

EITI ACCOUNTABILITY AND GRIEVANCE MECHANISMS: PERSPECTIVES FROM CIVIL SOCIETY AND NATURAL RESOURCE GOVERNANCE ADVOCATES

WORKSHOP REPORT

Summary report of a workshop held on August 17-18, 2016, in Barcelona, Spain



TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
ABOUT THE WORKSHOP	4
BACKGROUND	5
SUMMARY OF KEY DISCUSSIONS	10
ACCOUNTABILITY MECHANISM PROPOSALS	
PREVENTION: WORKING GROUP ON CIVIL SOCIETY PROTECTION	13
MONITORING: REFORMING EXISTING MONITORING AND RESPONSE MECHANISMS	16
REMEDATION: GRIEVANCE MECHANISM	19
PARTICIPANT LIST	
IN-PERSON PARTICIPANTS	22
REMOTE ADVISORY GROUP	23
APPENDIX	
NON-JUDICIAL GRIEVANCE MECHANISMS: BENEFITS AND BEST PRACTICES	24

EXECUTIVE SUMMARY

The Extractive Industries Transparency Initiative (EITI) is a global multi-stakeholder initiative (MSI) that was established to promote open and accountable management of natural resources. The initiative brings together governments, companies in the extractive industries, and civil society organizations to collect data and publish regular reports about revenue flows and other issues in the oil, gas, and mining sectors. These “EITI reports” are intended to promote debate about the accountability and management of natural resource revenues and other issues related to the extractive industry. The success of the initiative relies, in part, on the ability of the public, civil society, and other critical voices to freely discuss the contents of the reports and raise questions about natural resource governance.

EITI has various mechanisms to ensure that members follow the EITI rules (known as the “EITI Standard”), such as periodic monitoring of countries and requiring countries to submit annual progress reports. However, stakeholders both within and outside of EITI have raised concerns that the initiative does not have trustworthy, reliable, and effective mechanisms for stakeholders to raise concerns about breaches of the EITI Standard and its associated processes. These range from the lack of a clear dispute resolution process for raising concerns about the internal governance of EITI as a global organization, through to the absence of an accessible process for filing safe, confidential reports of serious violations of the EITI Standard or allegations of direct retaliation for activities related to EITI or natural resource governance advocacy.

MSI Integrity convened this workshop to explore whether mechanisms should be developed or improved to close the current accountability gaps in EITI, and to begin exploring how those gaps might be closed. The workshop brought together natural resource governance activists (some of whom have experienced retaliation or reprisal in EITI countries for their advocacy); leading experts on international accountability mechanisms; and civil society representatives from the EITI International Board.

The workshop focused exclusively on the concerns of natural resource governance advocates, and civil society more generally, given the particular challenges they face working in and around EITI. In many EITI-implementing countries, natural resource governance activists risk persecution, intimidation, and harassment for their EITI-related work. While these actions would amount to a breach of part of the EITI Standard, called the Civil Society Protocol, during MSI Integrity’s previous research into EITI, we encountered several instances of serious violations of the Civil Society Protocol that were neither documented nor brought to the EITI International Board.¹ Individuals expressed that this was because they either did not know if they could raise such complaints, or they feared the consequences of what might happen if they spoke up.

Concerned by this apparent impunity, MSI Integrity sought to convene a preliminary discussion about how to address the current shortcomings in EITI from the perspective of those most directly affected by the accountability gaps. This led to prioritizing involvement of participants from EITI-implementing countries with first-hand experience working on the initiative, with a particular focus on those working in countries with limited civic freedom or who had experienced retaliation or reprisal for their work. However, it is hoped that future dialogues may be held with other stakeholders who share concerns about accountability gaps in EITI.

¹ See MSI Integrity *Protecting the Cornerstone* (2015) <<http://www.msi-integrity.org/wp-content/uploads/2015/02/MSI-Integrity-Protecting-The-Cornerstone-Report.pdf>>.

Some of the major conclusions and discussion points that emerged over the course of the two-day workshop included:

- Threats to individuals and generally shrinking civic space are not being accurately detected in the EITI system. This is in part because the validation process does not have detailed information about the real degree of freedom or civic space in a country, and because there are not trusted processes for raising complaints with EITI.
- The Rapid Response Committee has not been an effective tool for addressing time-sensitive breaches of the EITI Standard or threats to civil society. Very few individuals beyond the EITI International Board are familiar with the mechanism, which means it is underutilized. In the handful of instances that it has been used to address issues relating to civil society crackdowns or abuses, the outcomes were seen by many participants as highly political, unpredictable, and problematic. The Committee lacks several basic qualities that are seen as essential to making grievance mechanisms effective, e.g. being transparent, predictable, independent, and accessible; having fair decision-making processes; and having appropriate remedial powers.
- Any new or reformed grievance/accountability mechanism must be carefully designed so as to avoid causing more harm than good. There are often real risks involved in filing complaints alleging that a government or company has harassed an individual or is acting inconsistently with the EITI Standard, and the processes need to be thoughtful about how to enable and empower stakeholders to genuinely raise such concerns with EITI. In particular, participants were skeptical of complaints mechanisms at other MSIs that offer very limited options for remedy. Any new or reformed processes must draw on good practice and lessons learned in other initiatives. These good practices are presented in summarized form in this report and also as an appendix.
- Some participants favored modifying existing EITI processes such as the Rapid Response Committee and improving the validation process to address accountability gaps, whereas others in the group believed these processes could never a) pre-emptively detect or monitor risks to natural resource advocates, or b) remediate or respond to harms experienced by individuals. On the second day, participants branched into three groups based on participant interests. Group one focused on developing a new grievance mechanism; group two focused on developing monitoring or early warning systems; group three focused on reforming EITI's other existing tools. The workshop ultimately came to the view that a combination of new tools and reforms to existing processes might offer the most robust approach.
- It should be noted that many country-level advocates believed that EITI had made little impact for those impacted by the extractive industries or engaged in natural resource governance advocacy at the local level. As a result, some participants from implementing countries were reluctant to invest energy in reforming EITI, fearing it was futile and that the government and company representatives on the EITI Board would not support meaningful reform of EITI.

Three proposals for improving EITI's accountability mechanisms

The workshop initially focused on developing a mechanism that could either resolve alleged violations of the EITI Standard generally, or address instances of alleged retaliation for activities related to EITI or natural resource governance advocacy. By the end of the two days, participants emerged not only with a proposal for a grievance mechanism, but also with two other complementary proposals.

We note that because the workshop was limited to civil society constituents, the focus was on the Civil Society Protocol and the needs of civil society regarding risks to civil society participants in select EITI-implementing countries. Input from additional EITI constituents may expand the scope of the mechanisms developed in the workshop or lead to the development of additional mechanisms to address other constituency needs. For example, other constituents may seek to address wider breaches of the EITI Standard or the failure of a particular multi-stakeholder group to deliver on its public commitments.

The three example proposals for improving EITI's accountability developed during the workshop are:

1. Establishing a system of national-level civil society monitors who report to a new *Working Group on Civil Society Protection*. The working group would proactively monitor the condition of civil society in EITI-implementing countries and respond to, or provide feedback on, in-country developments that threaten civic space and undermine the Civil Society Protocol.
2. Reforming existing EITI bodies and processes with a focus on updating the member application and validation processes, as well as the Rapid Response Committee, to account for civil society-specific needs and protections.
3. Developing a non-judicial complaints filing process designed to address stakeholder grievances around rights violations resulting from natural resource advocacy or other egregious breaches of the Civil Society Protocol.

Participants registered their ongoing interest in advancing these reforms, with some offering to join a special advisory group to support the advancement of these reforms in EITI.

ABOUT THE WORKSHOP

MSI Integrity convened the EITI Accountability Mechanisms Design Workshop on August 16 and 17, 2016, in Barcelona, Spain. The workshop was facilitated by Shape the Law, with assistance from MSI Integrity and financial support from the Open Society Foundation.

Workshop participants included leading human rights and accountability mechanism experts, civil society representatives from the EITI International Board, and local natural resource governance advocates from EITI countries. More than half of all workshop participants had extensive experience working on, or filing complaints with, accountability mechanisms, including the International Finance Corporation Compliance Advisor/Ombudsman, the Roundtable on Sustainable Palm Oil, the Organisation for Economic Cooperation and Development National Contact Points, World Bank Inspection Panel, the Asian Development Bank Accountability Mechanism, and the Fair Labor Association Third Party Complaint Process, among others. The majority of participants had direct experience working on EITI and were from EITI-implementing countries, such as Azerbaijan, Cameroon, Colombia, Ghana, Nigeria, Niger, and Myanmar. Several participants had faced persecution for their EITI-related activities or worked on behalf of communities and individuals who had. As such, the discussion was confidential, and this report has been released only with the prior review and agreement of the attending individuals.

To focus the workshop on knowledge-sharing, the workshop format was derived from design thinking principles, which emphasize problem solving through interactive and collaborative discussion. Participants were given a set of advance reading materials including a copy of the EITI Standard and Civil Society Protocol, a background document on EITI and its existing accountability mechanisms, a briefing paper on non-judicial grievance mechanisms, and an example of an international complaints filing process.² The majority of the workshop was devoted to sharing participants' experiences and expertise and applying these to the EITI context through a variety of exercises and discussions. Participants were encouraged to ground their conversations and recommendations in personal experience, and applied their recommendations or suggested improvements for EITI to a series of case studies based on historic anonymized instances of civil society experiences of retaliation linked to EITI (many of which have never been discussed publicly or raised with EITI). Throughout the two-day convening, participants were also offered the opportunity to consult with a remote advisory group of experts (see Participant List), including the EITI Secretariat, through email and Skype.

Due to the sensitive and unresolved nature of a number of the cases shared at the workshop, this initial conversation was held without the presence of government, company, or EITI officials. It is hoped that similar discussions with other EITI stakeholders will be able to be held in the future.

² Prior to the workshop, a training was held on EITI's essential functions and features. All participants without previous experience working directly on EITI were asked to attend.

BACKGROUND

WHAT ARE ACCOUNTABILITY MECHANISMS AND GRIEVANCE MECHANISMS?

In the EITI context, accountability mechanisms are formalized processes through which EITI members and the EITI itself (i.e. the EITI Board, Secretariat, and Association) can be held to account for their commitments and promises related to joining or establishing the EITI. Accountability mechanisms can take lots of different forms, such as monitoring and reporting on individual member compliance, through to sanctioning members if they are found to be non-compliant.

Grievance mechanisms are a type of accountability mechanism. A grievance mechanism is a formal, legal or non-legal (or 'judicial/non-judicial') routinized complaint process that can be used by individuals, communities, and civil society organizations who are negatively affected by specific activities or operations.³ One of the key aspects of a grievance mechanism is that it should provide access to a remedy for the harm or abuses suffered. Non-judicial grievance mechanisms — which were the focus of the workshop — are becoming increasingly common in multi-stakeholder initiatives, international financial institutions, as well as at the company and project levels. For more information, please refer to the briefing paper on non-judicial grievance mechanisms prepared by Accountability Counsel for the workshop (see appendix).

EXISTING ACCOUNTABILITY MECHANISMS AND CURRENT GAPS IN EITI

What are EITI's current accountability mechanisms and what are its accountability gaps?

EITI has a number of accountability mechanisms. The primary mechanisms relating to the Civil Society Protocol are analyzed below, with an outline of the gaps or shortcomings that have been documented in those processes.⁴ This is a modified version of the materials given to participants prior to the workshop which helped frame the current gaps and challenges within EITI for the discussion.

(1) Periodic monitoring of EITI countries (or "validation")

EITI monitors countries for their compliance with the EITI Standard through a periodic

³ SOMO (Centre for Research on Multinational Corporations) "What is a grievance mechanism?" <<http://grievancemechanisms.org/intro/what>> (accessed August 3, 2016). In some circumstances, grievance mechanisms may also be designed specifically for labor groups and unions – as distinct from other civil society organizations.

⁴ It is important to note that the Civil Society Protocol is grounded in Requirement 1.3 of the EITI Standard, which is necessary for any EITI implementing country's candidacy and compliance. Under Requirement 1.3, civil society must be fully, actively, and effectively engaged in the EITI process; the government must ensure that there is an enabling environment for civil society participation with regard to relevant laws, regulations, and administrative rules as well as actual practice in implementation of the EITI; and stakeholders, including but not limited to members of the multi-stakeholder group, must be able to speak freely on transparency and natural resource governance issues and be substantially engaged in the design, implementation, monitoring, and evaluation of the EITI process to ensure that it contributes to public debate; amongst other provisions. The Civil Society Protocol is referenced throughout this report as it provides a more detailed account of the protections for, and role of, civil society in EITI. However, readers should assume that references to the Civil Society Protocol include those provisions listed under Requirement 1.3. EITI Standard (2016) at 13.

process known as “validation.”

Who and how:

Stage one: The EITI International Secretariat collects data and consults with the country’s multi-stakeholder group (MSG) and “other key stakeholders” to assess compliance with the EITI Standard. This may include an in-country visit, but it is not required. The Secretariat prepares a report that is submitted to the validator. The country’s multi-stakeholder group is invited to comment on the report.

Stage two: Independent validators will take “a risk-based approach for spot checks, and further consultations with stakeholders.”⁵ The validator may comment on or amend the Secretariat’s report and prepares a short summary for submission to the Board. This stage does not involve an in-country visit.

Stage three: A committee of the EITI Board, the Validation Committee, reviews the summary assessment and any feedback from the country’s multi-stakeholder group. It makes a recommendation to the EITI Board on the country’s compliance with the EITI requirements.

Stage four: The EITI Board makes a final determination of compliance. The EITI Board decides by consensus. Where consensus is not possible, $\frac{2}{3}$ of each constituency (civil society, companies, and implementing governments) must vote in favor.⁶

When?

EITI-compliant countries are re-validated every three years. In the event that concerns are raised about a compliant country’s implementation of the Standard, “the EITI Board reserves the right to require the country to undergo a new Validation.”⁷

What are the shortcomings of validation as an oversight mechanism?

- The validation process has historically failed to detect breaches of some fundamental requirements of the EITI Standard, such as the independence of the selection of civil society to the MSG and whether MSG representatives are adequately liaising with their constituencies.⁸
- Validators are not required to have any training or expertise in human rights and civic space issues, nor any familiarity with the local language/culture.
- The validation methodology is focused heavily on technical data collection/production, rather than issues relating to civic space, public debate, or the condition of civil society. For example, validation does not require:

⁵ EITI *EITI Standard* (2016) <https://eiti.org/sites/default/files/documents/english-eiti-standard_0.pdf> at 40.

⁶ Once a validation determination has been made (either suspension, delisting or the country designation as EITI candidate or EITI compliant), the EITI implementing country in question may petition the Board to review its decision. In reviewing such petitions, “the EITI Board will consider the facts of the case, the need to preserve the integrity of the EITI and the principle of consistent treatment between countries. The EITI Board’s decision is final.” EITI Standard (2016), EITI Standard Requirements 8.8 at 38.

⁷ EITI, *EITI Standard* (2016) <https://eiti.org/sites/default/files/documents/english-eiti-standard_0.pdf> EITI Standard Requirements 8.3 (b) at 34. It is important to note that there are yet very few EITI Compliant countries. Moreover, all countries must be validated within 2.5 years of becoming candidates, unless they successfully apply for an extension. Countries that are non-compliant are validated again 3-18 months later, timing according to board discretion. Progress against corrective actions is then assessed.

⁸ See: MSI Integrity *Protecting the Cornerstone* (2015) <<http://www.msi-integrity.org/wp-content/uploads/2015/02/MSI-Integrity-Protecting-The-Cornerstone-Report.pdf>> at Sections 3 and 4.

- Interviews with civil society actors outside the MSG;
- Field visits to regions affected by extractive activities (for example, to understand if EITI Reports have been disseminated and debated in areas of greatest importance or whether these stakeholders are aware of the opportunities to liaise with their constituent government, civil society, or company representatives in the MSG); or
- Ensuring that interviews are confidential and secure, which may limit how frankly and openly interviewees speak with validators. For example, there are not yet protocols or safeguards to prevent reprisals against interviewees or whistleblowers.
- There may be up to three years between validations, during which there is no formal oversight of a country's compliance with the EITI Standard.

(2) Rapid Response Committee

The EITI Board has a Rapid Response Committee (RRC). Minutes relating to the formation of the Committee state that it was designed to react with “rapid responses to political developments” in instances when “civil society or other stakeholders in candidate countries are excluded from playing a fully active role in monitoring revenue transparency.”⁹ However, there are no public terms of reference, by-laws, or processes describing the RRC or how issues can be brought to its attention.

- **Who:** The RRC is composed of government, company, and civil society representatives from the EITI Board. EITI Secretariat staff also participate.
 - **Independence:** The RRC is not independent from the Board. It does not have any publicly known conflict of interest provisions or requirements for recusal if RRC members are implicated by a situation considered by the RRC.
 - **Human-rights expertise or expertise investigating issues relevant to the Civil Society Protocol:** Although Committee members may happen to have human rights experience, this is not a requirement for Committee membership.
- **Scope and mandate:** This is unclear beyond the statement in the initial minutes (which required some research to obtain) referenced above. It is unknown whether or when any cases have been brought to the RRC and been deemed “outside” its mandate.
- **Avenues for filing complaints/requesting anonymity:** There are no publicly stated processes for filing a complaint or requesting anonymity or security after filing.¹⁰ In practice, EITI CSO Board members or the EITI Secretariat refer matters to the Rapid Response Committee for consideration. It is unknown how many matters have been referred to the RRC and how many of those were ultimately considered by the RRC (see Transparency below).
- **Decision-making process:** There are no clearly defined public processes, but as an EITI Board committee it is bound by the EITI Articles of Association, which require that decisions be made by consensus if possible. Technically, if that is not possible, then voting is permitted; however, it is unclear if that applies in the RRC.
- **Decision-making/remedial power:** It does not have binding decision-making

⁹ EITI, *Minutes of the 4th EITI Board Meeting* (2008)

<https://eiti.org/sites/default/files/documents/boardmeeting_004_minutes.pdf> at 4.

¹⁰ Indeed, during in-country investigations by MSI Integrity in 2014 in Azerbaijan, Cameroon, DRC, Philippines and Tanzania, very few local or national stakeholders (as opposed to those involved with EITI at the international level) were aware of the existence of the Rapid Response Committee.

powers or remedial powers. It can issue recommendations, but these must then be considered by the EITI Board.

- **Transparency:** There is little known about the RRC, including a lack of transparency about the number of situations it has discussed, the outcomes of those discussions, and the decisions it has made. The EITI Board minutes include only highly summarized presentations of anything raised by the RRC at the Board. When the EITI Board adopts the RRC recommendations, these are publicized, but the RRC itself does not make information available about its operations.

(3) *Referring cases to the national multi-stakeholder group*

The Civil Society Protocol requires that breaches “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.”¹¹ A small handful of EITI countries have considered developing dispute-resolution mechanisms or ways to raise grievances in the context of EITI, but neither MSI Integrity nor Publish What You Pay is aware of whether these have been established.

(4) *Other avenues*

Some other avenues in EITI are technically open to raising complaints or providing oversight. For example:

- Technically, anyone could raise a concern with the EITI International Secretariat.
- Technically, anyone could directly request that the EITI Board conduct an early validation of a country, including where there are concerns about civil society participation.¹²

Note however, that the procedure and methods for raising complaints with the Board or Secretariat are not explained anywhere and technical ability to file these complaints is not well publicized. Finally, an EITI Board member could also raise an issue during the EITI Board meeting or in implementation reports about a country’s progress.

EITI: need for improved accountability mechanisms

Globally, many civil society actors face increasing legal restrictions, pressures, and harassment from governments that limit their ability to work and draw attention to issues seen as counter to government interests. Even if they are not directly linked to EITI activities, such barriers or reprisals against civil society expression can have a chilling effect on advocates working on natural resource governance. Because natural resource governance can involve, among other contentious activities, asking challenging questions to government or industry about financial flows and uses of revenues derived from resource extraction, retaliation against civil society is an especially grave threat in the context of EITI.

EITI’s commitment to the protection of natural resource governance advocates through the Civil Society Protocol is admirable. However, the Civil Society Protocol can only truly be meaningful if effectively enforced. At present, EITI lacks effective

¹¹ EITI, *EITI Standard* (2016) <https://eiti.org/sites/default/files/documents/english-eiti-standard_0.pdf> Civil Society Protocol, para 3.1 at 45.

¹² EITI, *EITI Standard* (2016) <https://eiti.org/sites/default/files/documents/english-eiti-standard_0.pdf> EITI Standard Requirements 8.3 (b) at 35.

means to monitor and address breaches of the Civil Society Protocol, leaving civil society actors in EITI-implementing countries highly vulnerable to harassment and retaliation. Though EITI has a few existing accountability mechanisms, these have significant shortcomings and are particularly insufficient for addressing threats to civil society.

For example, EITI uses the validation process to monitor member compliance with the EITI Standard. However, validation monitoring is infrequent (occurring only every three years), does not require field visits or interviews with civil society actors outside the MSG, and is conducted without confidentiality protocols.¹³ Furthermore, Validators are not required to have any training or expertise in human rights and civic space issues or any familiarity with the local language and culture. Alternatively, breaches of the Civil Society Protocol might be addressed by the RRC. Minutes relating to the formation of the committee state that it was designed to react to instances with “rapid responses to political developments” in instances when “civil society or other stakeholders in candidate countries are excluded from playing a fully active role in monitoring revenue transparency.”¹⁴ However, the RRC lacks independent decision-making power and a publicly stated complaints filing process, making it weak and inaccessible. Like the validation process evaluators, RRC members are also not required to have expertise on human rights or issues around civic space, evidencing a general trend whereby EITI’s accountability mechanisms focus heavily on technical data, but fail to adequately assess or address issues relating to civic space, public debate, or the state of civil society.

Thus, EITI is currently faced with several distinct accountability gaps. Firstly, many serious violations of the EITI Standard – including the Civil Society Protocol – are not being recorded or remediated due to a lack of effective and trusted on-the-ground monitoring and reporting mechanisms. Secondly, stakeholders lack an effective means to file allegations of direct retaliation for activities related to EITI or natural resource governance advocacy. Finally, EITI’s existing accountability mechanisms do not adequately address the general threats to civic space that have inhibited civil society from enforcing the initiative to the fullest extent. These gaps in mind, the goals of the workshop were:

- To share experiences and lessons learned about accountability mechanisms from other contexts, including international financial institutions and other multi-stakeholder initiatives.
- To identify the key qualities/elements for an effective mechanism in the EITI context, drawing from group experiences of the operation of accountability mechanisms in other contexts as well as a particular understanding of EITI.
- To provide EITI Board members with details of potential accountability mechanisms to use as reference as they consider how to address shrinking civic space (e.g. freedom of expression and freedom of assembly) and increasing threats to civil society in many countries.

¹³ See footnote 7.

¹⁴ EITI, *Minutes of the 4th EITI Board Meeting* (2008) <https://eiti.org/sites/default/files/documents/boardmeeting_004_minutes.pdf> at 4.

SUMMARY OF KEY DISCUSSIONS

On the first day of the workshop, participants shared experiences highlighting EITI's accountability gaps and explored the existing accountability mechanisms within EITI. There was extensive discussion about the elements that made accountability mechanisms within other institutions and initiatives effective (or ineffective). On the second day, participants scoped which existing EITI accountability mechanisms could meaningfully address the previously identified accountability gaps and then focused on developing new tools to address any unmet needs, drawing from lessons learned in other initiatives and institutions.

The Rapid Response Committee: Challenges and Successes

Participants listened to a background presentation on the Rapid Response Committee (RRC). This presentation was based on research conducted by former EITI International Board Members Ali Idrissa (also a former RRC member) and Marinke van Riet, who are currently evaluating the effectiveness of the RRC through an in-depth analysis of the four cases that have been brought to the attention of the Committee that concern civil society freedom and civic space.

Participants were given fictionalized versions of three cases brought before the RRC — Azerbaijan, Niger, and Myanmar — without knowing their outcomes. Drawing from their experience in other complaints processes or by putting themselves in the shoes of the individuals concerned, the participants discussed the process they felt should have been followed and their desired outcomes or remedies. Across all three cases, workshop participants agreed that the RRC's outcomes in practice were highly politicized, unpredictable, and problematic.

Examples of concerns raised about the RRC by participants and/or during the presentation include:

- A concerning lack of information about *how* to file a complaint with the RRC, and the Committee's subsequent decision-making processes and powers. There is no public terms of reference outlining the power or processes of the RRC on the EITI's website.
- The RRC's lack of independence from the EITI Board and Secretariat and lack of conflict of interest provisions. There are no processes for how complaints should be handled if the company or country implicated participates on the RRC or EITI Board, or if the complainant distrusts or implicates the International Secretariat. It is also unclear what power the RRC has to make decisions without first obtaining the permission of the EITI Board.
- Lack of anonymity or confidentiality provisions for complainants. This is critical given that complaints may implicate an individual's home country/national government.
- General lack of awareness of the mechanism amongst those it is supposed to protect. Many participants in the room were unfamiliar with the RRC, despite working heavily on EITI in their own countries, and would not have known that they could file a complaint.

Analysis of other International Complaints and Accountability Mechanisms

Participants analyzed existing non-judicial grievance mechanisms, including the UTZ Certified Grievance Procedure, the Open Government Partnership Response Policy, the International Finance Corporation Compliance Advisor/Ombudsman, and the Roundtable on Sustainable Palm Oil Complaints System. To conduct this analysis, participants used the criteria for effectiveness of grievance mechanisms set out by

the United Nations Guiding Principles (see appendix), and also expanded to include further criteria. The overall view was that each of the mechanisms had major shortcomings and lacked multiple critical accountability mechanism features identified by participants (see below). EITI would need to address and learn from these failures when developing its own mechanism.

Throughout the analysis, the following features emerged as critical to any mechanism:

1. **Clarity of mandate.** Clarity regarding who can file a complaint and whether a mechanism can initiate an investigation absent a complaint.
2. **Clear and fair processes.** Simple and clear processes with robust internal checks and balances that lead to predictable outcomes. Appropriate due processes (e.g. right to have representation, rights for respondents to reply) to be built in. An appeal process to be established.
3. **Timeliness.** Clear timeframes for completing each step of the process.
4. **Independence.** Conflict of interest protections and independence from the initiative's other governance bodies, as well as the option for complainants to object to selection of complaint review committee members.
5. **Binding power.** Clear and binding mandate and decision-making power, including the power to grant effective remedies without needing approval from other parties or bodies.
6. **Expertise and competence.** Clarity of the decision-maker, who should have independence (see above), but also expertise about the issues likely to be raised.
7. **Confidentiality.** Whistleblower or confidentiality protections.
8. **Transparency.** Transparency of process and outcomes, including the complaints received, status of complaints, and the outcomes and rationales for decisions made. This needs to be balanced against the confidentiality and safety concerns of complainants.
9. **Accessibility.** Well-known to potential communities and/or other users (e.g. local civil society) and with processes that are accessible and easy for the intended users. In the multi-stakeholder setting, this means being both accessible and operable at both the international and national levels.
10. **Support for complainants.** The ability to provide technical assistance for complainants; for example, to document or prepare complaints, or present evidence.
11. **Sufficiently resourced.** Sufficient funding is necessary to enable proper investigations. Funding sources (and accountability structures — who does the mechanism report to?) must not impair the independence and impartial nature of the mechanism.
12. **Effective remedy.** Ability to provide a range of remedies (such as mediation, intervention, or compensation) to redress the harm caused. This may range from issuing truth-seeking reports or requesting apologies, through to suspending or otherwise sanctioning a member.¹⁵

Considering Accountability Mechanisms in the EITI Context

As a means of further exploring the appropriateness of a grievance mechanism for the EITI context, the group proceeded into a discussion about the nature of the complaints a new or improved accountability mechanism would be designed to

¹⁵ As noted by the UN Guiding Principles on Business and Human Rights, accountability mechanisms, such as grievance mechanisms, should also serve as “a source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.” See UN Office of the High Commissioner on Human Rights *Guiding Principles on Business and Human Rights, Implementing the United Nations 'Protect, Respect and Remedy' Framework* HR/Pub/11/04 (2011) Principle 31 (g) at 34.

address. Ultimately, the group reached a consensus that a potential mechanism should:

1. Be open to all stakeholders, including local community members.
2. Operate on the international and national levels but have multiple entry points for complainants. Furthermore, there should be no requirement to exhaust national mechanisms before approaching the international one, as requirements that complainants exhaust lower-level mechanisms first has the potential to stifle complainants seeking remedy under repressive regimes or through broken judicial systems.
3. Address concerns about alleged breaches of the Civil Society Protocol and potentially also concerns related to other aspects of EITI.
4. Proactively review and react to potential Civil Society Protocol-related concerns, even before a complaint has been filed.

Participants agreed that it would be challenging to design a single accountability mechanism to address both urgent one-off issues and systemic issues. Therefore, participants began to identify the kinds of accountability mechanisms best suited to address time-sensitive complaints versus those better able to effect long-term systemic change.

Identification of Accountability Gaps in EITI and Proposed Solutions

Participants identified all existing accountability tools within EITI, including the RRC; the validation process; board requests for early validation; complaint referrals to the International Secretariat; complaint referrals to a country's multi-stakeholder group or national stakeholder group process; and additional national multi-stakeholder group accountability policies and processes. From there, the group identified which accountability gaps could be addressed through modifications to current EITI processes and which required new mechanisms altogether. The group then split off into three working groups, with each to design a work plan or prototype to address a subset of the identified accountability gaps.

The first group set out a plan to modify existing EITI processes to improve their function as accountability tools. The second and third working groups designed new accountability tools capable of providing the outcomes and remedies previously identified. To address general threats to natural resource governance advocates and EITI stakeholders, the second group prototyped a *prevention mechanism* to proactively monitor EITI-implementing areas at high risk for civil society retaliation. To address specific instances of harm, retaliation, or breaches of the Civil Society Protocol, the third group designed a non-judicial grievance mechanism to handle complaints.

After developing preliminary proposals, each group had the opportunity to present their work to the other workshop participants and to members of the workshop's remote advisory group (see Participant List). Groups then had the opportunity to revise their proposals in one final round of brainstorming, at which point one participant from each group switched places with another in order to incorporate outside perspectives into the final drafts.

ACCOUNTABILITY MECHANISM PROPOSALS

The following represent each of the three groups' proposed mechanisms, which they recommend to be discussed and examined further by EITI. It should be noted that these mechanisms were developed under intense time pressure, and should be viewed as exploratory ideas to addressing the current gaps in EITI, rather than as fully developed solutions. They focus solely on the gaps regarding protection of civil society representatives and civic space in EITI (e.g. enforcement of the Civil Society Protocol).



The three proposed accountability mechanisms operate as mutually reinforcing processes. They are intended to work together to better integrate tools for Civil Society Protocol enforcement into EITI's monitoring procedures and to provide greater accessibility and oversight needed to allow external actors, such as civil society and communities, to raise concerns.

1) PREVENTION MECHANISM: Working Group on Civil Society Protection

Accountability Gap to be Addressed by this Mechanism: Participants identified that EITI lacks comprehensive systems for prevention and early detection of breaches of the Civil Society Protocol.

Proposal Summary: Through this mechanism, individuals in each EITI country would be appointed at the national level to monitor national civic space conditions and provide regular and standardized reports on civic space conditions to a Working Group on the EITI Board (possibly within the Implementation Committee). The Working Group would use these reports to monitor and flag any deterioration of civic space or the enabling environment that may affect the ability of civil society representatives to fully participate in the EITI process and promote public debate. The national-level monitor, along with the Working Group, would then provide governments with proactive feedback if there were indications of mild deterioration. In the event of a major violation of the Protocol or a rapid decline in the condition of civic space, the Working Group would also have the authority to refer the government to the Rapid Response Committee (RRC), a Grievance Mechanism (see Remediation Mechanism proposal), or the EITI Board for higher-level actions such as sanctions or early validation.

Details of the Proposal

The prevention mechanism would operate through the coordinated efforts of "Civil Society Monitors" at the national level and a new working group (tentatively called

“The Working Group on Civil Society Protection”) at the international level. The Civil Society Monitors in each country would report regularly to this working group.

Civil Society Monitor: A point person from each implementing country would be selected as the Civil Society Monitor to coordinate outreach, research, and monitoring on the condition of civic space in that country. The Monitor’s activities would assess country compliance with the Civil Society Protocol. Their research and assessments would be based on: a) consultation with local civil society actors, including those outside the multi-stakeholder group (MSG) and b) relevant reports from other human rights procedures or mechanisms, such as UN special procedures. The Monitor would then compile their findings into an annex to be included in the country’s annual activity report (the format of the annex would be standardized, but considering the appropriate format required more consideration than time allowed at the workshop). This annex would include factors central to meaningfully assessing compliance with the Civil Society Protocol, such as:

- A log of incidents (e.g. arrests, threats, harassment) related to natural resource governance. Specifically, the annex would document: a) the number of protests around natural resource governance and the government response and b) any conflict, abuses, or tensions related to the extractive industries;
- A review of existing and proposed legislation related to civil society or civic space (e.g. assembly, protest, defamation, etc.); and
- The degree of civil society participation in the implementation of the national action plan.

Civil society members would also be invited to submit monitoring reports alongside the annual activity report, to be noted in the annex.

The annual activity report annex would open a new feedback loop between civil society, the implementing government, and the Working Group on Civil Society Protection. While the working group would have the authority to respond to findings in the annex at any time (see below), documentation of certain serious “trigger” events could also automatically result in the report being circulated to the Board, as well as the RRC or the Grievance Mechanism Committee (see Remediation Mechanism proposal). Depending on the event in question, these international bodies would be able to take higher-level actions, such as communicating warnings, imposing sanctions, or other measures.

Events eligible to automatically trigger referral to the Board, RRC, or Grievance Mechanism would include:

- Proposed legislation restricting civil society;
- Escalation of protests or conflict that raise serious risks to civil society; and
- Threats against specific civil society activities, particularly those likely to have some impact on the ability to discuss corruption or natural resource governance.

In developing this proposal, workshop participants indicated a desire to include a “traffic light” system in the prevention mechanism to lend additional leverage to the report annexes. Participants proposed that the annex findings translate into a color rating whereby, for example, countries with increasing threats to civil society would be marked with a “yellow” warning while countries with documented violence against activists would be marked with a “red” warning, etc. Participants agreed that it would be beneficial for the traffic light system to operate on the national level

so as not to conflict with the International Board's compliant-candidate-suspended ratings of countries.

A country's traffic light rating could also be factored into the validation process, thereby helping ease the burden placed on validators to accurately assess compliance with the Civil Society Protocol.

Beyond its research and monitoring activities, the Civil Society Monitor could also support capacity building by organizing workshops and promoting the dissemination of the annual activity report and general information on EITI as it relates to civil society (e.g. on the function of the RRC).

Lastly, eligibility criteria would need to be developed for the Civil Society Monitor. These should include, at a minimum:

- Independence from government and the extractive industries. At a minimum, this would mean maintaining a degree of financial independence from the government and extractive industry companies of the implementing country;
- The ability to liaise with national and local civil society and a requirement to be elected by civil society members;
- A three-year term limit, with the possibility to sit for two terms; and
- Other competency-based criteria, such as minimum requirements for the Monitor's skills and experience.

Note: The selection process for the Civil Society Monitor was not established at the workshop and would need consideration.

Working Group on Civil Society Protection: The Working Group on Civil Society Protection would be housed within the EITI Implementation Committee. Its primary responsibilities would be to review reports from the Civil Society Monitors and take appropriate actions based on the findings in those reports. In particular, the working group would focus on identifying and responding to breaches of the Civil Society Protocol. The working group's core functions would include:

- Liaising with all Civil Society Monitors (see above);
- Based on annual activity report findings or ad hoc reporting from Civil Society Monitors, taking action — including mandatory reporting to the EITI Board, RRC, or Grievance Mechanism under certain conditions (see above);
- Collating public feedback on the annual activity report annexes and publishing these comments in a follow-up document. Ensuring that governments detail how they've addressed this public feedback in subsequent annual activity reports;
- Making recommendations for new standards or policies on civil society monitoring and protection; and
- Facilitating connections between all Civil Society Monitors to share learning and best practices. For example, the Working Group could encourage annual regional or global retreats among Civil Society Monitors.

Workshop participants noted that the working group should acknowledge those countries that follow the recommendations made in the report annexes as a means of promoting good practice and performance.

In the event that the working group detects a breach of the Civil Society Protocol or else believes that a serious breach appears imminent, it should have the power to exercise a range of responses, including:

- Issuing a public statement;
- Requesting an informal meeting with the implementing country's government;
- Summoning the implementing country's government formally for a response;
- Fining the government or company responsible for the breach;
- Requiring the implementing country to undergo early validation;
- Referring the issue to the RRC or Grievance Mechanism;
- Transferring the issue to the Validation Committee; and
- Sending a monitoring mission to assess serious and ongoing risks.

Importantly, the working group must have explicit decision-making power and a mandate to initiate these actions without approval from the EITI Board.

2) REFORMING EXISTING OVERSIGHT AND OUTREACH MECHANISMS

Accountability Gap to be Addressed by this Mechanism: Participants identified that EITI's existing oversight and outreach mechanisms could be reformed to better detect breaches of the EITI Standard, including the Civil Society Protocol.

Proposal Summary: A variety of reforms to existing EITI mechanisms for the long-term prevention and detection of member noncompliance with the EITI Standard through:

1. A more rigorous admissions process for countries seeking to join EITI;
2. Requiring sufficient expertise and independence by validators, and providing guidance as to when EITI Standards are satisfied;
3. Standardized annual activity reports for countries, which the EITI Secretariat can review and use to monitor symptoms of non-compliance; and
4. Strengthening the operation of the RRC to address immediate concerns and threats related to civic space.

Details of the Proposal

More Rigorous Outreach and Admission Procedures: EITI should develop strong admissions requirements and procedures to ensure that countries that join EITI have the capacity and willingness to meet the EITI Standard, including the Civil Society Protocol. The Implementation Committee is currently drafting a guidance note for outreach to new countries, offering a timely opportunity to a) emphasize that the admissions process is a strong moment of leverage to ensure compliance and b) require that before countries are admitted to the initiative they should meet more robust criteria.

In particular, the guidance note should:

- Provide clear, strong, and comprehensive guidance on how countries can best prepare for candidate status, including guidance related to the protection of civic space and the enabling environment;
- Provide good practice examples of how MSG representatives should be selected to represent each constituency;
- Emphasize that the application period should not be rushed; and
- Require consultations with all stakeholder groups, and particularly civil society, as part of the development of the national work plan.

Validation: The EITI validation process requires several improvements to ensure better accountability. Presently, the validation process lacks a comprehensive and mandatory methodology (i.e. steps that the validators must follow to ensure that the findings are accurate). Furthermore, it lacks criteria for the selection of validators to ensure that validations are credible. The EITI Standard must outline process requirements, such as validator independence and knowledge of how to engage civil society actors, in a clear and transparent manner in order for the initiative to produce reliable evaluations.

Develop Criteria for Expertise: Validation auditors generally have robust quantitative data analysis and collection skills and familiarity with financial flows. However, they frequently lack sufficient knowledge and experience to assess social processes, governance practices, and human rights violations. These are necessary in order to determine compliance with the non-technical parts of the EITI Standard (e.g. regarding MSG governance, whether the reports contribute to debate) and the Civil Society Protocol. EITI should develop specific requirements that validators, or some on the validation team, have expertise in human rights, governance, and social processes.

Ensure Independence: Independence is critical to ensuring strong validation results. However, currently, compliance assessments are carried out by EITI Secretariat staff. This may present a conflict of interest, as these staff members are the same people providing technical assistance to implementing countries. EITI must address this issue to ensure the legitimacy of its assessments. One solution might be to draw on a pool of experts to carry out initial data gathering, which would then refer results to the Secretariat and Board.

Guidance: Validators should be provided with more explicit guidance on how to evaluate country compliance with all non-technical EITI Standards. For example, there needs to be clearer instruction on how to assess if the quality of dissemination and public debate aspects of the EITI Standard have been met.

Multi-Stakeholder Group Accountability: The validation process should include provisions to ensure that commitments made at the national level (in the multi-stakeholder group work plan) are implemented. Such provisions need not be sanctions, but should somehow note when implementing countries fail to deliver on their national promises and commitments to EITI.

Annual Activity Reports: Implementing countries are required to submit annual activity reports to EITI. These reports are underutilized at the international level and should form part of the oversight of a country's commitment to the EITI Principles. If annual reports were made to follow a *template* and were run through systematic analysis, the EITI Secretariat or Implementation Committee would be able to provide regular feedback to implementing countries on their compliance with the EITI Standard between validations. Regular feedback would allow countries to

better gauge their current strengths and areas for improvement. Importantly, this would serve as a monitoring tool for the International Board. To amplify this monitoring benefit, the following could be required:

- A “traffic light” system could be introduced to give an informal assessment of where the country stands in terms of compliance;
- The annual activity reports should systematically capture the extent of a country’s progress in complying with the EITI Standard (with less focus on descriptive accounts of meetings and conferences), including charting progress in implementing corrective actions; and
- The annual activity reports should also highlight innovations in that country to support learning by other countries and create incentives to go beyond the Standard.

The Rapid Response Committee (RRC): The RRC has the potential to address urgent issues that arise from threats to civic space. However, the Committee’s ambiguous mandate, inaccessibility, unpredictable decision-making powers, and lack of independence from the EITI Secretariat severely limit its utility.

In order for the RRC to be an effective, quick-action accountability mechanism, it ought to:

- Clarify its terms of reference so that they explicitly address concerns around civic space, not only relating to EITI but more broadly to natural resource governance;
- Modify its complaints submission process so that all complaints are delivered directly to the chair of the Committee. Alternatively, in the event that complaints are filed with the Secretariat, the Secretariat should be obligated to pass on all submissions to the RRC without vetting or discrimination. This modification would ensure that a) the RRC becomes aware of complaints as soon as possible and b) the RRC, and not the Secretariat, is responsible for determining whether a complaint is admissible. While the Secretariat could still be involved in data gathering or investigating the case in question, it should be up to the RRC to decide whether the complaint falls within EITI’s scope.
- Establish a clear framework for resolving complaints or issues, including:
 - Clear guidelines on complainant anonymity and disclosure of information;
 - Clearly defined actions for the Committee to take in response to any breaches of the EITI Standard that the RRC may uncover through its complaints review process (i.e. recommendation for early validation, suspension of a board member from that country, etc.). The framework should also include an explanation of the actions the RRC is eligible to take if the country continues to be non-compliant;
 - Reference to international human rights standards and an explanation of how RRC processes relate to other external accountability mechanisms and laws;
 - Conflict of interest provisions and independence from initiative-governing bodies;
 - A degree of independent decision-making power from the board (i.e. ability to make decisions and take action without board approval);
 - A systematic process for documenting complaints and associated evidence; and

- A program to ensure broader accessibility and awareness of the RRC and the process by which to register concerns.

In addition, the RRC should follow general process norms identified as good practice for accountability mechanisms, including requiring:

- Simple and clear process, with clearly defined timeframes for reaching decisions;
- Independent decision-making power;
- Whistleblower protections for those who draw issues to the attention of the RRC;
- Technical assistance for complainants (when needed) in order to ensure they can fully document and present their concerns;
- Accessibility to local communities, including awareness of the RRC and accessible and trusted processes for contacting the RRC directly;
- Internal checks and balances on processes;
- Transparency of process. At the very least, publication of complaint information, outcomes, and rationales. However, it should also allow anonymity provisions for complainants; and
- The power to grant effective remedies.

3) REMEDIATION MECHANISM: Grievance Mechanism

Accountability Gap to be Addressed by this Mechanism: Participants identified a number of cases in which individuals — both inside and outside national multi-stakeholder groups — have experienced human rights violations as a result of their work related to natural resource governance or EITI, including allegations of arbitrary detention and physical violence. As noted in the UN Guiding Principles on Business and Human Rights, multi-stakeholder initiatives like EITI should provide an effective system for individuals to seek remediation for these harms.¹⁶ While the RRC could be adapted to respond to urgent threats to civic space, it is unequipped to offer the substantive mediation or remedies needed for victims of rights abuses related to EITI or natural resource governance advocacy. In addition, EITI lacks a formal “triage” process through which individuals can raise other complaints about breaches of the EITI Standard.

Proposal Summary: The proposed Grievance Mechanism would house a “triage” center for receiving general complaints about any national- or international-level concerns about the implementation of the EITI Standard, including the Civil Society Protocol. The mechanism would then direct complaints to the appropriate body for resolution (e.g. it might refer to the Implementation or Validation Committees or the EITI Secretariat, depending on the complaint and the most appropriate body to respond to it).

Beyond this triage function, the Grievance Mechanism itself would be designed to consider and address violations of the Civil Society Protocol with a specific focus on providing assistance, treatment, dialogue with government, retraining, and mediation

¹⁶ UN Office of the High Commissioner on Human Rights *Guiding Principles on Business and Human Rights, Implementing the United Nations ‘Protect, Respect and Remedy’ Framework* HR/Pub/11/04 (2011) Principle 30 Commentary at 32–33.

for those who have experienced human rights violations linked to EITI. The Grievance Mechanism would be an independent body made up of experts with particular expertise on issues of civic space and human rights. Upon receiving a complaint, the Grievance Mechanism would determine the appropriate resolution process and remedies for the case in collaboration with the complainant. All decisions made by the Grievance Mechanism would be binding on EITI parties and would not need to be approved by the EITI Board. The Grievance Mechanism, including the triage center, would be open to all stakeholders.

Details of the Proposal

The precise form of the Grievance Mechanism requires more time to develop than a short workshop could allow. However, the group identified the most critical features and questions to consider in developing the mechanism. The features that were agreed to be essential and non-negotiable are *italicized and in red text*, whereas the remainder represent something closer to best practice.

Qualities and Composition:

- The Grievance Mechanism Committee should be made up of trusted, independent experts employed by the EITI Association. Similar to the setup of the EITI Secretariat, *it should be composed of experts rather than be premised solely on multi-stakeholder representation.*
- The accountability structure of the mechanism should be considered in detail. During the workshop it was felt that the optimal position would be for the Committee to report to an independent body and be accountable to the EITI Chair. More work must be done to understand the best accountability structure for the grievance mechanism, weighing the costs and benefits of different approaches. An independent contractor, for example, is still not exempt from conflicts of interest, as they would likely desire their contract to be renewed. Most importantly, whatever accountability structure is employed should provide the Grievance Mechanism Committee with consistent, unbiased feedback.

Mandate and Powers:

- The Grievance Mechanism should have *independent and complete decision-making power* (i.e. it must be able to issue demands of implementing countries that go beyond recommendations and do not need the approval of the EITI Board).
- The EITI Standard should be revised so that all bodies in the EITI Association are required to uphold the decisions of the Grievance Mechanism Committee.
- The Grievance Mechanism should have the power to call on or mobilize other committees and resources within EITI — for example, for intervention or fact-finding.

Transparency and Confidentiality Provisions:

- The mechanism should be as transparent as possible about cases, including providing public reasons for decisions made, while respecting the confidentiality requests of the complainant. The confidentiality needs of the complainant should be addressed on a case-by-case basis.
- All case material brought to the Grievance Mechanism Committee should be kept confidential and should be protected in a separate system from the EITI Association through secure, firewalled storage, etc.

- A public register should be made available of all complaints filed with the Committee, including stages of each case's processing and the outcomes of each case. The register should exist in both a public version — scrubbed of all sensitive information — and a confidential version. The confidential version would allow for internal analysis of patterns across cases.

Complaint-Handling Procedure:

- Upon submitting a complaint, the complainant should be asked about the kind of review/resolution process they would like to see. In this way, the complaints review/resolution process should be flexible and *worked out in collaboration with the complainant* on a case-by-case basis. For example, a complainant may express a desire for the resolution process to focus more or less on mediation, intervention, compensation, or other outcomes.
- The Grievance Mechanism should have the power to mediate a dispute between parties, but mediation should result in a clear outcome/remedy even if one party chooses not to participate in the mediation.

Appeals Process:

- If possible, an external appeals option (for example, recourse to an external tribunal) should be established for stakeholders unsatisfied with the complaints process. Where possible, this should be some kind of enforceable arbitration body, ideally one that is pre-existing (see, for example, the appeals process in the Accord on Fire and Building Safety in Bangladesh). Any stakeholder involved in the Grievance Mechanism complaints resolution process should be able to appeal to the external appeals option.

Remedies: All remedies should be discussed and determined with input from the complainant. Examples of appropriate remedies that should be available to the mechanism are:

- *Issue of a truth-finding investigation and report;*
- *Assistance to the complainant, such as legal or medical assistance;*
- Payment of damages;
- Requiring an EITI member to change a policy or practice to maintain compliance with the EITI Standard;
- Sanctions or fines for non-compliance or breach of the Civil Society Protocol;
- Drawing on EITI linkages to multilateral donors or funders to support its recommendations — for example, requesting collateral funding cuts to stakeholders found to have breached the Civil Society Protocol; and
- Quiet diplomatic outreach to protect vulnerable individuals.

Linkages to Other EITI Accountability Mechanisms: The Grievance Mechanism should be one part of a suite of accountability mechanisms in EITI and therefore should refer or link to other bodies within the initiative as appropriate. For example, the Committee should refer or link to:

- The proposed Prevention Mechanism, in instances where there appears to be a pattern of Civil Society Protocol breaches;
- The Validation Committee, if there is a severe violation of the EITI Standard; and
- The Rapid Response Committee, if a complaint is filed that requires urgent, high-level action.

PARTICIPANT LIST

Tricia Feeney	Executive Director of Rights and Accountability in Development (RAID).
Brian Finnegan	Global Workers Rights Coordinator at the American Labor Federation- Congress of Industrial Organizations (AFL-CIO).
Asmara Klein	EITI Coordinator, Publish What You Pay International Secretariat.
Ana Carolina Gonzalez Espinosa	Lecturer at Externado University in Colombia. <i>EITI CSO Board member.</i>
Gubad Ibadoghlu	Economist and civil society activist, coordinator of “For Improving Transparency in Extractive Industries,” a 142-member Baku-based NGO coalition. <i>EITI CSO Board member.</i>
Jonathan Kaufman	Executive Director of Advocates for Community Alternatives and the Coordinator of the Public Interest Lawyering Initiative for West Africa.
Daniel Kaufmann	President of the Natural Resource Governance Institute (NRGI). <i>EITI CSO Board Member.</i>
Sarah Knuckey	Co-director of the Human Rights Institute, director of the Human Rights Clinic, and Lieff Cabraser Associate Clinical Professor of Law at Columbia Law School.
Kindra Mohr	Policy Director for Accountability Counsel.
Haoua Moussa	Country coordinator of African Network of Youth Policy Expert (AFRINYPE) in Niger.
Jaff Napoleon Bamenjo	Coordinator of RELUFA Cameroon.
Faith Nwadishi	Executive Director of Koyenum Immalah Foundation (KIF), a nongovernmental organization located in Nigeria. EITI CSO Board member.
Hannah Owusu-Koranteng	Founding member of Wacam, member of the Multi Stakeholder Group of Ghana EITI, former EITI CSO Board member.
Sarah Saadoun	Business and human rights researcher at Human Rights Watch.
Marinke van Riet	Natural resource governance activist, director of Voice. Former EITI CSO Board member.
Victoria Tauli-Corpuz	United Nations Special Rapporteur on the Rights of Indigenous Peoples.
Win Myo Thu	Founder of ALARM (Association for Advancing Life and Regenerating Motherland), CSO representative to the EITI Multi-Stakeholder Group in Myanmar.
Ame Trandem	Coordinator of the OECD Watch network at SOMO.

Remote participants:

The following individuals, who have experience with EITI and/or accountability mechanisms in other contexts, were available as remote participants for the workshop via Skype or email.

Chad Dobson	Founder, Executive Director of the Bank Information Center (BIC) from 2007 until 2016.
Jessica Evans	Human rights lawyer, senior researcher and advocate on international financial institutions at Human Rights Watch.
Kristen Genovese	Senior researcher on the Rights, Remedy and Accountability Program at the Centre for Research on Multinational Corporations (SOMO).
Lisa Misol	Independent consultant specialized in transparency, accountability, and civic participation issues, former Senior researcher for Human Rights Watch's Business and Human Rights Program.
Samuel Nguiffo	Lawyer, Secretary General of the Center for Environment and Development in Yaoundé, Cameroon.
Lori Udall	President of Montpelier Consulting, LLC.
Pablo Valverde	Country Manager at the EITI International Secretariat working with the Middle East and North Africa and Anglo/Lusophone West Africa.
Erica Westenberg	Senior Governance Officer at Natural Resource Governance Institute (NRGI).

APPENDIX

NON-JUDICIAL GRIEVANCE MECHANISMS: BENEFITS AND BEST PRACTICES

Concept note for the workshop prepared by Accountability Counsel

What are non-judicial grievance mechanisms?

A non-judicial grievance mechanism (NJGM) is a formal process for addressing complaints and resolving disputes brought forth by individuals, workers, communities, and/or civil society regarding negative environmental and human rights impacts.¹⁷ These mechanisms serve as a means to collect, evaluate, and resolve these complaints related to the conduct of a corporation, government, financial institution, or other actor, and to hold them accountable to their own standards, policies, and/or relevant international law.

NJGMs have become increasingly common in multi-stakeholder initiatives, international financial institutions, as well as individually at the company- and project-levels.¹⁸ They may even be designed and driven at the community level.¹⁹ Although they vary widely in their functions, objectives, structures, and processes,²⁰ they generally consist of a set of well-known, established procedures designed to resolve grievances, review compliance with relevant standards (e.g. the multi-stakeholder initiative's own standards, or some commonly agreed environmental and social standards), and provide remedies and/or sanctions. For example, NJGMs at international financial institutions, such as the International Finance Corporation (IFC), often take the form of a complaint office with specialized personnel who independently administer the functions of the mechanism and provide a culturally appropriate, neutral forum for communities to raise grievances and seek remedy from the institution.

What are the benefits of NJGMs?

If they are appropriately designed and operating effectively, NJGMs have the potential to bring value and lasting benefits to both the public and private sector.

¹⁷ See SOMO "Human Rights & Grievance Mechanisms" <<http://grievancemechanisms.org/intro/what>> (last accessed Aug. 2, 2016) (noting that grievance mechanisms are also called 'dispute,' 'complaints,' and 'accountability' mechanisms).

¹⁸ For example, mechanisms are common among the following IFIs, export finance and development agencies, and international organizations: the African Development Bank, Asian Development Bank, Australian Export Finance and Insurance Corporation, Brazilian Development Bank, Canadian Office of the Extractive Sector, Dutch Entrepreneurial Development Bank, European Bank for Reconstruction and Development, Export Development Canada, German Investment and Development Corporation, Inter-American Development Bank, International Finance Corporation, Japan Bank for International Cooperation, Japan International Cooperation Agency, Nippon Export and Investment Insurance, Organisation for Economic Cooperation and Development, UN Development Programme, U.S. Overseas Private Investment Corporation, and World Bank. In addition, numerous multi-stakeholder initiatives have clearly-defined grievance mechanisms, such as: the Roundtable on Sustainable Palm Oil, Forest Stewardship Council, Equitable Food Initiative, Bonsucro, UTZ, Roundtable on Responsible Soy, Rainforest Alliance, and the Fair Labor Association.

¹⁹ See Jonathan Kaufman and Katherine McDonnell "Community-Driven Operational Grievance Mechanisms" *Business and Human Rights Journal* (2016), 127 at 127–132.

²⁰ For an overview of the various mechanisms that exist, see SOMO *The Patchwork of Non-Judicial Grievance Mechanisms: Addressing the limitations of the current landscape* (2014) <<http://grievancemechanisms.org/attachments/ThePatchworkofNonJudicialGrievanceMechanisms.pdf>>.

To begin, NJGMs can be important sources of knowledge and learning. They can act as an early-warning system for detecting non-compliance and may be used by multi-stakeholder initiatives, companies, institutions, and government agencies to diagnose weaknesses in operations, management, or systems, and determine how to improve them. They provide a process for allowing instances of non-compliance to be rectified, and can be an opportunity for disputes to be resolved before they escalate into something larger or more widespread.

Importantly, where harm has already occurred, NJGMs also provide a process for redress and a means to avoid the continuation or escalation of that harm to others. They give communities or civil society a neutral forum through which they can express their concerns without fear of retaliation or reprisal and seek compliance and remedy for harm. Through a complaint process that reduces power imbalances between the parties, companies, institutions, and governments can demonstrate their interest in the wellbeing of the community and build trust and respect with its members.²¹

In addition, by resolving complaints through NJGMs, companies, institutions, and government agencies can avoid high-profile allegations of abuses (or refusing to acknowledge abuses) that lead to severe reputational damage associated with their activities. Because of their role in promoting responsible practices and providing remedy for adverse impacts, NJGMs enhance the reputation and legitimacy of those that administer them.

What are the key qualities of effective NJGMs?

A NJGM should be based on good practice. A mechanism that is poorly designed or implemented risks compounding grievances among affected people and overlooking non-compliance and operational deficiencies, and therefore doing more harm than good.²² The UN Guiding Principles on Business and Human Rights have eight criteria for what makes NJGMs effective.²³ Although these criteria are not exhaustive, we annotate them here with comments based on lessons learned and experiences from practitioners working in the NJGM sphere:²⁴

- **Legitimacy:** A NJGM should have a sufficiently independent governance structure or processes to ensure that the process is fair and has the trust of the affected people. The mechanism should be able to function independently of political influence or pressure from the management of the entity whose actions may be the source of the grievances or non-compliance — whether a company, institution, multi-stakeholder initiative, or government agency. The mechanism should also have sufficient authority to handle grievances and make redress decisions objectively.

²¹ It is also worth noting that mechanisms provide a more accessible, flexible, and collaborative approach to compliance breaches and dispute resolution than formal court proceedings. They are less costly for all parties and have the potential to deliver more timely resolutions to grievances that may otherwise lead to litigation or further harm. These mechanisms offer a reliable, alternative venue that can achieve impartial and transparent outcomes.

²² UN Office of the High Commissioner on Human Rights *Guiding Principles on Business and Human Rights, Implementing the United Nations 'Protect, Respect and Remedy' Framework* HR/Pub/11/04 (2011) Principle 31 Commentary at 33-35.

²³ Ibid, at 33–35.

²⁴ For a more complete list of best practice examples, see C. Daniel, K. Genovese, M. van Huijstee & S. Singh (Eds.) *Glass Half Full? The State of Accountability in Development Finance* (SOMO 2016) <https://www.grievancemechanisms.org/resources/brochures/IAM_DEF_WEB.pdf>.

- **Accessibility:** In order to serve as a reliable forum for providing access to remedy, a mechanism should be well known to all potentially affected people. If communities or civil society do not know about a mechanism, they cannot use it. In addition, the mechanism should provide adequate assistance to help them overcome barriers to accessing it, including “language, literacy, costs, physical location, and fears of reprisal.”²⁵ The use of NJGMs should not impede access to other options for remedy and redress, or require people to use the mechanism before pursuing other avenues for remedy. Communities should have multiple options available to them, and be free to seek domestic or judicial solutions concurrently or if they are displeased with the outcome provided by the mechanism.
- **Predictability:** The mechanism should have clear and known procedures with timeframes for each stage of the process. The timeframes should be explicit and clearly communicated to potentially affected people, and the mechanism should have a way to monitor that the process and parties are respecting those timelines and any commitments made through the dispute resolution process.²⁶ Where the mechanism fails to meet deadlines, these should be publicly explained.
- **Equitability:** To ensure that people can engage in a process on fair and equitable terms, they must receive unbiased information and advice. Affected people are often not well informed of their rights or options for recourse, and may be severely disadvantaged in their access to resources and information. In order to facilitate an equitable and fair process and maintain trust, the mechanism should provide information on the process and inform people of their right to consult with and be accompanied by counsel and/or advisors at any time during the process.

Transparency: Transparency can be key to building and maintaining confidence in the mechanism within affected communities, as well as with shareholders and the general public. This includes keeping parties to a complaint process informed about its progress and reporting to the public regarding the mechanism’s activities. The mechanism should maintain a publicly available case register of all relevant information (e.g. parties, nature of the complaint, status), including an online version, in addition to any other culturally appropriate means of disseminating this information. The mechanism should not require parties to agree to a blanket confidentiality agreement as a prerequisite to participate in the complaint process. However, it should protect the identity of any party that requests confidentiality.

- **Rights-compatibility:** In order to be considered effective and legitimate, mechanisms must provide outcomes and remedies that align with internationally recognized rights. Outcomes and remedies should respect applicable rights under national and international law. As the UN Guiding Principles explain, “Grievances are frequently not framed in terms of human rights and many do not initially raise human rights concerns. Regardless, where outcomes have implications for human rights, care should be taken to ensure that they are in line with internationally

²⁵ HR/Pub/11/04 at Principle 31(b) and Commentary.

²⁶ One important distinction to be made here is that the mechanism should monitor whether the instances of non-compliance have been remedied, not whether any action plans have been implemented, as the action plans may not adequately address the instances of non-compliance. The mechanism should publish monitoring reports regularly (at least once a year), which incorporate information provided by complainants on the implementation of the commitments under any action plan.

recognized human rights.”²⁷ Any monitoring and evaluation efforts of the mechanism should also include a review of these outcomes and remedies for their rights compatibility.

- **A source of continuous learning:** In addition to resolving grievances and identifying non-compliance, effective mechanisms can serve a valuable role by providing feedback. A process for identifying lessons learned from the mechanism, implementing improvements, and monitoring progress to avoid future harm and unsustainable investments should be incorporated. There should also be a review and evaluation process of the mechanism itself to verify that it is effective and reflects good practice (e.g., is accessible, legitimate, rights-compatible, etc.). The review processes should directly seek the input of affected communities or users of the mechanism when evaluating the mechanism’s effectiveness (see **Based on engagement and dialogue** below).
- **Based on engagement and dialogue:** The entity should hold public consultations and opportunities for input about the design, performance, and monitoring and evaluation of the mechanism. The input of potentially affected communities and the public is critical to the development of a culturally appropriate mechanism that can respond effectively to their concerns and address non-compliance and harm. Their input will ensure both that it maximizes value to the entity in the form of useful feedback and that it meets the needs of communities.

What options for remedy and redress can NJGMs provide?

Ensuring compliance and redress for harm generally involves sanctions and/or positive remedial action, which requires resources and an enforceable commitment to carry out that action. Sanctions for non-compliance and harmful conduct can be a valuable tool — not only as an accountability measure to environmental and social standards, but also as a deterrent. Entities that are found to have engaged in corrupt practices or to be in violation of environmental and social standards should not just have to provide the affected community with remedy, but should also be met with industry-wide sanctions if the problem is pervasive. For instance, among major IFIs, firms and individuals that have been sanctioned by one IFI are subject to cross-debarment at other major IFIs as well, greatly disincentivizing harmful and corrupt practices. In terms of remedy, companies, institutions, and government agencies can establish reparations trust funds at the outset of their planned activities.

²⁷ UN Office of the High Commissioner on Human Rights *Guiding Principles on Business and Human Rights Implementing the United Nations ‘Protect, Respect, and Remedy’ Framework* at Principle 31(f) Commentary.