

Civil Society in Africa

**THE ROLES OF CIVIL SOCIETY ORGANIZATIONS
IN THE EXTRACTIVE INDUSTRIES
TRANSPARENCY INITIATIVE IN NIGERIA**

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Due to the failings of the regulatory framework in the oil and gas sector in Nigeria, Civil Society Organizations (CSOs) tend to act as watchdogs over the activities of government. This article focuses on the Extractive Industries Transparency Initiative (EITI), which has been localized in the oil and gas sector and domesticated as a law in Nigeria. The article highlights the roles of CSOs in the initiative.

Introduction

Civil Society Organizations (CSOs) have played major roles in the development of international multi-stakeholder codes. Multi-stakeholder codes result from collaboration among a diverse range of actors, including states, CSOs, multinational corporations (MNCs), and even scholars.² For example, the Voluntary Principles on Security and Human Rights in the Extractive Sector (VPSHR), which was initiated by the governments of the United States and the United Kingdom, was the product of collaboration and negotiations among governments, MNCs, CSOs, and others.³

CSOs played major roles in the development of the Extractive Industries Transparency Initiative (EITI). The EITI, launched in 2002, has been described as

a coalition of governments, companies, civil-society groups, investors and international organisations, and is conceived of as a standard for monitoring compliance with contract disclosure and revenue-transparency criteria to ensure that companies publish what they pay and governments disclose what they receive from the extraction and export of natural resources. Member countries voluntarily adopt the standard, and seek “validation” status through compliance.⁴

Currently, there are 31 compliant countries and 17 candidate countries; 36 countries have produced EITI reports.⁵

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² Oshionebo, E., *Regulating Transnational Corporations in Domestic and International Regimes: An African Case Study* (2009).

³ Mujih, E., *Regulating Multinationals in Developing Countries: A Case Study of the Chad- Cameroon Oil and Pipeline Project* (2012)

⁴ Acosta, A. M. “The Impact and Effectiveness of Accountability and Transparency Initiatives: The Governance of Natural Resources,” 31 (§ 1) *Development Policy Review* §§ 89-105, at § 92 (2013).

⁵ EITI website, <https://eiti.org/countries>.

Nigeria signed on to the EITI in 2003, and its application commenced in February 2004 as part of the economic reforms of the Obasanjo administration.⁶ Section 1(1) of the Nigerian Extractive Industries Transparency Initiative (NEITI) Act⁷ establishes the EITI in Nigeria. The overarching objective of the NEITI Act is to promote and ensure due process in the payments made by extractive companies⁸ to the federal government of Nigeria.⁹ The NEITI is one of the few laws regulating Nigeria's oil and gas industry that expressly provides for the participation of CSOs in its activities.¹⁰ The law provides for the inclusion of members of CSOs in the National Stakeholders Working Group (NSWG)—the governing body of the NEITI—to promote transparency and accountability in revenue payments in the oil and gas industry. Section 6 states:

S.6 (2)(a) In making the appointment into the NSWG, the President shall include:

- (i) representative of the extractive industry companies,
- (ii) representative of Civil Society,
- (iii) representative of Labour Unions in the extractive industries
- (iv) experts in the extractive industry and
- (v) one member from each of the six geographical zones.

⁶ Civil Society Legislative Advocacy Centre (CISLAC), "Implementing Nigeria Extractive Industries Transparency Initiative for Impact: Some Policy Options," <http://www.cislacnigeria.net/posts/publications/briefs/>. Mr Obasanjo was one of the major drivers of the localization of EITI in Nigeria. To buttress this assertion, prior to the localization of EITI in Nigeria, "the Obasanjo administration took certain practical steps to implement the EITI process in Nigeria by creating a NEITI secretariat headed by Obiageli Ezekwesili, well regarded within the presidency and donor community for her excellent bureaucratic skills and commitment to due process in budgetary matters." Abutudu, M. & Garuba, D., "Natural Resource Governance and EITI Implementation in Nigeria," 47 *Current African Issues* 12 (2011). Simply, the EITI "is a global coalition of governments, companies and civil society working together to improve openness and accountable management of revenues from natural resources." <http://eiti.org/eiti>.

⁷ Nigeria Extractive Industries Transparency Initiative Act (NEITI) (2007).

⁸ Section 21 of the NEITI Act defines an extractive industry company as "any company in Nigeria that is engaged in the business of prospecting, mining, extracting, processing and distributing minerals and gas, including oil, gold, cola, bitumen, diamonds, precious stones and such like; and includes any agency or body responsible for the payment of extractive industry proceeds to the Federal Government or its Statutory Recipient." In addition to the audits conducted for the oil and gas sector, the NEITI has also conducted audits for the solid minerals industry in Nigeria. See the NEITI website for the copies of audits on the solid minerals industry in Nigeria, <http://neiti.org.ng/index.php?q=documents/neiti-audit-reports-solid-minerals>.

⁹ Generally see section 2 of the NEITI Act which enunciates the primary objectives of the Act.

¹⁰ Professor Asobie, a former chairman of the NSWG, has argued that CSOs are an integral constituent of the EITI multi-stakeholder group (MSG) which comprises the government, private sector, and civil society. He states thus "[o]ne of the six EITI criteria is that civil society is actively engaged as a participant in the design, monitoring and evaluation of the whole process of EITI and contributes effectively towards public debate on the outcome. This has indeed been borne out by the Nigerian experience, since 2004." Asobie, A., "Foreword," in *Civil Society in the NEITI Process* 6-7 (2012), <http://www.neiti.org.ng/index.php?q=pages/civil-society-neiti-process>. Also, the NEITI Act has been argued to have introduced "compulsory regulation of CSR into corporate governance" in the oil and gas industry in Nigeria. See Ihugba, B.U., "Compulsory Regulation of CSR: A Case Study of Nigeria," 5(2) *Journal of Politics and Law* 68-81 at 61 (2012), <http://www.ccsenet.org/journal/index.php/jpl/article/view/15639/0>

Furthermore, the NEITI has always engaged CSOs in its activities as a means of improving transparency and opening the process to the Nigerian public. This deliberate strategy of NEITI's involvement with NGOs can be traced to the onset of the EITI implementation or localization in Nigeria, when a coalition of CSOs led by Publish What You Pay through its different activities sensitized the Nigerian public to the inherent benefits accruing from the implementation of the EITI to the extractive companies, government, and the public.¹¹ Furthermore, a host of other CSOs have been active in the EITI localization by providing input, and the NEITI board (management) has provided training and support to enhance the capacity of CSOs' effective participation in the NEITI in Nigeria.¹²

CSO Participation in NEITI Process in Nigeria

As part of the structure of the NEITI process, CSOs are on the governing board, NSWG. The NEITI also has a Civil Society Steering Committee, in which CSOs and the NEITI board are partners in the various outreach programs and activities organized by the NEITI.¹³ Furthermore, the NEITI employs a permanent, full-time Civil Society Liaison Officer.¹⁴ Many CSOs, both local and international have been at the forefront of publicizing the activities of the NEITI and EITI. To further accentuate the symbiotic relationship between the NEITI and CSOs in Nigeria, a Memorandum of Understanding (MOU) was developed in 2006 to promote the CSO contribution to the NEITI process.¹⁵

CSOs play major roles in the NEITI process in Nigeria. However, in comparison with the other stakeholders (government and oil multinational corporations) in the NEITI process whose roles appear to be "clearly defined and streamlined, that of the civil society still remain unclear" in Nigeria.¹⁶ To remedy this anomaly, the NEITI has organized a series of activities and engaged in consultation with CSOs in different parts of the country to determine the roles of CSOs in the NEITI process.¹⁷ The consultation has entailed meetings with a plethora of CSOs in Nigeria, and from these deliberations some consensus has emerged. The consensus can be broken into the general and specific roles expected to be played by CSOs in the NEITI.¹⁸ The general roles of CSOs in the NEITI process include the following:

(a) Identification: Here, CSOs averred that part of their duties or aims is to ensure that major issues of public interest central to the NEITI process are brought to the fore so that members of the public can also engage in its debate.¹⁹ Some of the major issues highlighted by CSOs include the various oil and mining license issuance procedures and the environment. The

¹¹ Asobie, *supra* note 10; Ewere, A.O., *NEITI and Good Governance in Nigerian Oil Industry* (2011).

¹² Asobie, *supra* note 10.

¹³ NEITI Handbook (2013), <http://www.neiti.org.ng/index.php?q=publications/neiti-handbook>,

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Civil Society in the NEITI Process*, *supra* note 10, at 10.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

consensus of the CSOs is that governance will improve in Nigeria only if these major issues are identifiable focal points of advocacy.²⁰

(b) Agenda Setting: Agenda setting is one of the core responsibilities of CSOs. CSOs averred that one of their roles in the NEITI process is to ascertain issues pertaining to the NEITI mandate and use them as premises for the national and international engagement with oil multinational corporations (MNCs) and the government on means to improve transparency and accountability via the NEITI.²¹

(c) Public Education and Enlightenment: CSOs engage in many outreach programs or activities such as workshops, conferences, road shows, and town hall meetings to inform the public on the issues of transparency in oil revenue payment and the NEITI process in Nigeria. This is especially paramount in Nigeria because of low literacy levels and because government-organized activities and events are viewed with suspicion.²² Thus, it can be argued that many Nigerian trust CSOs more than the government.

(d) Agents of Change and Social Mobilization: CSOs in Nigeria are well known as great mobilization agents. In respect to the NEITI process, CSOs are also “agents of change and social mobilisation.”²³ CSO activities include mobilizing public opinion to support the NEITI process, acting as pressure groups to influence policy formulation and the legislative process, engaging in peaceful protests, and writing petitions.²⁴

(e) Monitoring and Oversight: CSOs are expected to monitor the policies and events in the extractive sector and report correctly with facts in order to improve governance in the sector.²⁵ However, this role of CSOs has to be community-based and people-centered.²⁶

(f) Advisory: The CSOs are supposed to provide impartial advice to the NEITI management or board.

(g) Whistle-Blowing: CSOs are supposed to expose any problems regarding oil transparency payments in the oil and gas sector in Nigeria. Also, whistle-blowing by CSOs can be a means of drawing attention to areas where the NEITI is failing. CSOs engaging in whistle-blowing should be equipped with adequate information, integrity, and competence.²⁷

(h) Observation: It is within the remit of CSOs to observe some activities of the NEITI in tandem with the secretariat of the NEITI.²⁸ These include budget preparation, projects, conferences, and meetings.²⁹

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* at 24.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

(i) Feedback: CSOs also engage in feedback as part of their core roles in the NEITI process. CSOs are supposed to provide feedback on their engagement with the process to their immediate constituency and to the public at large.

Furthermore, some specific roles are provided for CSOs under the NEITI Act. These include membership of the NEITI governing board (NSWG), remediation issues arising from NEITI audits, NEITI-legislative engagement, dissemination of audit reports, and community participation.³⁰

Weaknesses of CSO Participation in the EITI Process in Nigeria

However, CSO participation in the NEITI is not foolproof, and it has been subjected to strident criticism by various stakeholders.³¹ One major pitfall of CSO participation in the NEITI process is that some CSOs are divided and suffer from internal strife that weakens them.³² For example, the intractable disagreements in the Publish What You Pay coalition led to the formation of another CSO called the Coalition for Accountability and Transparency in Extractive Industry, Forestry and Fisheries in Nigeria.³³ Thus, it has been posited that CSOs have difficulties in managing internal crises in Nigeria due mainly to personality clashes, and such conflicts are exacerbated by the government's eagerness to fan the embers of discord.³⁴ Government and its agencies exploit such conflicts to put a lid on the activities of CSOs and deprive the polity of quality opposition to their policies.³⁵

Another inherent weakness of CSO participation in the NEITI process is accentuated by Section 6(a) of the NEITI Act, which grants powers to the President of Nigeria to appoint the members of the governing board (NSWG) including CSO representatives. This proviso is prone to abuse by the President because such appointments may be dispensed on the basis of political patronage, especially as the NEITI is an arm (department) of the Presidency. To redress this anomaly, NEITI has signed on to an MOU with CSOs and consults with them before a CSO representative is appointed to the governing board. However, the CSOs are unable to elect their representatives directly to the NSWG, and their choice is still subject to governmental approval or ratification. In other words, the CSO representatives are picked by the government.

Another weakness in the CSO participation in the NEITI process relates to the legitimacy issues inherent in CSOs in Nigeria. It is argued that the NEITI focus is on Abuja- or city-based NGOs to the detriment of local NGOs that are closer to the oil-producing communities in the Niger Delta.³⁶ Thus, capacity-building of CSOs is invariably skewed to the groups in the cities, to the detriment of local CSOs. The NEITI secretariat tends to consider CSOs based in Abuja or

³⁰ *Id.*

³¹ See generally Ewere, *supra* note 11; Ihugba, *supra* note 10; Shaxon, N., "Nigeria Extractive Industries Transparency Initiative: Just a Glorious Audit" (Nov. 2009), <http://eiti.org/document/shaxson-neiti-glorious-audit>.

³² Abutudu & Garuba, *supra* note 6; Shaxson, *supra* note 31.

³³ Abutudu & Garuba, *supra* note 6.

³⁴ *Id.*

³⁵ *Id.* Also see Ewere, *supra* note 11. Concerning the self-aggrandizement by leaders of certain CSOs, a former Minister of Finance in Nigeria has described such CSOs as "non-governmental individuals." Shaxon, *supra* note 31, at 25.

³⁶ Shaxon, *supra* note 31.

Lagos (and other big cities) as the most significant in the NEITI process (and the extractive industry).³⁷ The implication of this is that many local and rural CSOs might be excluded from the NEITI process. In Nigeria, local CSOs are closer to the people and the oil-producing communities in the Niger Delta. Moreover, the NEITI Act has been criticized for its apparent silence on environmental issues.³⁸ The contention is that if the NEITI had taken the views of local CSOs based in the oil-producing communities, the blatant omission of environmental issues from the mandate of the NEITI Act could have been avoided.³⁹ Recently, the NEITI tried to address some of the factors militating against effective CSO participation in the NEITI process by engaging in extensive nationwide consultations with CSOs.

Another weakness in the NEITI process is that the government and the NEITI appear to be using the contribution of CSOs as means of achieving credibility and legitimacy in the eyes of the international community and donors instead of achieving a high level of transparency and accountability in the extractive sector in Nigeria.⁴⁰ The contention is that the NEITI and the government appears to be more focused on attaining international “validity” rather than actualizing the mandate of the NEITI Act.

Conclusion

This short article has highlighted the contribution of CSOs to the NEITI process in Nigeria. Notwithstanding the assertions about the inherent weaknesses of CSOs in NEITI process, CSO participation has improved the transparency and accountability in the computation of oil revenue payments in Nigeria.

³⁷ Abutudu & Garuba, *supra* note 6.

³⁸ *Id.*

³⁹ Bassey, N., “The Environmental Black Hole in NEITI,” in Sofiri Joab-Peterside, Ekanem Bassey, & Naomi Goyo (eds.), *Domestication of Extractive Industries Transparency Initiative in Nigeria: Gaps Between Commitment and Implementation – A Civil Society Assessment of the Performance of Nigeria Extractive Industries Transparency Initiative* (2010), cited in Abutudu & Garuba, *supra* note 6.

⁴⁰ Abutudu & Garuba, *supra* note 6.