

ENHANCING TRANSPARENCY AND ACCOUNTABILITY IN THE EXTRACTIVE INDUSTRIES: A REVIEW OF THE EITI STANDARDS 2023

- Mr Uche Val Obi SAN, Ngozi Chinwa Ole, Simbiat Abubakar and Anastasia Edward¹

1. INTRODUCTION

Axiomatically, some countries with humongous levels of energy resources are bedevilled with an excruciating level of poverty, energy deficit problems, deteriorating environment, and corruption to the extent that researchers have termed them as resource-cursed. Academics, political analysts, legal scholars and international institutions have established that the publication of adequate information on how extractive resources are managed will reduce opacity and resource curse in certain situations. In the words of Geginat, ‘An institutional environment characterised by openness and transparency is of central importance not only for private markets but also for the effective and efficient management of public resources’.² The reason d’etat for the latter is that openness equips relevant stakeholders and the public with relevant information to hold government and resource managers accountable for the mismanagement of extractive resources. While transparency has been recognised as a tool for facilitating effective management of extractive resources, the question of how to facilitate it is a major issue. The Extractive Industries Transparency Initiative (EITI) is a conglomerate of extractive governments, civil liberty societies and companies which provides an encyclopedic standard (EITI Standard) to boost transparency and accountability in the extractive industries. It was established in 2002 and has since provided a robust governance framework to boost disclosure, accountability, and inclusive decision-making processes. Over 50 countries have subscribed to the implementation of the EITI Standards in their respective jurisdictions.³ Subscribing members implement transparency in their resource management by disclosing relevant financial transactions in the extractive sector and, establishing a multi-faceted stakeholders committee to oversee the implementation of the EITI Standard.⁴

As the extractive industries continue to shape our global landscape, the EITI Standard remains a vital tool for ensuring that the sector operates transparently, responsibly, and in harmony with the environment and the interests of the people it serves. The EITI continues to produce several standards to enhance transparency including in 2013, 2019 and more recently 2023. This article provides a formal overview of the EITI Standard, elucidating its role in fostering transparency and accountability in the extractive sector. For this purpose, this piece is divided into three. Besides the introduction, the second part provides an exposition of the 2023 Standard while the third part is the conclusion.

¹ Mr Uche Val Obi SAN is the Managing Partner of Alliance Law Firm while Ngozi Chinwa Ole is a Consultant-Managing Associate; Simbiat Abubakar and Anastasia Edward are Executive Associate and Associate respectively in the same firm.

² G Geginat, *How Transparent is Business Regulation around the World* (Doing Business 2013).

³ Ibeth Lopez-Cazar and others, ‘The Extractive Industries Transparency Initiative (EITI) and corruption in Latin America: Evidence from Colombia, Guatemala, Honduras, Peru, and Trinidad and Tobago’ (2021) 70 Resource Policy 101907.

⁴ Kerem Oge, ‘Transparent Autocracies: The Extractive Industries Transparency Initiative (EITI) and Civil Society in Authoritarian States’ (2016) *The Extractive Industry and Society* 9.

2. EITI PRINCIPLES AND REQUIREMENTS

2.1. Introduction

Indomitably, efficient management of energy and natural resources is crucial, and transparency and accountability are pivotal to the sustainable and responsible management of natural resources, particularly in the extractive industries. In 2002, the Extractive Industries Transparency Initiative was proposed by Tony Blair and eventually established in 2003.⁵ At the preliminary, it was conceived as a multi-stakeholder forum aimed at helping the petroleum host government eliminate the resource curse by deepening their understanding of financial inflows and outflows. In 2003 when it was adopted, it provided for twelve basic principles of transparency which were accepted as a multi-stakeholder initiative. By 2007, the membership of the EITI has expanded to over 20 members including Azerbaijan, Nigeria, Norway etc.⁶ In the same 2007, Nigeria was the first country to domesticate the EITI Standards as the NEITI Act 2007.⁷ The EITI Standard 2003 has since metamorphosized into several versions with the 2023 being the latest version. The 2023 version has since grown to incorporate other indices of good governance like energy justice and energy transition.⁸ It provides for seven requirements of transparency to be implemented by EITI countries. These requirements will be analyzed in seriatim.

2.2. Oversight by Multi-Stakeholder Group

The point has been made that EITI is predicated on establishing a Multi-Stakeholder Group (MSG) comprising the government, companies and civil society. This group oversee the general disclosure process whether financial or resource management. requires effective multi-stakeholder oversight, including a functioning multi-stakeholder group that involves the full, active and effective engagement of government, companies and civil society. The oversight by the MSG is founded on the tripartite pillars of government engagement, company engagement and civil society engagement. The process is kick-started by a declaration by the government of its unequivocal intention to implement the EITI Standards and the appointment of a designated senior official for this purpose. For companies, the initial requirement is to publish an anti-competition policy and engage in rigorous due diligence processes. Civil societies are expected to participate in the EITI implementation through providing a very strong oversight and the government must provide an enabling environment for them. The multi-stakeholder group comprising of the mentioned above group must provide an annual work plan which they should implement in line with the standard. They must execute periodic outreach generally and disseminate information on the entire EITI process.

2.3. Legal and Institutional Framework, Contracts and Licenses

Member countries are under the obligation to adopt and make public legal and fiscal regimes for petroleum activities. Such a regime will also encompass variations of contracts and grant

⁵ Harouna Kinda and Noël Thiombiano, 'Does Transparency Matter? Evaluating the Impacts of the Extractive Industries Transparency Initiative (EITI) on Deforestation in Resource-Rich Developing Countries' (2024) 173 World Development 106431.

⁶ EITI, 'Our History' (2023) <<https://eiti.org/our-history> > accessed 22nd December 2023.

⁷ Nnimmo Bassey, 'Concerning Environmental Audits in the Nigeria Extractive Industries Transparency Initiative' (2020) 7(3) The Extractive Industries and Society 786.

⁸ The EITI Standard 2030, 4.

instruments used in the sector. Implementing states must disclose their energy transition plan and policies applicable to the extractive industries. The objective of this requirement is to ensure public understanding of all aspects of the regulatory framework for the extractive industries, including the legal framework; fiscal regime; roles of government entities and reforms; as well as laws and regulations related to addressing corruption risks in the extractive sector. The implementing countries are expected to maintain a public register of licenses and their beneficial owners and contracts as well as an adequate description of the entire process for such awards. Information about the transfer of licenses and material deviations including the explanation of the methodology adopted for such assessment should be fully disclosed including information on gender distribution. Other information is also required in some cases as dictated by the MSG. The MSG will determine the existing mechanisms for appraising the accuracy of beneficial ownership information. They may in some contexts require the company to submit supporting documentation which proves such beneficial ownership.

2.4. Exploration and Production

The EITI requires the publication of information on mineral exploration, development and production. Compliant countries are required to disclose data on production including volumes and values. Information such as methodology for calculating production data using relevant international standards should be made public. The standard seeks to make it transparent for accountability purposes to export data. As such, timely export data including export volumes, the company exporting and the basis for calculating such exportation must be made public. Information about buyers is also expected to be made public. Buyers of such commodities especially in complaint countries are expected to disclose information about the extractive commodity or its derivatives bought. The essence is to provide stakeholders and the public with sufficient information to hold the buyers accountable. In turn, companies are encouraged to publish their greenhouse gas emissions. If they don't willfully, the MSG may request such disclosure. The latter requirement is encouraging because of the global stance on energy transition and environmental governance.

2.5. Revenue Collection

The particular principle is predicated on the reasoning that disclosure of extractive industries' financial inflow and outflows will inform public scrutiny enhancing more accountability that will mitigate resource curse. Implementing countries are obligated to make a comprehensive disclosure of revenues and material payments derived from the industry including from oil and gas companies subject to practical barriers. The barriers may include provisions on confidentiality in material contracts. Conversely, companies are required to make available information on payments made to implementing countries and publish their financial audited statements including tax deductions and incentives. The determination of what is material is contingent on the discretion of the MSG. It is also expected that the government should disclose all requisite information on payments made from and revenue derived from oil and gas transportation. The MSG will ensure that such processes and disclosure on revenue collection are subject to an independent audit process which will guarantee the adequacy and credibility of information.

2.6. Revenue Management and Distribution

The Standards require implementing states to make available to the public information on revenue management including allocations, budgets and social expenditures. Such disclosure must conform to internationally recognizable standards including the IMF Government Finance Statistics (GFS)

Manual. If there is a financial flow between national and subnational entities concerning revenue from the extractive industries including sharing formula; such must be disclosed by the implementing entity. To strengthen revenue sustainability and resource dependence, the EITI Standards require member countries to reveal revenues meant for specific programs including gender. Information on future revenues and related assumptions must be publicized. The government is under the obligation to reveal how energy transition and climate risks were factored in. The MSG may request oil, gas and mining companies to disclose their projected expenditures as may correspond with the information submitted by the government.

The EITI Standard is designed to incorporate social and environmental outcomes. Material payments made by extractive industries that are relevant to the environment whether under law or contract must be divulged. The MSG has the power to determine whether such payments are material and if they are, a reporting process will be developed to promote transparency. The MSG will also set up an auditing process to guarantee data quality. State-owned entities are mandated to include material disclosure of revenues and payments made. In all, countries should disclose information about the annual contribution of the extractive industries to the general revenue of their state. Such information must be detailed as provided for in paragraph 6.3. of the EITI Standards 2023. economy for the fiscal year as covered by the EITI

2.7. Outcomes and Impact

The EITI Standard is geared towards informing public debate that will lead to greater accountability. As such, the information and disclosure must be of a form that can inform meaningful public debate. Thus, an integral part of the EITI Standard is that disclosure must be made at a level that the public will understand. The 2023 Standards impose an obligation on the MSG to ensure that the information published is comprehensible, accessible and widely distributed. There should be widespread awareness about such information disclosed. MSG is expected to undertake capacity-building efforts to strengthen public understanding of the information disclosed. They will also publish periodic reports to broaden understanding of issues related to transparency. The implementing countries are to agree on an open policy on data for access and re-use of EITI Data.

3. MONITORING AND EVALUATION OF EITI IMPLEMENTATION

Monitoring and evaluating EITI implementation is germane to ensuring revenues from the extractives are managed transparently. The mechanism for monitoring and evaluating the EITI process involves a combination of international oversight and national-level assessments. International oversight of the EITI process is carried out by the EITI International Secretariat, while national-level assessments are conducted by MSGs in their countries. The EITI International Secretariat, based in Oslo, Norway, plays a vital role in monitoring, evaluating and supporting the implementation of the Standards 2023 globally. At the national level, each implementing country establishes a national secretariat responsible for coordinating the EITI process within the country. National secretariats are typically hosted by a government institution, but they operate as independent entities to ensure impartiality and credibility. The national secretariats facilitate stakeholder engagement through the MSG, oversee the collection and validation of data, and produce EITI reports.

The EITI holds all implementing countries to the same global standard. Through the validation of the EITI's quality assurance mechanism, implementing countries are assessed on their ability to meet the provisions of the EITI standard. Validation promotes dialogue and learning at the country level. It provides implementing members with the opportunity to communicate progress and address challenges in EITI implementation.

The validation process is a key aspect of monitoring and evaluating EITI implementation. It is conducted by an independent validator, selected by the country being assessed. The validator assesses the country's compliance with the EITI Standard, ensuring that the necessary data has been disclosed and that the multi-stakeholder process has been effectively implemented. The validation process also includes an assessment of the impact and outcomes of EITI implementation, examining whether it has led to improved governance and transparency in the extractive sector. This process involves an evaluation of the country's legal framework, fiscal systems, disclosure practices, and extent of stakeholder engagement. The independent validation helps ensure that the information disclosed is accurate and reliable, assuring the public and investors.

Successful implementations of EITI have been observed since the initiative's initiation. Several countries have made significant progress in implementing the EITI Standards, leading to greater transparency and accountability in their extractive industries. For example, Nigeria, as one of the early adopters of EITI, has made considerable improvements in disclosing extractive sector revenues and ensuring public participation in decision-making processes. Ghana has also made notable strides in implementing EITI, resulting in enhanced transparency and public trust in the management of extractive resources.

Implementing countries are required to publish an EITI report within six months of the end of the fiscal year. The report should contain comprehensive information on extractive sector revenues, payments, and other relevant data. After the report is published, the validation process begins. The validation timeline typically spans 18 to 24 months (about 2 years), during which the independent validator assesses the country's compliance with the EITI Standard. Through these mechanisms, EITI strives to foster transparency, accountability, and good governance in the extractive industries, ultimately benefiting resource-rich countries and their citizens.

4. EITI: A PANACEA OR WHITE ELEPHANT

While a host of petroleum countries including Nigeria have adopted and, are implementing the standards including the 2023 version; the burning question is whether it is a panacea for the resource curse or bad resource management. A recent study conducted by Sovacool et al examined over 49 EITI-implementing countries to determine the nexus between their implementation of the Standards and Resource Curse or Bad Resource Management.⁹ It concluded that EITI Countries

⁹ Benjamin K Sovacool and others, 'Energy Governance, Transnational Rules, and the Resource Curse: Exploring the Effectiveness of the Extractive Industries Transparency Initiative (EITI)' (2016) 83 World Development 179-192.

do not perform better as per resource management during their compliant period. Another study by Cazar on the impact of the standards on mitigating corruption in the extractives industry in some Latin American Countries shows that their participation in the scheme does not have any statistically significant effect on eliminating corruption in the extractive industry.¹⁰ Some of the studies point out that while there was full compliance with EITI Standards, there were no adequate institutions and strong civil society to hold the government accountable. Suffice it to say that disclosure must interact with other right factors to produce the desirable results in the context of mitigating the resource curse or bad resource management. Thus, it behoves governments to ensure that factors are made right to enable the implementation of the standards to produce optimal results. The 2023 Standards still have a long way to go. As such, implementing states should adopt complementary efforts to extrapolate the best from the EITI process.

5. CONCLUDING REMARKS

The EITI Standards have a pivotal role to play in addressing opacity and corruption. By addressing emerging issues, such as environmental concerns and social impacts, the EITI paves the way for sustainable development and mitigates potential conflicts. By encouraging innovation and embracing technology, the EITI platform for international collaboration can lead to the development of best practices, capacity building, and peer learning, ultimately enhancing transparency and accountability across the extractive industries globally. EITI implementation encourages countries to improve their governance structures and institutional capacity in the extractive industries sector. It promotes the establishment of robust legal and regulatory frameworks, effective revenue management systems, and strong oversight mechanisms. Furthermore, the EITI's significance lies in its ability to foster collaboration and dialogue among diverse stakeholders. Through international cooperation, knowledge sharing, and capacity building, the EITI contributes to a collective effort to improve governance and responsible resource management worldwide. Thus, measures should be adopted by implementing states to ensure that the standards produce the most.

¹⁰ Ibeth Lopez-Cazar and others, 'The Extractive Industries Transparency Initiative (EITI) and corruption in Latin America: Evidence from Colombia, Guatemala, Honduras, Peru, and Trinidad and Tobago' (2021) 70 Resource Policy 101907.