

JULY 2018 NEWSLETTER

FOCUS MORE ON IMPACTS AND OUTCOMES!

...NEITI TASKS EITI BOARD

Nigeria has called on the global Extractive Industries Transparency Initiative (EITI) to shift its current priorities to the pursuit of visible impacts in the implementation of the initiative in member countries.

The Executive Secretary of Nigeria Extractive Industries Transparency Initiative (NEITI) Mr.



Waziri Adio made the call while addressing the International Board of EITI at its meeting in Berlin, Germany.

Mr. Adio explained that the current focus by EITI for member countries to attain satisfactory progress in the implementation of EITI standard is not enough if the efforts do not translate into visible impacts in areas of poverty reduction and improved standard of living of citizens.

In his presentation to the EITI Board entitled, *"EITI Impact and Outlook in Nigeria"*, Mr. Adio conveyed Nigeria's concerns that little or no attention is given to context and diversity of implementing countries especially those in developing countries. *"Out of seven categories in the EITI Validation requirements, only one is focused on impact and outcome while out of EITI thirty-three requirements, only four are on impacts and outcome,"* Adio explained.

He identified key areas where Nigeria has made huge positive impacts in the implementation of EITI to include improvement in revenue recovery and generation of credible data for advancement of citizens' engagement and debate required to push reforms in the extractive industry.

The Executive Secretary informed the international Board that NEITI operations in the oil and gas sector in Nigeria have so far led to recovery of revenues in excess of \$3 billion from companies to government coffers.

In addition, recoverable revenues in excess of \$20 billion in the sector have been disclosed by NEITI reports over the years. The recoverable revenues are from process lapses leading to under-assessment or underpayments of taxes, royalties, signatures bonuses etc. or both.

Mr. Adio further explained that through regular publications of credible and accessible critical data, NEITI has succeeded in opening up previously opaque sector to public scrutiny, thus increasing citizens' demands for reforms.

While welcoming the EITI Validation process designed to hold all implementing countries to the same standard, Mr. Adio noted that such an important exercise need to recognize and encourage impacts recorded by member countries.

NEITI gave the assurance that Nigeria's new direction in the implementation of EITI is driven by a five-year plan that targets strategic impacts on ordinary Nigerians and reversal of resource curse in the country.

Implementation of the plan, Mr. Adio added, involves deepening openness in the sector; shaping the sector and overall governance reforms through constructive citizens' engagement, strengthening demand for accountability and development of operational capacity.

The 20-member Board drawn from all parts of the world and chaired by the former Prime Minister of Sweden, develops and shapes the policy direction of EITI that guides the 51 implementing countries in the organization.

EITI CHAIR CHALLENGES IMPLEMENTING COUNTRIES ON CONTRACT TRANSPARENCY

In 2013, the EITI Standard started to encourage disclosure of contracts. Contracts, it is worth reminding ourselves, are legal documents that governments enter into on



behalf of their people. Experience has shown that in many cases, in particular in countries with weak institutions and governance, the terms to extract oil and minerals may be unduly favourable to one side or another. Sometimes, one side can benefit more because the profitability of the project changes over time, or the prices of the extracted commodity can change considerably. Consequently, it has been argued that citizens should have the

right to know the terms and conditions of these contracts.

Today, we see that 29 EITI countries have disclosed at least some contracts. In total, more than 800 contracts have been published by EITI countries. And companies are also engaging on the issue. 16 EITI supporting companies have now made statements supporting publication in some form, including 7 out of the 9 companies on the EITI board.

Governments and companies are increasingly agreeing to publish contracts. By providing a space where citizens, companies and governments can share experiences and lessons learned across stakeholder groups and national boundaries, EITI has helped these actors share concerns and potential benefits, and discuss possible approaches and ways of achieving contract transparency

You get the picture - the past few years have seen a steady stream of extractive contracts being published. More recently, companies and governments have begun to adopt proactive contract disclosure policies. There is a growing acknowledgement that not everything in a contract needs remain confidential forever, and that information can be released – to the benefit of governments, companies and citizens.

The Oyu Tolgoi mine in Mongolia will be the world's largest copper mine when it fully opens in 2020. The contract for the mine was published in 2009. The contract and the data released under the EITI have led to a wealth of analysis that has helped raised issues and flagged concerns. In some cases, disclosure leads to awkward and difficult conversations but the alternative – where mistrust builds and potentially leads to discord and violence due to a lack of transparency is surely worse. The EITI exists to ensure that point is not reached, that data is released, understood, debated and when appropriate acted on.

Validation has highlighted best practice and benefits of contract transparency in EITI countries. In many countries this includes improved inter-agency collaboration, leading to an improved ability to monitor contractual obligations, more reliable forecasting of future revenues and better assessments of the implications for affected communities.

- Peru's Law on Transparency and Access to Public Information requires that public entities disclose contract information and Peru's 2014 EITI Report includes a list of hydrocarbon contracts.
- In the Philippines contract data has been disclosed in ways that allow for deeper analysis of contracting data by a wide range of users, including civil society groups working with indigenous communities.
- In Mongolia, an EITI working group on contract disclosure was established and, working in collaboration with the Petroleum Authority of Mongolia,

ensured that confidentiality clauses were removed from new model production-sharing agreement.

- Guyana has published the terms of their contract with Exxon Mobil, which is expected to bring in significant revenues for the country when oil starts to be extracted in 2020. The contract has been analysed and its merits discussed at length by domestic and international observers.
- And in Senegal, the government's policy is to publish all mining, oil and gas contracts and describe the actual practice. Senegal has published their contracts for the largest oil and gas fields in West Africa.

These practices have emboldened other countries. Yet, it is also clear that there is still room for improvement for EITI reporting and engagement on contract information:

Some countries are keen to catch up - civil society organizations in Cameroon, Kazakhstan and Madagascar have put contract transparency on the MSGs' agenda as part of their advocacy for full contract disclosure.

In Myanmar, where contracts are not disclosed due to confidentiality provisions, discussions within the EITI process resulted in contract disclosure being included as one of the key recommendations in the first MEITI report.

The EITI can also address general confusion on the role of confidentiality clauses and how governments and companies can break these confidentiality clauses and the use of 'best practice' model contracts.

These issues were highlighted in Albania, Cote d'Ivoire, Ghana, Iraq, Mozambique, Timor-Leste and Ukraine. Where there are justifiable concerns that commercially sensitive data is contained in a contract, this could be resolved through redaction or even delayed publication of the contract. We need further discussion on whether and how contract transparency potentially harms commercial competitiveness and how these concerns can be addressed.

I hope that we can use this session to put focus on the issues and to learn from each other on the various efforts that are underway to open up contract transparency and contracting. We have an impressive panel with us today, representing institutions that have significant knowledge on this topic. Many in the audience have practical experience from working on contract transparency in their home countries. I look forward to a fruitful discussion!

An abridged speech given by Fredrik Reinfeldt, Chair of the EITI, at the EITI Board meeting side event on contract transparency in Berlin June 2018.



**REVIEW PRODUCTION SHARING AGREEMENTS NOW!
... NEITI URGES FGN**

The Nigeria Extractive Industries Transparency Initiative (NEITI) has alerted the nation on the urgent need to review the Deep Offshore and Inland Basin Production Sharing Agreement between Nigeria and oil companies.

NEITI says that the urgency to review the obsolete legislation without further delay is in view of the revenue losses to the federation arising from use of the old agreement in computation of revenues to be shared between the government and oil companies.

NEITI recalls that the Deep Offshore and Inland Basin Production Sharing Contracts Act of 1993 provides for: *“ a review of the terms when prices of oil crosses \$20 in real term; and a review of the terms 15 years after operation of the agreement and five years subsequently”*.

NEITI however observed with concern that Nigeria is yet to adhere to this important provision even now that the price of oil is revolving around \$70 per barrel.

In an Occasional Paper released by NEITI, which reviewed three years of NNPC's financial, and operations reports, NEITI has noted that crude oil production under the Production Sharing Contracts (PSCs) has since overtaken production under the Joint Venture arrangements.

Analysis shows that Production Sharing Contracts (PSCs) accounted for 44.8% of total oil production while the Joint Ventures (JVs) contributed 31.35%.

A trend analysis of this development by NEITI shows that JV Companies accounted for over 97% of Production in 1998 while PSCs contributed only 0.50%. This trend continued until 2012 when PSCs accounted for 37.58% while JVs contributed 36.91%. From the publication, in 2013 PSCs contributed 39.22% while JVs contributed 36.65%, 2014: PSCs; 40.10% and JVs 32.10%; 2015: PSCs 41.45% and JVs 31.99%;2016:PSCs 49.22% and JVs 31.21% while in 2017 the contributions stood at PSCs 44.32% and 30.85% respectively.

The NEITI Occasional Paper further explained that: *“Other companies, comprising Nigerian Petroleum Development Company (NPDC), Alternative Financing (AF), and Independent/ Marginal Fields contributed 2.39% to total production in 1998 and by 2017 this had risen to 24.83%. This figure clearly shows the changing structure of oil production in Nigeria, where PSCs (which contributed a mere 0.5% to total production 20 years ago) have dramatically overtaken JVs (which contributed 97% to total production 20 years ago)”*.

Between 2015 and 2017 covered by NEITI’s Occasional Paper review of NNPC Report, Nigeria produced 2.126 billion barrels of crude oil and condensate.

A Further review of the NNPC Report shows that: *“Production was highest in 2015 with 775.6million barrels produced. Production was lowest in 2016 with 661.1million barrels produced, while production in 2017 was 690 million barrels. 2016 was a difficult year for oil production because production was shut in a number of oil terminals”*.

NEITI’s major concern is that now that the PSCs account for about 50% of total oil production and major source of revenues, the delay or failure to review and renew the agreement means that payment of royalty on oil production under PSCs would not be made while computation of taxes would be based on the old rates.

On lifting of crude oil, the NNPC Monthly Financial and Operations Report disclosed *“international oil companies (IOCs) lifted more crude oil than the government. Total lifting of crude oil and condensates was 2.135 billion barrels. Of this sum, IOCs and Independents lifted a total of 1.367 billion barrels, while government’s lifting by NNPC was 721.16 million barrels. This means that the operators lifted 64.01% of total crude lifting’s, while government through NNPC lifted 33.76%. When expressed in monetary terms, total government lifting of oil amounted to \$35.893 billion while the figure for IOCs and Independents was \$68.591 billion”*

The NNPC Report further disclosed that refineries received 15.15% of total domestic crude lifting out of which 41.32% was utilized under the Direct Sale Direct Purchase (DSDP) program of NNPC.

On Refineries and domestic crude utilization, the report disclosed that for the 3yrs under review, Nigeria’s refineries recorded an average capacity utilization of 12.26%. A further breakdown shows that Kaduna refinery had the lowest capacity utilization of 9% while Warri and Port Harcourt recorded 9.73% and 15.4% respectively.

One striking feature of the NNPC financial operations report is the disclosure that the Corporation lost the sum of N547billion in its operation between 2015 and 2017. Out of this amount, the NNPC Corporate Headquarters recorded the highest revenue loss to the tune of N336.268billion.

On the contrary, the Report revealed that the Nigeria Gas Company made a huge profit of N141.324billion.

While NEITI applauds the Monthly voluntary disclosures by the NNPC, it is important to note that NEITI through its auditors under the EITI framework has not independently verified the information and data from the NNPC reports.

WE ARE PARTNERS WITH OGP -ADIO

There exist lots of similarities and opportunities for collaboration between the Extractive Industries Transparency Initiative (EITI) and the Open Government Partnership (OGP) currently being implemented in Nigeria.

Executive Secretary of NEITI, Waziri Adio made this remark at a two-day Civil Society Conference/High Level Meeting on Open Government Partnership (OGP) Commitments on the Extractive Sector, recently held in Abuja.



Mr. Adio said that, “the OGP and the EITI have areas of convergence”, adding, “the two initiatives are complimentary and geared toward ensuring transparency and accountability in government”.

Mr. Adio, who disclosed that about 51 countries are currently implementing the EITI while 76 countries implement the OGP, noted that Nigeria is lucky being among few countries that are implementing the two initiatives.

“Nigeria is one of the very few countries that signed up to OGP and also signed up to EITI; when you look at the two initiatives you will see that the crux of the initiative and approach is almost alike”, Adio stated.

“EITI as you know is a multi-stakeholder initiative, it is one of the few initiatives that also have the government, the civil society and the companies coming together to solve a common problem. That multi-stakeholders approach is also in OGP”, he explained.

Minister of State Petroleum Resources, Dr. Ibe Kachikwu while making his presentation at the event, stated that oil and gas producing communities should benefit directly from the statutory 13% derivation paid to oil producing states.

Dr. Ibe Kachikwu who spoke through his Special Adviser, Dr Tim Okon, lamented that citizens pay less attention to how monies allocated to states and local governments are spent.

He urged CSOs and other non-state actors to demand for direct benefits for oil and gas bearing communities, noting that the logic behind the 13% derivation was to ensure that the challenges of host communities are addressed.

Dr. Kachikwu called for the establishment of key institutions at the sub-national level to monitor governments spending given the significant gap on transparent and accountable applications of monies allocated states and local governments.

NEITI and OGP Secretariat in Nigeria organized the conference, which attracted participants from relevant government agencies and civil societies (CSOs) across the country, with funding support from Trust Africa. It aimed at strengthening the anti-corruption agenda of Nigerian government through improved collaboration between NEITI and OGP Secretariat in Nigeria.

The meeting underscored the need for partnership across government institutions, companies, civil society, citizens, and journalists towards implementation of all government’s commitments in the EITI and OGP.

The meeting also underlined the need to strengthen NEITI’s role as accountability watchdog in order to maximize the benefits of transparency and accountability in the oil, gas and mining sectors.

‘CITIZENS ENGAGEMENT KEY TO NEITI SUCCESS ‘

The success of implementation of the Extractive Industries Transparency Initiative (EITI) in Nigeria is dependent on robust citizens’ engagement in the oil, gas and mining sectors through NEITI’s regular industry audit reports.

Executive Secretary of NEITI, Waziri Adio made this assertion recently in Abuja while unveiling the agency’s data dashboard targeted at increasing transparency in the country’s oil, gas and mining sectors.

Mr. Adio noted that for NEITI to achieve its purpose of reducing poverty, promoting development and reversing resource curse, there is need for robust public engagement and debate.

“It is not enough to publish reports and expect that the changes we want will come, the changes will come only when we engage ourselves and debate about best way to use the resources”, Adio stated.



The dashboard, designed to simplify the data in NEITI reports, create access to user-friendly data, review trend and analysis, is intended to ensure that information and data in the reports support citizens’ engagements and public debate.

The Executive Secretary explained that, as part of the Nigeria’s commitment to the implementation of the global

Extractive Industries Transparency Initiative policy on Open Data, the dashboard was developed.

He noted that the dashboard was about empowering accountability actors across the board to engage in data-driven and impactful advocacy, and putting citizens in a position to not only control and shape the arguments, but also the outcome.

Mr. Adio said the data dashboard aligns with NEITI’s resolve to push the boundaries and expand the frontiers of openness and accountability, noting that it is about restoring Nigerians as the rightful owners of their resources.

“As you all know, this is a very technical sector and the technical nature of the sector imposes and reinforces exclusion. It is only those who know about it that can be part of the conversation and make reasonable arguments”, Adio stated.

He assured participants at the event that the dashboard will continue to be updated with current data to enable the media and civil society organizations to have adequate information to hold the government and companies accountable.

Mr. Dayo Olaide of MacArthur Foundation, who spoke on behalf of the donor community, commended NEITI for its initiative on data dashboard for oil, gas and mining sectors. He pledged continued support of the donor community to NEITI operations. The dashboard was developed with financial and technical support from R2K and Barian Systems through a grant from MacArthur Foundation.

Other participants at the event include Media and Civil Society Organizations (CSOs) that work on transparency and accountability issues in the oil, gas and solid minerals sectors in Nigeria