessary for candidates to be selected;
- The methods to publicize the call for candidates and notification of the selection process;
- The process for candidates to demonstrate their qualifications. This may include a committee to review the qualifications and eligibility of nominees, or a process for candidates to publicly demonstrate their qualifications before voting or selection begins; and,
- The procedures for electing or selecting representatives, including any special requirements for determining primary versus alternate mandates. In designing selection procedures, CSOs should consider mechanisms to ensure the selection process is transparent and public.

## 2. Specify the duration of the mandate, and term limits for representatives

The code of conduct should specify the duration of CSO representatives' mandate appointment to serve on the MSG. CSOs should consider including term limits, specifying the number of re-appointments allowed, and whether representatives can serve consecutive terms. These limits offer opportunities to rotate representatives and allow new voices to be added to the MSG. To enhance continuity and institutional knowledge sharing within the MSG, selection to the MSG should be staggered so that only a limited number of civil society representatives' terms expire in a given year. If all CSO MSG representatives' terms expire at the same time, this may be disruptive to the institutional knowledge and stability of civil society and the MSG.

## 3. Set the expectations for attendance, preparation, and participation at MSG, working group, and civil society constituency meetings

It may be helpful to set clear expectations for the commitment and responsibilities of CSO representatives to the MSG. To establish these expectations, CSOs should consider including provisions such as:

- Expectations for preparing and participating actively in MSG meetings, including corresponding with other CSO representatives before and/or after MSG meetings to establish common positions and strategize;
- Duties for joining and participating in working groups related to MSG activities; and,
- Minimum requirements for permissible attendance at MSG meetings. This could be a general expectation of attendance, or could be expressed as a minimum number or percentage of meetings attended per year. Provisions should clarify permitted bases for absence from meetings, whether the presence of designated alternates excuses the absence of primary members, and any consequences for frequent absences.

## 4. Establish the obligation to liaise with stakeholder constituents

The code of conduct should outline the obligations of CSO representatives for liaising with stakeholder constituents, as identified in **Section I** above. The code of conduct should not be unduly prescriptive, but may want to establish general expectations regarding:

- **When liaising will take place:** This may include agreeing to hold a certain number of regular meetings each year, or before/after MSG meetings to update the constituency on progress and seek their input. Alternatively, or in addition, the code could require CSO representatives to liaise before discussing specific issues in the MSG, such as modifying EITI reporting frameworks or when core MSG processes are under review.
- **Procedures for liaising:** CSOs may wish to agree to procedures regarding: how meetings will be announced; who will be invited or welcome to attend; where they might take place; how constituents will have the possibility to provide input or how decisions will be made; and, any other logistical considerations.
- **Follow-up and documentation:** Where possible, liaising efforts should be documented, and recommendations or action points should be checked for updates at future meetings. It may be helpful to require this follow-up in the code of conduct.

## **5. Establishing independence provisions and codifying how to manage real and potential conflicts of interest**

The code of conduct should codify the independence expected of CSO representatives, both as established during the selection process and regarding their involvement and conduct in the MSG. In addition to prohibiting direct financial or operational interests in the other stakeholder groups (government and companies), it should include establishing safeguards to mitigate and prevent conflicts of interest. There should also be clear procedures for investigating, adjudicating, and reporting suspected or confirmed conflicts of interest, including potential sanctions and expectations for representatives (see Section 6, below).

### **5.1. Conflict of interest provisions**

- Establishing a clear definition of what constitutes a conflict of interest. This should include consideration of real or potential financial and operational conflicts, as well as direct and indirect conflicts (e.g., where benefits might accrue to family);
- An explanation of disclosure requirements for CSO representatives on the MSG or involved in the national coalition, steering committee, or network, to disclose information that may lead to perceived or actual conflicts of interest based on their role and responsibilities; and,
- The management procedures where a conflict of interest arises. These may range from requiring the CSO representative to refrain from decision-making on matters where they are conflicted, through to resigning from the MSG.

### **5.2. Rules regarding receiving payments or benefits from government, companies or the MSG for participating in the EITI process**

To protect the credibility and independence of CSO representatives, the code of conduct should establish an official policy regarding payments to CSO representatives from government, extractive companies, the national EITI secretariat, or MSG in conjunction with their participation in the MSG. If such payments are not prohibited altogether, there should be full disclosure of any payments received from these actors. The payments should not exceed the reasonable cost of attending MSG meetings, even if they are fixed per diems or other flat-rate payments.

### **5.3. Disclosure of financial accounts**

Ideally, CSO representatives should disclose their financial accounts for a period during and surrounding their involvement on the MSG. At the very least, there should be full disclosure of all funding received to participate in EITI, including specific grants received from external actors, such as international NGOs or donors.

## **6. Create procedures to handle disciplinary complaints, and review the code of conduct**

Codes of conduct should also explain the process for raising and resolving potential breaches of the code of conduct, including disciplinary procedures and potential penalties where representatives are found to have violated the code. This may include suspension or expulsion from the CSO constituency of the MSG.

The code of conduct should include a provision that it will be publicly reviewed on a regular basis (for example, every three years) to ensure it is serving to bolster the legitimacy, accountability, and credibility of representatives, and yielding appropriate disclosures and reports.