

NEITI'S 2012 EITI REPORT IN COMPLIANCE WITH REQUIREMENT 21 (C) OF THE EITI RULES, 2011 EDITION.

This report is presented in compliance with Requirement 21 of the EITI Rules 2011 Edition.

METHODOLOGY

The methodology for this Report is, to take Requirements 1-20 and intimate on the EITI activities carried out during the year in fulfillment of each Requirement.

However, it is imperative to note that the EITI process in Nigeria is peculiar given the fact that it is also statute based. Thus, the peculiarity of the NEITI Act 2007 has to be balanced against the EITI process especially when it comes to some provisions relating to the NSWG (In Nigeria the MSG is known as the National Stakeholders Working Group – NSWG).

OBSERVANCE OF EITI REQUIREMENTS 1-20

Requirement 1

The government is required to issue an unequivocal public statement of its intention to implement the EITI.

This was fulfilled with the enactment of the NEITI Act 2007 which “provides for the establishment of the Nigeria Extractive Industries Transparency Initiative (NEITI) charged with the responsibility, among other things, for the development of a framework for transparency and accountability in the reporting and disclosure by all extractive industry companies of revenue due to or paid to the Federal Government”

At the inauguration of the present NSWG in 2012, His Excellency President Goodluck Jonathan stated, *“I wish to state the unequivocal commitment of the Federal Government to full implementation of transparency and accountability as enshrined in the NEITI Act 2007 and the principles and criteria of the global Extractive Industries Transparency Initiative”*.

Again, government's unequivocal public statement of its intention to implement the EITI was stated in the opening speech by His Excellency President Goodluck Jonathan at the NSWG Retreat in November 2102, *"Nigeria voluntarily signed up as a member of EITI to demonstrate the country's desire to enthrone good governance, openness and transparency in the management of oil and gas, and solid minerals sector revenue. We recognised the great role that NEITI would play in the transformation agenda and clearly moved for the full implementation of the NEITI Act 2007 in the transformation agenda report on priority policies, programs and projects.*

I am aware of the giant strides recorded by Nigeria in the implementation of the EITI which has been recognised and applauded globally. This retreat is coming at a time when the Federal government is pursuing comprehensive and massive reforms in the extractive industries particularly the oil and gas sector. The Petroleum Industry Bill now before the National Assembly for consideration and passage into law is a testimony of the Federal government's determination to reform the sector".

The Presidency all through the year especially in receipt of the 2006-2008 Oil and Gas Audit Report has indicated the need to give all the necessary support to NEITI in order to ensure that NEITI becomes an international benchmark for transparency and accountability in the management of extractive resources in the Country.

In addition and most importantly, the Federal Government of Nigeria, as a sign of total commitment to the implementation of the EITI under the NEITI Act 2007 continues to provide the bulk of the funds to run the operations of NEITI through Federal budgetary allocation annually. This is statutorily covered in Section 13(1) (a) of the NEITI Act 2007 which states that "The funds of the NEITI shall consist of such sums as may be provided by the Federal Government and appropriated by the National Assembly based on the budget submitted by the NSWG and which shall be released as and when due."

Requirement 2

The government is required to commit to work with civil society and companies on the implementation of the EITI.

The Federal Government has continued to encourage the growth of civil society organisations in the country as a reflection of the rule of law and

democratic values it upholds. The realization of the Transformation Agenda of the Federal Government is based on working with the civil society organisations in ensuring adequate flow of information to enhance public perception of prevailing governance issues affecting sustainable growth in Nigeria

Furthermore, NEITI has set an engagement strategy with civil society organisations through the Civil Society Steering Committee of the NSWG. This committee was set up to enhance civil society input to the NEITI process. The Terms of Reference of the Civil Society Steering Committee are embodied in Article 8.5 of the NEITI Board Charter.

An insight into the commitment of government to work with the extractive industries is provided by the Presidential directive (PRES 158 of 22 February 2005, which is still in effect), addressed to the Managing Directors of oil and gas companies operating in Nigeria to co-operate with NEITI on financial, physical and process audits of Nigeria's extractive industry. This directive requires all such companies to also assign a senior staff member to assist the audit team. This directive is still in operation along with the NEITI Act 2007.

Furthermore the Chairperson of the Oil Producers Trade Section of the Lagos Chamber of Commerce and Industry (OPTS) who is the Managing Director of ExxonMobil Nigeria represents the oil and gas industry in the NSWG alongside the leader of an oil and gas labour union PENGASSAN.

Requirement 3

The government is required to appoint a senior individual to lead on the implementation of the EITI.

The year 2012 started with Professor Humphrey A. Asobie as the Chairman of the NSWG. Professor Asobie is a well known civil society activist. He was the Chairman of the NSWG for 4 years. He greatly enriched and lifted the profile of the EITI process in Nigeria.

Upon expiration of his tenure as Chairman in January 2012, as defined by the NEITI Act 2007, the Federal Government appointed another leading figure in civil society advocacy in the person of Mr. Ledum Mitee.

Ledum Mitee is a Legal Practitioner of repute, renowned human rights activist, environmentalist and a man who has for the greater part of his life agitated for the prudent use of extractive resources revenues to achieve sustainable development in Nigeria.

Mrs. Zainab Ahmed, an Accountant with an excellent track record in management and administration as the Executive Secretary of NEITI continues to be responsible for the effective day-to-day administration of the NEITI.

Requirement 4

The government is required to establish a multi-stakeholder group to oversee the implementation of the EITI.

The NEITI Act 2007 provided under Section 5 for an NSWG and Section 6 for the composition of the NSWG.

At the expiration of the tenure of the old NSWG, a new NSWG, also with fifteen members was constituted and inaugurated in August 2012 by the Federal Government, to serve a four-year term prescribed by the NEITI Act 2007. Under the Act, the President of the Federal Republic of Nigeria has the prerogative to appoint NSWG members in line with Section 6 of the NEITI Act 2007.

Requirement 5

The multi-stakeholder group, in consultation with key EITI stake-holders, should agree and publish a fully costed work plan, containing measurable targets, and a timetable for implementation and incorporating an assessment of capacity.

NEITI is funded principally through budgetary allocation from the Federal Government of Nigeria and supplementary funding by donors through the Multi Donor Trust Fund (MDTF). The activities contained in the annual Workplan conducted in fulfillment of EITI and the NEITI are determined by the level of funding from these sources. The NEITI 2012 Work Plan contains the breakdown of all activities, timelines, performance indicators, budget and budget sources for the Year 2012.

The 2012 work plan was approved by the NSWG on the 26 January 2012, and, therefore, has the agreement of key stakeholder representatives in the NSWG. The plan was developed in consultation with civil society with the costing (budget) approved by NSWG, the Budget Office under the Presidency and by the respective Committees of National Assembly. The 2012 work plan was publicly available on NEITI's website, and is also available on request from the Secretariat.

Requirement 6.

The government is required to ensure that civil society is fully, independently, actively and effectively engaged in the process.

Civil society organisations in Nigeria are fully independent, active and effective in the EITI process. The robustness of the activities of civil society organisations in Nigeria is well acclaimed worldwide. The government has constantly encouraged the need to work towards integrating the civil society into the EITI. Fluidity in the relationship has been promoted in order to maintain and sustain quick response to the demand of the NEITI audits.

This is buttressed by the Civil Society Steering Committee of the NEITI which is composed of various independent, distinct and separate civil society organisations, thus providing an interface with all civil society organisations in Nigeria in respect of NEITI reports.

However, the extent to which this requirement can be fulfilled in the choice of civil society representative in the NSWG is determined by the NEITI Act 2007 which puts the prerogative of appointing members of the NSWG solely on the President of the Federal of Nigeria.

Nonetheless NEITI has dutifully advised the executive arm of government of the necessity to adhere affirmatively to this requirement by ensuring that an elective succession plan amongst the civil society organisations is utilized in appointing civil society organisation representatives to the NSWG.

Consequently in the reconstituted NSWG in August 2012, the civil society member in the NSWG is the Chair of the Publish What You Pay Nigeria, who was appointed through an election conducted amongst the civil society

organisations. This is to ensure that the representative of the civil society organisations is truly independent

Requirement 7

The government is required to engage companies in the implementation of the EITI.

The obligatory nature of the NEITI Act 2007 demands that companies are fully engaged by dint of corroboration and cooperation in the implementation of the EITI. Nonetheless whilst such may be compulsory NEITI also ensures that the companies' voluntary buy-in of the EITI is encouraged by the holding of various workshops and seminars for the companies. For instance, templates workshops were held respectively both in Oil & Gas and Solid Minerals Sectors, for all stakeholders in different parts of the country, in order to facilitate and enhance a better understanding of the population of the templates for the audits.

Also the NSWG has as members, the Chairman of the OPTS who is a representative of the Oil and Gas companies, a member from the Oil and Gas labour union and extractive industry experts. The expectation is that these members of the NSWG would be in a position to adequately engage their constituencies of the developments in NEITI for better engagement of the extractive industry companies.

The Technical department of the NEITI Secretariat has designated desk officers for both Solid Minerals and Oil and Gas respectively to constantly liaise and engage companies in their respective sectors for better implementation of the EITI process.

Requirement 8

The government is required to remove any obstacles to the implementation of the EITI.

This was achieved through the enactment of the NEITI Act 2007 and further imbibed by the Transformation Agenda of the present government of Nigeria which simpliciter is 'good governance' that is defined as

“participatory, transparent, responsive, effective and efficient, equitable and inclusive process, which above all, adheres to the rule of law”.

The present Petroleum Industry Bill (PIB) before the National Assembly for passage into law is another example of how the Federal Government intends to bring more transparency and accountability into the Oil and Gas sector.

Furthermore the oversight functions of the National Assembly of NEITI’s activities have further strengthened government’s resolve to remove obstacles in the implementation of EITI in Nigeria.

Requirement 9

The multi-stakeholder group is required to agree a definition of materiality and the reporting templates.

The materiality level for the 2009-2011 Oil and Gas industry Audit was defined as:

- i. “Figures for what constitute material payments and revenues were to be specific rather than in percentages.*
- ii. Benefit streams (flows) were to be in absolute value in determining materiality.*
- iii. Individual streams can be deemed to be material if its total amount as reported by Government exceeds \$100million in cash or in kind for the purpose of EITI Validation Report.*
- iv. Signature bonuses and Education Tax are material whether or not such payments are up to \$100m.*
- v. While the Consultant was obliged to report all discrepancies, he was however, not required to investigate discrepancies if the aggregate value of such discrepancies within an individual financial flow is less than \$5Million.*
- vi. For physical flow, the Consultant was obliged to report discrepancies pertaining to specific transactions where the difference exceeds 5,000 barrels equivalent and its nature.*
- vii. To that effect, the audit considered materiality level for reporting the aggregate revenue and investment flows to the federation at 0.5% of the annual aggregate value of all flows within the audit scope.*

The materiality level for the 2007-2010 Solid Minerals audits was defined as:

- 1. Report All Discrepancies: report any and all discrepancies in the underlying data or differing data from competing sources pertaining to a specific transaction. Any and all such transactions shall be specifically identified in the report and the nature of the discrepancy, if determined, shall be summarized.*
- 2. Investigate and Resolve Discrepancies: In the event that the aggregate value of the collective discrepancies within any individual financial flow, is in excess of 5,000,000, naira then the Consultant shall investigate such discrepancies further, utilizing its best efforts to understand and resolve such discrepancies satisfactorily. The Consultant is not required to investigate discrepancies if the aggregate value of such discrepancies within an individual financial flow, as that term is defined herein, is less than 5,000,000 naira.*
- 3. Materiality Standard for Aggregate Reporting: Conduct such investigatory and audit services as are necessary to enable public reporting upon the aggregate revenue and investment flows to the Federation to a materiality level of N5,000,000 of the annual total (meaning, that the permissible margin of error for aggregate reporting by the Consultant is to be less than zero point five percent of the aggregate value of all flows encompassed within the audit's scope), otherwise the Consultant shall report that the data has not been confirmed.*

The materiality levels and the templates were respectively approved by the NSWG in a meeting on the 18th October 2012.

Requirement 10

The organisation appointed to produce the EITI reconciliation report must be perceived by the multi-stakeholder group as credible, trustworthy and technically competent.

2009 – 2011 OIL & GAS AUDITS: the contract to conduct this audit was won by the indigenous accounting firm of Sada Idris & Co.

2007 – 2010 SOLID MINERALS AUDITS: The accounting firm of Haruna Yahaya & Co. was chosen to conduct this audit.

The whole process of the appointment of the respective consultants was done under the vigorous procedure set up by the Nigerian Public Procurement Act 2007. The exercise was transparent, competitive and the need for international procurement standards were maintained following placement of the procurement exercise on the NEITI website, national and international newspapers.

The respective contracts were approved by the Federal Executive Council of Nigeria for the performance of the respective audits.

Requirement 11

The government is required to ensure that all relevant companies and government entities report.

The NEITI Act 2007 makes it mandatory for all extractive companies, relevant organs of the Federal, State or Local Government to disclose to NEITI at the request of NEITI an accurate record of the cost of production and volume of sale of oil, gas or other minerals extracted by the company at any period as well as an accurate account of money paid by and received from the company at any period, as revenue accruing to the Federal Government from such company for that period.

Sanctions are also provided by the NEITI Act 2007, such as if an extractive company gives false information or report, renders false statement of account or fails to render a statement of account.

Requirement 12

The government is required to ensure that company reports are based on accounts audited to international standards.

The Statement of Accounting Standards issued by the Nigerian Accounting Standards Board is based on compliance with International Financial Reporting Standards for all companies operating under Companies and Allied matters Act 2000.

Furthermore, a greater majority of the companies in the Oil and Gas sector are companies quoted in stock exchanges outside Nigeria vide their respective holding companies that adhere to the acceptable International Financial Reporting Standards (IFRS) required by EITI.

This is also applicable to the solid minerals audits. The materiality level ensured that some quoted firms on the Nigerian Stock Exchange would be captured whilst others had audited accounts to Nigerian Accounting Standards which is in line with General Accepted Standards (GAPP).

Company reports were considered to be in accordance with IFRS.

However, to eradicate any seeming uncertainty, the government of the Federal Republic of Nigeria, directed that all financial statements of companies quoted on the Nigeria Stock Exchange shall be prepared in accordance with IFRS with effect from 2012.

Requirement 13

The government is required to ensure that government reports are based on accounts audited to international standards.

According to the Auditor General of the Federation, Government reports presently in Nigeria are based on accounts audited to Nigerian auditing standards (Generally Accepted Auditing Standards (GAAP) which are not exactly the same as international standards. However for the purposes of the 2009-2011 Oil and Gas and 2007-2010 Solid Minerals audit, the Auditors agreed to accept GAAP as being high enough pending the directive by the Federal Government that all government reports shall be prepared

in accordance with International Financial accounting Standards from 2014 (extended from 2013 to 2014)

Requirement 14

Companies comprehensively disclose all material payments in accordance with the agreed reporting templates.

All companies involved in the 2009-2011 Oil & Gas audits disclosed all material payments in accordance with agreed templates, except four companies: Neconde Energy Limited, Septa Energy Limited, Energia Limited and Emerald Energy Resources.

About eight companies did not provide the requested data for the Solid Minerals audits.

NEITI is presently putting into place, machinery for the enforcement of sanctions against defaulting companies which fail to comply with the dictates of the statute.

Requirement 15

Government agencies comprehensively disclose all material revenues in accordance with the agreed reporting templates.

The government agencies involved in the 2009 - 2011 Oil & Gas and in the 2007-2010 Solid Mineral audits disclosed all material revenues in accordance with the agreed templates. The agencies had earlier on participated in a workshop to acquaint themselves with requirements of the templates.

Requirement 16

The multi-stakeholder group must be content that the organisation contracted to reconcile the company and government figures did so satisfactorily.

The services provided by the respective reconciler under the executed contracts with NEITI for the 2009-2011 Oil & Gas and Solid Minerals 2007-2010 audits were extensively enumerated in the Terms of Reference (ToR).

The ToR specified a set of tasks and deliverables grouped into Financial, Physical and Process audits applicable to a defined set of companies in the respective extractive industry sectors. The services were satisfactorily carried out by the reconciler in accordance with the ToR.

The NSWG in a meeting on the 23rd November, 2012 resolved to approve as satisfactory, the Report of the 2007 – 2010 Solid Minerals audits conducted and presented by Haruna Yahaya & Co.

The 2009-2011 Oil & Gas audits (financial flows only) was submitted by the auditors on 12th December 2012 but was only approved by the NSWG on the 17th January 2013.

Requirement 17

The reconciler must ensure that the EITI Report is comprehensive, identifies all discrepancies, where possible explains those discrepancies, and where necessary makes recommendations for remedial actions to be taken.

The Report must be able to capture all data relating to payments by extractive companies and receipts by the Government. In other words the Report must not only be comprehensible, it must be very comprehensive to include all details for efficient use for the purpose it was prepared: to ensure transparency and accountability. The 2007-2010 Solid Minerals and the 2009-2011 Oil & Gas (financial flows) audits were very comprehensive in nature.

Both audits respectively identified significant discrepancies and made recommendations accordingly for remediation.

Requirement 18

The government and multi-stakeholder group must ensure that the EITI Report is comprehensible and publicly accessible in such a way as to encourage that its findings contribute to public debate.

The 2007 - 2010 Solid Minerals Audit Report upon approval by the NSWG was placed on the NEITI website. A World Press Conference was held in

Abuja on the 18th of December, 2012 to put the report in the public domain.

This was also done for the 2009 -2011 Oil & Gas (Financial Flows) Audit Report on the 28th January 2013 when a World Press Conference was held to present the report to the public. The Report was placed on the NEITI website on the 28th January 2013.

Both reports were also sent to the National Assembly and Auditor General of the Federation as required by the NEITI Act 2007.

In addition, 2006-2008 Oil and Gas Report, was translated into the three major languages (Yoruba, Hausa and Ibo) in Nigeria in 2012.

Consequently all the reports are going to be disseminated along the following lines as was done for previous reports: full format, executive summary, simplified version and translated version in three major Nigeria languages. Dissemination and accessibility to the public would be by means of: NEITI website, enlightenment outreach events, national distribution of the report, press conferences, electronic and print media, etc.

Requirement 19

Oil, gas and mining companies must support EITI implementation

The NEITI Act 2007 makes it mandatory for oil, gas and mining companies to support EITI implementation in Nigeria. Furthermore, NEITI has developed activities such as workshops and seminar to have the voluntary buy - in of the Oil, gas and mining companies into its programmes.

Requirement 20

The government and multi-stakeholder group must take steps to act on lessons learnt, address discrepancies and ensure that EITI implementation is sustainable. Implementing countries are required to submit Validation reports in accordance with the deadlines established by the Board.

The various reports of the oil and gas audits inclusive of the 2009 – 2011 have identified notable revenue discrepancies and structural and operational weaknesses related to the management of oil revenues and oil and gas sector governance.

This is also applicable to the sole 2007 – 2011 solid mineral audits.

The reconcilers in all cases have made a series of recommendations for improvement and change to remedy the identified lapses.

The Inter Ministerial Task Team (IMTT) which is responsible for the strategy aimed at addressing the lapses that were identified in the reports is expected to continuously carry out its remedial functions at all times

IMTT is a group of relevant government organisations, aimed at discussing the implementation of the remediation plan. NEITI is the coordinator of the remediation efforts.

The remedial issues identified have been presented to the IMTT in their meetings held in the year. Members are to provide comments on lapses identified with regards to their agencies and efforts to remedy them. Meetings were held on a quarterly basis.

Recommendations from Validations and Corresponding Activities Undertaken To Address the Recommendation

1. Appointment of competent Directors to Secretariat

This was completed by the NSWG in 2010 and reported in NEITI's 2011 EITI Report in compliance with Requirement 21

2. Develop and agree an NSWG board charter.

This was completed by the NSWG in 2010 and reported in NEITI's 2011 EITI Report in compliance with Requirement 21

3. Formalise structures for engagement between NSWG, civil society and companies.

The was completed by the NSWG in 2010 and reported in NEITI's 2011 EITI Report in compliance with Requirement 21(c)

4. Appointment of Auditor(s) for 2006-2008 Reports

The Hart Group was appointed to conduct the audits. The audits have since been completed and approved by the NSWG for public consumption.

5. Documentation of appointment process for 2005, and 2006-2008, in line with documentation for 1999-2004.

The appointment process for both the 2005 and 2006-2008 oil and gas audits have been duly compiled and to be archived alongside documents of the 1999-2004.

Furthermore the appointment process for the 2009-2011 Oil and Gas and 2007-2010 Solid Minerals audits have also been documented.

6. Implement strategy and work plan to expand NEITI to solid minerals sector and Nigeria/STP JDZ

Solid Minerals

Solid minerals have been incorporated into the NEITI audits by the completion of the widely acclaimed 2007-2010 Solid Minerals industry audits.

Nigeria/STP JDZ

NEITI in the 2009-2011 Oil & Gas audits included figures solely from Nigeria's operations in the Joint Development Zone (JDZ) in EITI reporting. However figures from the Sao Tome and Principe were not included because the Sao Tome and Principe authorities are still working on modalities for joint reporting.

7. Publication of 2006-2008 Reports, including popular version.

The simplified popular version has been published, placed on the NEITI website and distributed national wide at workshops and strategic public institutions.

CONCLUSION

The NEITI in furtherance of its mandate and in the need to further extend the principles of EITI in Nigeria continues to:

1. Encourage States in the Federation in the pursuit of EITI at the sub-national level. NEITI has made in-roads in some States with the intention of passing sub-national legislation on EITI: takes EITI to the grassroots. NEITI continues to work with civil society by empowering them with the audits and capacity to ask questions on transparency and accountability at sub-national level.

Furthermore in the above light and in compliance with Sections 2 (d) and 3 (j) of the NEITI Act2007, NEITI intends to conduct an accountability audit known as the Fiscal Allocation and Statutory Disbursement (FASD) audits in 2013.

2. NEITI has also continued to strengthen its mandate with stronger links and cooperation with other anti corruption agencies in Nigeria. The expectation is that the anti corruption agencies with the powers of arrest and prosecution would use the audits to ensure realization of the need for entities covered under the NEITI to be transparent in their

operations and for recipients to be accountable for revenue received by them.

Endorsement by the NSWG

This report was endorsed by the NSWG in a meeting on the 20th June 2013, as the EITI Report of Nigeria for 2012 in compliance with Requirement 21(c) of the EITI Rules, 2011 Edition.

