

# Initiatives Aimed at Ensuring Transparency and Accountability in the Nigerian Petroleum Industry: A Critical Appraisal of the Nigeria Extractive Industry Transparency Initiative (NEITI), the NEITI Act and the Petroleum Industry Governance Bill (PIGB)

**Yolandi Meyer**

LLB LLM LLD (University of Pretoria)

Post-Doctoral Research Fellow, South African Research Chair in International Law,  
University of Johannesburg

ymeyer8@gmail.com

## Abstract

This article seeks to analyse initiatives that have aimed to increase the level of transparency and accountability in the petroleum sector in Nigeria during the past few decades. Nigeria has vast deposits of natural-resource wealth; however, harvesting these resources in order to provide an optimal financial return has often been challenging. Furthermore, the financial gains have not always translated into an improved socio-economic standing of the country's citizens. It is argued that the main reasons for this are mismanagement of natural-resource wealth and a lack of transparency and accountability in the petroleum sector. This article discusses recent initiatives that aim to deal with these issues, namely: the Extractive Industries Transparency Initiative (EITI), specifically the Nigerian Extractive Industries Transparency Initiative (NEITI), the NEITI Act and the Petroleum Industry Governance Bill (PIGB). The article examines whether these initiatives can contribute to a more transparent and accountable petroleum sector and whether they can ultimately translate into objectifiable results and improve the overall socio-economic situation in Nigeria.

**Keywords:** Nigerian Extractive Industries Transparency Initiative; Extractive Industries Transparency Initiative; NEITI Act; Nigeria; Petroleum Industry Governance Bill

## Introduction<sup>1</sup>

The situation in Africa regarding the extractive industries sector has become an issue of grave concern during the past few decades. The continent has always boasted one of the world's largest concentrations of natural resources. Industry has taken notice of this abundance of natural resources, as is evident from the large number of corporations interested in investing on the continent.<sup>2</sup> With the independence of many African states during and after the 1960s, resource-rich states such as Nigeria have been very successful economically during certain periods of prosperity. In addition, despite the economic crises of the 1970s and 2008, there is still a great demand for raw natural resources from the African continent.<sup>3</sup>

The problem, however, is that exporting African states often have weak regulatory systems and high levels of corruption, and this leads to extensive social abuses and the over-exploitation of resources.<sup>4</sup> Claims against multinationals in cases such as *Wiwa v Royal Dutch Petroleum*<sup>5</sup> illustrate some of the potentially negative impacts, in terms both of the environment and of human rights, that are often associated with the activities of corporations operating in the extractive industry sector in Africa. There has been conflict over natural-resource management in Nigeria since oil in large quantities was discovered in the country in 1956. According to Nwapi, '... there has hardly been a sorer spot in Nigeria's polity than how to develop and manage the resources.'<sup>6</sup>

- 
- 1 This work is based on research supported by the National Research Foundation of South Africa (Grant Number 85104).
  - 2 Darryl Linington, 'Africa Predicted to be the World's Second-fastest Growing Region in 2020' (*IT News Africa*, 30 October 2018) <<http://www.itnewsafrika.com/2018/10/africa-predicted-to-be-the-worlds-second-fastest-growing-region-in-2020/>> accessed 30 October 2018.
  - 3 Raf Custers and Ken Matthysen, 'Africa's Natural Resources in a Global Context' (IPIS Research Paper August 2009) <[www.Ipisresearch.be/att/20090812\\_Natural\\_Resources.pdf](http://www.Ipisresearch.be/att/20090812_Natural_Resources.pdf)> accessed 11 April 2014.
  - 4 Some examples of African legislation dealing with resource extraction include: Ghana's Petroleum Revenue Management Act (2011), Chad's Petroleum Revenue Management Act (1999), Tanzania's Oil and Gas Revenues Management Act (2015), Cameroon's Petroleum Code (1999); DRC's Decree no 16/010 (2016); Nigeria's Petroleum Act (2004) and the Constitution of Nigeria (1999) which provides that the Federal government controls all oil deposits.
  - 5 In *Wiwa v Royal Dutch Petroleum*, Royal Dutch Petroleum was sued in a US court in 1996 for its complicity with the Nigerian military in committing various human rights violations against the Ogoni people of Nigeria. These atrocities included torture and the execution of protestors. Among the victims was Ken Saro-Wiwa, an internationally recognised activist and writer. The surviving family members of the victims brought the claims against Shell, and after several years of litigation, the parties reached a settlement in 2009, on the eve of the trial, of US\$15.5 million, payment of some of the plaintiffs' legal fees, and the establishment of a trust to benefit the Ogoni people. See *Wiwa v Royal Dutch Petroleum Co*, No 96 Civ 8386 (KMW) (HBP), 1998 US Dist LEXIS 23064 (SDNY Sept 25, 1998).
  - 6 Chilenye Nwapi, 'A Legislative Proposal for Public Participation in Oil and Gas Decision-Making in Nigeria' (2010) 54(2) *Journal of African Law* 184; see also United Nations Development Programme (UNDP), 'Niger Delta Human Development Report' (UNDP 2006) 3, which further discusses the

Numerous claims of corruption have been levelled against the Nigerian government with regard to the management of petroleum revenues. It is estimated that senior officials of the Nigerian government have embezzled at least US\$50 billion of petroleum revenues since the 1960s.<sup>7</sup> More recently, grave concerns have been expressed regarding corruption in the Nigerian National Petroleum Corporation (NNPC), the state petroleum corporation. The NNPC is currently the majority owner of all joint petroleum operations in Nigeria and is responsible for the exploration for and production of petroleum products on behalf of the government.<sup>8</sup> There have been numerous allegations of mismanagement, loss of revenues and large-scale corruption in the organisation.<sup>9</sup> The lack of transparency surrounding the amount of petroleum revenue accumulated and the mismanagement of petroleum revenues largely contributes to this problem.<sup>10</sup> Despite the country having generated petroleum revenues amounting to US\$400 billion in the past 50 years, Nigeria is still one of the poorer countries in the

---

reasons for conflict: 'Declining economic performance leading to rising unemployment or underemployment; the lack of access to basic necessities of life like water, shelter, food and clothing; discriminatory policies that deny access to positions of authority and prevent people from participating in shaping the rules that govern their lives these all indicate that governance over time has fallen short. Corruption aggravates feelings of being cheated, especially when the rulers live like kings amid extreme want. In spite of the substantial flow of oil money to state and local governments, many communities see no sign of government presence in terms of development projects.' See also Bethel Ihugba and Sergius Okoro, 'Evaluation of the Legal Framework for Promoting Sustainable Development in the Extractive Host Communities in Nigeria' (2017) 8(1) *Journal of Sustainable Development Law & Policy* 355.

- 7 André Standing, 'Corruption and the Extractive Industries in Africa: Can Combatting Corruption Cure the Resource Curse?' 2007 153 *ISS Paper* 4 <<https://www.issafrika.org/uploads/Paper153.pdf>> accessed 20 April 2016; see also BBC News, 'Nigeria's NNPC 'Failed to Pay' \$16bn in Oil Revenues' (BBC News, 15 March 2016) <<https://www.bbc.com/news/world-africa-35810599>> accessed 31 October 2018.
- 8 See Nigerian National Petroleum Corporation, 'About NNPC' <<http://www.nnpcgroup.com/AboutNNPC/CorporateInfo.aspx>> accessed 28 May 2018; see also Nigerian National Petroleum Corporation, 'Joint Venture operations' <<http://www.nnpcgroup.com/nnpcbusiness/upstreamventures.aspx>> accessed 16 May 2016; see also Augustin Ikein, 'The Impact of Oil on a Developing Country: The Case of Nigeria' (Praeger 2010) 2, 3; see also Nwapi (n 6) 189.
- 9 See Aaron Sayne, Alexandra Gillies and Christina Katsouris, 'Inside NNPC Oil Sales: A Case for Reform in Nigeria' (Natural Resource Governance Institute, August 2015) 13 <[https://resourcegovernance.org/sites/default/files/NRGI\\_InsideNNPCOilSales\\_MainReport.pdf](https://resourcegovernance.org/sites/default/files/NRGI_InsideNNPCOilSales_MainReport.pdf)> accessed 28 May 2018; see also Tony Ailemen, 'KPMG Indicts NNPC, Other Agencies over Unremitted ₦8.8trn' (Business Day Online, 18 May 2018) at <<http://www.businessdayonline.com/kpmg-indicts-nnpc-agencies-unremitted-n8-8trn/>> accessed 28 May 2018.
- 10 Standing (n 7) 4; see also Sayne (n 9) 10.

world measured by per capita income:<sup>11</sup> more than 80 per cent of Nigerians live on less than two dollars a day.<sup>12</sup>

This article discusses the initiatives aimed at improving the level of transparency and accountability in the industry. I first discuss the Extractive Industry Transparency Initiative (EITI) as an introduction to the NEITI in order to demonstrate how the latter originated and the principles on which the initiative is based. Secondly, I consider both the NEITI and the NEITI Act. Thirdly, I analyse the provisions of the Petroleum Industry Bill (PIB), which includes a discussion of the PIGB. Finally, in conclusion, I make certain findings regarding the level of transparency and accountability in the industry and how further improvements can be made in this regard.

## **The Extractive Industries Transparency Initiative (EITI)**

The Extractive Industries Transparency Initiative (EITI) is described as a ‘global standard to promote the open and accountable management of oil, gas and mineral resources’ that ‘seeks to address the key governance issues of the oil, gas and mining sectors’.<sup>13</sup>

The EITI was established by governments, multinational corporations and civil society, and it prescribes the standards to be applied on a global scale by these entities. The main aim of the initiative is to ensure that entities, especially governments and multinationals, manage a host country’s resources in a sustainable and transparent manner.<sup>14</sup> The EITI has become the ‘most influential and institutionalised transnational multi-stakeholder movement in the extractive industries sector’.<sup>15</sup>

---

11 In 2006, Nigeria’s per capita income was US\$2 207.861, ranking in 137th position compared to other countries. See IMF GDP per capita, current prices<<http://www.imf.org/external/datamapper/NGDPDPC@WEO/OEMDC/ADVEC/WEOWORLD>> accessed 19 January 2018.

12 Greg Mills, *Why Africa is Poor* (CATO Institute 2012) 203; see also Paul Collier, *The Bottom Billion: Why the Poorest Countries are Failing and What Can Be Done About It* (Oxford University Press 2007) 38–52, dealing with the so-called resource trap; Aljazeera, ‘Nigeria: A truly strong economy?’ (*Aljazeera* 19 April 2014)<[www.aljazeera.com/programmes/countingthecost/2014/04/nigeria-truly-strong-economy-2014418134434573256.html](http://www.aljazeera.com/programmes/countingthecost/2014/04/nigeria-truly-strong-economy-2014418134434573256.html)> accessed 22 April 2014.

13 Extractive Industries Transparency Initiative, ‘Who We are’ <<https://eiti.org/who-we-are>> accessed 9 June 2017; see also Eghosa Ekhaton, ‘The Roles of Civil Society Organizations in the Extractive Industries Transparency Initiative in Nigeria’ (2014) 16(2) *International Journal of Not-for-Profit Law* 47; see also Rhuks Ako and Eghosa Ekhaton, ‘The Civil Society and the Regulation of the Extractive Industry in Nigeria’ 2016 7(1) *Journal of Sustainable Development Law & Policy* 192.

14 See Extractive Industries Transparency Initiative <<https://eiti.org/eiti>> accessed 18 March 2015.

15 Helmut Weidner, ‘Extractive Industry Transparency Initiative’ in Thomas Hale and David Held, *Handbook of Transnational Governance; Institutions and Innovations* (John Wiley & Sons 2011) 238.

In the extractive industries sector, there seems to be distrust between local communities and companies working in the sector.<sup>16</sup> The former are of the belief that the latter, along with the government, is misappropriating resource wealth through corruption and mismanagement. Companies, on the other hand, believe that their contribution to the local community and the larger economy through building infrastructure and job creation goes unseen and is therefore not appreciated and acknowledged.<sup>17</sup> The EITI seeks to remedy this situation by creating an environment of dialogue and transparency between the different stakeholders in resource-extraction operations.<sup>18</sup>

The EITI Standard comprises eight requirements that have to be adhered to:

- (i) Oversight of projects by a multi-stakeholder group consisting of government, corporations and civil society.
- (ii) Legal and institutional framework governing allocation of contracts and licences to ensure effective management of the sector.
- (iii) Disclosure of information regarding exploration and production activities to determine the potential of the sector.
- (iv) Disclosure of information regarding revenue collection.
- (v) Disclosure of information regarding revenue allocation.
- (vi) Disclosure of information regarding social and economic expenditure to determine whether the sector is accomplishing the desired output.
- (vii) Disclosure of extractive-industry data to establish understanding among stakeholders of the impact of the sector.
- (viii) Requirements regarding compliance measures and deadlines for reporting.<sup>19</sup>

The EITI Principles, which form part of the EITI Standard and represent the beliefs and aims of the stakeholders, provide that the

prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.<sup>20</sup>

One of the most important ways in which the EITI attempts to prevent corrupt practices and ensure the transparency of the extractive sector is by comparing the revenue payments of the companies to those declared by the government. Countries that

---

16 Christopher Eads and Anders Kråkenes (eds), 'Impact of EITI in Africa: Stories from the Ground' (2010) 4 <<https://eiti.org/sites/default/files/documents/EITI%20Impact%20in%20Africa.pdf>> accessed 24 April 2018.

17 *ibid.*

18 Eads (n 16) 4, 5.

19 See Extractive Industries Transparency Initiative, 'Requirements' <<https://eiti.org/eiti-requirements>> accessed 26 June 2017.

20 See Extractive Industries Transparency Initiative, 'Principles' <<https://eiti.org/document/eiti-principles>> accessed 18 May 2017.

implement the EITI have to ensure that foreign and domestic companies declare the proceeds from natural-resource extraction operations. These figures are then compared with the payments that the government claims it received as revenue from the companies. The comparison is done by an independent monitoring body and can be made public by the EITI International Board.<sup>21</sup>

The EITI International Board is responsible for upholding the EITI Standards. It does this by subjecting participants to regular Validations. In a similar manner to the Global Compact, a participant is classified as having made ‘satisfactory progress or compliance, meaningful progress, inadequate progress or no progress’ after the Validation process.<sup>22</sup>

## **Nigeria Extractive Industries Transparency Initiative**

In November 2003, Nigeria signed on to the EITI and established the Nigeria Extractive Industries Transparency Initiative (NEITI) as part of a socio-economic reform programme by the Federal Government of Nigeria.<sup>23</sup> The programme formed part of a National Economic Empowerment Development Strategy (NEEDS) that focused primarily on

improving Nigeria’s macroeconomic environment, pursuing structural reforms, strengthening public expenditure management and implementing institutional and governance reforms.<sup>24</sup>

The establishment of the NEITI forms part of institutional and governance reforms and is described as a ‘Nigerian national sub-set of the global EITI’.<sup>25</sup> In 2004, a multi-stakeholder group, the National Stakeholders Working Group, was established to implement the EITI in Nigeria.<sup>26</sup> In May 2007, the NEITI Act became law in order to enforce the implementation of the EITI in the country. With the enactment of this legislation, Nigeria became the first country to enact domestic legislation aimed at implementing EITI standards.<sup>27</sup> On 27 September 2007, Nigeria became an EITI

---

21 Weidner (n 15) 238–239.

22 See Extractive Industries Transparency Initiative, ‘Upholding the Standard Internationally: Validation’ <<https://eiti.org/about/how-we-work>> accessed 5 September 2016.

23 See Nigeria Extractive Industries Transparency Initiative, ‘Brief History of NEITI’ <[www.neiti.gov.ng/index.php/aboutus/brief-history-of-NEITI](http://www.neiti.gov.ng/index.php/aboutus/brief-history-of-NEITI)> accessed 20 April 2018; see also Ekhaton (n 13) 48; see also Ako and Ekhaton (n 13) 192.

24 *ibid.*

25 *ibid.*

26 *ibid.*

27 *ibid.*; The Petroleum Industry Governance Bill, which was declined assent by President Buhari in 2018, provides that one of the Act’s objectives is to ‘promote transparency and accountability in the administration of petroleum resources of Nigeria.’ This echoes the objectives of the NEITI Act of 2007. The NEITI is also described as an ‘ethical reference point for the ongoing reform in Nigeria’s Petroleum Industry.’ See part I, s 1 of the Harmonised Petroleum Industry Governance Bill 2018 (A Bill for an Act to provide for the governance and institutional framework for the petroleum industry

candidate country and the Validation process commenced in December 2009. After certain remedial measures initially had to be carried out, the country was declared compliant by the EITI Board in 2011.<sup>28</sup>

In terms of section 1(2)(a) of the NEITI Act, the NEITI is an autonomous government agency established by law and supervised by the Office of the President of Nigeria; it has to report to the President as well as the National Assembly.<sup>29</sup> The NEITI provides information on resource-extraction activities and the payment of revenues to public institutions that oversee such activities. This it does in order to prevent corruption and the mismanagement of revenues from natural-resource extraction to address issues of secrecy and non-transparency in the extractive-industries sector in Nigeria.<sup>30</sup>

According to the 2018 EITI in Africa Report:<sup>31</sup>

Nigeria has faced significant challenges in managing revenue from the oil and gas sector. Nigeria EITI (NEITI) has been effective in improving transparency and accountability in this area. NEITI Reports inform Nigerian citizens on the revenue flows in the sector, and how both monetary and in-kind revenues are collected and distributed by the relevant Federal agencies.

NEITI audit reports have promoted a culture of transparency and helped the government to recover vast amounts of natural-resource extraction revenue due to the government but not paid to it.<sup>32</sup> For example, more than US\$3 billion in recoverable revenue has been regained through NEITI reporting.<sup>33</sup> The reasons for these discrepancies include royalties and taxes not paid to the government, funds not paid to the Niger Delta Development Commission (NDDC), insufficient recording of funds received by the NDDC, the Nigerian National Petroleum Corporation (NNPC) not paying revenue received from domestic crude sales and regulators not keeping sufficient records.<sup>34</sup> Furthermore, there seems to be a discrepancy between what petroleum companies claim they paid versus what the government claims it received in petroleum revenues; this

---

and for other related matters) <<http://www.petroleumindustrybill.com/wp-content/uploads/2018/04/Harmonised-Clean-Copy-of-Petroleum-Industry-and-Governance-Bill-2018.pdf>> accessed 21 May 2018; see also Eads (n 16) 7.

28 See Tonje Gormley, 'Legal Mechanisms for Increased Transparency in the Extractive Industries' in Karl Sauvant, *Yearbook of International Investment Law & Policy 2011–2012* (Oxford University Press 2013) 265.

29 See ss 1(2)(a) and 4(4) of the Nigeria Extractive Industries Transparency Initiative (NEITI) Act, 2007; see also Nigeria Extractive Industries Transparency Initiative, 'Brief History of NEITI' <[www.neiti.gov.ng/index.php/aboutus/brief-history-of-NEITI](http://www.neiti.gov.ng/index.php/aboutus/brief-history-of-NEITI)> accessed 20 April 2018.

30 Eads (n 16) 6; see also O Egbon, 'Accountability through Extractive Industries Transparency Initiative: Whose Accountability?' (2015) *Accountancy Business and the Public Interest* 87.

31 EITI in Africa (October 2018) 13 <[https://eiti.org/sites/default/files/documents/eiti\\_africa\\_brief\\_en.pdf](https://eiti.org/sites/default/files/documents/eiti_africa_brief_en.pdf)> accessed 30 January 2019.

32 *ibid* 7.

33 See EITI in Africa (n 31) 14.

34 See Eads (n 16).

means that funds which were supposed to have been received from the petroleum companies and consequently paid to the government by the NNPC were never received.<sup>35</sup>

Although initiatives such as the NEITI have had positive effects, such as providing much-needed healthcare services, education and infrastructure, they still do not have a sufficiently positive impact on all communities, especially not on those most negatively affected by the extractive-industries sector. Corruption and poor government regulation are largely to blame for initiatives not having the intended impact on the indigenous communities they aim to serve.<sup>36</sup> Another factor contributing to this problem is the issue of resource allocation from oil and gas extraction. There is significant disagreement between the government and the oil-producing states about the percentage of oil revenues to be paid to the oil-producing states for development purposes.<sup>37</sup> Notably, it is often the areas that produce the most oil and gas deposits that receive the least financial support and that are the least developed.<sup>38</sup>

The question of revenue-sharing in Nigeria has been a contentious issue since the country's independence. There seem to be concerns that the federal government is taking too great a share of the national revenue, while local oil-producing states, which suffer damage as a result of oil-producing operations, are not receiving their fair share of the proceeds in order to reinvest in the rehabilitation of the areas and to invest in new infrastructure and development projects.<sup>39</sup> The conflict between the federal government and oil-producing states is further exacerbated by the cultural and political tension that exists between the different ethnic groups in Nigeria (there are more than 300), each

---

35 *ibid.*

36 Franklin Lisk, Hany Besada and Phillip Martin, 'Regulating Extraction in the Global South: Towards a Framework for Accountability', Background Research Paper submitted to the High Level Panel on the Post-2015 Development Agenda (May 2013) 20, 21, citing Alex Gboyega, Tina Soriede, Tuan Minh Le and G Shukla, 'The Political Economy of the Petroleum Sector in Nigeria' (The World Bank Africa Region Public Sector Reform and Capacity Building Unit Policy Research Working Paper 2011).

37 Mukhtar Abdullahi, 'Politics of Resource Control and Revenue Allocation: Implications for the Sustenance of Democracy in Nigeria' (2014) 7(4) *Journal of Politics and Law* 176–180.

38 Samuel Ugoh and Wilfred Ukpere, 'Oil Politics and the Niger Delta Developmental Conundrum' (2010) 4(6) *African Journal of Business Management* 1166; see also Abdullahi (n 37) 178.

39 Abdullahi (n 37) 176. Revenue-sharing in Nigeria is regulated by s 162 of the Nigerian Constitution, which provides for a 'Federation Account' into which all revenues collected by the government are paid and then allocated in a manner as determined by the National Assembly. The National Assembly has to take into consideration factors such as 'population, equality of States, internal revenue generation, land mass, terrain as well as population density'. See also Eghosa Ekhaton, 'Public Regulation of the Oil and Gas Industry in Nigeria: An Evaluation' (2016) 21 *Annual Survey of International & Comparative Law* 54–57. Certain rules regarding revenue allocation are also contained in the Allocation of Revenue (Federation Account etc) Act of 1982 and the Allocation of Revenue (Federation Account) (amendment) decree of 1992.



fighting for its rightful place in the national political landscape.<sup>40</sup> There is often a feeling by smaller ethnic groups, such as those found in the oil-producing states such as the Ogoni or the Igbo people, that they are being marginalised by larger, more dominant ethnic groups in the country.<sup>41</sup> Some also argue that a weakness of the NEITI initiative is that its civil-society activities are focused on larger cities and communities, with many smaller communities, such as those in the oil-producing states, being excluded from the process of reform.<sup>42</sup> Furthermore, the Act does not contain any environmental provisions, which is of great importance for reform in the areas most affected by oil-extraction operations.<sup>43</sup>

Although Nigeria still faces significant challenges relating to resource governance and transparency, the country was validated against the 2016 EITI Standard in January 2017.<sup>44</sup> Once a country is validated in terms of the EITI Standard, it means that it has complied with the relevant EITI Standard requirements.<sup>45</sup> The EITI board stated in its report that Nigeria had ‘made meaningful progress overall in implementing the 2016 EITI Standard’.<sup>46</sup> The board particularly commended the work of the Nigerian National Stakeholders’ Working Group (NSWG), which is the governing body of the NEITI tasked mainly with formulating plans and policies to implement the NEITI and, consequently, regulating the implementation of the NEITI and ensuring compliance with the relevant standards through audit processes.<sup>47</sup>

Certain issues were identified by the board that were not yet up to standard and needed to be addressed before the second Validation, which was set to commence in July 2018. Should Nigeria not ‘achieve meaningful progress with considerable improvements across several individual requirements in the second Validation’, the country could be suspended in terms of the EITI Standard.<sup>48</sup> Some of the issues the EITI board identified to be addressed before the next Validation included:

---

40 *ibid.* Even in oil-producing areas such as the Niger Delta the communities are particularly heterogenous in nature, with numerous different cultural and ethnic groups, which could lead to difficulties when development projects are initiated in these areas due to the varying interests that have to be considered: see Nwapi (n 6) 206.

41 *ibid.*

42 Ekhaton (n 13) 51, 52.

43 Ekhaton (n 13) 52.

44 See Extractive Industries Transparency Initiative, ‘Nigeria 2016 Validation’ <<https://eiti.org/validation/nigeria/2016#impact-of-the-eiti-in-nigeria>> accessed 2 May 2018.

45 *ibid.*

46 *ibid.*

47 See Nigeria Extractive Industries Transparency Initiative, ‘National Stakeholders Working Group (NSWG)’ <<http://www.neiti.gov.ng/index.php/aboutus/governing-structure/national-stakeholders-working-group-nswg>> accessed 4 May 2018.

48 See Extractive Industries Transparency Initiative, ‘Nigeria 2016 Validation’ (n 44).

- disclosure by the government of all oil, gas and mining licences awarded or transferred;
- the NSWG should have work plans for implementing the EITI Standard;
- after having consulted with relevant stakeholders, the NSWG should evaluate to what extent provision has been made for infrastructure projects in resource-extraction contracts, and
- greater civil-society engagement should be implemented in the EITI process.<sup>49</sup>

According to the EITI requirements, civil-society organisations should be ‘substantially engaged in the design, implementation, monitoring and evaluation of the EITI process’.<sup>50</sup>

In the view of the NEITI, the greatest contribution of the initiative in Nigeria was to ‘promote a culture and consensual framework for making the extractives sector more transparent and accountable’ where ‘in the past, information on revenue and physical flows of oil and gas in Nigeria was treated as confidential’.<sup>51</sup>

Nigeria is one of only a few countries that have been EITI compliant since 2011. The initiative has helped recover more than US\$2.4 billion worth of misappropriated funds from the extractives sector as a result of information in NEITI reports.<sup>52</sup> However, it has also been argued that NEITI is merely used by government and enterprises as a means of earning international validity for their operations rather than delivering tangible results and realising the objectives of the NEITI Act.<sup>53</sup>

The political situation in Nigeria had a significant impact on the delay between the introduction of the EITI Standard in 2003 to the passage of the NEITI Act in 2007, and later also obtaining compliant status in 2011.<sup>54</sup> At any given time in the process, the government has a direct impact on how swiftly and effectively the Standard is implemented and the effect it has on the general socio-economic situation in the country. As Gormley aptly states:<sup>55</sup>

[T]he example of Nigeria is an illustration of how the legal mechanism of national implementation of the EITI standard appears to be apt to fully deliver on the fulfilment of the objective of increasing revenue transparency in the extractive industries, but there

---

49 *ibid.*

50 *ibid.*

51 *ibid.*

52 See Extractive Industries Transparency Initiative, ‘Country Status against the EITI Rules (2007–2016)’ <<https://eiti.org/countries-archive>> accessed 7 May 2018; see also Extractive Industries Transparency Initiative, ‘Nigeria 2016 Validation’ (n 44).

53 Ekhaton (n 13) 52.

54 Gormley (n 28) 265.

55 *ibid* 277.

is a need for complementary measures in order to achieve and ensure accountability which ... is required for achieving broader societal change through political pressure.

He further raises an important question in this regard, namely: ‘Is the link between transparency and accountability always as close as commonly assumed?’<sup>56</sup> One can have numerous measures to ensure transparency, such as the EITI or a national subset of this initiative, such as the NEITI with its accompanying legislative framework in the form of the NEITI Act. However, this does not guarantee accountability. Initiatives to improve transparency have to be accompanied by mechanisms to enforce such standards and ensure that the cycle of transparency comes full circle, and this can happen only if accountability is the next step in the process.

## **Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007**

The NEITI Act establishes the Nigeria Extractive Industries Initiative (NEITI), which is responsible 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.<sup>57</sup>

It is interesting to note that the Act denotes a particularly wide meaning to the term ‘Extractive Industry Company’. According to the Act, the term includes:<sup>58</sup>

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.

The main objectives of the Act are to ensure transparency and accountability regarding payments by the extractive industry companies to the government, to eliminate corruption where it exists with regard to these payments, to conform with the standards of the EITI, and to ensure transparency and accountability in the allocation of extractive industry resources by the government.<sup>59</sup> In striving to achieve these objectives, the Act provides for powers to obtain records from the government and extractive-industry companies in order to assess relevant revenues and payments.<sup>60</sup> The Act further provides for regular audits and reports to ensure a certain level of transparency regarding

---

56 *ibid* 277.

57 See Nigeria Extractive Industries Transparency Initiative (NEITI) Act, 2007; see also Ihugba and Okoro (n 6) 362.

58 Section 21 of the Nigeria Extractive Industries Transparency Initiative (NEITI) Act, 2007.

59 *ibid* s 2.

60 *ibid* s 3.

revenues received and paid by extractive-industry companies and the government.<sup>61</sup> The NSWG, which is the governing body of the NEITI, is constituted by the President and consists of a chairman and a maximum of 14 members. The composition of the Working Group is fairly representative as it has to include representatives from extractive-industry companies, labour unions in the extractive industries, civil society and experts in the extractive-industry sector.<sup>62</sup> Furthermore, in order to ensure geographical representation, the Working Group has to include a member from each of the six geopolitical zones of the country.<sup>63</sup>

Apart from containing mostly framework provisions, the Act does provide for some sanctions in the case of non-compliance with the relevant legislative provisions. Section 16 provides that:<sup>64</sup>

[A]n 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 of 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 ₦30 000 000.

Furthermore:<sup>65</sup>

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 ₦30 000 000.

This amount translates to roughly US\$83 000, which is not a substantial amount for a corporate fine considering that some corporate fines could be up to millions or billions of dollars and the annual turnover of many companies is significantly higher than the fine mentioned in the Act.<sup>66</sup> However, in addition to the fine, which is the minimum amount that can be charged, the company will also be required to pay over the amount of revenue that was due to the Federal Government.<sup>67</sup> The President may also, 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’.<sup>68</sup>

---

61 *ibid* s 4.

62 *ibid* s 6.

63 *ibid* s 6.

64 *ibid* s 16(1).

65 *ibid* s 16(3).

66 ₦30 000 000 translates to US\$83 241.20, see OANDA Currency Converter <<https://www.oanda.com/currency/converter/>> accessed 30 January 2019.

67 Section 16(2) of the Nigeria Extractive Industries Transparency Initiative (NEITI) Act, 2007.

68 *ibid* s 16(4).

The Act further provides for the individual liability of directors or ‘other persons concerned in the management of the company’ of an extractive industry company, should the company be found to be liable for a violation in terms of the Act. The specific individual will be liable to a minimum of two years’ imprisonment or a minimum fine of ₦5 million unless they can prove that:<sup>69</sup>

(a) [T]he 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.

The exact same provision also applies to any government official who

renders false statement of account or fails to render a statement of account required ... to the Federal Government or its agencies, resulting in the underpayment or non-payment of revenue accruable to the Federal Government or statutory recipients ....<sup>70</sup>

These provisions are especially necessary in cases of embezzlement of petroleum funds or fraudulent practices with regard to the payment of petroleum revenues to the government, as this has been an issue of particular concern in the past.

## **The Petroleum Industry Bill and the Petroleum Industry Governance Bill**

The Petroleum Industry Bill (PIB), which is the forerunner of the Petroleum Industry Governance Bill (PIGB), was drafted in response to significant governance and regulatory challenges faced by the Nigerian petroleum industry at the start of the 21st century. The PIB was an extensive piece of legislation, and after years of attempting to pass the Bill without success, it was evident that a different approach was necessary.<sup>71</sup> In 2015, the Buhari administration made a proposal to pass the PIB in four separate parts.<sup>72</sup> The four parts include the PIGB and three other pieces of legislation which will be developed and passed at a later stage. These include a Fiscal Regime Bill, a Petroleum Host Communities Bill and an Upstream and Midstream Administration Bill. The PIGB was prioritised because it contains significant sector governance reforms that

---

69 *ibid* s 16(5).

70 *ibid* s 16(6). As yet there have not been any prosecutions of individuals or companies under the NEITI Act, see Bethel Ihugba, ‘A Critical Analysis of the Auditing and Reporting Functions of Nigeria Extractive Industry Transparency Initiative (NEITI) Act 2007: Lessons for EITI Countries’ (2014) 13(3) *Journal of International Trade Law and Policy* 232.

71 See Julia Payne and Camillus Eboh, ‘Nigeria Passes Major Oil Reform Bill after 17-year Struggle’ (*Reuters*, 18 January 2018) <<https://www.reuters.com/article/us-nigeria-oil-law/nigeria-passes-major-oil-reform-bill-after-17-year-struggle-idUSKBN1F72I2>> accessed 21 May 2018.

72 See Kenneth Ene, ‘The Fall and Rise of the Nigerian Petroleum Industry Governance Bill’ (Oxford Policy Management, February 2018) <<https://www.opml.co.uk/blog/nigerian-petroleum-industry-governance-bill>> accessed 24 October 2018; see also Ako and Ekhaton (n 13) 198.

are vitally important to reform the petroleum industry as a whole. In March 2018, the Bill was passed by the National Assembly and will be referred to the president to be signed into law.<sup>73</sup> The most significant features of the PIGB are the newly limited powers of the Minister of Petroleum Resources, the restructuring of the NNPC and the establishment of the Nigeria Petroleum Regulatory Commission.

The objectives of the PIGB are to:<sup>74</sup>

(a) create efficient and effective governing institutions with clear and separate roles for the petroleum industry; (b) establish a framework for the creation of commercially oriented and profit driven petroleum entities to ensure value addition and internationalization of the petroleum industry; (c) promote transparency and accountability in the administration of petroleum resources of Nigeria; and (d) foster a conducive business environment for petroleum industry operations.

It is interesting to note the similarities between section 1(c) of the PIGB and section 2(d) of the NEITI Act, which states that one of the objectives of the NEITI Act is to ‘ensure transparency and accountability by government in the application of resources from payment received from extractive industry companies’.<sup>75</sup>

The Bill retains provisions regarding the powers of the Minister of Petroleum Resources, a position currently held by President Buhari, which raises important questions of impartiality and the extent to which powers should be conferred on the minister with regard to petroleum resources. However, the Bill significantly reduces the powers of the minister insofar as issuing regulations under the Petroleum Act, the Oil Pipelines Act, and the Hydrocarbon Oil Refineries Act are concerned, because all the previous powers of the minister under these Acts are now transferred to the Nigeria Petroleum Regulatory Commission (NPRC).<sup>76</sup> For example, according to the current Petroleum Act, the minister is mandated to grant, renew or revoke petroleum-mining licences.<sup>77</sup> These powers now fall under the authority of the NPRC.<sup>78</sup> According to the Bill, the minister is responsible for the formulation and monitoring of policy with regard to the petroleum industry as well as supervising petroleum operations and the petroleum industry in general.<sup>79</sup> The minister may also negotiate and enter into international

---

73 See Channels Television, ‘National Assembly passes Petroleum Industry Governance Bill’ (*Channels Television*, 28 March 2018) <<https://www.channelstv.com/2018/03/28/national-assembly-passes-petroleum-industry-governance-bill/>> accessed 21 May 2018.

74 See Harmonised Petroleum Industry Governance Bill (n 27) part I s 1.

75 NEITI Act (n 58) art 2(d).

76 See Templars Law, ‘The Petroleum Industry Governance Bill’ 2 <<https://www.templars-law.com/wp-content/uploads/2017/06/Petroleum-Industry-Governance-Bill.pdf>> accessed 25 May 2018.

77 See art 2; First Schedule, arts 3, 13; First Schedule, art 24 of the Petroleum Act, Chapter P10, LFN 2004 (Laws of the Federation of Nigeria).

78 See Harmonised Petroleum Industry Governance Bill (n 27) part III s 6.

79 *ibid* part I s 2.

petroleum agreements with other countries and international organisations and has a right of pre-emption of all petroleum and petroleum products in the event of a national emergency.<sup>80</sup>

The Bill further establishes several new institutions, namely, the Nigeria Petroleum Regulatory Commission (NPRC), the Nigeria Petroleum Assets Management Company (NPAMC), the National Petroleum Company (NPC), the Petroleum Equalisation Fund (PEF), the Ministry of Petroleum Incorporated (MOPI), and the Nigeria Petroleum Liability Management Company (NPLMC).

The Bill establishes the NPRC as a body corporate with all the rights it entails, such as the ability to enter into contracts in connection with or dispose of or acquire property.<sup>81</sup> The NPRC assumes responsibility over all of the rights, duties, liabilities, assets and interests of the Petroleum Inspectorate, which is part of the Ministry of Petroleum Resources and was responsible for regulating the petroleum industry; the Products Pricing Regulatory Agency, which determined the pricing of petroleum products; and, lastly, the Department of Petroleum Resources, which managed the upstream and downstream petroleum ventures and other regulatory functions.<sup>82</sup> The objectives of the NPRC are to:<sup>83</sup>

(a) promote the healthy, safe and efficient conduct of all petroleum operations in an environmentally friendly and sustainable manner; (b) promote the efficient, safe, effective and sustainable infrastructural development of the petroleum industry; (c) ensure compliance with all applicable laws and regulations governing the petroleum industry; (d) determine and ensure the implementation and maintenance of technical standards, codes and specifications applicable to the petroleum industry in line with global best practice; (e) ... execute Government policies for the petroleum industry assigned to it by the Minister; (f) promote an enabling environment for investments in the petroleum industry; (g) ensure that regulations are fair and balanced for all classes of lessees, licensees, permit holders, consumers and other stakeholders; (h) in consultation with the Federal Ministry of Environment, ensure strict implementation of environmental policies, laws and regulations as pertains to oil and gas operations ...

In order to achieve these objectives, the NPRC is mandated, among other functions, to grant, issue, renew, amend, suspend, extend, review, revoke, cancel and reissue licences and permits for upstream, midstream and downstream ventures.<sup>84</sup>

The NPRC is further responsible for ensuring the payment of correct amounts of royalties and fair allocation of petroleum-production quotas.<sup>85</sup> It is required to ensure

---

80 *ibid* part I s 2 art 3; see also *Templars Law* (n 76) 2.

81 See *Harmonised Petroleum Industry Governance Bill* (n 27) part III.

82 *ibid* part III s 4.

83 *ibid* part III s 5.

84 *ibid* part III s 6(1)(p), (s) and s 6(2)(j), (k).

85 *ibid* part III s 6(1)(w), (u).

the administration and enforcement of general laws and policies relating to petroleum operations, as well as to monitor compliance with conditions of licences, permits and leases.<sup>86</sup> It is also responsible for environmental regulation in the petroleum industry and has to work with the Ministry of Environment to ensure compliance with international and national environmental standards by entities and persons involved in the petroleum industry.<sup>87</sup> In addition, it is required to ‘promote sustainable infrastructure development’.<sup>88</sup>

It would have been encouraging to see more detailed provisions in the Bill regarding the environment. Specifically, provisions regarding not only preservation of the environment in oil-producing communities should be included, but also measures to remedy the damage that has already been caused to the surrounding environment by current or past petroleum-extraction operations. Hopefully this is an issue that will be provided for in the Petroleum Host Communities Bill if it is not included in the PIGB.

The Bill also places limitations on the persons permitted to be appointed as a commissioner on the NPRC. According to the Act, a person shall not be appointed if he or she:<sup>89</sup>

[H]as a financial interest in any business connected, either directly or indirectly with the Nigerian petroleum industry, or is engaged in any activity (whether for remuneration or otherwise) connected with the petroleum industry, provided that such person may be appointed if he or she declares their interest and makes the appropriate arrangements that ensures the avoidance of a conflict of interest, or is a relative of a person who has such an interest or is engaged in such an activity, unless the President is satisfied that the interest or activity is in effect passive and will not interfere with the person’s impartial discharge of his duties as a Commissioner or unless the financial interest is terminated prior to the appointment taking effect ...

The abovementioned provision is of particular importance because of the prevalence of corruption and fraudulent practices which can occur in the Nigerian petroleum sector. A certain level of prudence is especially necessary when an individual with a particular business interest in the petroleum sector is also on a board responsible for decisions regarding the sector. Furthermore, the Bill aims to establish the Commission as an autonomous and independent entity by stating in section 15(3) that the Commission shall be independent in performing its functions.<sup>90</sup> As part of its efforts to promote

---

86 *ibid* part III s 6(1)(a), (b).

87 *ibid* part III s 6(1)(d) and (6).

88 *ibid* part III s 6(2)(c).

89 *ibid* part III s 6(22)(a). This rule also applies to a person being appointed as the Executive Secretary or Executive Director of the Petroleum Equalisation Fund; see part IV s 52(a) of the Harmonised Petroleum Industry Governance Bill 2018.

90 Harmonised Petroleum Industry Governance Bill (n 27) part III s 15(3); see also Donna Obaseki-Ogunnaiké ‘Understanding the Petroleum Industry Governance Bill 2016’ 2017 15(1) *Oil, Gas and Energy Law* 4.



transparency, the Bill provides in section 8 that prior to making any regulation under the Act, the Commission shall conduct a public hearing and take into consideration the concerns raised in the public hearing.<sup>91</sup> The Bill also provides for both the Commission and the Equalisation Fund to receive grants or gifts by a person or organisation.<sup>92</sup> Even though the Bill states that these gifts or grants should not be donated by persons regulated by the Commission or the Equalisation Fund, these sections *ex facie* seem very worrisome as they could lead to abuse of power. If the sections are to be retained, there will have to be very strict regulations in place to ensure transparency in this regard.<sup>93</sup>

The Bill further provides for the NPRC to have a Special Investigation Unit which has the authority to:<sup>94</sup>

(a) investigate acts which may constitute offences under this Act or any other law relating to petroleum operations; (b) collaborate with other Government agencies and persons in relation to the detection or prosecution of offences under this Act or any other law relating to petroleum operations; (c) keep surveillance on oil and gas installations, premises and vessels where it has reason to believe that illegal petroleum operations are going on; and (d) in conjunction with the Nigerian Police and other relevant law enforcement agencies arrest with a warrant obtained from a judicial officer, any person reasonably believed to have committed an offence under this Act.

The Bill retains the Petroleum Equalisation Fund, which will, under the new Act, receive a 5 per cent levy that will be charged on all fuel sold and distributed in the country.<sup>95</sup> The PEF aims to ensure a more equitable and balanced distribution of petroleum products and also to ensure that the price of petroleum remains balanced throughout the country. The PEF is also responsible for developing and supporting domestic gas infrastructure.<sup>96</sup> The Ministry of Petroleum Incorporated (MOPI) is established by the Act as a corporation that is authorised to hold shares on behalf of the government in entities established by the Act.<sup>97</sup> MOPI can be described as the ‘sole investment vehicle of the Government’ and holds shares on behalf of the government in entities created by the Bill, such as NPAMC and the NPC.<sup>98</sup>

The Nigeria Petroleum Assets Management Company (NPAMC) and the National Petroleum Company (NPC) are established by the Bill, and effectively replace the Nigerian National Petroleum Corporation (NNPC). All the assets, liabilities, employees,

---

91 Harmonised Petroleum Industry Governance Bill (n 27) part III s 8; see also Obaseki-Ogunnaike (n 90) 4.

92 Harmonised Petroleum Industry Governance Bill part III s 27, part IV s 57.

93 Obaseki-Ogunnaike (n 90) 4.

94 See Harmonised Petroleum Industry Governance Bill (n 27) part III s 34.

95 *ibid* part IV s 36(1).

96 *ibid* part IV s 37.

97 *ibid* part V s 76.

98 See Templars Law (n 76) 3.

rights and obligations of the NNPC have to be transferred to the NPAMC and the NPC within a specified period of time, according to the Act, and therefore the NNPC is accordingly released from any liability or obligation with regard to these assets and liabilities.<sup>99</sup> All existing agreements and causes of action remain unchanged, being simply transferred from the NNPC to the NPAMC.<sup>100</sup> Providing for an effective disbanding of the NNPC in this manner may be a positive development, because the entity has been losing considerable amounts of revenue as a result of many factors, including corruption within the corporation.<sup>101</sup>

The NPAMC and the NPC are responsible for managing the assets currently held by the NNPC.<sup>102</sup> The NPAMC manages assets previously held by the NNPC under product-sharing contracts and the NPC manages all the other assets previously held by the NNPC.<sup>103</sup> The NPAMC is also authorised to ‘negotiate and enter into new exploration and production agreements with other petroleum companies as may be required by the government ...’.<sup>104</sup> The NPC shares are held by the Ministry of Petroleum Incorporated on behalf of the government (40%), the Ministry of Finance (40%), and the Bureau of Public Enterprises (20%).<sup>105</sup> However, within five years of the incorporation of the NPC, the NPC has to transparently divest no less than 10% of its shares and within ten years of incorporation it has to divest a further minimum of 30% of its shares to the public.<sup>106</sup> The divestment or privatisation of these shares is a positive step as it allows the public to own a share of the national oil company and reduces the significant hold that the government currently has on the industry, one that could lead to the abuse of power.<sup>107</sup>

The Nigeria Petroleum Liability Management Company (NPLMC) should be incorporated in terms of the Bill and will take over the management of all liabilities

---

99 See Harmonised Petroleum Industry Governance Bill (n 27) part VI s 81(1) and s 107(1), and also s 83.

100 *ibid* part VI s 81(5); see also *Templars Law* (n 76) 3.

101 See Ejiofor Alike, ‘Nigeria: NNPC, Nigeria’s Oil Behemoth Records ₦547bn Losses in Three Years’ (*This Day*, 18 May 2018) <<https://www.thisdaylive.com/index.php/2018/05/18/nnpc-nigerias-oil-behemoth-records-n547bn-losses-in-three-years/>> accessed 22 May 2018; see also Kingsley Jeremiah, ‘NNPC Loses ₦546b to Failure of Reforms in Three Years’ (*The Guardian Nigeria*, 21 May 2018) <<https://guardian.ng/news/nnpc-loses-n546b-to-failure-of-reforms-in-three-years/>> accessed 24 May 2018.

102 See Harmonised Petroleum Industry Governance Bill (n 27) part VI s 77(1); see also KPMG, ‘The Petroleum Industry Governance Bill’ para iii <<https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/ng-kpmg-newsletter-on-the-petroleum-industry-governance-bill.pdf>> accessed 22 May 2018.

103 See Harmonised Petroleum Industry Governance Bill (n 27) part VI s 77(2); see also KPMG (n 102) para iii.

104 See Harmonised Petroleum Industry Governance Bill (n 27) part VI s 79(c).

105 *ibid* part VI s 101.

106 *ibid* part VI s 106.

107 Obaseki-Ogunnaike (n 90) 6.

previously held by the NNPC as well as pension liabilities previously held by the Department of Petroleum Resources.<sup>108</sup> The NPLMC is also responsible for ascertaining and settling the relevant liabilities previously held by the NNPC within a certain time.<sup>109</sup>

If signed into law, the Bill (at the time of writing this article it is still only a Bill) will repeal the Nigerian National Petroleum Corporation Act, the Nigerian National Petroleum Corporation (Projects) Act, the Nigerian National Petroleum Corporation Amendment Act, the Petroleum Equalisation Fund (Management Board) Act and the Petroleum Products Pricing Regulatory Agency (Establishment) Act.<sup>110</sup> Furthermore, the Bill will prevail over provisions in the Oil Pipelines Act, the Petroleum Act, the Hydrocarbon Oil Refineries Act and the Companies and Allied Matters Act, to the extent that provisions in these Acts are in conflict with provisions in the Bill.<sup>111</sup>

A positive aspect of the Bill is the creation of several new institutions such as the NPRC, the NPAMC, NPC, the PEF, the MOPI, and the NPLMC. The creation of these institutions ensures that power in the petroleum industry is no longer centralised in a single institution as it was previously under the NNPC. This allows for a distribution of powers and guards against issues that were experienced under the NNPC with regard to corrupt practices and an abuse of petroleum resources and revenues.

## Conclusion

Challenges to regulation in the extractive industries in the African context include weak regulatory systems, ineffective judicial enforcement, corruption, over-dependence on natural-resource extraction as a source of national income and a lack of skills and resources to regulate corporate behaviour. In Nigeria, there have also been administrations (such as that of former President Jonathan) that have been accused of extensive corrupt practices relating to the petroleum industry and petroleum revenue.<sup>112</sup> However, the current administration, under President Muhammadu Buhari, has taken a hard line on corruption and seems committed to rooting out all forms of corruption, especially in the extractive sector.<sup>113</sup>

---

108 *ibid* s 126(1); see also KPMG (n 102) para iv.

109 See Harmonised Petroleum Industry Governance Bill (n 27) s 126(7); see also KPMG (n 102) para iv.

110 See Templars Law (n 76) 5.

111 *ibid*.

112 See Idris Akinbajo, '\$1.1billion Fraud: British Judge Questions Jonathan's Integrity, Stops Etete from Getting ₦17 billion' (*Premium Times* Nigeria, 15 December 2015) <<http://www.premiumtimesng.com/news/headlines/195233-1-1billion-fraud-british-judge-questions-jonathans-integrity-stops-etete-from-getting-n17-billion.html>> accessed 20 April 2016; Cholo Brooks, 'Goodluck Jonathan, Former Nigerian President Faces Arrest Says EFCC' (*GNN Liberia*, 6 April 2016) <<http://gnnliberia.com/2016/04/06/15684/>> accessed 20 April 2016.

113 All Africa, 'Nigeria: UK Expresses Support for President Buhari's Anti-Graft War' (*AllAfrica*, 17 April 2016) <<http://allafrica.com/stories/201604180019.html>> accessed 19 April 2016; Rafiu

Significant progress has been made since the early 2000s regarding the level of transparency in the petroleum industry in Nigeria. With the establishment of the NEITI in 2004 and the NEITI Act in 2007, Nigeria has shown its commitment to complying with global EITI standards and in so doing ensuring a certain level of transparency in the extractive-industry sector. Furthermore, the NEITI and the PIGB have some similar objectives with regard to establishing transparency and accountability measures in relation to payments in the extractive-industry sector. The NEITI audits have, over the past few years, revealed significant losses of petroleum revenue and therefore made it possible to attempt to recover such revenues. However, it is important to note that accountability and transparency in a sector should not just be determined by the existence of initiatives such as the NEITI; the specific results of the initiatives should also determine whether the extractive sector is truly more transparent as a result of the reforms.<sup>114</sup> Some would argue that, owing to the lack of an enforcement mechanism, initiatives such as the EITI are used by corporations and governments only to legitimise their operations in the eyes of stakeholders.<sup>115</sup>

The PIGB is the result of a 17-year consultation and review process. In August 2018 this process was dealt a blow when President Buhari withheld his assent to the Bill and referred it back to the National Assembly to consider the issues the president identified.<sup>116</sup> The president's refusal to assent to the Bill has had negative impacts on the petroleum sector as a whole, as a result of the significant loss of investment flowing from the non-passage of the Bill and consequent investor uncertainty regarding the reform process.<sup>117</sup> According to one report, Nigeria has lost billions of dollars in foreign investment because of its delay in passing several petroleum-sector reform bills, including the PIGB.<sup>118</sup>

Certain reasons have been put forward by the media to explain why the president withheld assent to the PIGB.<sup>119</sup> However, Senior Special Assistant to the President on

---

Ajakaye, 'Nigeria's Buhari Seeks Path Out of Oil Price Pit' (*Anadolu Agency*, 21 March 2016) <<http://aa.com.tr/en/economy/nigerias-buhari-seeks-path-out-of-oil-price-pit/541256>> accessed 19 April 2016. However, it has been argued that President Buhari's anti-corruption efforts are aimed primarily at political opponents and that he has failed to prosecute some of his political allies who have been involved in corrupt activities. See The Conversation, 'Buhari Failed to Fix Nigeria's Economy. But He may still have the Edge' (*The Conversation*, 27 January 2019) <<https://theconversation.com/buhari-failed-to-fix-nigerias-economy-but-he-may-still-have-the-edge-110196>> accessed 1 February 2019.

114 See Egbon (n 32) 86; See also Ihugba and Okoro (n 6) 359.

115 Egbon (n 32) 97, 98.

116 Tolulope Aderemi, 'PIGB: Why the President must Re-consider His Decision' (*Vanguard Nigeria*, 20 September 2018) <<https://www.vanguardngr.com/2018/09/pigb-why-the-president-must-re-consider-his-decision/>> accessed 17 October 2018.

117 Aderemi (n 116).

118 Adebisi Adedapo, 'Nigeria Loses ₦3trn Yearly to Delay in Oil Sector Reforms' (*AllAfrica*, 25 October 2018) <<https://allafrica.com/stories/201810250061.html>> accessed 25 October 2018.

119 Aderemi (n 116).

National Assembly Matters (Senate), Mr Ita Enang, has stated that the real reason for withholding assent included provisions relating to the Petroleum Equalisation Fund, provisions (specifically the revenue allocations to the NPRC and the PEF) in contradiction to the Fiscal Responsibility Act of 2007, which regulates the manner in which funds should be managed by government agencies. The president had also cited constitutional and legal reasons for withholding assent and there was concern about the provision in the Bill permitting the NPRC to retain as much as 10 per cent of revenue generated by the petroleum industry to the disadvantage of the Federal states and local governments.<sup>120</sup> According to the president, funds that are allocated to the NPRC and the Petroleum Equalisation Fund (PEF) in terms of the Bill have to be readjusted to provide for more funds to be allocated to the three tiers of government in order to fund their annual budgets.<sup>121</sup> According to Enang:<sup>122</sup>

The president is saying if allocation to the PRC and PEF are adjusted to a reasonable level, the three tiers of government will have more revenues available to fund their annual budgets... The revenue from the petroleum sector accounts for about 70 or 80 per cent of the entire earnings that fund the country's budget ... it is inadvisable for such a high percentage of revenue (15 per cent) to be allocated to the PRC and PEF alone, considering there are other sources of funding for them ... If the bill is passed as it is, the two agencies will have too much money and not much will be left for the three tiers of government to share.

While the Bill has been referred back to the National Assembly by the president in order for the necessary amendments to be made, various stakeholders such as government entities and members of the petroleum sector, have urged the president to accept the Bill in its current form.<sup>123</sup>

It remains to be seen whether the Bill will be passed after the necessary amendments have been made by the legislature. However, the proposed provisions of the PIGB are indicative of the fact that the Nigerian government has realised that previous methods

---

120 Basse Udo, 'Why Buhari withheld Assent to the PIGB – Presidential Aide' (*Premium Times Nigeria*, 29 August 2018) <<https://www.premiumtimesng.com/news/top-news/281790-why-buhari-withheld-assent-to-pigb-presidential-aide.html>> accessed 25 October 2018; see also Olalekan Adetayo, 'Why Buhari Declined Assent to Petroleum Industry Governance Bill – Enang' (*Punch Nigeria*, 30 August 2018) <<https://punchng.com/why-buhari-declined-assent-to-petroleum-industry-governance-bill-enang/>> accessed 17 October 2018; Fikayo Olowolagba, 'Why NASS is Pressuring Buhari to Assent Petroleum Industry Bill – Saraki' (*Daily Post*, 23 October 2018) <<http://dailypost.ng/2018/10/23/nass-pressuring-buhari-assent-petroleum-industry-bill-saraki/>> accessed 29 October 2018.

121 Udo (n 120).

122 Udo (n 120).

123 See A Ademiju, 'Oil Experts Urge Buhari to Assent PIB' (*New Telegraph*, 29 October 2018) <<https://www.newtelegraphng.com/2018/10/oil-experts-urge-buhari-to-assent-pib/>> accessed 29 October 2018; Olowolagba (n 120); Chukwudi Akasike, 'Stakeholders Urge FG to pass PIB into Law' (*Punch Nigeria*, 11 October 2018 <<https://punchng.com/stakeholders-urge-fg-to-pass-pib-into-law/>> accessed 29 October 2018.

of regulating the petroleum industry have not been successful and that a different approach is necessary to ensure that further losses are prevented and future income is managed both more efficiently and for the benefit of the Nigerian people. However, accountability is often not an automatic consequence of transparency, and the government will have to implement and enforce the necessary regulatory measures in order to ensure that accountability is ensured along with transparency in the industry.

The advantage of establishing separate regulatory entities as established by the Bill is that control of petroleum resources is less centralised and there is a greater level of autonomy and independence of government and ministerial influence.<sup>124</sup> Obaseki-Ogunnaike aptly states in this regard: ‘The direct participation of the State in a predominantly commercial and technical activity or industry is often bound to open such industry to political and regulatory risks.’<sup>125</sup> Considering the high level of corrupt activities by previous governments and government institutions, the Bill could improve the level of transparency and accountability in the industry, provided that the Bill is passed and sufficient enforcement measures are put in place to ensure adherence to its provisions.

---

124 *ibid* 2.

125 Obaseki-Ogunnaike (n 90) 1.

## References

- Abdullahi M, 'Politics of Resource Control and Revenue Allocation: Implications for the Sustenance of Democracy in Nigeria' 2014 7(4) *Journal of Politics and Law* 176.
- Adedapo A, 'Nigeria Loses ₦3trn Yearly to Delay in Oil Sector Reforms' (*allAfrica*, 25 October 2018) <<https://allafrica.com/stories/201810250061.html>> (accessed 25 October 2018).
- Ademiju A, 'Oil Experts Urge Buhari to Assent PIB' (*New Telegraph*, 29 October 2018) <<https://www.newtelegraphng.com/2018/10/oil-experts-urge-buhari-to-assent-pib/>> accessed 29 October 2018.
- Aderemi, T, 'PIGB: Why the President must Re-consider his Decision' (*Vanguard Nigeria*, 20 September 2018) <<https://www.vanguardngr.com/2018/09/pigb-why-the-president-must-re-consider-his-decision/>> accessed 17 October 2018.
- Adetayo O, 'Why Buhari declined Assent to Petroleum Industry Governance Bill – Enang' (*Punch Nigeria*, 30 August 2018) at <<https://punchng.com/why-buhari-declined-assent-to-petroleum-industry-governance-bill-enang/>> accessed 17 October 2018.
- Ailemen T, 'KPMG indicts NNPC, Other Agencies over Unremitted ₦8.8trn' (*Business Day Online*, 18 May 2018) <<http://www.businessdayonline.com/kpmg-indicts-nnpc-agencies-unremitted-n8-8trn/>> accessed 28 May 2018.
- Ajakaye R, 'Nigeria's Buhari seeks Path Out of Oil Price Pit' (*Anadolu Agency*, 21 March 2016) <<http://aa.com.tr/en/economy/nigerias-buhari-seeks-path-out-of-oil-price-pit/541256>> accessed 19 April 2016.
- Akasike C, 'Stakeholders urge FG to pass PIB into Law' (*Punch Nigeria*, 11 October 2018) <<https://punchng.com/stakeholders-urge-fg-to-pass-pib-into-law/>> accessed 29 October 2018.
- Akinbajo I, '\$1.1 billion Fraud: British Judge Questions Jonathan's Integrity, Stops Etete from getting ₦17 billion' (*Premium Times Nigeria*, 15 December 2015) <<http://www.premiumtimesng.com/news/headlines/195233-1-1billion-fraud-british-judge-questions-jonathans-integrity-stops-etete-from-getting-n17-billion.html>> accessed 20 April 2016.
- Ako R and Ekhaton EO, 'The Civil Society and the Regulation of the Extractive Industry in Nigeria' 2016 7(1) *Journal of Sustainable Development Law & Policy* 183.  
<https://doi.org/10.4314/jstdlp.v7i1.9>
- Alike E, 'Nigeria: NNPC, Nigeria's Oil Behemoth Records ₦547bn Losses in Three Years' (*This Day*, 18 May 2018) <<https://www.thisdaylive.com/index.php/2018/05/18/nnpc-nigerias-oil-behemoth-records-n547bn-losses-in-three-years/>> accessed 22 May 2018.

- Aljazeera, 'Nigeria: A Truly Strong Economy?' (*Aljazeera: Counting the cost*, 19 April 2014) at <[www.aljazeera.com/programmes/countingthecost/2014/04/nigeria-truly-strong-economy-2014418134434573256.html](http://www.aljazeera.com/programmes/countingthecost/2014/04/nigeria-truly-strong-economy-2014418134434573256.html)> accessed 22 April 2014.
- All Africa, 'Nigeria: UK Expresses Support for President Buhari's Anti-Graft War' (*All Africa*, 17 April 2016) <<http://allafrica.com/stories/201604180019.html>> accessed 19 April 2016.
- Babayomi OA, 'A Review of the Key Provisions of the Petroleum Industry Bill and the Implications on Deregulation' 2014 3(1) *Journal of Sustainable Development Law and Policy* 189.
- BBC News, 'Nigeria's NNPC 'Failed to Pay' \$16bn in Oil Revenues' (*BBC News*, 15 March 2016) <<https://www.bbc.com/news/world-africa-35810599>> accessed 31 October 2018.
- Brooks C, 'Goodluck Jonathan, Former Nigerian President Faces Arrest Says EFCC' (*GNN Liberia*, 6 April 2016) <<http://gnnliberia.com/2016/04/06/15684/>> accessed 20 April 2016.
- Channels Television, 'National Assembly passes Petroleum Industry Governance Bill' (*Channels Television*, 28 March 2018) <<https://www.channelstv.com/2018/03/28/national-assembly-passes-petroleum-industry-governance-bill/>> accessed 21 May 2018.
- Collier P, *The Bottom Billion: Why the Poorest Countries are Failing and What can be Done About It* (Oxford University Press 2007).
- Custers R and Matthysen K, 'Africa's Natural Resources in a Global Context' IPIS Research Paper August 2009 at <[www.ipisresearch.be/att/20090812\\_Natural\\_Resources.pdf](http://www.ipisresearch.be/att/20090812_Natural_Resources.pdf)> accessed 11 April 2014.
- Eads C and Krakenes A (eds), 'Impact of EITI in Africa: Stories from the Ground' (2010) 7 <<https://eiti.org/sites/default/files/documents/EITI%20Impact%20in%20Africa.pdf>> accessed 24 April 2018.
- Egbon O, 'Accountability through Extractive Industries Transparency Initiative: Whose Accountability?' 2015 *Accountancy Business and the Public Interest* 81.
- EITI in Africa, (October 2018) <[https://eiti.org/sites/default/files/documents/eiti\\_africa\\_brief\\_en.pdf](https://eiti.org/sites/default/files/documents/eiti_africa_brief_en.pdf)> accessed 30 January 2019.
- Ekhatior O, 'Public Regulation of the Oil and Gas Industry in Nigeria: An Evaluation' 2016 (21) *Annual Survey of International & Comparative Law* 43–91.
- Ekhatior EO, 'The Roles of Civil Society Organizations in the Extractive Industries Transparency Initiative in Nigeria' 2014 16(2) *International Journal of Not-for-Profit Law* 47.



- Ene KC, 'The Fall and Rise of the Nigerian Petroleum Industry Governance Bill' (Oxford Policy Management, February 2018) <<https://www.opml.co.uk/blog/nigerian-petroleum-industry-governance-bill>> accessed 24 October 2018.
- Extractive Industries Transparency Initiative, 'Country Status against the EITI Rules (2007–2016)' <<https://eiti.org/countries-archive>> accessed 7 May 2018.
- Extractive Industries Transparency Initiative, 'Nigeria 2016 Validation' <<https://eiti.org/validation/nigeria/2016#impact-of-the-eiti-in-nigeria>> accessed 2 May 2018.
- Extractive Industries Transparency Initiative, 'Principles' <<https://eiti.org/document/eiti-principles>> accessed 18 May 2017.
- Extractive Industries Transparency Initiative, 'Requirements' <<https://eiti.org/eiti-requirements>> accessed 26 June 2017.
- Extractive Industries Transparency Initiative, 'Upholding the Standard Internationally: Validation' <<https://eiti.org/about/how-we-work>> accessed 5 September 2016.
- Extractive Industries Transparency Initiative <<https://eiti.org/eiti>> accessed 18 March 2015.
- Extractive Industries Transparency Initiative, 'Who We are' <<https://eiti.org/who-we-are>> accessed 9 June 2017.
- Gormley TP, 'Legal Mechanisms for Increased Transparency in the Extractive Industries' in KP Sauvant, *Yearbook of International Investment Law & Policy 2011–2012* (Oxford University Press 2013).
- Ihugba BU, 'A Critical Analysis of the Auditing and Reporting Functions of Nigeria Extractive Industry Transparency Initiative (NEITI) Act 2007: Lessons for EITI Countries' 2014 13(3) *Journal of International Trade Law and Policy* 232. <https://doi.org/10.1108/JITLP-03-2014-0006>
- Ihugba BU and Okoro SN, 'Evaluation of the Legal Framework for Promoting Sustainable Development in the Extractive Host Communities in Nigeria' 2017 8(1) *Journal of Sustainable Development Law & Policy* 354. <https://doi.org/10.4314/jsdlp.v8i1.15>
- Ikein AA, *The Impact of Oil on a Developing Country: The Case of Nigeria* (Praeger 2010).
- IMF GDP per capita, current prices at <<http://www.imf.org/external/datamapper/NGDPDPC@WEO/OEMDC/ADVEC/WEOWORLD>> accessed 19 January 2018.
- Jeremiah K, 'NNPC loses ₦546b to Failure of Reforms in Three Years' (*The Guardian Nigeria*, 21 May 2018) at <<https://guardian.ng/news/nnpc-loses-n546b-to-failure-of-reforms-in-three-years/>> accessed 24 May 2018.

KPMG, 'The Petroleum Industry Governance Bill'

<<https://assets.kpmg.com/content/dam/kpmg/ng/pdf/tax/ng-kpmg-newsletter-on-the-petroleum-industry-governance-bill.pdf>> accessed 22 May 2018.

Krishi MA, 'Nigeria: Senate Raises Panel Over 16 Bills Rejected by Buhari' (Daily Trust Nigeria, 10 October 2018) <<https://www.dailytrust.com.ng/senate-raises-panel-over-16-bills-rejected-by-buhari.html>> accessed 17 October 2018.

Linington D, 'Africa Predicted to be the World's Second-fastest Growing Region in 2020' (*IT News Africa*, 30 October 2018) <<http://www.itnewsafrika.com/2018/10/africa-predicted-to-be-the-worlds-second-fastest-growing-region-in-2020/>> accessed 30 October 2018.

Lisk F, Besada H and Martin P, 'Regulating Extraction in the Global South: Towards a Framework for Accountability' (Background Research Paper submitted to the High Level Panel on the Post-2015 Development Agenda, May 2013). <https://doi.org/10.5334/gia.ah>

Mills G, *Why Africa is Poor* (CATO Institute 2012).

Nigeria Extractive Industries Transparency Initiative, 'Brief History of NEITI'

<[www.neiti.gov.ng/index.php/aboutus/brief-history-of-NEITI](http://www.neiti.gov.ng/index.php/aboutus/brief-history-of-NEITI)> accessed 20 April 2018.

Nigeria Extractive Industries Transparency Initiative, 'National Stakeholders Working Group (NSWG)' <<http://www.neiti.gov.ng/index.php/aboutus/governing-structure/national-stakeholders-working-group-nswg>> accessed 4 May 2018.

Nigerian National Petroleum Corporation, 'About NNPC'

<<http://www.nnpcgroup.com/AboutNNPC/CorporateInfo.aspx>> accessed 28 May 2018.

Nigerian National Petroleum Corporation, 'Joint Venture Operations'

<<http://www.nnpcgroup.com/nnpcbusiness/upstreamventures.aspx>> accessed 16 May 2016.

Nwapi C, 'A Legislative Proposal for Public Participation in Oil and Gas Decision-Making in Nigeria' 2010 (54) *Journal of African Law* 184.

<https://doi.org/10.1017/S0021855310000045>

OANDA Currency Converter <<https://www.oanda.com/currency/converter/>> accessed 30 January 2019.

Obaseki-Ogunnaiké D, 'Understanding the Petroleum Industry Governance Bill 2016' 2017 15(1) *Oil, Gas and Energy Law* 1.

Olowolagba F, 'Why NASS is Pressuring Buhari to Assent Petroleum Industry Bill – Saraki' (*Daily Post*, 23 October 2018) <<http://dailypost.ng/2018/10/23/nass-pressuring-buhari-assent-petroleum-industry-bill-saraki/>> accessed 29 October 2018.

Payne J and Eboh C, 'Nigeria Passes Major Oil Reform Bill after 17-year Struggle' (*Reuters*, 18 January 2018) <<https://www.reuters.com/article/us-nigeria-oil-law/nigeria-passes-major-oil-reform-bill-after-17-year-struggle-idUSKBN1F72I2>> accessed 21 May 2018.

Sayne A, Gillies A and Katsouris C, 'Inside NNPC Oil Sales: A Case for Reform in Nigeria' (*Natural Resource Governance Institute*, August 2015) 13 <[https://resourcegovernance.org/sites/default/files/NRGI\\_InsideNNPCOilSales\\_MainReport.pdf](https://resourcegovernance.org/sites/default/files/NRGI_InsideNNPCOilSales_MainReport.pdf)> accessed 28 May 2018.

Standing A, 'Corruption and the Extractive Industries in Africa: Can Combatting Corruption Cure the Resource Curse?' 2007 153 ISS Paper 4 <<https://www.issafrica.org/uploads/Paper153.pdf>> accessed 20 April 2016.

Templars Law, 'The Petroleum Industry Governance Bill' <<https://www.templars-law.com/wp-content/uploads/2017/06/Petroleum-Industry-Governance-Bill.pdf>> accessed 25 May 2018.

The Conversation, 'Buhari Failed to Fix Nigeria's Economy. But He may still have the Edge' (*The Conversation*, 27 January 2019) at <<https://theconversation.com/buhari-failed-to-fix-nigerias-economy-but-he-may-still-have-the-edge-110196>> accessed 1 February 2019.

Udo B, 'Why Buhari withheld Assent to the PIGB – Presidential Aide' (*Premium Times Nigeria*, 29 August 2018) <<https://www.premiumtimesng.com/news/top-news/281790-why-buhari-withheld-assent-to-pigb-presidential-aide.html>> accessed 25 October 2018.

Ugoh SC and Ukpere WI, 'Oil Politics and the Niger Delta Developmental Conundrum' 2010 4(6) *African Journal of Business Management* 1166.

Weidner H, 'Extractive Industry Transparency Initiative' in TN Hale and D Held (eds), *Handbook of Transnational Governance: Institutions and Innovations* (John Wiley & Sons 2011).

## **Cases**

*Wiwa v Royal Dutch Petroleum Co*, No 96 Civ 8386 (KMW) (HBP), 1998 US Dist LEXIS 23064 (SDNY 25 September 1998).

## **Legislation**

Allocation of Revenue (Federation Account etc) Act of 1982.

Allocation of Revenue (Federation Account etc) (amendment) decree of 1992.

Constitution of the Federal Republic of Nigeria (1999).

Decree no 16/010 (2016) (Democratic Republic of the Congo).

Harmonised Petroleum Industry Governance Bill (A Bill for an Act to provide for the governance and institutional framework for the petroleum industry and for other related matters) (2018).

Nigeria Extractive Industries Transparency Initiative (NEITI) Act (2007).

Oil and Gas Revenues Management Act (2015) (Tanzania).

Petroleum Act (2004) (Nigeria).

Petroleum Act, Chapter P10, LFN (2004) (Laws of the Federation of Nigeria).

Petroleum Code (1999) (Cameroon).

Petroleum Revenue Management Act (1999) (Chad).

Petroleum Revenue Management Act (2011) (Ghana).