

Appendix 4 - NEITI Act

NIGERIA EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE, (NEITI) ACT, 2007

EXPLANATORY MEMORANDUM

This Act 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.

NIGERIA EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE

(NEITI) ACT, 2007

A BILL

FOR

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE NIGERIA EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (NEITI) AND FOR RELATED MATTERS.

Enacted by the National Assembly of the Federal Republic of Nigeria:

1.(1) There is established a body to be known as the Nigeria Extractive Industries Transparency Initiative, (in this Act referred to as "the NEITI".)

(2) The NEITI:

(a) shall be an autonomous self-accounting body, which shall report to the President and the National Assembly,

(b) shall be a body corporate with perpetual succession with a common seal,
and

(c) may:

- (i) sue and be sued in its corporate name, and
- (ii) acquire, hold and dispose of movable and immovable properties in the discharge of its functions under this Act.

2. The primary objectives of the NEITI are:

- (a) to ensure due process and transparency in the payments made by all extractive industry companies to the Federal Government and statutory recipients.
- (b) to monitor and ensure accountability in the revenue receipts of the Federal Government from extractive industry companies.
- (c) to eliminate all forms of corrupt practices in the determination, payments, receipts and posting of revenue accruing to the Federal Government from extractive industry companies;
- (d) to ensure transparency and accountability by government in the application of resources from payment received from extractive industry companies, and
- (e) to ensure conformity with the principles of Extractive Industries Transparency Initiative

3. For the purpose of realizing its objectives under this Act. The NEITI shall perform the following functions:

- (a) develop 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;
- (b) evaluate without prejudice to any relevant contractual obligations and sovereign obligations the practices of all extractive industry companies and government respectively regarding acquisition of acreages, budgeting, contracting, materials procurement and production cost profile in order to ensure due process, transparency and accountability.
- (c) ensure transparency and accountability in the management of the investment of the Federal Government in all extractive industry companies,

- (d) obtain, as may be deemed necessary, from any extractive industry company 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, provided that such information shall not be used in any manner prejudicial to the contractual obligation or proprietary interests of the extractive industry company,
- (e) request from any company in the extractive industry, or from any relevant organ of the Federal State or Local Government, 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; provided that such information shall not be used in a manner prejudicial to contractual obligations or proprietary interest of the extractive industry company or sovereign obligations of Government,
- (f) monitor and ensure that all payments due to the Federal Government from all extractive industry companies, including taxes, royalties, dividends, bonuses, penalties, levies and such like are duly made;
- (g) identify lapses and undertake measures that shall enhance the capacity of any relevant organ of the Federal State or Local Government having statutory responsibility to monitor revenue payments by all extractive industry companies to the Federal Government,
- (h) disseminate by way of publication of records, report or otherwise any information concerning the revenues received by the Federal Government from all extractive industry companies as it may consider necessary;
- (i) promote or undertake any other activity related to its functions and which in its opinion, is calculated to help achieve its overall objectives as enumerated in section 2 of this Act;
- (j) ensure that all fiscal allocations and statutory disbursements due from the Federal Government to statutory recipients are duly made.

4. (1) The NEITI shall in each financial year appoint independent auditors for the purpose of Appointment auditing the total revenue which accrued to the Federal Government for that year from extractive industry companies, in order

to determine the accuracy of payments and receipts.

(2) The independent auditors appointed under subsection (1) of this section shall undertake a physical, process and financial audit on such terms and conditions as may be approved by the National Stakeholders Working Group (NSWG).

(3) Upon the completion of an audit, the independent auditors shall submit the reports together with comments of the Extractive Industries Company to the NEITI, which shall cause same to be disseminated to the National Assembly and the Auditor-General of the Federation and also ensure their publication.

(4) The NEITI shall submit a bi-annual report of its activities to the President and National Assembly.

(5) An auditor or auditing firm that has audited any extractive industry company in any given year shall not be appointed in the same year for the purposes of subsection (2) of this section.

(6) An auditor or auditing firm shall not be engaged for more than two years consecutively for the purposes of subsection (2) of this section.

(7) The Auditor-General of the Federation shall not later than 3 months after the submission of the audit report to the National Assembly publish any comment made or action taken by the Government on the audit reports.

5. (1) The governing body of the NEITI shall be the National Stakeholders Working Group (in this Act referred to as "the NSWG")

(2) The NSWG shall be responsible for the formulation of policies, programmes and strategies for the effective implementation of the objectives and the discharges of the functions of the NEITI.

(3) Without prejudice to subsection (2) of this section, the NSWG shall have powers to recommend the annual budget and work-plan of the NEITI and ensure the periodic review of programmes performance by the NEITI.

6. (1) The NSWG shall be constituted by the President and shall consist of a chairman and no more than 14 other members one of whom shall be an Executive

Secretary.

(2) (a) In making appointment into the NSWG, the President shall include:

- (i) representative of extractive industry companies,
 - (ii) representative of Civil Society,
 - (iii) representative of Labour Unions in the extractive Industries,
 - (iv) experts in the extractive industry, and
 - (v) one member from each of the six geopolitical zones.
- (b) the Chairman and other members of NSWG other than the Executive Secretary shall serve on part-time basis.

(3) The appointment of Executive Secretary shall be for 5 years and no more.

7. A person appointed as a member of the NSWG shall hold office for 4 years and no more.

8. The members of the NSWG as well as any person appointed to any of its special committees under section 2 may be paid such allowances out of the funds of the NEITI as the National Revenue Mobilization and Fiscal Commission may approve.

9. (1) The NSWG shall ordinarily meet quarterly for the dispatch of business at such times and places as it may determine, but not less than four times in a year.

(2) At every meeting of the NSWG, the Chairman shall preside and in his absence, a member of the NSWG appointed by the members from among themselves shall preside.

(3) Questions proposed at a meeting of NSWG shall be determined by a simple majority of members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.

(4) The NSWG may at any time co-opt any person to act as an adviser at any of its meetings but no person so co-opted shall be entitled to vote at any meeting.

(5) The validity of the proceedings of the NSWG shall not be affected by the absence of any member, vacancy among its membership or by any defect in the

appointment of any of the members.

10. The quorum of the NSWG at any meeting shall be 8 members.

11. The NSWG may constitute such special committees as it considers fit to deal different aspects of its responsibilities.

12. (1) The NSWG may create departments and engage the services of such staff and consultants as it may consider necessary for the NEITI.

(2) The NEITI shall have an Executive Secretary who shall

(a) be appointed by the President upon the recommendation of the NSWG provided he is a graduate with relevant qualifications and at least 10 years cognate experience;

(b) be responsible for the day-to-day administration of the NEITI; and

(c) serve as Secretary to NSWG.

(3) The staff and consultants of the NEITI may be engaged on such terms and conditions as the NSWG may determine.

(4) The NSWG shall fix the remunerations, allowances and benefits of the staff and consultants of the NEITI.

(5) (a) The NSWG shall recommend to the President for appointment, qualified validator line with NEITI guidelines as contained in second schedule to this Act; and

(b) NSWG shall fix the remunerations, allowances and benefits for the validators.

13. (1) The funds of the NEITI shall consist of:

(a) 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; and

(b) such sums as may be paid to the NEITI by way of grants, donations and gifts provided the sources of such grants, donations and gifts are properly disclosed and not in conflict with the provisions of this Act.

(2) The NEITI shall apply the proceeds of the funds established under section 13 (1) of this Act to the

(a) cost of administration;

(b) payment of salaries, allowances and benefits to members of the NSWG or any of its committees;

(c) payment of salaries, remunerations, allowances, pensions benefits to officers and employees for NEITI;

(d) payment of all purchases;

(e) payment for all contracts, including mobilization, fluctuation, variations, legal fees and cost of contract-administration; and

(f) carrying out of other activities that would promote its objectives which are connected to all or any of the functions of NEITI under this Act, and

(g) payment for validators.

(3) The Government body of NEITI, the NSWG, shall not later than 30th September in each year, submit to the President and the National Assembly an estimate of the expenditure and income of NEITI during the succeeding year and the NEITI shall cause to be kept proper accounts in respect of each year and proper records in relation thereto.

14. (1) the NEITI shall cause the account of total revenue which accrued to the Federal Government from all extractive industry companies, its receipts, payments, assets and liabilities to be audited not later than 6 months after the end of each year by independent auditors appointed on such terms and conditions as the NSWG may approve and on the confirmation of the audit, the independent auditor shall submit the report with comments of the audited entity to the NEITI which shall cause same to be published for the information of the public, provided that the contents of such report shall not be published in a manner prejudicial to the contractual obligations or proprietary interests of the audited entity.

(2) The NEITI shall have power to borrow money from banks with the approval of NSWG.

(3) The NEITI shall prepare and submit to the President and the National Assembly not later that 30th September in each year, a report of its activities

during the immediate preceding year, and shall include in such report the audited accounts of the NEITI for that year and the auditor's report thereon.

15. (1) the NEITI shall maintain bank accounts, the signatories of which shall be determined by the NSWG in accordance with the regulation made pursuant hereto.

(2) The accounts may be opened in such banks as the NSWG may determine.

16. (1) An extractive industry company which

(a) gives false information or report to the Federal Government or its agency regarding its volume or production, sales and income; or

(b) renders false statement of account or fails to render a statement of account required under this Act to the Federal Government or its agencies, resulting in the underpayment or non-payment of revenue accruable to the Federal Government or statutory recipients commits an offence and is liable on conviction to a fine not less than N30,000,000.

(2) Where the Extractive industry has been convicted of an offence under subsection (1) of this section, the court shall, in addition to the penalty prescribed there under, order the company to pay the actual amount of revenue due to the Federal Government.

(3) An extractive industry company which delays or refuses to give information or report under this Act, or willfully or negligently fails to perform its obligations under this Act, commits an offence and is liable on conviction to a fine not less than N30,000,000.

(4) Without prejudice to subsections (1), and (2) and (3) of this section, the President may on the recommendation of the NSWG suspend or revoke the operational license of any extractive industry company which fails to perform its obligations under this Act.

(5) If any extractive industry company commits an offense against the Act, every Director or other persons concerned in the management of the company commits the offense and is liable on conviction to not less than 2 years imprisonment or a fine not less than N5,000,000 unless that person proves that

(a) the offense was committed without his consent or connivance, and
(b) the person exercised all such diligence to prevent the commission of the offense as ought to have been exercised by that person, having regard to the nature of his functions in that company and to all the circumstance.

(6) A government official who renders false statement of account or fails to render a statement of account required under this Act to the Federal Government or its agencies, resulting in the underpayment or non-payment of revenue accruable to the Federal Government or statutory recipients, commits an offense and is liable on conviction to not less than 2 years imprisonment or a fine not less than N5,000,000, unless that person proves that

(a) the offense was committed without his consent or connivance, and
(b) the person exercised all such diligence to prevent the commission of the offense as ought to have been exercised by that person, having regard to the nature of his functions in that company and to all the circumstance.

17. The NSWG may make regulations as it may consider expedient for the purpose of giving effect to the provisions of this Act and for regulating any matter that falls within the scope of the functions of the NEITI.

18. Subject to the provisions of this Act, no suit shall be commenced against NEITI before the expiration of 30 days after written notice of an intention to commence the suit shall have been served upon NEITI as a defendant or its agent, and the notice shall clearly and explicitly state:

(a) the cause of action,
(b) the particulars of the claim,
(c) the names of the legal practitioners representing the plaintiff and their addresses, and
(d) the relief sought.

19. (1) The Executive Secretary of the NEITI, his officers, employees or agents shall personally be subject to any action, claim or demand by, or liable to any person in respect anything done or omitted to be done in the exercise of any function or

power conferred by this Act upon the NEITI or member of the NSWG.

(2) A member of the NSWG, the Executive Secretary or any officer of the NEITI shall be indemnified out of the funds of the NEITI against any liability incurred by him in defending any proceeding, whether civil or criminal, if the proceeding is brought against him in his capacity as a member of NSWG, Executive Secretary, officer or any employee of the NEITI.

(3) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any officer, or employee of NEITI or member of the NSWG.

20. A notice, summons, other court process, other documents required or authorized to be served upon the NEITI under the provisions of this Act, any other law or enactment shall and be served by delivering it to the Executive Secretary or by sending it by registered post and addressed to the Executive Secretary at the principal office of the NEITI.

21. In this Act:

“Extractive Industry Company” means any company in Nigeria that is engaged in the business of prospecting, mining, extracting, processing and distributing minerals and gas including oil, gold, coal, tin, bitumen, diamonds, precious stones and such like, includes

any agency or body responsible for the payment of extractive industry proceeds to the Federal Government or its Statutory Recipient.

“Federal Government” means the Federal government of Nigeria.

“Government” means the three tiers of the government of Nigeria, including Federal, State and Local Government, and their respective Ministries, agencies and departments.

“President” means the President and Commander-in-Chief of the Armed Forces of Federal Republic of Nigeria;

“Statutory Recipient” means any entity to whom by law, extractive industry companies or Government are obliged to make payments,

“Extractive Industry Expert” means a person who has spent a minimum of ten

(10) years in a management position in the extractive industry.

“NSWG” means National Stakeholders Working Group.

22. This Act may be cited as the Nigeria Extractive Industries Transparency Initiative Act 2007.

SCHEDULE Section 2(7)

SUPPLEMENTARY PROVISIONS RELATING TO THE NIGERIA EXTRACTIVE INDUSTRY TRANSPARENCY INITIATIVE, ETC.

Proceedings of the Governing Body

1-(1) Subject and section 27 of the Interpretation Act, Cap. 192 LFN, 1990 the NSWG may make standing order to regulate its proceedings for those of any of its Committee.

(2) The quorum of the NSWG shall be the Chairman or any other person presiding at a meeting in his absence and 4 other members of the governing body and the quorum of any Committee shall be as determined by the governing body.

2-(1) The NSWG shall meet whenever it is summoned by the Chairman and if the Chairman is required to do so by notice given to him by not less than 4 other members, he shall summon a meeting of the NSWG to be held within 14 days from the date on which the notice was given.

(2) At any meeting of the NSWG, the Chairman shall preside but if he is absent, the members present at the meeting shall appoint one of them to preside at the meeting.

(3) When the NSWG desire to obtain the advice of any person on a particular matter, it may co-opt him for such period as it deems fit, but a person who is a member by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the NSWG and shall not count towards a quorum.

(4) The NSWG shall ordinarily meet at such times and places as it may determine, and for not less than four times in a year.

(5) Questions proposed at a meeting of the NSWG shall be determined by a simple majority of members present and voting, and in the event of an equality of votes, the Chairman or another person shall have a second or casting vote.

Committees

3-(1) The NSWG may appoint one or more Committee to carry out on its behalf such of the functions of NEITI as it may determine.

(2) A Committee appointed under this paragraph shall consist of such number of person as may be determined by the NSWG and a person shall hold office on the Committee in accordance with the terms of his appointment.

(3) A decision of a Committee shall not have effect until it is confirmed by the NSWG.

Miscellaneous

4-(1) The fixing of the seal NEITI shall be authenticated by the signatures of the Chairman and Secretary of the NSWG generally.

(2) Any contract or instrument which, if made or executed by a person not being a body corporate could not be required to be under seal, may be made or executed on behalf of NEITI by the Secretary of the NSWG generally or any other person specifically authorized by the NSWG to act for that purpose.

(3) A document purporting to be duly executed under the seal of NEITI shall be received in evidence and shall, unless the contrary is proved, be presumed to be so executed.

(4) The validity of any proceeding of the NSWG or of a Committee shall not be adversely affected by

(a) A vacancy in the membership of the NSWG or a Committee, or

(b) A defect in the appointment of a member of the NSWG or Committee, or

(c) Reason that a person not entitled to do so took part in the proceedings or the NSWG or Committee.