Assessing civil society engagement in the EITI process

A guide to providing validation inputs on EITI Requirement 1.3

Contents

A First things first: some background on EITI

What is the Extractive Industries Transparency Initiative?

The Extractive Industries Transparency Initiative, or EITI, is a global standard for the good governance of oil, gas, and mineral resources. The **EITI Standard** requires the disclosure of information along the extractive industry value chain – from licensing, to extraction, to management of revenues by government, to the contribution of these revenues to the economy and society. Any country with an extractive industry sector is eligible to join the EITI Standard. As EITI explained in 2016,

> **A country's natural resources, such as oil, gas, metals and minerals, belong to its citizens. Extraction of these resources can lead to economic growth and social development. However, poor natural resource governance has often led to corruption and conflict. More openness and public scrutiny of how wealth from a country's extractive sector is used and managed is necessary to ensure that natural resources benefit all.**

The EITI Standard is currently implemented by more than **50 countries**. Each implementing country has its own national secretariat, as well as a multi-stakeholder group, or MSG, made up of government, civil society, and extractive company representatives. The multi-stakeholder group makes decisions on how the EITI Standard is implemented in the country: the "EITI process."

EITI is governed by a **Board**, which consists of 20 members representing implementing countries, supporting countries, civil society organizations, industry and institutional investors. There is also an EITI **Secretariat**, which supports countries in implementing the EITI Standard and serves the Board.

> For more information on the EITI process in a specific implementing country, including contact information for the National Coordinator and relevant Secretariat staff, and results of prior assessments ("validations") of compliance with the EITI Standard, please visit the country page on the **EITI website.**

How important is civil society to the EITI process?

The existence of an enabling environment for civil society – and particularly the ability for civil society to participate freely and actively in the EITI process as well as to contribute to debates about natural resource governance – is central to the EITI process. The participation of civil society is fundamental to achieving the objectives of EITI, including **Principle 4**, which states that "public understanding of government revenues and

expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development." The EITI Secretariat has emphasized the critical role of civil society in improving natural resource governance: "The active participation of civil society in the EITI process is key to ensuring that the transparency created by the EITI can lead to greater accountability and improved governance of oil, gas and mineral resources."

Civil society has been key to the transparency movement in the extractives sector since the 1990s, playing a crucial role in advancing a new norm of transparency in this historically opaque sector, both within and outside EITI. Over time, it was recognized that the link between transparency, accountability, and responsible governance in the sector requires a renewed emphasis on civil society's role in analyzing, distributing, and using the data produced by transparency to promote genuine accountability in resource governance. All this requires the active participation of civil society at every step of the process.

The EITI Standard includes explicit requirements relating to civil society engagement and the enabling environment for civil society participation. **Requirement 1.3** of the Standard generally addresses civil society engagement, with Requirement 1.3(a) mandating that "[c]ivil society must be fully, actively and effectively engaged in the EITI process." Requirement 1.3(b) further states that "[t]he 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."

How does EITI figure out whether countries are complying with its requirements?

EITI countries are periodically subject to an evaluation mechanism, where their performance in meeting the EITI standard is assessed through a process called "validation." Implementing countries are generally subject to validation every three years after joining EITI, according to a **validation schedule** that is posted on the EITI website. Results of validations are made public on the EITI website, both in the **register** of previous validation decisions, and on specific country pages (which may be accessed **here**).

Country validations include an assessment of whether implementing countries are meeting requirements under the EITI Standard relating to civil society engagement (Requirement 1.3). Assessments of civil society engagement are often complex, and the EITI Secretariat and Board have issued guidance clarifying how these assessments should be carried out.

The **EITI Civil Society Protocol**, which was incorporated into the EITI Standard in January 2015, provides "an assessment framework for the provisions related to civil society" in implementing countries. The Protocol elaborates upon Requirement 1.3, "set[ting] out the questions the EITI Board (including Committees) and validators should consider in assessing whether the provisions pertaining to civil society participation (1.3.a-e; i.3.f.ii) have been met, as well as the types of evidence to be used in answering those questions." The Protocol groups the relevant questions relating to civil society

participation into five categories: expression, operation, association, engagement, and access to decision-making.

In December 2020, as part of a broader revision of the EITI Validation model, the EITI Board approved the revised 2021 EITI Validation Guide, which provides guidance on assessing EITI requirements, including Requirement 1.3. The Guide confirms the continued applicability of the Civil Society Protocol to this assessment: "In assessing civil society engagement and the environment for civil society participation, the Validation is expected to apply the guidance set out in the civil society protocol in a manner consistent with past Validations." However, the Guide also elaborates on the Protocol in two important ways. First, for most of the categories covered by the Protocol, the Guide presents a framework for assessing (for contextual purposes) the "broader enabling environment for civil society participation in extractive sector in the country being assessed."[1] This allows us to compare civil society engagement regarding extractive activities with the broader environment for civil society in a country, helping to identify key areas of concern and the potential for a chilling effect or self-censorship due to the broader context. Second, for most categories, the Guide also identifies specific analytical questions that "should be considered in cases where there are concerns about potential breaches of the civil society protocol."

The assessment framework presented in the Civil Society Protocol, and the contextual framework and specific analytical questions presented in the Guide, are excerpted in the Appendix of this document. The Appendix also features commentary and suggested diagnostic questions from ICNL and PWYP, which may clarify or elaborate upon aspects of this quite complex and comprehensive framework.

[1] More specifically, the Guide explains:

'For contextual purposes, Validation will provide an overview of the broader enabling environment for civil society participation in extractive sector in the country being assessed. This overview will draw on internationally recognised indicators and assessments such as those produced by Civicus, the International Center for not-for-profit Law (ICNL), United Nations bodies, Freedom House, OECD, regional organisations, etc. Validation will assess whether legal or practical restrictions related to the broader enabling environment have in practice restricted civil society engagement in the EITI in the period under review. The detail and depth of this assessment will consider the broader environment for civil society participation. Validation should capture stakeholder views on any developments in the broader enabling environment that have the potential to impact civil society engagement in the EITI'.

What counts as "civil society engagement" for purposes of the EITI Standard and EITI Validations?

The Civil Society Protocol defines 'civil society representatives' as "civil society representatives who are substantively involved in the EITI process, *including but not limited to members of the multi-stakeholder group*".

The Protocol further explains that "references to the 'EITI process' will include activities related to preparing for EITI sign-up; MSG meetings; CSO constituency side-meetings on EITI, including interactions with MSG representatives; producing EITI Reports; producing materials or conducting analysis on EITI Reports; expressing views related to EITI activities; and *expressing views related to natural resource governance*."

For purposes of assessing "the participation of civil society in the EITI process," then:

(1) The "EITI process" includes "expressing views related to EITI activities" and "expressing views related to natural resource governance," not just participating in EITI meetings, reports, and activities; and

(2) "Civil society representatives" are "not limited to members of the multi-stakeholder group," but encompass any representatives "substantively involved in the EITI process," which includes representatives more generally engaged in advocacy about EITI or natural resource governance.

In providing inputs regarding civil society engagement in the EITI process, then, civil society actors need not focus narrowly on EITI activities. Instead, submissions and input can appropriately consider the environment for natural resource governance activism more generally.

What happens if an implementing country doesn't meet EITI requirements?

Under the revised Validation model, validation will determine whether an implementing country has "exceeded," "'fully met," "mostly met," "partly met," or "not met" each requirement under the EITI Standard. A failure to fully meet or exceed Requirement 1.3, relating to civil society engagement, can result in the suspension of an EITI implementing country. In particular:

- If a country is found to have "partly met"[2] or "not met"[3] any of the requirements relating to stakeholder engagement – which includes Requirement 1.3 – the Board will suspend the country.

- If, on its first validation, a country is found to have "mostly met"[4] Requirement 1.3 due to a deficiency related to the Civil Society Protocol, the country will not be suspended, but corrective actions will be prescribed. If the country fails to demonstrate progress against these corrective actions in subsequent validations, this will result in suspension.

COUNTRY CASE EXAMPLES

Poor results in validation – particularly with respect to Requirement 1.3 on civil society engagement – can lead to suspension of an EITI implementing country, both under the new Validation model and the previously applicable model. (Under the previous model, countries were assessed in terms of whether they had demonstrated "satisfactory," "meaningful," or "inadequate" progress in meeting EITI requirements.) Three case studies showcase the different ways that suspension, or the risk of suspension, have affected implementing countries in the past.

AZERBAIJAN, one of the first EITI implementing countries, withdrew from EITI in March 2017 after being suspended due to breaches of the Civil Society Protocol. Azerbaijan's validation found that the broader civic space environment, including a legal framework that created significant barriers to NGO registration and funding, restricted civil society's ability to participate in EITI. Azerbaijan has remained outside the EITI since.

2 A "partly met" determination indicates that "[s]ignificant aspects of the requirement have not been implemented, and the broader objective of the requirement is not fulfilled."
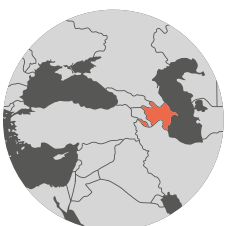
3 A "not met" determination indicates that "[a]ll or nearly all aspects of the requirement remain outstanding, and the broader objective of the requirement is far from fulfilled."

4 A "mostly met" determination indicates that "[s]ignificant aspects of the requirement have been implemented, and the broader objective of the requirement is mostly fulfilled."

NIGER faced a similar situation in 2017, but with a different result. During validation, progress in meeting Requirement 1.3 was judged to be "inadequate" due to civil society representatives and journalists engaged in the EITI process facing arrests, coercion and reprisals. These abuses took place against a wider backdrop of intimidation, harassment and arbitrary detention of civil society actors pushing for investigation of corruption allegations in the extractive sector. Following suspension, Niger **withdrew from EITI** in 2017, but subsequently re-built its MSG, re-started its EITI process, and **rejoined EITI** in 2020 with the support of local civil society.

Finally, in 2018, **ETHIOPIA** faced the risk of suspension following an initial validation assessment of "inadequate" progress in meeting Requirement 1.3, based on limitations imposed on freedom of expression, evidence of self-censorship by civil society regarding natural resource governance issues, and broader legal restrictions on civil society that hindered the ability of independent civil society actors to participate in EITI. However, a new government that took over part-way through validation committed to legislative and administrative changes to improve civic space, and the Board **upgraded the finding** on Requirement 1.3 to reflect this positive shift. As such, Ethiopia avoided suspension, and continues to be a full member of EITI.

What does the validation process look like?

As part of revisions to the EITI Validation model, the EITI Board approved a revised **Validation procedure** in December 2020. Under this procedure, validation involves four phases:

1	preparation for validation
2	review of information and preliminary assessment
3	stakeholder comments
4	Board review

During **preparation for validation**, the country MSG assembles data and documentation that demonstrates evidence of addressing each EITI requirement under assessment, with support and guidance from the relevant country team of the International Secretariat. This support may include a mission to the country undergoing validation to consult stakeholders and provide information on validation. The burden is on implementing countries, through their MSGs, to demonstrate progress in meeting EITI requirements and to provide supportive evidence, which can include publicly available documents, documents that are not publicly available (such as MSG meeting minutes), and other relevant documentation. The MSG should submit the assembled data and documentation to the International Secretariat by the commencement of Validation, as set out in the **validation schedule**. The new Procedure also prescribes that four weeks

before a validation begins, the EITI Secretariat will launch a public call for views on stakeholder engagement in the EITI, which is posted on the EITI website.

Following preparation for validation, during the **review of information and preliminary assessment**, the International Secretariat's Validation team reviews the information submitted by the MSG, as well as responses to the call for views on stakeholder engagement. The Validation team proposes a preliminary assessment of each EITI requirement, following the <u>Validation Guide</u>, and proposes corrective actions for requirements where gaps are identified or evidence is not sufficient to demonstrate that the requirement has been fully met. In developing this assessment, the Validation team will offer the MSG the opportunity to discuss initial findings at a teleconference. The Validation team may also undertake targeted virtual stakeholder consultations at this stage, consult the International Secretariat's country team or draw on external experts to seek further information; in exceptional cases, especially if there are severe concerns related to stakeholder engagement, the Validation team may visit the country to undertake in-person consultations and seek further information.

In this next phase of validation, the Validation Team seeks **stakeholder comments** from the MSG on the preliminary assessment. In particular, the MSG is invited to provide further evidence and other feedback on the Secretariat's preliminary assessment within four weeks from receiving the document in the local working language. Feedback may be provided either by the MSG as a unit, or by individual members of the MSG, though comments agreed by the MSG are given greater weight by the Validation Team. The Validation Team reviews all timely submissions and provides responses to the MSG, and then develops a final assessment and moves to the final phase of the validation process.

In this final phase, **Board review**, the Validation Team submits the final assessment and all underlying documentation to the <u>Validation Committee</u> of the EITI Board – a group of EITI Board members specifically tasked with overseeing the validation process. The Validation Committee reviews the assessment and makes a recommendation to the EITI Board on the country's progress in addressing EITI requirements, as well as the timing of the next Validation and any corrective actions required. The EITI Board then determines the assessment of each EITI requirement and the consequences of Validation. Though documents relating to the Validation are considered confidential until the Board has reached a decision, Board members are encouraged to reach out to local stakeholders to seek their views.

Entry points for civil society

The new validation procedure provides a number of entry points for civil society representatives to participate in validation, even if they are not members of their country's MSG – especially in preparation for validation.

During preparation for validation, and in fact at any time prior to the commencement of validation, civil society representatives who are not members of their country's MSG can **provide evidence regarding compliance**

with the EITI Standard to MSG members, and encourage MSG members to include these resources in the documentation assembled by the MSG. Resources can include publicly available documents, documents that are not publicly available, and other relevant documentation, such as: news articles from local and international sources; reports by local and international organizations; and any relevant local or international indicators.

Specifically with respect to civil society engagement and the environment for civil society participation, relevant resources could address any of the issues identified in the Civil Society Protocol or 2021 Validation Guide and excerpted in the Appendix. Relevant international resources regarding civil society engagement and the environment for civil society participation may include the Civicus *Monitor*, ICNL *Civic Freedom Monitor*, Freedom House *Freedom in the World* report, and UN documents such as *ICCPR Concluding Observations* or *UPR recommendations*. Resources developed by local organizations or news outlets and specifically addressing civil society participation in the EITI process may be of particular interest to MSG members.

To learn more about the composition of national MSGs and contact information for MSG members, civil society representatives should contact the National Coordinator listed on the **EITI country webpage**.

As part of preparation for validation, the new Procedure also prescribes that **four weeks before a validation begins, the EITI Secretariat will launch a call for views on stakeholder engagement in the EITI.** The call for views is posted on the EITI website, both on the relevant country page and as a stand-alone announcement; for example, the call for the 2021 validation of the Philippines may found **here** and **here**. The call is public; any stakeholders can respond, including CSOs in implementing countries, whether or not they are members of the country MSG. Responses must be provided before commencement of Validation to be considered.

This call for views provides an outstanding opportunity to raise concerns with respect to implementing country compliance with Requirement 1.3, including through a comprehensive assessment of compliance: a "shadow report." We'll discuss the process of developing submissions, including shadow reports, further below.

Finally, during the remaining three phases of validation – review of information and preliminary assessment; stakeholder comments; and Board review – **there may be opportunities to provide relevant information directly to the Validation team, MSG members, or Board members**, if it is new information that would not have been accounted for during the initial information-gathering phase. Civil society representatives keen to provide input on particular concerns or developments relevant to compliance with the EITI Standard should contact the National Coordinator or specific MSG members to assess opportunities for input.

B

Getting involved: responding to a call for views on stakeholder engagement in the EITI

I'd like to provide input into the EITI validation for my country, especially regarding civil society engagement and the environment for civil society participation. Where do I start?

As noted above, there are two primary ways in which civil society representatives who are not members of their country's MSG may provide input into validations regarding civil society engagement:

(1) providing evidence and resources to MSG members in advance of or during preparation for validation, regarding compliance with Requirement 1.3 (on civil society engagement); and

(2) responding to the call for views issued four weeks prior to the start of validation with submissions regarding civil society engagement and the environment for civil society participation.

In this section, we will focus on the process of developing submissions in response to a call for views.

The first step in developing a submission in response to a call for views issued prior to the commencement of validation is to **review the Civil Society Protocol** and the **EITI Validation Guide**. These documents present the governing framework that EITI uses in assessing implementing country compliance with Requirement 1.3. As noted above, the Civil Society Protocol sets out general guidance on how to assess compliance with Requirement 1.3 for the purposes of validation, and the 2021 EITI Validation Guide elaborates upon this guidance. In particular, the 2021 EITI Validation Guide provides a framework for assessing (for contextual purposes) the "broader enabling environment for civil society participation in extractive sector in the country being assessed," as well as specific analytical questions that "should be considered in cases where there are concerns about potential breaches of the civil society protocol." Both the Civil Society Protocol and the Validation Guide divide the assessment process for Requirement 1.3 into five categories: expression, operation, association, engagement, and access to decision-making.

Relevant guidance from the Protocol and the Validation Guide are excerpted in the Appendix of this document, which also features commentary and suggested diagnostic questions from ICNL and PWYP.

Civil society representatives should review the Protocol and Validation Guide, and as appropriate the commentary and suggested questions from ICNL and PWYP, both to familiarize themselves with the applicable framework, and to conduct the second step in developing a submission: **determining the submission's scope**. In examining the Protocol and Validation Guide, civil society representatives should consider whether their submission should focus on selected issues raised in this guidance, or instead should more comprehensively address implementing country compliance

with Requirement 1.3 (a "shadow report"). This will depend on which issues are most salient in a given implementing country, as well as on the information and networks available to the representatives developing the submission.

Once civil society representatives producing a submission have made a determination about its scope, the next step is to **design an appropriate methodology for developing the submission**. The methodology to employ will depend on the expertise, resources, networks, and time available to the representatives producing the submission, as well as the intended scope of the submission. If a submission will focus largely on specific aspects of the legal framework governing civil society engagement and the environment for civil society participation, representatives may be able to develop a submission through desk research conducted in capital. Alternatively, if a submission aims to collect information about the experience of local partners in regions with practical obstacles to participation in EITI processes, then representatives may need to administer questionnaires and surveys, and even to conduct field research with in-person interviews and focus groups.

The fourth step, of course, is to **implement the research methodology and develop the submission**. One point is worth emphasizing here: even if civil society representatives are developing a comprehensive "shadow report" assessing compliance with Requirement 1.3, representatives will likely have to abridge and streamline the framework set out in the Appendix. In particular, researchers should feel free to pick and choose amongst the diagnostic questions suggested by ICNL and PWYP, which are presented only to elaborate upon key issues raised in the Protocol and Validation Guide, and are meant to be particularly comprehensive and all-inclusive. In all cases the research methodology should be oriented to focus on issues and questions that are most salient to the situation in an implementing country. Furthermore, where the research methodology employed involves questionnaires, surveys, interviews, or focus groups, the questions presented will in many cases have to be significantly simplified.

The fifth step is to **solicit feedback on and finalize the submission**. It will often be helpful to share a draft submission with local and international partners to confirm the accuracy of the information presented, secure needed additional information, and assess the effectiveness of the presentation. One point to consider, in deciding how to organize a submission, is the relative priority to be placed on general information about the legal framework or civic space context in a country, as opposed to evidence gathered from local partners about practical obstacles to participation in EITI processes. It may be essential for civil society representatives to conduct research regarding the legal framework or civic space context in a country as a predicate for effectively carrying out field research on the experience of local partners, and the Validation Guide explicitly invites information about the "broader enabling environment for civil society participation in extractive sector in the country being assessed." However, information about the experience of local partners attempting to participate in EITI processes is likely to be of especial interest and utility to Validation teams, MSG members, and Board members, who may not otherwise have access to information about these specific experiences.

The final step is to **submit the submission**. Information about how to submit submissions in response to a call for views, including relevant email addresses, should be included in the call. **Submissions must be submitted before the commencement of validation in order to be considered**.

Approximately how long does it take to develop a comprehensive shadow report on Requirement 1.3?

The time to develop a shadow report will of course vary depending on context and available resources. Partners from civil society coalition Bantay Kita, which developed and submitted a shadow report with respect to the 2021 validation of the Philippines, have suggested, that as much as six months should be allotted to develop a shadow report, including one and a half months to draft the submission.

Bantay Kita has also kindly furnished the following illustrative Gantt chart for such a research project:

Key activities	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
Project conceptualisation and discussion (focus on local context)	■					
Coordinating with local partners/researchers	■					
Research design formulation and finalisation		■				
Orientation with local partners/researchers		■				
Data gathering/fieldwork			■			
Desk research and work on local law/regulation/policies			■	■		
Transcription and translation of interview results/ Data analysis			■	■		
Report writing				■	■	
Feedback					■	
Revision and final layout for submission of report						■

EITI guidance on Validation of Requirement 1.3, with commentary

This Appendix presents guidance from the **EITI Civil Society Protocol** and the **2021 EITI Validation Guide** on conducting validations of Requirement 1.3 of the EITI Standard, regarding civil society engagement. This includes the assessment framework presented in the Civil Society Protocol and the contextual framework and specific analytical questions presented in the Guide. The Appendix has been organized by the categories presented in the Protocol and Guide: (1) expression, (2) operation, (3) association, (4) engagement, and (5) access to decision-making, with the relevant guidance from the Protocol and the Guide set out in text boxes below.

The Appendix also features commentary and suggested diagnostic questions from ICNL and PWYP.

As you read through the EITI guidance presented in the text boxes, key points addressed in the commentary and suggested diagnostic questions are identified with encircled numbers (e.g., ❶).

The commentary and suggested diagnostic questions have been prepared by ICNL and PWYP purely to clarify or elaborate upon aspects of the framework set out in the Protocol and Guide, based on our experience with the EITI process and work to improve the enabling environment for civil society around the world. These commentary and questions do not constitute official EITI guidance. However, we hope these supplementary materials will prove helpful in reviewing the EITI guidance and considering how to develop submissions that will promote accurate assessment of civil society engagement and the environment for civil society participation in the course of EITI validations.

Expression

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Civil Society Protocol

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

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

- Civil society representatives are able to speak freely in public about the EITI process including for example during MSG meetings, EITI events including for the promulgation of EITI reports, public events, in the media etc.

- Actual practice, including diverse stakeholder views or substantive evidence provided by independent third parties, indicates that self-censorship or self-imposed restriction by civil society representatives has taken place related to the EITI process due to fear of reprisal and whether such barriers have impacted civil society representatives' dissemination of information and public comment on the EITI process.

2021 Validation Guide

For contextual purposes, based on available indicators and assessments the Validation will summarise the extent to which:

- The legal framework provides for freedom of expression, **1** including legal protections for freedom of expression. **2**

- There are any laws that have potential to restrict freedom of expression related to extractive sector governance. **3**

- The legal guarantees for freedom of expression are respected in practice.

The following guiding questions and related evidence should be considered in cases where there are concerns about potential breaches of the civil society protocol:

- Is there evidence that civil society representatives substantively engaged in the EITI are hindered or refrain from engaging in public debate, expressing opinions, and seeking and imparting information related to issues within the scope of the EITI Standard? **4**

- Is there evidence of civil society publicly expressing views on issues related to the EITI Standard that are critical towards the government and/or extractive companies?

- Have individuals or groups engaging in public debate, expressing opinions, or seeking and imparting information on issues related to the EITI

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Standard been subject to threats and attacks, such as: (1) legal proceedings; (2) intimidation; (3) harassments, including smear campaigns; or (4) verbal or physical threats? Is it reasonable to expect that intimidation, harassment or threats are undertaken or endorsed by government officials or security forces?

● Are there topics related to the EITI Standard that civil society are avoiding expressing their critical opinion on? Are there reasonable grounds to consider that this is due to fear of reprisal, such as evidence of prior retaliation?

● Has the threat of administrative measures, sanctions, or bars on publication discouraged civil society representatives from communicating information and opinions related to the EITI Standard to the press, or the press from publishing such information and opinions?

● Have the authorities provided for protective measures in the event of attacks or threats against members of civil society exercising their right to freedom of expression on issues related to the EITI Standard?

Commentary and suggested diagnostic questions

❶ What is covered by "freedom of expression"?

Individuals may express themselves through a variety of means – online and offline; through speeches, reports, interviews, signs, art, and other expressive acts; through official and unofficial media outlets; collectively, through petitions, organizational statements, or mass campaigns; and by engaging in peaceful assembly, such as protests, demonstrations, and other gatherings.

❷ So what types of instruments might affect the legal framework for freedom of expression?

To assess whether the legal framework provides for freedom of expression, civil society representatives providing input might consider whether the Constitution and/or legislation explicitly protect: (1) the right to freedom of expression; and (2) the right to peaceful assembly.

❸ And what types of laws might have the potential to restrict freedom of expression?

The following diagnostic questions might be helpful in assessing laws with the potential to restrict freedom of expression related to extractive sector governance:

● Do laws or measures unreasonably restrict freedom of expression?

   ● Do disinformation ("fake news") laws or cybercrime laws restrict expression on matters of public interest, including expression online?

- Have national security, public health, or public order rationales been used to justify measures, including emergency measures, restricting the spread of information or speech critical of the government, public agencies, officials, or business interests?

- Is defamation punishable by criminal penalties, including fines or imprisonment?

● Have legal restrictions, laws or measures – such as those mentioned above – been used to restrict the ability of individuals or civil society organizations (CSOs) to criticize the Government, advocate politically for unpopular causes, or speak freely and to strengthen public debate?

● Do laws or measures unreasonably restrict freedom of peaceful assembly?

- Is advance permission required to engage in an assembly, protest, or gathering?

  - Are application procedures burdensome, or do they require that requests for permission be provided far in advance (more than 7 days) of proposed events?

- Do authorities require the payment of fees to hold assemblies, protests, or gatherings?

- Do laws or regulations include vague provisions allowing for excessive government discretion in granting or denying permission to engage in a protest or gathering?

- Do authorities provide decisions regarding proposed assemblies, protests, or gatherings on a timely basis, with written explanations of decisions to grant or deny permission? Can denials of permission be appealed on a timely basis to an independent authority?

- Do laws or regulations prohibit assemblies, protests, or gatherings in particular places, especially prominent public places with symbolic value?

- Do laws or regulations prohibit specific types of communications, symbols, or use of equipment during assemblies, protests, or gatherings?

- Are violations of laws or regulations relating to assemblies, protests, or public gatherings, not involving violent or otherwise unlawful conduct, subject to criminal penalties?

- Are organizers or participants in assemblies, protests, and gatherings made legally responsible for the peaceful conduct of such events or the behavior of others?

❹ The first guiding question encompasses a lot of practices and restrictions. Could we unpack it a bit?

The first question – "Is there evidence that civil society representatives substantively engaged in the EITI are hindered or refrain from engaging in public debate, expressing opinions, and seeking and imparting information related to issues within the scope of the EITI Standard?" – touches on a broad array of restrictions and practices affecting individual and collective expression. Responsive inputs might appropriately address communications and ICT, access to information, and peaceful assembly, in addition to the other topics specifically addressed in the other questions above.

Diagnostic questions relevant to this question may therefore include:

With respect to communications:

- Are there restrictions on the use of communication by civil society members to freely share their opinions with the public on issues related to natural resource governance and the EITI process?

- Are there instances of the authorities blocking access, on an ongoing or sporadic basis, to websites related to natural resource governance and the EITI process?

With respect to peaceful assembly:

- Have laws or measures been used to restrict the ability of individuals/CSOs to assemble peacefully on issues related to natural resource governance and the EITI process?

  - Where assemblies related to natural resource governance and the EITI process have been organized without official authorization, have organizers or participants been subject to disproportionate sanctions, including criminal liability or imprisonment?

- In practice, is permission to engage in assemblies, protests, or gatherings relating to natural resource governance and the EITI process sometimes or often denied?

  - In practice, may assemblies, protests, and gatherings relating to natural resource governance and EITI process (including with local or affected communities) take place at a place and time and in a manner deemed suitable by organizers, with denial of permission or interference by the authorities only in exceptional cases?

- Do the government, whether through law enforcement officials or the military, or private security companies use excessive force to police or disperse peaceful assemblies, protests, or gatherings relating to natural resource governance and transparency, or to the EITI process?

  - When excessive force is used to police or disperse peaceful assemblies, protests, or gatherings, are those responsible subject to accountability mechanisms, including investigation and discipline by independent authorities?

Operation

Civil Society Protocol

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

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

- The extent to which legal, regulatory or administrative obstacles affecting the ability of civil society representatives to participate in the EITI process. This could include legal or administrative procedures related to the registration of CSOs that have adversely affected their ability to participate in the EITI process; legal or administrative restrictions on access to funding that have prevented CSOs from undertaking work related to the EITI process; legal or administrative issues preventing CSOs from holding meetings related to the EITI process, legal or administrative barriers to the dissemination of information and public comment on the EITI process etc.

- Any evidence suggesting that the fundamental rights of civil society representatives have been restricted in relation to the implementation of the EITI process, such as restrictions on freedom of expression or freedom of movement.

2021 Validation Guide

For contextual purposes, based on available indicators and assessments the Validation will summarise the extent to which:

- The legal framework imposes rules related to the operation of civil society,❶ including the registration of civil society groups, approval for activities, other administrative requirements and access to funding.

- The legal framework is applied in a way that may seek to hinder civil society's activities related to, for example, politically sensitive topics.

The following guiding questions and related evidence should be considered in cases where there are concerns about potential breaches of the civil society protocol:

- In practice, have registration requirements or related fees hindered civil society groups in carrying out activities relating to the EITI? Has the government interfered with the registration of civil society groups carrying out such activities, including through a pattern of delay or arbitrary

application of registration requirements? **2**

● Have unregistered civil society groups been subject to penalties for carrying out activities relating to the EITI process? Have unregistered CSOs have found it difficult to participate in the EITI process?

● Have reporting or regulatory requirements been applied unfairly or disproportionately to hinder or interfere with CSOs carrying out activities relating to the EITI? **3** Is it likely that these decisions are related to the CSOs' engagement in the EITI?

● Have restrictions on access to foreign funding prevented CSOs substantively engaged in the EITI from accessing needed resources or financial services? Have such government procedures related to access to funding hindered the EITI-related activities of CSOs engaged in the EITI? **4**

● Has government approval for CSO activities relating to the EITI process been delayed or denied?

● Are CSOs substantially engaged in the EITI subject to government harassment, frequent inspections, monitoring or requests for documentation? **5** Can a link be reasonably established between EITI-related activities and such practices?

● Are CSOs substantially engaged in the EITI subject to threats and violence from third parties? Does the government adequately investigate such threats and violence and protect CSOs against these risks in accordance with national laws and international commitments?

● Is there evidence of state-controlled CSOs carrying out activities related to the EITI process that have constrained independent civil society organisations from fully, effectively and actively engaging in the EITI? **6**

Commentary and suggested diagnostic questions

❶ A lot is included in the "rules related to the operation of civil society." What are the issues to focus on in assessing whether these rules are being applied to hinder civil society's activities?

As noted in the Guide, key elements of the legal framework relating to the operation of civil society that may be applied to hinder civil society activities include requirements relating to registration of CSOs, government approval of CSO activities, other administrative requirements, and access to resources. The following diagnostic questions might be helpful in assessing these elements of the legal framework.

With respect to registration of CSOs:

● Is registration mandatory? Does the law prohibit the operation of informal or

"unregistered" groups? Are there sanctions for carrying out activities through an unregistered organization?

- Are registration rules clearly prescribed by law? Do registration rules impose onerous requirements on civil society groups?

  - Does registration involve application to multiple authorities? Must requests for registration include sensitive or personal information, such as information about personal assets?

  - Do registration requirements impose excessive requirements regarding the minimum number of founders (i.e., more than two), or minimum amount of assets? Are there restrictions on who can be a founder, including restrictions on foreign persons or legal persons acting as founders? Are there special rules or restrictions applicable to the registration or incorporation of foreign CSOs?

  - Are organizations required to regularly renew or update registration? Is this procedure overly burdensome, or does it often lead in practice to de-registration?

  - Does initial registration, or renewal of registration, require the payment of fees which are excessive in the local context, relative to the ability of organizations to pay?

- Does the registration authority have and exercise discretion to deny registration? Do applicable procedures ensure that this discretion is fairly and effectively exercised?

  - Is the authority required to provide clear legal grounds, in writing, for denial of registration? Are registration decisions based on non-subjective and apolitical considerations? Do groups have ready access to independent appeal processes where an application for registration is denied?

  - Is the registration authority required to decide upon registration within a limited period and in writing? Does the authority adhere to these timelines in practice?

With respect to government approval of CSO activities:

- Are there limitations on the purposes for which CSOs can be formed? Are CSOs required to focus their activities on areas specified by the government, such as development or education? Has the formation of CSOs which will conduct activities relating to natural resource governance and transparency, or to the EITI process, been challenged or prevented by the authorities?

- Are certain activities by CSOs prohibited or restricted?

  - Are there vague prohibitions under law on the activities of CSOs, such as "political activity" or "threatening national unity"?

- Are CSOs required to obtain government approval for project activities?

With respect to other administrative requirements and state intervention:

- Are CSOs subject to burdensome reporting requirements regarding sources of funding, activities, members, or other features of CSO operations?

- Do authorities regularly levy special sanctions (fines, penalties, suspension, etc.) against CSOs? Do CSOs have ready access to independent mechanisms to appeal such sanctions?

- Does the law permit government interference with the internal self-governance of a CSO? Does the government have the right to attend internal CSO meetings, or to appoint or approve board members discretionarily, or to select CSO leadership?

- Are CSOs subject to termination or dissolution for minor infractions of legal or regulatory requirements, or on arbitrary grounds? Must dissolution be by order of an independent court, and are appeal mechanisms available?

With respect to access to resources:

- Does the legal framework recognize a special status for CSOs (e.g., "public benefit" or "tax-exempt" or "charitable" status) that provides fiscal benefits for qualifying CSOs? Are these benefits broadly available? Are the processes for accessing these benefits simple and expedited?

- Can CSOs raise funds from various sources, including individuals, corporations, legal entities, and state authorities? Can CSOs compete for government grants, tenders, and contracts?

- Are there special restrictions or rules for domestic CSOs to receive foreign funding?

  - Do CSOs need to obtain government permission to receive foreign funds?

  - Must foreign funds be deposited in government-controlled banks?

  - Are CSOs required to register receipt of foreign grants?

- Do measures aimed at anti-money laundering/combating the financing of terrorism (AML/CFT) target CSOs specifically and disproportionately?

- Does the government impose procedures regarding access of CSOs to funding, including requirements for official assessment or approval before funds may be released, or close government monitoring of CSO use of such funds?

- Are there prohibitions on CSOs engaging in economic activities, including business or commercial activities? Can CSOs directly conduct such economic activities, or must they be carried out through separate for-profit entities?

❷ The first guiding question suggests that governments can "interfere with the registration of civil society groups carrying out activities relating to the EITI" through "through delay or arbitrary application of registration requirements." Are there other forms of interference with registration worth highlighting?

Yes. In particular, submissions addressing this point may want to consider whether there is a pattern of arbitrary or politically-motivated decisions to suspend registration of CSOs carrying out activities relating to natural resource governance and transparency, or to the EITI process.

❸ The third guiding question generally concerns whether "reporting or regulatory requirements [have] been applied unfairly or disproportionately to hinder or interfere with CSOs carrying out activities relating to the EITI." What types of interference might this include in practice?

Governments may apply tax, financial, internal governance, or fiscal and activity reporting requirements in an especially stringent or arbitrary way to frustrate the activities of CSOs engaged in EITI-related activities. Governments may also apply other legal requirements and authorities to interfere with such CSO activities. The following diagnostic questions may be helpful in assessing this type of interference:

● Have prohibitions under law on the activities of CSOs, such as "political activity" or "threatening national unity," been applied to curtail the activities of CSOs engaged in activities relating to natural resource governance and transparency, or to the EITI process?

● Has the government prevented or hindered CSOs whose core activities relate to democratization and/or human rights from participating in activities related to natural resource governance, including government decision-making processes, on an equal footing with other organizations?

● Has the government sought to interfere with the internal self-governance of CSOs carrying out activities relating to natural resource governance and transparency, or to the EITI process?

❹ The fourth guiding question notes that "restrictions on access to foreign funding" may prevent CSOs engaged in the EITI from accessing needed resources, and also considers whether other "government procedures related to access to funding" might be applied to hinder EITI-related CSO activities. What types of government procedures or requirements might be relevant to this assessment?

CSOs engaged in EITI-related activities may access needed resources not only through foreign funding, but through state-provided fiscal benefits, government contracts, and economic activities that support non-profit activities. The following diagnostic questions may be helpful in assessing whether procedures or requirements related to access to funding are being applied to hinder EITI-related activities by CSOs:

● Have CSOs carrying out activities relating to natural resource governance and transparency, or to the EITI process, been able to access generally available fiscal benefits, such as tax exemption?

● Have CSOs carrying out activities relating to natural resource governance and transparency, or to the EITI process, been able to access government grants, tenders, and contracts?

● Have CSOs carrying out activities relating to natural resource governance and transparency, or to the EITI process, been barred from directly engaging in economic activities to raise funds?

❺ The sixth guiding question considers whether "CSOs substantially engaged in the EITI [are] subject to government harassment, frequent inspections, monitoring or requests for documentation." What forms might government harassment or monitoring of such CSOs take?

Government harassment and monitoring of CSOs can take a variety of forms, including infiltration, surveillance, stigmatization, and arbitrary termination or dissolution. The following diagnostic questions may assist in assessing government harassment or monitoring of CSOs engaged in the EITI:

● Does the government regularly engage in legal or extralegal monitoring of CSOs or individuals carrying out activities relating to natural resource governance and transparency, or to the EITI process, or in other infringement of their privacy? Do government informants seek to infiltrate such CSOs? Is there local government surveillance of CSO meetings, including those relating to natural resource governance and transparency, or to the EITI process?

● Does the government or government-allied actors regularly characterize CSOs carrying out activities relating to natural resource governance and transparency or to the EITI process as undermining a country's culture/religion, as national security threats, or as foreign agents?

● Are CSOs, including those carrying out activities relating to natural resource governance and transparency, or to the EITI process, subject to termination or dissolution for minor infractions of legal or regulatory requirements, or on arbitrary grounds?

❻ With respect to the final guiding question above, what evidence might indicate that "state-controlled CSOs [are] carrying out activities related to the EITI process that have constrained independent civil society organisations from fully, effectively and actively engaging in the EITI"?

State-controlled CSOs may crowd out independent civil society from participating in the EITI process by monopolizing government funding or other support, or by displacing independent CSOs from civil society networks or coalitions. Submissions focusing on the role of state-controlled CSOs in constraining civil society operations related to the EITI process may appropriately consider the following types of evidence:

● Are government funding or other forms of support relating to civil society engagement in the EITI process made available only to government-organized or -controlled organizations?

● Does the government, companies or EITI national secretariat take measures to help government-organized or -controlled CSOs, or organizations tied to corporate interests, join and take leadership positions in CSO networks or coalitions, including those focused on natural resource governance and transparency, or the EITI process?

Association

Civil Society Protocol

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

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

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

● Formal or informal communication channels between civil society MSG members and the wider civil society constituency have not been restricted.

● Civil society MSG representatives have not been restricted from engaging in outreach to broader civil society, including related to discussions about MSG representation and the EITI process.

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For contextual purposes, based on available indicators and assessments the Validation will summarise the extent to which:

● There are legal or practical restrictions in place that may affect civil society's ability to communicate with each other, either domestically or internationally ❶. These may include restrictions on domestic or foreign travel, use of communication channels, or attendance at or organisation of events.

The following guiding questions and related evidence should be considered in cases where there are concerns about potential breaches of the civil society protocol:

● Is there evidence of civil society representatives communicating and cooperating on the EITI process through, for example, coalitions and networks? Which actors or groups are involved? Which communication channels are utilised?

● Alternatively, is there any evidence of unjustified interference, monitoring or surveillance of communication (including online) between CSOs engaging in activities related to the EITI? These communications may include, for example, setting the constituency's objectives for EITI implementation, sharing information about the EITI, coordinating advocacy related to topics covered by the EITI Standard or agreeing procedures for the representation of the constituency in the EITI.

- Are civil society MSG representatives able to engage with other CSOs that are not part of the MSG, including capturing their input for MSG discussions and communicating outcomes of MSG deliberations?

- Are civil society representatives able to consult, engage with, share with and seek information from local communities regarding issues related to the EITI Standard or the MSG's work?

- Are there restrictions on the ability of CSOs to contact and cooperate with colleagues in civil society, business and government, either within or outside the country related to discussions about MSG representation and the EITI process? Such restrictions may include, for example, travel restrictions or barriers to organising meetings and establishing networks related to the EITI.❷

Commentary and suggested diagnostic questions

❶ What types of legal or practical restrictions "may affect civil society's ability to communicate with each other, either domestically or internationally"?

As the validation guide notes, legal or practical restrictions on communication or association may include restrictions on domestic or foreign travel, use of communication channels, or attendance at or organization of events. Restrictions on association may also address the sharing and accessing of information, or the organization and participation in networks and coalitions.

The following diagnostic questions may be helpful in assessing restrictions on travel:

- Do CSOs need to provide advance notice of international cooperation? Are CSOs subject to restrictions on travel or attending meetings or conferences?

- Is there a general ability to travel freely in remote areas and engage with marginalized/underrepresented groups?

The legal framework governing the use of communication channels may be complex. Laws and practices relating to use of communication channels may be assessed through the following diagnostic questions:

- Does the legal framework guarantee freedom of communication?

- Does the legal framework impose restrictions on the use of communication channels, including via the internet and ICT? Has legislation been used to limit the ability of representatives of civil society to access the Internet?

- Do the authorities or companies interfere with offline and online communication tools, such as by resorting to account closures and internet shutdowns?

● Does the law provide broad grounds on which to monitor private communications? Is judicial approval required before the government can engage in such monitoring?

● Does the legal framework provide safeguards against unjustified monitoring of communication channels, including Internet and ICT? Do security services engage in unauthorized monitoring of email, phone or other communications of civil society representatives?

Special issues relating to the sharing and accessing of information, which may occur either through defined communication channels or by other means, and which may be subject to special restrictions pertaining to protected classes of information, also warrant exploration:

● Does the legal framework provide protections for the sharing and accessing of information, including via the Internet and information and communications technology (ICT)?

● Are any legal restrictions on the sharing and accessing of information exceptional and limited?

● Are CSOs free to convene meetings and assemblies to share information and communicate with the public on issues of concern?

Submissions may also describe restrictions on CSO networks and coalitions, and in particular consider:

● Can individuals and CSOs form and participate in networks and coalitions of their choice, within and outside their home countries?

● Are there cases of police harassment of members of social networking groups?

❷ The final guiding question broadly addresses "restrictions on the ability of CSOs to contact and cooperate with colleagues in civil society, business and government, either within or outside the country related to discussions about MSG representation and the EITI process," and offers the following as examples of restrictions: "travel restrictions or barriers to organising meetings and establishing networks related to the EITI." Are there any other notable types of restrictions that should be considered here?

In addition to the restrictions noted in the final question above, submissions may appropriately consider whether there are cases in practice where restrictions are imposed on, or punishments are levied for:

● sharing or accessing of information by CSOs carrying out activities relating to natural resource governance and transparency, or to the EITI process; or

● the use of communications channels by such CSOs.

Engagement

Civil Society Protocol

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

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

● Civil society representatives are able to fully contribute and provide input to the EITI process. This could for example include evidence of input and advocacy related to key MSG deliberations on issues such as workplan objectives and activities, the scope of the EITI reporting process, approval of EITI Reports, annual self-assessment of the EITI process through the annual activity reports, validation etc. It could also include evidence that civil society is regularly participating in MSG meetings, MSG working groups and other EITI events, and that the views of CSOs are taken into account and documented in MSG meeting minutes.

● Civil society representatives consider that they have adequate capacity to participate in the EITI. This should include evidence that technical, financial or other capacity constraints affecting civil society have been considered and that plans for addressing such constraints have been agreed upon and/or effectuated including by providing access to capacity building or resources.

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The following guiding questions and related evidence should be considered:

● What is the level of attendance and participation of civil society in MSG meetings, MSG working groups, outreach and other EITI events?

● Can civil society representatives freely, meaningfully and actively take part in dialogues and deliberations to push for civil society perspectives and ideas when participating in the EITI process? ❶

● Is there evidence of input and advocacy by civil society on issues related to the EITI (statements in the media, research, position papers produced by civil society, etc)?

● Are the interests of civil society reflected in EITI implementation, including the EITI work plan objectives and activities, the scope of the EITI reporting process, the annual review of outcomes and impact, Validation, and other relevant issues? ❷

● Are obstacles put in place ahead of EITI meetings, events, and activities

which hinder or prevent civil society participation? Is there evidence that civil society input has been marginalized or is not being considered? **❸**

- Do civil society representatives have the adequate capacity and support to participate meaningfully in the EITI, with sufficient information, resources, time, and opportunities for coordination to support meaningful and effective interventions in EITI activities?

- Is there evidence that technical, financial or other capacity constraints affecting civil society have been considered or that plans for addressing such constraints have been agreed upon and effectuated?

Commentary and suggested diagnostic questions

❶ The second guiding question considers whether "civil society representatives [can] freely, meaningfully and actively take part in dialogues and deliberations to push for civil society perspective and ideas when participating in the EITI process." What types of dialogues and deliberations might be relevant here?

There is an array of dialogues and deliberations that civil society representatives should actively participate in as part of the EITI process. Diagnostic questions for assessing this participation include:

- Can civil society representatives, including representatives of informal or unregistered groups, freely and directly engage in dialogue with government authorities, companies, the national secretariat, EITI Secretariat, the EITI Board, and other entities engaged in the EITI process?

- Can civil society representatives take part in deliberations on the full range of issues relevant to the EITI process, including as EITI work plan objectives and activities, the scope of the EITI reporting process, approval of EITI Reports, annual self-assessment of the EITI process through the annual activity reports, and participation of MSGs in the validation process?

- Do civil society representatives actively push for civil society perspectives and ideas when participating in dialogues and deliberations relating to the EITI process?

❷ With respect to the fourth guiding question, how can we assess whether "the interests of civil society [are] reflected in EITI implementation"? Is it enough for EITI processes and outcomes to include elements considered favorable to the interests and equities of civil society?

The best way to assess whether "the interests of civil society [are] reflected in EITI implementation" is by considering whether civil society inputs have been incorporated into EITI processes and outcomes:

- Is civil society input reflected in the design, implementation, monitoring, and evaluation of the EITI process, or documented in MSG minutes?

- Is there demonstrable influence by civil society representatives in final decisions taken by MSGs?

❸ The fifth guiding question considers whether "obstacles [are] put in place ahead of EITI meetings, events, and activities which hinder or prevent civil society participation" and whether "there [is] evidence that civil society input has been marginalized or is not being considered." What obstacles and evidence are relevant to this assessment of whether civil society participation is being hindered or marginalized?

The full range of requirements, procedures, and practices that may complicate or frustrate civil society participation in EITI activities is relevant here. Obstacles to civil society participation can include imposing onerous requirements for participation, interfering with civil society representation on MSGs, and providing inappropriate payments to MSG members that distort the EITI process.

Thus, submissions may appropriately consider:

- Whether civil society representatives seeking to participate in EITI meetings, events, and activities are subject to unnecessary or duplicative procedures or requirements, such as requirements to produce proof of registration or satisfy burdensome documentation procedures;

- Whether the government has interfered or sought to interfere with the election of civil society representatives to the EITI MSG, including by promoting government-allied CSOs or by restricting civil society representation on the MSG; and

- Whether MSG representatives have received unduly high per diems or incentives (e.g., bonus payments for successful validation) that raise potential conflicts of interest.

Access to public decision-making

Civil Society Protocol

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

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

- Civil society representatives are able to use the EITI process to promote public debate for example through public events, workshops and conferences organised by or with participation of civil society to inform the public about the EITI process and outcomes.

- Civil society representatives are able to engage in activities and debates about natural resource governance, including for example conducting analysis and advocacy on natural resource issues, use of EITI data, engagement with media outlets, development of tools to communicate the findings of the EITI reports, etc.

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For contextual purposes, based on available indicators and assessments the Validation will summarise the extent to which:

- Governments, whether at the national or local level, enable, in policy and practice, public participation in policy making for extractive sector governance.

- The legal framework and its application facilitate access to information related to the extractive sector. ❶

The following guiding questions and related evidence should be considered in cases where there are concerns about potential breaches of the civil society protocol:

- Are civil society representatives using publicly available data on the extractive sector and recommendations arising from the EITI process in their advocacy? Evidence could include studies, public events, participation in parliamentary hearings, outreach to the press, publication of research material, etc. ❷

- Are there restrictions to civil society's ability to use the EITI process and related disclosures to contribute to public debate? Evidence could include, for example, legal or administrative barriers to publishing research on the extractive sector or reprisal following advocacy related to the EITI. ❸

Commentary and suggested diagnostic questions

❶ **"Public participation" and "access to information" have many facets. What are some relevant considerations in assessing whether such participation and access have been enabled or facilitated?**

The following diagnostic questions may be helpful in assessing the framework for public participation:

● Does the legal framework provide opportunities for public participation in policy and decision making, both generally and with respect to the governance of natural resources?

   ● Are there clearly defined legal standards and processes, such as consultation mechanisms, related to the involvement of CSOs in policy and decision making, including on issues related to natural resource governance and the EITI process?

   ● Do regulations require specific government officials or agencies to coordinate, monitor and report on CSO involvement in their work?

   ● Are government hearings related to natural resource governance open to the public?

● Does the legal framework require broad, cross- and inter-sectional consultations with local communities regarding proposed infrastructure, development, and natural resource extraction projects? Does the legal framework specifically require free, prior, and informed consent by local and indigenous communities before the initiation of such projects?

● Are legal guarantees regarding opportunities for public participation and consultations in policy and decision making effectively implemented in practice? Are civil society representatives practically able to participate in policy and decision making on issues related to natural resource governance and transparency as well as to the EITI process?

● Has legislation been used to limit the ability of CSOs to engage in political or legislative activities, including on issues related to natural resource governance and transparency?

   ● Are CSOs permitted to endorse candidates for public office, help draft laws, or urge the government to adopt certain policies, including respecting natural resource governance?

   ● Are CSOs barred from participating in government decision-making processes or projects, including with respect to natural resource governance?

The following questions may be helpful in assessing the framework governing access to information:

- Do laws establish requirements for government agencies and companies to release information on issues related to natural resource governance and the EITI process when requested, in the absence of a compelling rationale favoring non-disclosure?

  - Is important data on natural resource management classified as secret?

- In practice, do companies and the authorities share necessary information related to the management of natural resources and to the EITI process with civil society?

  - Do companies or the authorities impose onerous procedural requirements that must be satisfied before civil society representatives can gain access to such information?

  - Do companies and the authorities provide accurate, reliable, and comprehensive information in response to requests from civil society representatives?

- Is information provided in response to requests from civil society transparent and intelligible?

- Have laws or measures been used to restrict the ability of CSO representatives to find, receive and access and use data related to the extractive industries, such as EITI reports?

2 **The first guiding question suggests that evidence of "outreach to the press" is relevant to whether civil society representatives are able to use data from the EITI process in their advocacy. What types of considerations regarding the general environment for media freedom might affect this outreach?**

Where civil society representatives attempt to use data from the EITI process in outreach to the press but these efforts are frustrated by a closed media environment, this may be an important issue to raise in submissions. Relevant diagnostic questions relating to the media environment include:

- What is the state of media freedom?

  - Are the media independent or state-controlled?

  - Is there state censorship of the media or self-censorship by the media? Is there a pattern of persecution of journalists by state or non-state actors?

  - Is the media culture supportive of civil society? Have state or non-state actors used media outlets to disseminate messages aimed at smearing or undermining the legitimacy of civil society, including civil society representatives carrying out activities relating to natural resource governance and transparency, or to the EITI process?

- Are CSOs able to communicate their views on the EITI reports and activities, and on transparency and accountability issues related to natural resource governance generally, through engagement with print, broadcast, or social media?

❸ The second guiding question offers examples of "restrictions to civil society's ability to use the EITI process and related disclosures to contribute to public debate," including barriers to publishing research and reprisal following EITI-related advocacy. What other types of restrictions might be worth highlighting?

Restrictions on civil society's ability to use the EITI process to contribute to public debate can take myriad forms, including restrictions on holding events, workshops, and conferences; restrictions on circulating EITI findings, especially among marginalized communities; and general limitations on civil society capacity to contribute to public debate. Relevant questions thus include:

● Are CSO representatives able to contribute to and foster public debate, including in relation to transparency and natural resource governance generally?

● Are CSO representatives able to hold public events and organize other public engagement activities about EITI and other natural resource governance topics?

  ● Do CSO representatives face difficulty in organizing or participating in workshops and conferences to inform the public about the EITI process and outcomes?

  ● Are civil society representatives specifically prevented or limiting from holding such workshops or conferences, or circulating the findings of EITI reports, in remote, ethnic, minority, or marginalized communities, including communities characterized by the authorities as presenting particular security concerns or sensitivities?

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