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The 2011 EITI Rules: A Guide for Civil Society

By Adelia Saunders

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Background

The Extractive Industries Transparency Initiative (EITI) promotes openness and accountability in the oil, gas and mining sectors. At the core of the initiative are the *EITI Rules:* 21 requirements that detail what candidate countries must do to join, achieve and maintain compliance with the initiative's global standard for reporting extractive revenues. The rules include provisions designed to ensure effective participation of civil society organizations.

The EITI board issued revised rules in February 2011. *The EITI Rules, 2011 Edition* includes clearer, more rigorous requirements for compliance and an updated Validation Guide. Other changes address civil society participation and should result in more useful, comprehensive EITI reports. However, even after the revisions, the rules have several critical shortcomings.

This briefing paper focuses on what the public and civil society organizations need to know to participate effectively in the EITI process and to take full advantage of country reports. In addition to discussing the pluses and minuses of the revised rules, the paper includes advocacy pointers suggesting opportunities for civil society to push for greater transparency.

Key features of the 2011 EITI rules

- **"Requirements" instead of "Indicators"**
  - While the EITI principles and criteria have not changed, the 18 "indicators" that previously governed sign-up, reporting, validation, dissemination and EITI status have been replaced with 21 "requirements."
  - The new edition is stronger in tone, emphasizing that the rules are mandatory standards not suggested guidelines.

- **New sign-up requirements**
  - To become an EITI candidate, governments must publicly state their intention to implement EITI, **(Requirement #1)**, commit to work with civil society and companies **(#2)**, appoint a senior official to oversee implementation, and establish a multi-stakeholder group (MSG). The MSG must then agree on a work plan with measurable targets, which takes capacity constraints and funding needs into account **(#5)**.
  - Because a country must now establish an MSG that includes civil society representatives as part of the sign-up process, civil society is involved from the earliest stages, including in the design and approval of a work plan.

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ABOUT THE AUTHOR

Adelia Saunders is a Graduate Associate at Revenue Watch.

- **Stricter time limits and emphasis on regularity**
  - Countries that become candidates after July 1, 2011, must publish an EITI report within 18 months **(#5e)** and submit a validation report within two and a half years **(Policy Note #3)**.
  - Countries may have their candidacy extended for an extra year if they demonstrate meaningful progress but do not achieve compliance after their first validation attempt. No country can remain a candidate for more than three and a half years **(Policy Note #3)**.
  - After achieving compliant status, countries must produce a report each year, using data no more than two accounting periods old. For example, a report published in 2011 must include data from 2009 or later **(#5e)**.
  - Countries that do not produce a report for more than two years may be subject to temporary suspension and eventual delisting **(Policy Note #5)**.
  - Compliant countries must be revalidated every five years or more frequently if their implementation falls below the minimum requirements **(#21)**.

- **Strengthened civil society participation**
  - Policy Note 6 underscores the responsibility of governments to ensure that civil society is "fully, independently, actively and effectively engaged" in all aspects of implementation.
  - Requirement #6 contains nine components designed to protect and promote civil society participation, including:
    - The MSG must inform civil society and the public of the government's commitment to the initiative and widely disseminate all information resulting from the EITI process **(#6b)**.
    - Civil society must be given sufficient advance notice of and be included in the activities of the MSG **(#6c)**.
    - The government must take actions to remove obstacles to civil society participation **(#6e)**, address capacity constraints **(#6d)**, encourage public debate **(#6g and #6h)**, and respect the basic rights of civil society representatives **(#6i)**.

      Advocacy pointer: Civil society should refer to the requirements that governments protect their independence, include them in every step of implementation, and address critical capacity constraints to ensure that civil society plays an effective role in the initiative.

  - Governments must guarantee that the prevailing legal framework allows substantive, independent participation and oversight by non-governmental organizations **(#2)**.
  - The MSG must include civil society representatives and adequately represent all stakeholders. Civil society organizations have the right to choose their MSG representatives **(#4)**.
  - Beyond the new rules aimed at improving participation, the EITI board has created a Rapid Response Committee to examine cases of harassment and threats to civil society representatives.

    Advocacy pointer: If local activists believe civil society participation or public debate is being restricted, they should alert their representatives on the EITI board.

- **Defining "materiality"**
  - The MSG must agree on a clear definition of "material" revenues and payments, for example by defining a reasonable materiality threshold. To make an informed decision about which revenue streams are important enough to include in the report, the group may request access to government statistics on financial transactions. The MSG must document the options considered and the rationale for the materiality threshold chosen **(#9b)**.

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Advocacy pointer: Civil society members should participate in defining materiality thresholds and have access to the data on in-kind revenue streams, contract terms, etc., needed to make a fully informed decision.

- The MSG must agree on which revenue streams companies and the government should report, which companies and government entities must provide information, what time period will be covered by the report, and the degree of disaggregation of data contained in the report **(#9c)**.
- The rules recommend the report include payments and revenues in the form of production entitlements, profit taxes, royalties, dividends, bonuses and relevant fees, except in cases when they are clearly not material **(#9d)**.

- **International accounting standards**
  - Government and company reports must be based on accounts that have been audited to international standards **(#12 and #13)**.
  - If data has not been audited properly, the new rules require the MSG to agree on a way of addressing this. For example, the MSG may want to develop a "time-bound action plan" to ensure that government and company reports are based on accounts audited to international standards **(#12a and #13a)**.

- **Reporting requirements: revenues, discrepancies and company participation**
  - The government must make sure that oil, gas and mining companies (including state-owned companies) report all relevant payments. Government entities must report all relevant payments received from companies **(#11, #14 and #15)**.
  - A reconciler must verify that all discrepancies between government and company figures have been identified and adequately explained whenever possible. The reconciler must also offer recommendations for addressing outstanding inconsistencies **(#17)** and describe how reporting discrepancies were identified and investigated **(#18b[v])**.
  - The report must list all companies involved in the oil, gas and mining sectors, and note any companies or government entities that did not participate in the reporting process **(#18b)**.

- **Subnational transfers, barter deals and social payments**
  - The MSG must establish whether payments made to subnational government entities are material. When they are, the MSG should make sure these payments are included in the reporting process. In addition, the MSG may wish to include revenue transfers between national and subnational government agencies **(#9e)**.
  - The MSG must develop ways of reporting material revenue streams received as in-kind payments or through barter arrangements in countries where these revenues play a significant role. For example, the value of oil-for-infrastructure deals between governments and companies must be reported **(#9f)**.
  - The MSG is encouraged to consider the significance of social payments and transfers and include these in the reporting process when material **(#9g)**.

- **Accessibility and clarity**
  - The requirements have not been fully met until EITI reports are widely disseminated and effectively contributing to public debate.
  - Reports must be published in all appropriate languages and made available online. It is the MSG's responsibility to make sure paper copies are distributed to a broad range of civil society, company and media representatives and that outreach events are organized to spread awareness **(#18 and #20a)**.

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Advocacy pointer: The new rules allow civil society to demand that governments make good on their commitment to widely disseminate clear, comprehensive annual reports that include all material revenue streams.

- **Updated Validation Guide**
  - Drawing on lessons learned, the updated Validation Guide includes standard terms of reference for validators and emphasizes that the process will be used to ensure that rigorous reporting standards have been followed.
  - The MSG must select an independent validator from a list of accredited firms. The validator should analyze the country's compliance with EITI requirements and clearly state his or her reasons for determining whether each has been met.
  - The report should also include conclusions on EITI's impact and lessons learned.
  - The EITI board will use the validator's report to determine whether the country has attained or maintained compliant status.

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Shortcomings in the new rules

While the revisions in *EITI Rules, 2011 Edition* raise the initiative's standards and should improve the quality and usefulness of EITI reports, they leave important issues unaddressed:

- **No requirements for disaggregation**
  - EITI reports are most useful when they break down revenues by company, revenue stream (such as royalties, profit tax, etc.) commodity (oil, gas, etc.) and project. Company-by-company and project-by-project data can help identify the cause of reporting discrepancies, and may indicate whether contracts between governments and companies are fair and beneficial to local populations.
  - The Central African Republic, Democratic Republic of Congo, Ghana, Guinea, Liberia, Mongolia, Niger, Nigeria, Norway, Peru, Sierra Leone and Timor Leste all voluntarily disaggregate their data by company. But many countries do not, and the new rules still do not require it.
  - The Dodd-Frank Financial Reform Act requires that extractive companies registered with the U.S. Securities and Exchange Commission publicly disclose payments to individual governments for individual projects. EITI should keep pace with this evolving global reporting standard.

- **No requirement to disclose production data**
  - The meaning and usefulness of revenue data contained in EITI reports increases dramatically when paired with production data. However, the new rules still do not require the disclosure of production data, although this information is of public interest and generally not considered proprietary.

- **What are "international standards" for audited accounts?**
  - The 2011 rules require that accounts conform to international auditing standards, but do not specify what these standards are.
  - The rules should clarify which supranational auditing standards are considered acceptable for government data reported to the EITI reconciler. At a minimum, this requirement should stipulate that an independent agency—operating within standards recognized outside the country itself—confirms that revenue receipts from government agencies can be matched with national budget data provided to parliaments and the public.
  - The rules should require companies and government entities to present certification from their auditors confirming that figures submitted to the reconciler are consistent with independently audited accounts.

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Advocacy pointer: When international auditing standards have not been met, activists may wish to push for practical short-term solutions in addition to long-term plans to boost audit capacity.

For more information

- The *EITI Rules, 2011 Edition* is available in multiple languages at http://eiti.org/document/rules.
- EITI describes the revisions to the rules at http://eiti.org/news-events/2011-edition-eiti-rules.
- For Revenue Watch's analysis of EITI country reports, see http://data.revenuewatch.org/eiti/.

Transitioning to the new rules

Implementing countries have been grouped according to their EITI status as of August 2011, with pragmatic transitional arrangements tailored to each group.

- Any country admitted as a candidate after July 1, 2011, shall be subject to the 2011 edition.
- Countries that have already achieved compliant status (Azerbaijan, Liberia, Timor-Leste, Ghana, Mongolia, Kyrgyzstan, Niger, Nigeria, Central African Republic and Norway) will complete their next reports under the 2011 edition and must issue their annual EITI report by July 1, 2012.
- Candidate countries close to achieving compliance (Cameroon, Gabon, Democratic Republic of Congo, Kazakhstan, Mali, Mauritania and Peru) will be reviewed by the EITI secretariat under the 2010 version.
- Sierra Leone and the Republic of Congo will have their candidacy extended for 18 months after demonstrating "meaningful progress." At the end of 18 months, they must achieve compliant status under the 2011 rules.
- Validation candidates for 2011 (Madagascar, Tanzania, Albania, Burkina Faso, Mozambique and Zambia) will be validated in accordance with the 2010 edition. (The EITI board is considering adding Cote d'Ivoire to this group.) Validation deadlines for Albania, Burkina Faso, Mozambique and Zambia will be extended by six months.
- Candidates for validation in 2012-13 (Afghanistan, Iraq, Chad, Indonesia, Togo, Guatemala, and Trinidad and Tobago) will have their deadlines extended by six months, and validations will be conducted according to the 2011 edition.

For more detailed information, see http://bit.ly/EITIcountryupdates.

REVENUE WATCH INSTITUTE

The Revenue Watch Institute promotes the effective, transparent and accountable management of oil, gas and mineral resources for the public good. Through capacity building, technical assistance, research, funding and advocacy, we help countries to realize the development benefits of their natural resource wealth.

1700 Broadway
17th Floor
New York, NY 10019
Phone 1.646.929.9750
rwi@revenuewatch.org