
EITI IN NIGERIA: “THE ROLE OF THE JUDICIARY”

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OUTLINE

1. Extractive Transparency in Nigeria
2. NEITI Audit reports findings
3. NEITI Legal Framework
4. The role of the Judiciary
5. Benefits of effective transparency

Extractive Industries Transparency in Nigeria (1)

- Extractive industries transparency initiatives was set up 2002 to promote greater accountability in management of mineral resource wealth and ensuring that extractive resources aid sustainable development.
- With advent of democracy in 1999, Government commissioned World Bank to study the management of the oil & gas sector
- Report revealed shortcomings in:
 - crude oil output and disposal;
 - funds inflows;
 - funds outflow; and
 - institutional effectiveness

Extractive Industries Transparency in Nigeria (2)

- NEITI was inaugurated in February 2004 by former President Obasanjo when he set up the National Stakeholders Working Group (NSWG).
- NEITI is mandated by law to promote transparency and accountability in the management of Nigeria's oil, gas and mining revenues. A major component of the on-going anti-corruption reform in Nigeria.
- The NSWG oversees the activities of NEITI and is made up representatives of government, extractive industry companies and civil society. NEITI works with various stakeholders to build national consensus on the need for extractive industries revenue transparency in Nigeria.

Extractive Industries Transparency in Nigeria (3)

- To give legal backing to the work of NEITI, a bill was introduced to the National Assembly in December 2004. The NEITI Bill was eventually passed by the National Assembly and subsequently signed into law on May 28, 2007.
- With this, Nigeria became the first EITI-implementing country with a statutory backing for its operations
- Objectives stated in the NEITI Act - Sections 2 (a),(b),(c) & (e) :
 - ❑ “ to ensure due process & transparency in the payments made by extractive industry (EI) companies”
 - ❑ “ to ensure accountability in the revenue receipts of the Federal Government from EI companies”
 - ❑ “ to eliminate all forms of corrupt practices in the determination, payments receipts and posting of revenue accruing to the FG from EI companies”
 - ❑ “to ensure conformity with EITI principles”

Extractive Transparency in Nigeria (4)

■ Functions

- ❑ For the purpose of realizing these objectives, section 3 (a), (b), (d), and (f) respectively, required the NEITI:
- ❑ “to develop a framework for transparency in the reporting & disclosure by EI companies of revenue due to or paid to the FG”
- ❑ “to evaluate without prejudice to any relevant contractual obligations and sovereign obligations the practices of all extractive industry companies and government respectively regarding acreages, budgeting, contracting, materials procurement and cost profile to ensure due process, transparency and accountability”
- ❑ “to request from EI companies,”... an accurate record of the cost of production & volume of sale of oil, gas , or other minerals extracted by the company..”
- ❑ “to ensure that all payments to the from EI companies, including taxes, royalties, dividend, bonuses, penalties, levies and such like, are duly made.”

NEITI Findings (1)

- NWSG/NEITI commissioned audit of the oil and gas sector for 1999 – 2004, 2005 and 2006-2008
- Reports indicate similar types of issues:
 - Financial audit
 - the difference between the aggregated oil-related financial flows reported by CBN and the oil companies into the Federation Account was: \$7.9m for 1999-2004, \$65.68 million in 2005, while all differences were reconciled for the period 2006-2008.
 - Poor coordination among government agencies and weak data management systems that resulted in disparity in government revenue
 - Underpayment of Royalties and PTT (resulting from grey shades in the royalty law, and lack of capacity within DPR and FIRS)
 - Poor recording of signature bonus transactions
 - Oil companies overstating expenses to minimize tax payments
 - Issues related to NNPC (amount owed to the Federal Government).

NEITI Findings (2)

➤ Physical audit

- Systematic loss of crude oil between the wellhead and the export / metering terminals
- Difference in flow rate in oil pipelines during the day, and after midnight (remediation measures are under discussion and the PIB addresses these issues)
- No data estimated, measured or inferred on possible product losses between production point and the terminal
- No system of measuring production, other than through monitoring terminal receipts
- Unclear ownership of terminal stocks
- Complex agreements impact on determination of company oil entitlements

NEITI Findings (3)

➤ Process audit

- Report flagged off some concerns, including the discretionary powers given to the Minister of Petroleum for allocating oil blocks from Petroleum Act of 1969; has been addressed in 2005 oil bid round and proposed PIB
- Concern also raised about the way the Local Content Vehicle (LCVs) were implemented in the 2005 Bid Round; addressed in Local Content Act of 2010
- Use of strategic downstream investment considerations flagged;
- Other issues on petroleum product imports, refineries etc
- Discrepancies between NNPC's records and those of oil prospecting companies on volumes of crude oil lifted at the export terminals.

NEITI – Legal Framework (1)

- The NEITI Act (2007) – Sections 16 & 17 make legal provisions to allow prosecutions if an extracting company:
 - “gives false information or report to the Federal Government ... regarding production, sales and income.”
 - “renders false statement of account or fails to render a statement of account ... resulting in the underpayment of revenue due to the Federal Government commits an offence liable on conviction to fine not less than N30million”
- The case also prescribes possible sanctions:
 - Section 16(2) – if an extractive firm is convicted of an offence, “the court...can order the company to pay... revenue due to the Government”
 - Extractive firms that refuse or delay cooperation with NEITI can be fined not less than N30million

NEITI – Legal Framework (2)

- The Act also provides sanctions against directors in private and public sector that commit an offence against the Act:
 - Section 16(5)- “Every Director or other persons concerned in the management of the company commits an offence and is liable on conviction to not less than 2 years imprisonment and a fine not less than N5million”
 - Section 16(6)- “A government official who renders false statement of account or fails to render a statement of account... resulting in the underpayment or non payment of revenue..commits an offence”
 - Section 16(3) – Mr. President has the power under recommendation of the NEITI’s NSGW to suspend or revoke the license of a firms
- The Act also gives the NSGW some additional powers:
 - Section 17- The NSGW may make regulations as it may consider expedient for the purpose of giving effect to the provisions of the Act and for regulating any matter that falls within the scope of the function of the NEITI

NEITI – Role of the Judiciary (1)

- Linking the NEITI to judicial institutions is important since it would give the initiative more credibility, help to enforce transparency in the sector and to ensure reform durability.
- NEITI can help the Judiciary to identify and prosecute unethical or inappropriate transactions
- NEITI needs the support of the judiciary to:
 - enforce sections of the ACT and the section on offences and punishments NEITI using sanctions provided by the law
 - Draw further regulations as provided by section 17 to drive sector reforms
 - Solve gray areas in petroleum tax administration: Companies are out to maximize profits, including by minimizing own costs and tax obligations, there are many gray areas in petroleum tax administration! Under such circumstances, it will be surprising if oil companies did not try to take advantage of such gray areas to the benefit of their shareholders.

NEITI – Role of the Judiciary (2)

- Capacity building efforts should also target the strengthening of Judiciary to improve extractive industry management and oversight (oil industry is complex, and does not lend itself to easy understanding by non-industry people)
 - Judges and Prosecutors to be conversant with the extractive industries issues
 - Judiciary being receptive to NEITI and Civil Society on issues
 - Promptly address violations of NEITI laws as referred to it
 - Minimize delays in NEITI-related cases, e.g. through ongoing judicial reforms
- The Judiciary can also help in:
 - Tackling other illegal activities (illegal mining, bunkering, etc)
 - Extending the work of the NEITI to the solid minerals industry
 - Generally have speedy resolution of all court cases

Benefits of Extractive Industries Transparency

- Creates good investment climate and attracts new players e.g. China
- Improved accountability on the part of Government and extracting companies
- Good governance and enhanced public expenditure management
- Increased revenue collection by ensuring that all payments, taxes, royalties, etc are duly made
- Poverty reduction strategies by increasing the state's ability to provide for its citizens through its long-term vision, projects & programs.
- It is the responsibility of all citizens, civil society organizations, government officials, parliamentarians and the media to understand and monitor extractive revenue transparency in Nigeria.

End Notes

- Historical necessity for transparency in EIs in Nigeria, and need to restore trust in the sector
- Sector stands better chance of optimal performance with full transparency
- Public trust ultimate panacea for security
- NEITI as watchdog of EI transparency
- It needs to do more; it should be brave and initiate action against erring companies
- Perhaps need to strengthen some of the sanctions for offending NEITI laws. Fines now appear too low
- Judiciary has a central role in interpreting the law, & must play that role