

Validation of NIGERIA
Validation Report
Sustainable Development Strategies Group (SDSG), Independent Validator
11 October 2016

1. BACKGROUND

The first country in Africa to implement in the EITI, and among the first EITI-implementing countries in the world, Nigeria has published EITI Reports covering 15 Fiscal Years in oil and gas, and seven fiscal years in solid minerals. Nigeria's first National Stakeholders Working Group (NSWG) was established in 2004 and its first EITI Report, covering oil and gas over 1999–2004, was published in 2006. Nigeria was accepted as an EITI Candidate country on 27 September 2007 and achieved EITI Compliant status in 2011—making Nigeria among the first countries to achieve EITI Compliant status. The International Secretariat's Initial Assessment notes, "Nigeria has appropriated EITI implementation to such a degree that it has helped shape development of the EITI Standard and developed one of the most extensive EITI reporting processes globally." While recognising Nigeria's leadership in turning recommendations from EITI Reports into concrete action, the Initial Assessment also notes, "the Standard has now overtaken NEITI and additional efforts will be required to comprehensively align NEITI with the requirements of the Standard."

- **Work Performed by the Independent Validator**

The Secretariat requested submission of the Validation Reports for Nigeria and four other countries before the Board meeting in Astana in late October 2016. Both PDF and editable versions of the Initial Assessments for these countries were transmitted to the SDSG Validation Team in September 2016. The Validation Team committed to undertake this task through: (1) In-depth review and marking up of the EITI Assessment by the team; (2) Detailed review and comments by Multi-Stakeholder Specialist of Requirements 1 and 7; (3) Detailed review and comments by Financial Specialist of Requirements 2 through 6; and (4) Overall drafting lead and detailed review by Team Leader of all requirements.

- **Comments on the Limitations of the Assessment**

The most significant challenge for the Validation Team is the compressed time frame within which to undertake its review of EITI implementation in Nigeria. Stakeholder outreach was not practicable and detailed review of documentation beyond the Initial Assessments is necessarily limited. It should be noted, however, that the Validator is not expected to duplicate the data collection and consultation work completed by the Secretariat. Neither is it permitted to consider activities conducted after 1 July 2016, per express directive of the Board. Notwithstanding these limitations, the Validation Team has carefully reviewed the Secretariat's Initial Assessment and applicable references to determine Nigeria's level of progress against the different requirements of the 2016 Standard.

- **Comments on the Initial Assessment**

The initial data collection, stakeholder consultations, and drafting of the Initial Assessment were generally undertaken by the Secretariat in accordance with the 2016 Validation Guide. This entailed a desk review of relevant documents from 1–24 July 2016, a country visit by a five-person team from the Secretariat that conducted stakeholder consultations from 25 July–5 August 2016 in both Abuja and Lagos, and the production of the Initial Assessment. The Secretariat's team was identified by name, though it would be helpful to also indicate each member's level of familiarity or engagement with EITI Nigeria to confirm the appropriate balance in perspectives and experience.

On the whole, the entire process appears to have been transparently undertaken and stakeholders consulted were given several opportunities to provide comments. The Secretariat noted that it met with the multi-stakeholder group and its members, the Independent Administrator, and other key stakeholders, including stakeholder groups that are represented on, but not directly participating in, the multi-stakeholder group. However, there does not appear to be evidence of wider outreach to, and consultations with, stakeholders not involved in the EITI process, aside from some conversations with taxi drivers noted in the Initial Assessment.

In general, the Initial Assessment is well organized and clear. It thoroughly discusses the requirements and evaluates Nigeria's level of progress. Supporting documents are cited extensively, with at times perhaps too much detail provided in footnotes. Stakeholder input is cited, where appropriate and available. A consistent approach to the use of acronyms and to the format of footnotes will help improve the Initial Assessment.

2. GENERAL COMMENTS

- **Progress in EITI Implementation**

Nigeria's first EITI Report, covering oil and gas over 1999–2004, was published in 2006 and helped shape the EITI Rules. By July 2016, Nigeria had published EITI Oil and Gas Reports covering 15 fiscal years. Nigeria also extended EITI reporting to the solid minerals sector, publishing its first EITI Solid Minerals Report covering 2007–2010 in December 2012, its 2011 Report in May 2014, its 2012 Report in December 2012, and its 2013 Report in May 2016.

The International Secretariat's Initial Assessment notes that "over more than a decade of implementation, NEITI process has gone well beyond the minimum EITI Requirements by including assessments of physical and process flows alongside the reconciliation of financial payments. Nigeria was also the first country to enact legislation institutionalising EITI implementation and remains one of only three countries with a dedicated EITI law. Nigeria continues to lead the way in turning recommendations from EITI reports into concrete action."

However, NEITI has yet to conform many of its procedures to the EITI Standard. This includes, among others, the need to review NEITI's institutional structure; to update the strategic plan and objectives of EITI implementation, ensuring that they are aligned with national priorities; and others, as noted in the Initial Assessment and in the Recommendations below.

- **Impact of EITI Implementation**

NEITI has an impressive history of over a decade of implementation, contributing to a national debate regarding governance of extractive industries, greater public understanding of the extractives sector, and a culture of transparency and accountability in the sector. As noted in the Initial Assessment, NEITI Reports have led to recovery of more than USD 2.4 billion for the Federal Government of Nigeria. NEITI has also increased multi-stakeholder collaboration and led to improved governance in the extractives sector. Examples, based on EITI recommendations, include Nigerian National Petroleum Corporation (NNPC) reforms related to offshore processing agreements, swaps, subsidies, and Nigeria Liquefied Natural Gas dividends; NNPC's introduction of the Software Application Project; and Federal Reserve Service development of the Upstream Operational Manual. As NEITI works to entrench the EITI Standard, it is presented with opportunities to respond to stakeholder questions regarding how to deliver more sustainable benefits from the extractives sector, including poverty reduction.

- The Independent Validator's Assessment of Compliance

Figure 1 – Validator's assessment

EITI Requirements		LEVEL OF PROGRESS					Note
		No Progress	Inadequate	Meaningful	Satisfactory	Beyond	
Categories	Requirements						
MSG oversight	Government engagement (#1.1)						
	Industry engagement (#1.2)				←		1
	Civil society engagement (#1.3)						
	MSG governance (#1.4)						
	Work plan (#1.5)			←			2
Licenses and contracts	Legal framework (#2.1)						
	License allocations (#2.2)						
	License register (#2.3)						
	Policy on contract disclosure (#2.4)						
	Beneficial ownership (#2.5)						
	State participation (#2.6)						
Monitoring production	Exploration data (#3.1)						
	Production data (#3.2)						
	Export data (#3.3)						
Revenue collection	Comprehensiveness (#4.1)						
	In-kind revenues (#4.2)				←		3
	Barter agreements (#4.3)						
	Transportation revenues (#4.4)						
	SOE transactions (#4.5)						
	Direct subnational payments (#4.6)						
	Disaggregation (#4.7)						
	Data timeliness (#4.8)						
	Data quality (#4.9)						
Revenue allocation	Revenue management & expenditures (#5.1)						
	Subnational transfers (#5.2)						
	Distribution of revenues (#5.3)						
Socio-economic contribution	Mandatory social expenditures (#6.1.a)						
	Discretionary social expenditures (#6.1.b)						
	SOE quasi-fiscal expenditures (#6.2)						
	Economic contribution (#6.3)						
Outcomes and impact	Public debate (#7.1)						
	Data accessibility (#7.2)						
	Follow up on recommendations (#7.3)						
	Outcomes & impact of implementation (#7.4)						

1-6: Please see Detailed Findings.

3. DETAILED FINDINGS

- 1.1 **Government engagement.** We agree Nigeria has made **SATISFACTORY** progress. We note also that the current size of the dedicated government agency established under the NEITI Act—54 employees—is impressive and commendable.
- 1.2 **Company engagement.** We disagree that Nigeria has made satisfactory progress and find that Nigeria has made **MEANINGFUL** progress. Based on the evidence presented in the International Secretariat’s Initial Assessment, we find that companies are not *fully, actively, and effectively engaged* in the EITI process. The Initial Assessment notes, “Industry representatives on and off the MSG confirmed that except for a yearly workshop to improve the design of the reporting templates, the broader constituency was otherwise not engaged in deciding questions of scope, workplans or other decisions by the MSG.” The Initial Assessment also notes, “When asked whether it was possible for companies to influence NEITI’s advocacy activities, for example through the work plan, stakeholders from all constituencies expressed concerns that this could affect the independence of NEITI. When asked further what means companies have to halt an information campaign they considered harmful or untrue, more than one company representative made reference to their lawyers.” The Initial Assessment discussion of Requirement 1.4 provides additional information that is also relevant here, including that “Industry in particular does not currently see itself as a stakeholder in Nigeria’s EITI process.” This is not evidence of full, active, and effective company engagement. We note creation of the Company Forum as a step in the right direction, and one avenue NEITI may utilize to deepen and broaden company participation in the EITI process.
- 1.3 **Civil society engagement.** We agree that Nigeria has made **MEANINGFUL** progress.
- 1.4 **MSG governance and functioning.** We agree that Nigeria has made **MEANINGFUL** progress.
- 1.5 **Work Plan.** We disagree that Nigeria has made meaningful progress, and find that progress is **INADEQUATE**. At the time of validation, NEITI had not updated its objectives since 2013 and had not approved a 2016 work plan. The Initial Assessment notes, “there is no evidence that key stakeholders have been consulted on the objectives for implementation since 2012.” A draft version of the 2016 work plan was available on NEITI’s website at the commencement of Validation. The draft available online as of 1 July 2016 did not include costs or sources of funding, nor did it explicitly link to national priorities. The plans of the NSWG to review the 2013–2016 Strategic Plan and draft a second Strategic Plan are commendable. This undertaking is important to ensure entrenchment of the EITI Standard. We reiterate here that we are not able to consider actions taken after 1 July 2016, although they are discussed and referenced to some extent in this section of the International Secretariat’s Initial Assessment.
- 2.1 **Legal Framework and Fiscal Regime.** We agree that Nigeria has made **SATISFACTORY** progress.
- 2.2 **License Allocations.** We agree that Nigeria has made **MEANINGFUL** progress.
- 2.3 **Register of Licences.** We agree that Nigeria has made **MEANINGFUL** progress.
- 2.4 **Contracts.** We agree that Nigeria has made **INADEQUATE** progress.

- 2.5 **Beneficial Ownership.** Implementing countries are not yet required to address this and progress on this requirement does not yet have implications for a country's EITI status.
- 2.6 **State Participation.** We agree that Nigeria has made **MEANINGFUL** progress.
- 3.1 **Exploration.** We agree that Nigeria has made **SATISFACTORY** progress.
- 3.2 **Production.** We agree that Nigeria has made **MEANINGFUL** progress.
- 3.3 **Exports.** We agree that Nigeria has made **MEANINGFUL** progress.
- 4.1 **Comprehensive Disclosure of Taxes and Revenues.** We agree with the Initial Assessment that Nigeria has not made satisfactory progress regarding the comprehensiveness of the data disclosed. The Initial Assessment raises numerous concerns about comprehensiveness and cites instances in which specific areas of the data is not comprehensive. The Initial Assessment also identifies many aspects of this provision that are not currently being implemented. Whether Nigeria has made meaningful progress or inadequate progress with the specific aspects and broader purpose of this provision can be debated. However, it does not appear from the Initial Assessment that there are discrete action items related to improving reliability that are not already incorporated into the required process of defining material revenue streams and reporting thresholds, and identifying appropriate reporting entities for the next EITI Report. Ultimately, we can accept that Nigeria has made **MEANINGFUL** progress.
- 4.2 **Sale of the State's Share of Production or Other Revenues Collected in Kind.** We disagree and find that Nigeria has made **MEANINGFUL** progress. The standard requires disaggregation by company.
- 4.3 **Infrastructure Provisions and Barter Arrangements.** We agree that Nigeria has made **MEANINGFUL** progress.
- 4.4 **Transportation Revenues.** We agree that Nigeria has made **INADEQUATE** progress.
- 4.5 **Transactions Related to State-Owned Enterprises.** We agree that Nigeria has made **SATISFACTORY** progress.
- 4.6 **Subnational Payments.** We agree that Nigeria has made **MEANINGFUL** progress.
- 4.7 **Level of Disaggregation.** We agree that Nigeria has made **SATISFACTORY** progress.
- 4.8 **Data Timeliness.** We agree with the Initial Assessment that Nigeria has made not made satisfactory progress regarding data timeliness. Under provision 4.8, the EITI Reports based on data for the period ending 31 December 2013 were required to have been published prior to 1 January 2016. The Board has not acted to extend that deadline and the reports were not published until 23 May 2016. Provision 4.8 does not provide an exception; the data published in May 2016 was too old to be satisfactorily useful to readers. Under provision 8.2, Nigeria was automatically suspended beginning 1 January 2016, but that suspension was automatically lifted on 23 May 2016 (assuming the Board "is satisfied" that the EITI Reports were published on that date, which does not seem to be in doubt). Because the suspension was not in effect for more than one year, the last sentence of provision 8.2 does not require delisting. Ultimately, we agree that Nigeria has made **MEANINGFUL** progress.

- 4.9 **Data Quality and Assurance.** We agree with the Initial Assessment that Nigeria has not made satisfactory progress regarding data quality and assurance. The Initial Assessment raises numerous concerns about the reliability of the data and cites instances in which specific data is not reliable. The Initial Assessment also identifies many aspects of this provision that are not currently being implemented. Whether Nigeria has made meaningful progress or inadequate progress with the specific aspects and broader purpose of this provision can be debated. However, it does not appear from the Initial Assessment that there are discrete action items related to improving reliability that are not already incorporated into the required process (including the ToR process) for preparing the next EITI Report. Ultimately, we can accept that Nigeria has made **MEANINGFUL** progress.
- 5.1 **Distribution of Extractive Industry Revenues.** We agree that Nigeria has made **SATISFACTORY** progress.
- 5.2 **Subnational Transfers.** We agree that Nigeria has made **MEANINGFUL** progress.
- 5.3 **Revenue Management and Expenditures.** Disclosure under this requirement is encouraged and is thus not taken into account in the overall assessment of compliance.
- 6.1 **Social Expenditures by Extractive Companies.** We agree that Nigeria has made **MEANINGFUL** progress.
- 6.2 **Quasi-Fiscal Expenditures.** We agree that Nigeria has made **MEANINGFUL** progress.
- 6.3 **The Contribution of the Extractive Sector to the Economy.** We agree that Nigeria has made **MEANINGFUL** progress.
- 7.1 **Public Debate.** We agree that Nigeria has made **SATISFACTORY** progress, but note the need to extend outreach activities to all six geopolitical zones.
- 7.2 **Data Accessibility.** Disclosure under this requirement is encouraged and is thus not taken into account in the overall assessment of compliance.
- 7.3 **Lessons Learned and Follow-Up on Recommendations.** We agree that Nigeria has made **SATISFACTORY** progress.
- 7.4 **Outcomes and Impacts of EITI Implementation.** We agree that Nigeria has made **SATISFACTORY** progress. However, we encourage NEITI to provide a more detailed assessment of progress regarding each EITI Requirement than is provided in its current APR. Additionally, we encourage NEITI to incorporate broader stakeholder input into the APR, using it as an opportunity to increase public discourse on the EITI process and its benefits to Nigeria.

4. **RECOMMENDATIONS**

We agree with the recommendations discussed in the Assessment, and note below, *in italics*, modified or additional recommendations.

Below are the Secretariat's overarching recommendations for improving EITI implementation in Nigeria, with the Validation Team's modifications and supplements in italics.

- 4.1 NEITI's institutional structure should be revisited to ensure greater accountability between NSWG members and their constituencies by undertaking a comprehensive review of all governance documents together. This could include revisions to the Board Charter to ensure that constituencies can nominate their representatives, constituency guidelines that explain how nominations should take place and ensure that representatives can be held accountable, clearer definition of the roles and responsibilities of the representatives from geopolitical zones, *and clearer lines of communication to and from constituency groups.*
- 4.2 *NEITI should undertake efforts to ensure that companies are fully, actively, and effectively engaged in the EITI process. NEITI is encouraged to utilize the Company Forum and other strategies to deepen and broaden company engagement in the EITI process.*
- 4.3 As the four-year strategic plan comes to an end, a thorough discussion between and within constituencies is needed on what sectorial challenges the EITI Standard can help address and how. This should lead to a revision of the objectives of EITI implementation to ensure that they are aligned with national priorities.
- 4.4 Existing platforms for engaging stakeholders such as the newly-formed Company Forum and the Civil Society Steering Committee could be used more effectively to improve the relevance of NSWG discussions to national debates and address key demands of stakeholders beyond the membership of the NSWG. A first step could be to move responsibility for stakeholders away from NEITI's Communications Department.
- 4.5 The NSWG should consider undertaking scoping studies (either in-house by the NEITI Secretariat or by a contractor) for both solid minerals and oil and gas ahead of its next EITI Reports to ensure that all aspects of the EITI Standard are fully considered and addressed. Nigeria has not undertaken an oil and gas scoping study since 2006 and a solid minerals scoping study since 2011, despite this being a consistent recommendation of recent solid minerals EITI Reports.
- 4.6 In preparing the next EITI Reports, the NSWG should find a workable solution to the provision of quality assurance certification for EITI disclosures from both government and companies to ensure that reconciled payments and revenues were subject to credible, independent audit, applying international auditing standards. The NSWG should work with the Office of the Auditor General of the Federation (OAuGF), the Nigerian National Petroleum Corp. (NNPC), the IA and industry NSWG members in particular to establish a robust quality assurance framework. The NSWG should consider procuring its next IA earlier in the year to allow for sufficient data collection time and for timely publication of its EITI Reports.
- 4.7 The NSWG should ensure that future EITI Reports clearly include all revenue streams listed under Requirement 4.1.b in the scope of reconciliation. It should also ensure that the IA assesses the materiality of non-reporting companies and government entities as well as provide its opinion on the comprehensiveness and reliability of the EITI Report.
- 4.8 The NSWG should ensure that future EITI Reports clarify the practices related to SOEs' retained earnings and reinvestment, any changes in government ownership in SOEs or their subsidiaries during the year(s) under review and provide a comprehensive assessment of any loans or loan guarantees extended by the state or SOEs to oil and gas companies. The NSWG should agree a clear definition of SOEs and of quasi-fiscal expenditures undertaken by SOEs in the extractive industries.
- 4.9 In preparing its next O&G EITI Report, the NSWG should assess the existence of infrastructure provisions during the scoping phase to ensure that companies' disclosures are categorised

according to strict definitions. It should assess the materiality of any such transportation revenues and disclose such revenues should they be assessed as material.

- 4.10 In preparing the next EITI Reports, the NSWG should assess the materiality of both direct subnational payments and subnational transfers prior to data collection. Should the NSWG consider that it is not possible to reconcile material direct subnational revenues in its annual EITI reporting, it should submit a request for adapted implementation to the EITI Board. Future EITI Reports should also disclose the specific formula for calculating transfers to individual states and LGAs, to support an assessment of discrepancies between budgeted and executed subnational transfers.
- 4.11 The NSWG should ensure that future EITI Reports clarify the exact number of solid minerals, oil and gas licenses awarded and transferred in the year(s) under review, highlighting any non-trivial deviations from statutory procedures. The NSWG should work with the Nigeria- São Tomé and Príncipe Joint Development Authority to disclose information on any licenses awarded or transferred in the Joint Development Zone in the year(s) under review. The NSWG should also clarify the technical and financial criteria used for assessing license allocations and transfers, both for discretionary oil and gas licenses and for solid mineral license awards and transfers. The NSWG should also ensure that the dates of application and license coordinates for all (solid minerals, oil and gas) licenses held by material companies are publicly available. The government may wish to consider making solid minerals, oil and gas license information available publicly as part of an online license system.
- 4.12 The NSWG should ensure that future EITI Reports clarify the government's policies on beneficial ownership and contract disclosures and provide information on the legal ownership of all companies required to report in the next EITI Report and any previously-disclosed contracts.
- 4.13 The NSWG should ensure future EITI Reports provide disaggregated production values as well as export volumes and values for all key minerals produced including crude oil and natural gas.
- 4.14 The NSWG should ensure future EITI Reports clarify whether mandatory social expenditures exist in the oil and gas sector and ensure that reporting of mandatory social expenditures be disaggregated by type of payment and beneficiary, clarifying the name and function of any non-government (third-party) beneficiaries of mandatory social expenditures.
- 4.15 In preparing its next EITI Reports, the NSWG should liaise with relevant government entities to provide the size of the oil and gas sector in absolute terms, the solid mineral sector's share of government revenues in relative terms, the value of oil and gas exports in absolute and relative terms and the size of solid minerals employment in absolute terms for the year(s) under review.
- 4.16 As companies and civil society become more actively engaged in the broader aspects of EITI implementation, NEITI may wish to reconsider the role played by the constituencies in communications and dissemination. Linking NEITI's workplans to national priorities and securing the active participation of constituencies in their drafting could help engage constituencies more actively in targeted communications activities. Bringing in the company constituency at a strategic stage could also help ensure their active support for the messages, while ensuring that their views are adequately reflected would help build trust in the content.
- 4.17 *NSWG is encouraged provide a more detailed assessment of progress regarding each EITI Requirement in its Annual Progress Report and to incorporate broader stakeholder input into the APR, using it as an opportunity to increase public discourse on the EITI process and its benefits to*

Nigeria.

4.18 The NSWG is encouraged to further entrench extractive sector transparency in government systems, and take steps to move towards more frequent production of EITI information on a routine basis. The NSWG may consider undertaking a study to identify what information required to be disclosed under the EITI Standard is already publicly available and what information is not yet routinely disclosed. Opportunities for providing more EITI data in open data formats could also be explored.
