

THE FUTURE MANAGEMENT OF EITI: DISPUTE RESOLUTION
A paper prepared for the EITI International Advisory Group (IAG) by the EITI Secretariat

1. Key Questions for IAG

- 1.1 Is the proposed dispute resolution mechanism proportionate for both implementation and validation?**
- 1.2 Are there additional specific points in the EITI process where disputes might occur that need particular consideration?**

2. Introduction

2.1 At the 3rd IAG meeting in February 2006, members of the IAG requested a paper on the way in which disputes arising in EITI might be resolved.

2.2 This paper is based on the outline dispute procedure suggested in the Country Validation paper presented at the Abuja meeting, and seeks to further elaborate the way in which the procedure would work, including in terms of who could initiate a dispute, and whether the procedure was proportionate. It looks at dispute resolution during both the implementation and validation processes.

2.3 In developing the EITI validation process a number of other multistakeholder initiatives were assessed to look for lessons that can be applied – and this paper has similarly been informed by other initiatives. Annex 1 contains summaries of various dispute mechanisms.

2.4 The process described is inevitably quite elaborate because it seeks to address situations that should rarely occur, but which require transparent and credible decision making when they do occur. Clearly the most effective way to reduce the burden on the system is for all parties to operate in ways that minimise the likelihood of disputes arising.

3. Dispute resolution during implementation

3.1 Disputes will inevitably occur between different participants in the implementation of EITI in a given country. It is important that disputes are therefore anticipated and clear procedures are put in place to avoid what might be minor disagreements escalating into intractable problems.

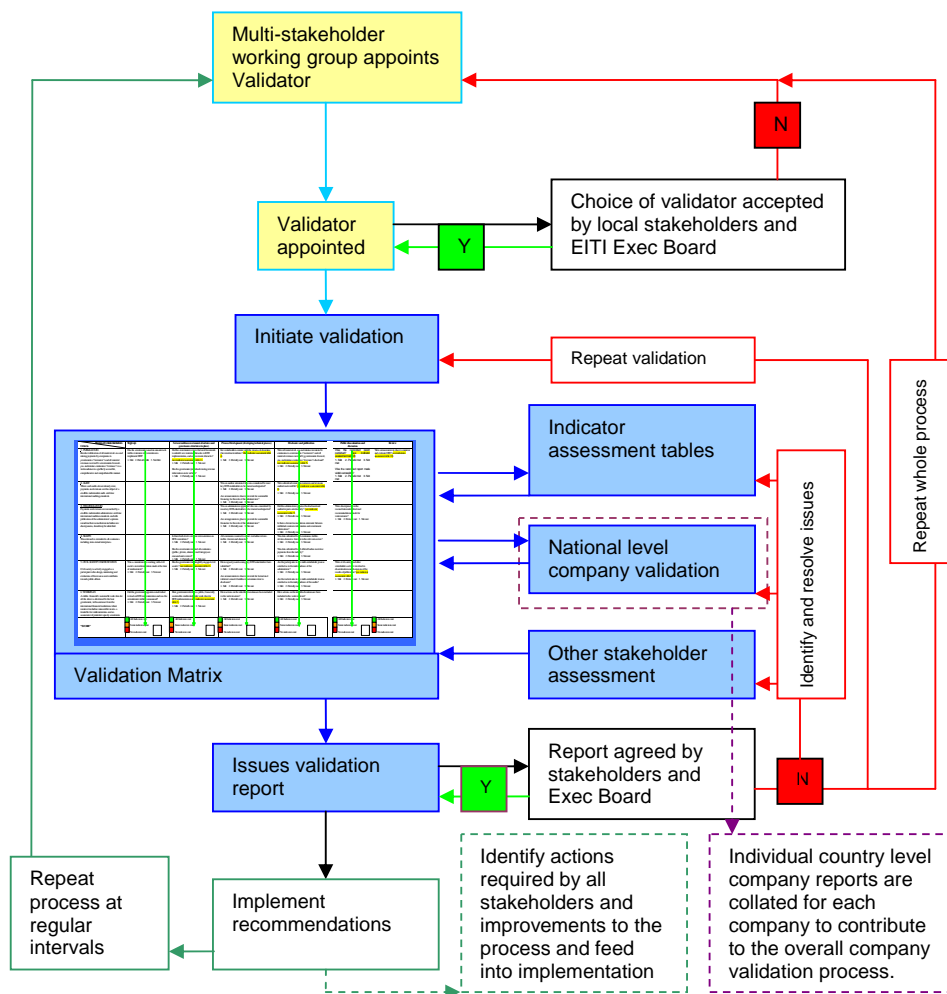
3.2 The right place to address disputes is in the country of implementation, by the relevant stakeholders, and at the time of implementation when disagreement occurs. Detailed guidance on country level dispute resolution is provided in a separate paper (“Support to Implementation”) about how to deal with disagreements during the process of implementation – though in brief, responsibility rests with the multi-stakeholder group. If required, they may be supported by the identified lead agency and / or the expert panel.

3.3 In some occasions, however, a dispute will not be able to be resolved in country – and in such circumstances there is a role for the international EITI architecture. The EITI Board, Secretariat and Expert Panels might assist in resolution of disputes – for example, on appointment of the EITI Committee – since no EITI Committee would exist to resolve the disagreement.

4. Dispute resolution during validation

4.1 This paper looks at disputes in the validation process. The country validation paper identified two points in validation where disputes were likely to occur (the red lines on the diagram below):

- at the stage at which a validator is appointed.
- at the stage at which a validation report is produced.



5. Disputing the validator

5.1 The validator is appointed by a country's EITI Committee from a global list pre-selected by the EITI Secretariat and Board. It is hoped that this process will minimise the likelihood of dispute.

5.2 Nevertheless, if there are objections then, in the first instance, the Chair of the Board or his/her appointed representative will seek to resolve these by discussing the issues with the EITI Committee in the country concerned. If necessary a multistakeholder subgroup of the board may be convened. In either case, the Board will have up to two months to resolve the dispute. If agreement still cannot be reached, then – recognising country sovereignty - it is proposed that a consensus decision of the national EITI Committee should take precedence over that of the Board. If there is disagreement between the EITI Committee and the Board and there is no consensus view in the EITI Committee then the process of appointing a validator will be repeated.

6. Disputing the validator's report

6.1 Once the validator has compiled a report it will be shared with the multistakeholder working group and the EITI Board. At this time, either group will have the opportunity to raise any objections.

6.2 If objections are raised, then there will be three options:

- ONE - If objections relate to relatively minor procedural issues, then the validator will review the validation process in the relevant areas, and seek to resolve areas of disagreement. If necessary, a third party might be employed to repeat relevant areas of the validation, and to contribute to a final report from the original validator.
- TWO - If objections are substantial, then the validator will repeat the validation.
- THREE - In the rare event that objections are intractable and/or trust has broken down irrevocably, a new validator will be appointed and the validation repeated.

7. Who can object?

7.1 These mechanisms tend to operate in one of two ways:

- Only members can raise objections. For instance, the Forest Stewardship Council only allows one of its c. 650 members to bring a complaint. In doing so the member must also lodge a cheque to cover the cost of any dispute. Non-members can raise objections, but only through a member. It is incumbent upon members to ensure that objections they raise for a third party are credible.
- Anyone can raise objections. Most initiatives leave it open for anyone to raise an objection. These usually require that local remedies are sought in the first instance, and reserve the right for the body to which complaints are brought to reject complaints deemed vexatious or motivated by dubious reasons.

7.2 It is proposed that complaints can be raised by anyone under the EITI, but that where initiated by groups that are not members of the country EITI committee, then either members in the country concerned must agree to take them forward, or a member of the EITI Board must agree to take the complaint forward.

Annex 1: Examples of dispute resolution mechanisms

International Finance Corporation – Compliance Advisor/Ombudsman

IFC supports clients in addressing social and environmental issues arising from their projects by requiring clients to set up and administer appropriate mechanisms or procedures to address project related grievances or complaints. In addition to these procedures the IFC makes clear that administrative and/or legal procedures in the country of operation ought to also be considered.

If such local procedures cannot fully resolve grievances, a mechanism has been established through the Compliance Advisor/Ombudsman (CAO) to enable individuals and communities affected by IFC projects to raise their concerns to an independent oversight authority.

The CAO is independent of IFC management, and reports directly to the President of the World Bank Group.

Any individual or community directly impacted by an IFC/MIGA project or likely to be affected, can bring a complaint. Complaints can be submitted to the office of the CAO in any language, by mail, fax or email. Complainants may be represented, but their representative must be able to demonstrate authority to represent the complainants.

Complaints must demonstrate that the complainant (or those whom the complainant has authority to represent) has been affected or is likely to be affected by actual or potential social and/or environmental impacts on the ground. Complaints must be genuine. Complaints that are malicious or trivial or that have been generated to gain competitive advantage will not be accepted.

Forest Stewardship Council – interim Dispute Resolution Protocol

Prior to lodging a formal dispute with the FSC a potential complainant must seek informal resolution of the matter.

If a formal complaint is to be made, then the complainant must be either FSC members in good standing, or accreditation or applicant accreditation bodies.

All non-members must get an FSC member to seek informal resolution of the matter, and if unsuccessful, must get an FSC member to bring the complaint formally.

There are approx. 650 members of FSC, from 83 countries, comprising social organisations, environmental organisations and economic (commercial) organisations (FSC terminology).

If an FSC member brings a complaint it must do so in a specific format, and must do so within clear timescales. It must also provide security to cover the

costs of the dispute.

International Tropical Timber Organisation (ITTO)

ITTO is an independent organisation established by UN resolution to support and supervise the International Tropical Timber Agreement. It has 58 country members.

It requires that participating countries establish appropriate dispute procedures to resolve conflicts between stakeholders at the country level.

OECD Guidelines for MNEs

The OECD Guidelines are binding on OECD member states, through whom they are applied to companies.

Any individual or community group can lodge a complaint about company behaviour with the relevant country's National Contact Point. The NCP is charged with assessing whether a company is acting in accordance with the guidelines.

UN Global Compact

The GC is not a compliance based mechanism. However, any party can bring a complaint, and if deemed credible by the Global Compact Office, it will be drawn to the relevant company's attention. A series of steps are taken by which the Global Compact Office – in the event of non-resolution of the complaint – will consult with other UN entities, and the Global Compact Board and its member companies. If companies alleged to be operating in ways inconsistent with the Global Compact fail to respond to allegations within 3 months they are deemed inactive and noted as such on the Global Compact website.

If appropriate the Global Compact Office will refer complaints to the relevant NCP for the OECD Guidelines, or the ILO Tri-partite Guidelines.

Where deemed appropriate, the Global Compact will remove a company from its list of participants and so indicate that it has done so on the Global Compact website.