



Bolstering natural resource revenue governance through legal framework: A diagnostic of the Nigeria extractive industries transparency initiative (NEITI) Act, 2007

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Abstract

The Nigeria Extractive Industries Transparency Initiative (NEITI) was launched as a domestic version of the global Extractive Industries Transparency Initiative (EITI) to correct financial mismanagement in the extractive industries sector. The NEITI Act was enacted in 2007 to serve as a legal reinforcement for NEITI. The NEITI Act is intended to foster the operations of NEITI for improved socioeconomic development. The study aims to assess the impact of the NEITI Act on natural resource revenue governance in Nigeria. The rent seeking theory was adopted as the theoretical basis for the study. A mixed research methodology combining qualitative and quantitative techniques was used for the study. Data collection was done using documentary sources while content analysis was employed for data analysis. The study revealed that although the NEITI Act stipulates transparency and accountability as the core objectives of NEITI, its provisions on modus of operation focuses more on transparency and gives less consideration to accountability. The study also showed that the NEITI Act enhances revenue disclosure but fails to ensure that natural resource revenues are utilized by government to improve the socioeconomic well being of the people. The study recommends that the NEITI Act needs to be reviewed to strike a balance between its transparency and accountability mandate, and also to block loopholes that are exploited by stakeholders in the extractives industries sector, for improved natural resource revenue governance in Nigeria.

Keywords: natural resource revenues, natural resource revenue governance, rent seeking, legal framework, NEITI act

Introduction

The increased demand for natural resources has created both massive opportunities as well as considerable risks, for resource-rich developing countries. At one level, it has the potential to generate unprecedented levels of revenues for these countries. But, conversely, this can make countries more vulnerable to the political and economic instability generated by commodity price fluctuations (Darby, 2010) [20]. In addition, increased dependence on these resources has created transparency and accountability gaps in resource governance resulting to a plethora of negative development outcomes, especially in Less Developed Countries (LDCs). Many resource-rich LDCs occupy the lowest ranks of the Human Development Index (HDI) and highest ranks of Human Poverty Index (HPI) (Ross, 2001) [62]; tend to be highly indebted (Karl, 1997; Kretzmann & Nooruddin, 2005; Manzano & Rigobon, 2001) [41, 46, 47]; face higher export earning instability; are confronted with de-industrialization and a distorted sectoral composition of the economy; are very vulnerable to economic shocks (Auty, 1993; Hausmann & Rigobon, 2002) [10, 35]; and tend to evoke Dutch Disease effects, inequality, and governance problems (Auty, 1993; 2001) [10, 11].

As an effort to tackle development problems associated with financial mismanagement of natural resource revenues in LDCs, a proliferation of global initiatives began to evolve at the beginning of the 21st century (Van Alstine, 2014; Darby, 2010; Collier, 2007; Winanti & Hanif, 2020) [69, 20, 17, 71]. These initiatives sought to improve the governance of natural resources by opening communication channels, facilitating scrutiny of revenues gathered from natural resource extraction, fostering civil society participation in natural resource governance and promoting accountability

for how resource rents are channeled into the promotion of sustainable development (Barma, Kaiser, Minh & Vinuela, 2012; Winanti & Hanif, 2020; Gaventa & McGee, 2013; Khadiagala, 2015; Soreide & Truex, 2013) [12, 71, 32, 44, 64].

In 2003, the Extractive Industries Transparency Initiative (EITI) emerged as a global standard that aims to improve resource revenue governance quality in extractive industry sectors, including oil, gas, coal and minerals. The ultimate objective was averting the negative impacts of natural resource abundance such as slow economic growth, poor governance quality, environmental degradation, poverty, inequality and conflicts (Chenge & Ofuebe, 2020; Chenge, Oigbochie & Udoh, 2022; Papyrakis and Gerlagh, 2004; Yanuardi, Vijge & Biermann, 2022) [14, 15, 61, 72].

Nigerian Extractive Industries Transparency Initiative (NEITI) was launched as a domestic version of EITI in 2004. Its establishment was precipitated by growing concerns about the irreconcilable gap between the quantum of highly prized natural resources exploited and the widespread poverty and underdevelopment in Nigeria. The NEITI Act was enacted in 2007 to serve as a legal reinforcement for NEITI operations. It was designed to foster resource revenue governance and consequently drive sustainable socio-economic development in Nigeria.

Objectives of the study

The study aims to assess the impact of the NEITI Act on natural resource revenue governance. Specifically, the study aims to:

1. Examine the provisions of the NEITI Act and its modus for natural resource revenue governance.
2. Explore the strengths and weaknesses of the NEITI Act in enhancing natural resource revenue governance.

3. Suggest measures required to reposition the NEITI Act for improved natural resource revenue governance.

Conceptual review

Natural resource revenue governance

Natural resource revenue governance is used for strategies adopted for improving transparency and accountability in the management of natural resources revenues (Acosta, 2013) ^[3]. It draws from the general concepts of transparency and accountability used in public sector financial management. Natural resource revenues present a number of challenges to host countries (particularly the use of such revenues to satisfy domestic demand and fuel export industries) (Collaborative Africa Budget Reform Initiative [CABRI], 2016; Darby, 2010) ^[16, 20]. Transparency and accountability, thus, becomes relevant in the management of resource wealth as a way of enabling public disclosure of necessary, reliable and accessible information about all the activities and processes involved in the natural resource wealth management chain from discovery and exploitation, to the revenue collection and expenditure (Adewumi, 2013; Kirana, n.d.; Florini, 2008; Collier, 2007; Karl, 2007; Arezki and Van der Ploeg, 2007) ^[4, 45, 29, 17, 40, 8].

Legal framework

Legal frameworks, also referred to as legal architecture, are the rules that govern the rights and responsibilities of governments, companies, and citizens. Legal frameworks comprise a set of documents that include the constitution, legislation, regulations, and contracts that govern the operations of institutions (Natural Resource Governance Institute [NRGI], 2015) ^[48]. The legal framework that governs the extractive industries rests inside a broader set of rules governing the organization of the state and economic activities. A well-designed legal framework in the extractive sector should provide rules for how state institutions are structured; how companies acquire and manage licenses; the fiscal terms governing payments between companies and the state; environmental management; relationships between extractive projects and neighboring communities; the behavior of public officials active in the sector; public information disclosure and accountability; and how the government will manage natural resource revenues (NRGI, 2015) ^[48].

Review of related literature

The Extractive Industries Transparency Initiative (EITI)

The introduction of EITI was essentially facilitated by the British Government under Prime Minister Tony Blair administration. It was first introduced in 2002 and was launched effectively at its inaugural global conference held in London in 2003 (Asgill, 2012, Gillies, 2010) ^[9, 33]. The

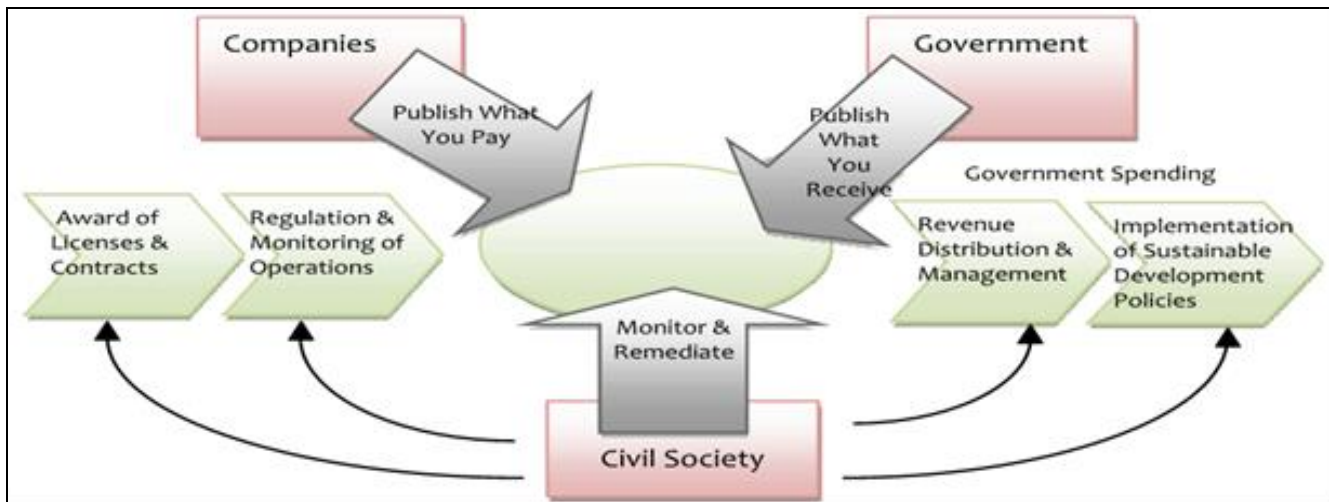
initiative kicked off with four pilot countries in 2004 and has so far attracted about 46 resource-rich countries as at December, 2015 (EITI, 2016) ^[27]. The initiative is described as an effort to make natural resources benefit all; a coalition of governments, companies, and civil society and a standard for companies to publish what they pay and for governments to disclose what they receive (Aaronson, 2011; David-Barrett & Okamura, 2016; Hilson & Maconachie, 2009; Sovacool & Andrews, 2015; Van Alstine, 2011) ^[1, 21, 36, 66, 68].

EITI sought to fill the limitation gaps exhibited by previous initiatives. By involving producer governments directly in the process, it enabled a more complete picture of state resource revenues to be built up. Also by making its initiative a collaborative approach involving companies and governments, it was seen as less threatening by all stakeholders (Soreide & Truex, 2013) ^[65]. The EITI unthreatening approach led to huge political acceptance which largely explains why the initiative has emerged as the world's pre-eminent international initiative seeking to tackle the transparency and accountability aspects of the resource curse (Corrigan, 2014) ^[19].

The EITI is explicitly focused on the extractives sector which includes oil, gas, and mining. Countries whose extractives industry contributes up to 25% of Gross Domestic Product (GDP) are encouraged to adopt this initiative. In addition, it is believed that the extractives sector is the most prone to corruption due to the very large amount of investments involved (Collier, 2007) ^[17]. It is voluntary for governments to sign up to the EITI, but mandatory for all companies and agencies within an implementing country to participate in the initiative (Abutudu & Garuba, 2011; David-Barrett & Okamura, 2016; Garuba, 2011; Uzoigwe, 2011) ^[2, 21, 61, 67].

The EITI design is guided by defined Principles and Criteria which outline the basic assumptions that underlie the initiative. Implementing countries are required to adhere to the EITI Principles and Criteria, but are also encouraged to go beyond these minimum requirements where possible (EITI, 2005; 2015a; 2015b) ^[24, 25, 26].

Underlying the EITI implementation are the two key objectives: the use of a multi-stakeholder framework and resource revenue transparency and accountability. The first key success factor which is highlighted by the proponents of the EITI is the initiative's emphasis on the involvement of all key stakeholders in the natural resource revenue governance implementation process (Bature, 2014; Uzoigwe, 2011) ^[13, 67]. The EITI operates as a Multi Stakeholder Initiative (MSI), bringing all the stakeholders to the extractives industry together on a common platform. The key stakeholders identified by the initiative include: governments; oil, gas and mining companies; and the civil society (Olcer, 2009; Wilson & Van Alstine, 2014) ^[60, 70].



Source: EITI Source Book, 2005

Fig 1: The EITI multi-stakeholder framework and how it works

In the EITI multi stakeholder framework, companies disclose what they pay to government; governments on the other hand declare what it receives from companies. An independent administrator, auditor or reconciler, engaged by the Multi Stakeholder Group (MSG), verifies and reconciles the reported payments and receipts (Haufler, 2010; Olcer, 2009) [34, 60]. In doing this, the auditors design a comprehensive template, which serves as a framework for transparency and accountability, to capture immense data and information. After this, the auditor is required to write an EITI report which is examined, approved and published by the MSG (NEITI, 2013) [59].

Civil society organizations utilize the data and information now placed in the public domain, analyze it, simplify it, and stimulate public disclosure about the use and application of the revenue for development. Also, they use the data and information, made public, to hold government to account in terms of translation of the resources into citizen's welfare (Eghosa, 2014; Kasekende, Abuka & Sarr, 2016; Yaw-Ofori & Lujala, 2015) [23, 42, 73].

Emergence of Nigeria Extractive Industries Transparency Initiative (NEITI) and its Establishment Act (NEITI Act, 2007)

The EITI with its focus on resource revenue transparency and accountability seemed attractive to the administration of President Obasanjo, who himself belonged to the global civil society organization, the Transparency International (TI). In addition, the Nigerian government saw in EITI an opportunity to demonstrate to the world its eagerness to change the image of the country (relating to its high Corruption Perception Index) in the international community and especially in the eyes of foreign investors (Nwapi, 2014, Okpanachi, 2011) [55, 58].

Thus, as the largest oil producing country in sub-Saharan Africa, Nigeria's participation in the EITI was considered strategic to the overall global resource transparency and accountability campaign (Ewere, 2011; Oladele & Aderemi, 2013) [28, 59]. Nigeria therefore signed up to the EITI on February 19th, 2004 establishing the Nigerian EITI (NEITI). Upon the establishment of NEITI, Nigeria began to require all oil companies to publish what they pay, and government officials to make public where the money goes (Okeke, 2014; Okeke & Aniche, 2013) [57, 56].

Dr. Obi Ezekwesili was appointed to lead the NEITI, which proceeded with a formal implementation process. The first step in the process was to create a National Stakeholders Working Group (NSWG) to implement NEITI; the high-powered multi-stakeholder group was comprised of members from government, corporations (both domestic and multinational), civil society, the media, and the private sector (NEITI, 2011; 2013).

Five operational teams were constituted: a Technical team to evaluate bids for all NEITI assignments; Legislative team to strategize and support translation of EITI principles into law; Focal team to develop, find funding for and implement training, workshops and conferences; Civil Society team to create communication strategy to disseminate information throughout country and civil society groups; media team to publicize the work of NSWG and to invite responses from broad spectrum of society (Kebusek, 2010) [43].

An internationally recognized accounting consultancy firm experienced in extractive industries projects, the Hart Group, from the United Kingdom (UK) was hired to do the audit for years 1999-2004. Audit results were presented in early 2006, in several phases, with stakeholder review sessions held to review each draft before being finalized. The quality of the audit was considered very high, as it exceeded the international EITI standards (Ahmed, 2012; Igbuzor, n.d.; NEITI, 2016) [5, 37, 54].

Three audits were actually performed: a financial audit, which reconciled payments and revenue, mapped the financial flows in the oil and gas sector, and identified systemic issues in the government financial system that impacted transparency and accountability; a physical audit, which tracked the actual movement of oil and gas from extraction through refinement/export; and a process audit, which reviewed the process affecting financial matters throughout the entire extractive industry (Ahmed, n.d.; 2012; NEITI, 2012; 2016) [5].

A number of significant irregularities and systemic blocks to transparency were found in the three audits. On each of the findings from the audit report, specific recommendations were made by the auditors for improvement, while acknowledging that since so many of the issues were systemic in nature, the solutions would not be easy. Following the submission of the final report and strategy meetings with the covered entities, the report was

disaggregated so that the sections pertaining to each individual entity could be distributed, showing what needed to be done (Ahmed, 2012; 2014) ^[5, 7].

In 2012, the NEITI commenced a fourth type of audit known as Fiscal Allocation and Statutory Disbursement (FASD) audit. The audit covers fiscal allocation and statutory disbursements of extractive industries revenue funds accruing to the federation account from the oil and gas sector to beneficiaries such as federal, state and local governments, and other relevant agencies, as well as tracking actual application of these funds (Ahmed, 2014; NEITI, 2013a; NEITI, 2013b) ^[7, 52, 53].

However, the NEITI Act, which codified the provisions of EITI into Nigerian law, was successfully passed on 28 May 2007, the day before Obasanjo stepped down as president. With its passage, Nigeria was the first country to have a statutory backing for EITI implementation, an occurrence acclaimed widely in EITI communications (Okeke, 2014; Okeke & Aniche, 2013) ^[57, 56]. The NEITI Act of 2007 gives the NEITI the necessary legal backing and the mandate to promote due process and transparency in extractive revenues paid to and received by government as well as ensure transparency and accountability in the application of extractive revenues (Garuba & Ikubaje, 2010; Oladele & Aderemi, 2013) ^[30, 59].

Theoretical framework

The rent seeking theory is adopted for the study. The idea of rent-seeking has a long history in economics, dating back to the seminal work of Gordon Tullock in 1967. It was later popularized by Anne Krueger in 1974. Although originally developed to explain the social welfare losses involved in the establishment of monopolies, tariffs, and subsidies, models of rent-seeking behavior have been at the forefront of recent attempts to explain resource mismanagement (Deacon & Rhode, 2012) ^[22].

A common theme of these models is that political institutions conducive to rent-seeking underlie failures of societies to realize benefits from natural resource wealth. Natural resource wealth is a "curse" rather than a benefit to society when property rights are not defined or respected and the wealth becomes a rent seeking prize (Congleton, Hillman & Konrad, 2008; Deacon & Rhode, 2012) ^[18, 22]. In applying the theory, the study maintains that:

1. Nigeria, since the 1980s, has experienced the features of rent seeking fuelled by unprecedented government revenues from oil and the perception by state actors that the state is better resourced through rents rather than taxes.
2. Rent-seeking has resulted in reduced economic efficiency through misallocation of resources, reduced wealth creation, lost government revenue, heightened income inequality and spawned national decline, all culminating to the resource curse problematic.
3. The NEITI Act 2007 as a legal framework was enacted to serve as a corrective measure for resource mismanagement, by enforcing resource revenue transparency and accountability in Nigeria's extractive industries sector.

Methodology

The study adopts a mixed methodological approach to carry out investigation. Documentary sources were used for data collection. Thus, data was derived from the NEITI Act,

2007, NEITI audit reports and NEITI annual reports. Other relevant publications of NEITI and complementary government agencies like the Central Bank of Nigeria (CBN) and Office of the Accountant General of the Federation (OAGF) were also utilized. Content analysis was used as the method of data analysis.

Discussions and findings

The NEITI Act and its modus for natural resource revenue governance

Although the NEITI Act 2007 has twenty two (22) sections and four (4) sections in the supplementary provisions dealing with various aspects concerning the organization and general operations of NEITI, the summary here would be centered on sections 2, 3 and 16 which deal with issues relating to the objectives of NEITI, functions of NEITI and offences/penalties provisions respectively.

Section 2 identifies the primary objectives of NEITI which are:

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

Section 3 stipulates that for the purpose of realizing its objectives under this Act, the NEITI shall perform the following functions:

- a. develop a framework for transparency and accountability in the reporting and disclosure by all extractive industry companies of revenue due to or paid to the Federal Government;
- b. evaluate without prejudice to any relevant contractual obligations and sovereign obligations the practices of all extractive industry companies and government respectively regarding acquisition of acreages, budgeting, contracting, materials procurement and production cost profile in order to ensure due process, transparency and accountability.
- c. ensure transparency and accountability in the management of the investment of the Federal Government in all extractive industry companies,
- d. obtain, as may be deemed necessary, from any extractive industry company an accurate record of the cost of production and volume of safe of oil, gas or other minerals extracted by the company at my period, provided that such information shall not be used in any manner prejudicial to the contractual obligation or proprietary interests of the extractive industry company,
- e. request from any company in the extractive industry, or from any relevant organ of the Federal State or Local Government, an accurate account of money paid by and received from the company at any period, as revenue

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

Section 16 of the NEITI Act which deals with offences and penalties states that:

1. An extractive industry company which
 - a. gives false information or report to the Federal Government or its agency regarding its volume or production, sales and income; or
 - b. renders false statement of account or fails to render a statement of account required under this Act to the Federal Government or its agencies, resulting in the underpayment or non-payment of revenue accruable to the Federal Government or statutory recipients commits an offence and is liable on conviction to a fine not less than N30,000,000.
2. Where the Extractive industry has been convicted of an offence under subsection (1) of this section, the court shall, in addition to the penalty prescribed there under, order the company to pay the actual amount of revenue due to the Federal Government.
3. An extractive industry company which delays or refuses to give information or report under this Act, or willfully or negligently fails to perform its obligations under this Act, commits an offence and is liable on conviction to a fine not less than N30,000,000.
4. Without prejudice to subsections (1), and (2) and (3) of this section, the President may on the recommendation of the NSWG suspend or revoke the operational license of any extractive industry company which fails to perform its obligations under this Act.
5. If any extractive industry company commits an offence against the Act, every Director or other persons concerned in the management of the company commits the offence and is liable on conviction to not less than 2 years imprisonment or a fine not less than N5,000,000 unless that person proves that:
 - a. the offense was committed without his consent or connivance, and

- b. the person exercised all such diligence to prevent the commission of the offense as ought to have been exercised by that person, having regard to the nature of his functions in that company and to all the circumstance.
6. A government official who renders false statement of account or fails to render a statement of account required under this Act to the Federal Government or its agencies, resulting in the underpayment or non-payment of revenue accruable to the Federal Government or statutory recipients, commits an offence and is liable on conviction to not less than 2 years imprisonment or a fine not less than N5,000,000, unless that person proves that:
 - a. the offense was committed without his consent or connivance, and
 - b. the person exercised all such diligence to prevent the commission of the offense as ought to have been exercised by that person, having regard to the nature of his functions in that company and to all the circumstance.

Exploring the strengths and weaknesses of the NEITI Act in natural resource revenue governance

The NEITI Act has contributed in an important way to providing greater transparency in Nigeria's oil and gas industry. By going far beyond the basic core requirements of global EITI, the Act has aided both insiders and outsiders to understand the big picture of Nigerian oil and gas sector (Ahmed, 2014; Shaxon, 2009) ^[7, 63]. Goldwyn (n.d.) cited in Shaxon (2009) ^[63] also stated that the NEITI Act has set the gold standard for audits under EITI Principles as the audits looked deeper into the conduct of government and industry practices in Nigeria than any country has ever attempted. Similarly, Gillies (2008; 2009) ^[33] in Shaxon (2009) ^[63] asserted that the audit report which is a product of the NEITI Act remains the single most useful and credible publicly-available document on Nigeria's oil and gas sector. Katsouris (n.d.) in Shaxon, (2009) ^[63] equally noted that Nigeria's oil and gas sector has remained opaque over the years. There has hardly been any information on how things were supposed to work in the sector regarding taxation, measuring oil and gas production, and crude pricing and marketing. The Act reinforced audits which put the processes and data out there for the first time, and highlighted gaps needing urgent attention. From that perspective, it was like gold.

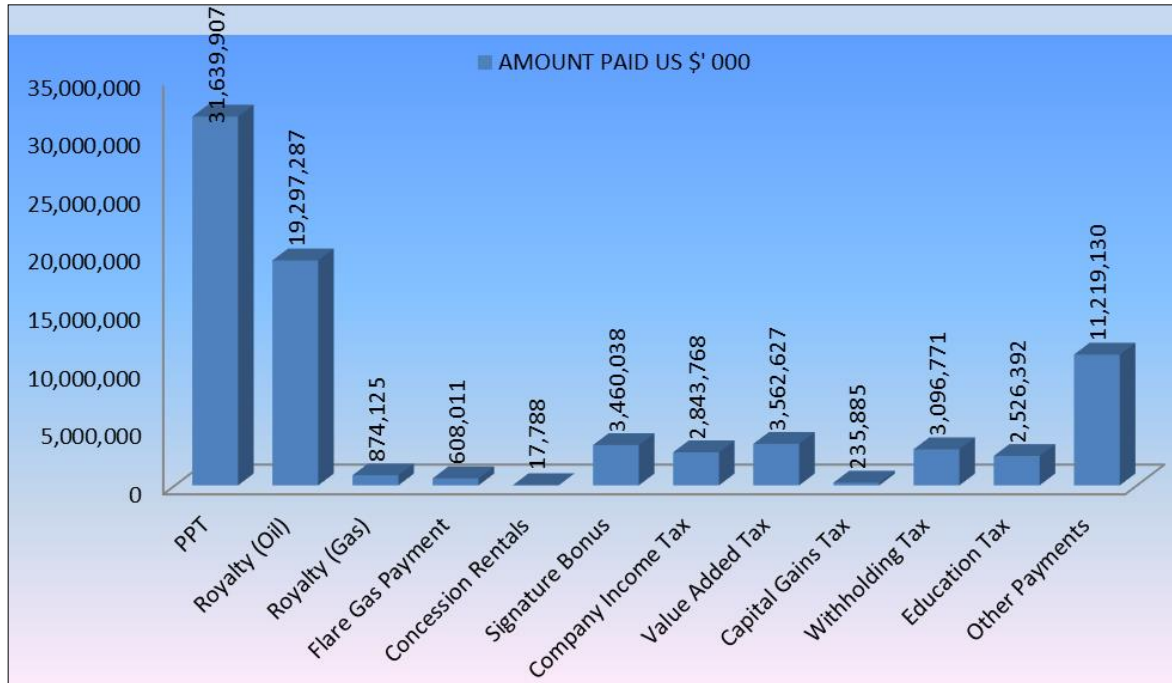
In spite of the successes recorded by the NEITI Act, a lot of the limitations, which pose as drawbacks for the Act and NEITI's functionality have been identified. Prior to the enactment of NEITI Act in December 2007, NEITI relied on persuasion, dialogue and consensus building to attain or achieve its objectives and perform its functions (Okeke & Aniche, 2013) ^[56]. With the enactment of the NEITI Act, the implementation of NEITI Principles was expected to move from voluntary to obligatory. However, the operations of NEITI reveal that even with the advent of the NEITI Act, NEITI has continued to rely largely on persuasion, dialogue and concession building as a means of getting compliance from oil and gas companies. Conversely, the adoption of this subtle approach has not improved the compliance rate from oil and gas companies.

The enactment of the NEITI Act has made it a legal requirement for companies operating in the oil and gas

sector to file their annual returns to the Federal Inland Revenue Service (FIRS) for cases of Petroleum Profit Tax (PPT) and other taxes, and crude oil production volumes to the Department of Petroleum Resources (DPR) for cases of royalties or other related oil and gas payments. However, there are difficulties in ascertaining company returns (petroleum profits) which serve as a basis for the determining PPT and crude oil production volumes which is

used for assessment of royalties and other related oil and gas revenues.

The use of different accounting systems by stakeholders (government agencies and companies) is identified as a factor responsible for this challenge which in turn has resulted to reduced earnings for government. Figure 2 and table 1 show revenue remittances by companies to the government from 2015 to 2020.



Source: NEITI Audit Reports, 2015 – 2020

Fig 2: Companies' Payments in the Oil & Gas Sector by Revenue Types (2015-2020) – Cumulative analysis

Table 1: Companies' Payments in the Oil & Gas Sector by Revenue Types (2015-2020) – Annual analysis

Revenue Heads	2020 US \$'000	2019 US \$'000	2018 US \$'000	2017 US \$'000	2016 US \$'000	2015 US \$'000
PPT	3,273,564	6,784,862	6,927,131	5,047,574	4,216,908	5,389,868
Royalty (Oil)	4,639,138	4,513,417	3,595,449	2,187,709	1,577,040	2,784,534
Royalty (Gas)	277,690	126,777	182,663	113,757	66,078	107,160
Flare Gas Payment (FGP)	256,985	307,591	15,400	6,553	8,799	12,683
Concession Rentals	9,873	2,658	2,264	1,163	824	1,006
Signature Bonus & License Renewal	333,858	925,181	1,141,514	156,765	-	902,720
Company Income Tax (CIT)	268,839	1,167,980	219,828	268,776	314,846	603,499
Value Added Tax (VAT)	491,581	1,195,367	762,946	548,932	563,801	-
Capital Gains Tax (CGT)	54,413	4,400	36	520	176,516	-
Withholding Tax (WHT)	436,134	625,581	697,190	573,930	763,936	-
Education Tax (EDT)	404,011	423,586	426,597	286,575	317,853	667,770
Other Payments (Niger Delta Development Commission (NDDC), Nigerian Content Development and Monitoring Board (NCDMB), Nigerian Export Supervision Scheme (NESS) Fee, Dividend from NLNG e.t.c.	1,392,510	2,824,690	2,650,908	1,607,200	1,072,247	1,671,575

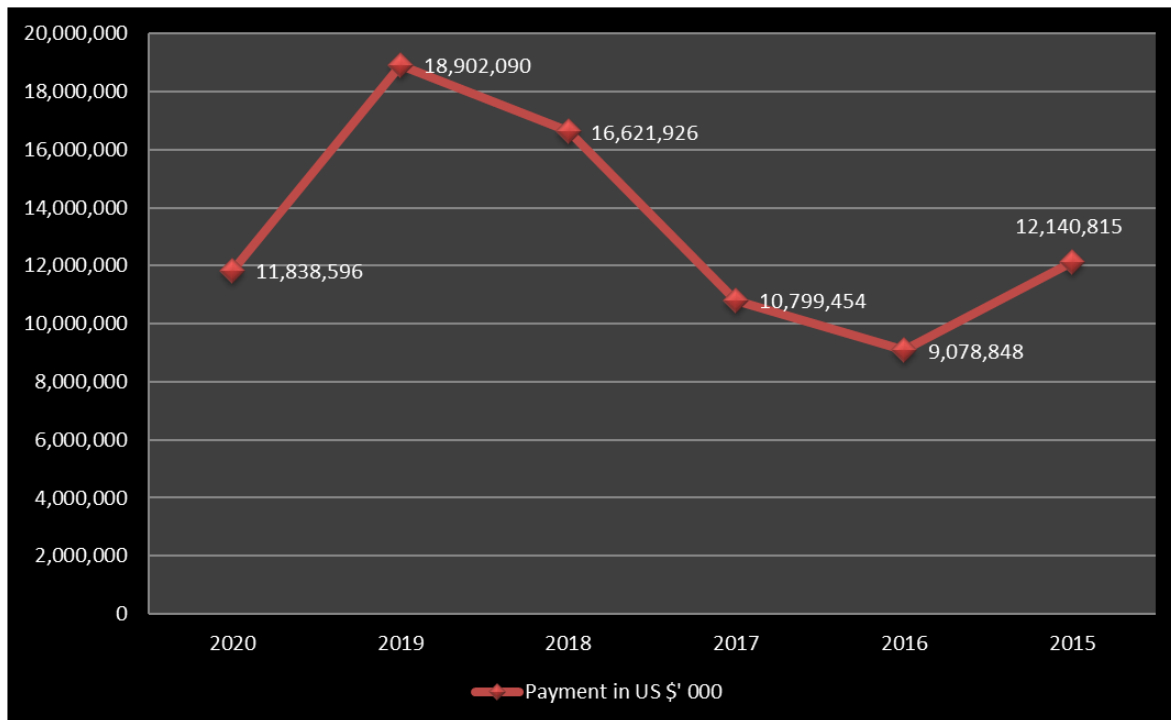
Source: NEITI Audit Reports, 2015-2020

Still in line with the issue of oil and gas payments made by companies, Section 16 of the NEITI Act makes it is an offence for a company to render false accountings or delay in publishing accounting records that result to underpayment to the Federal Government. For companies, default may lead to a penalty of US\$200,000 and possible revocation of license, upon advice of the NSWG (Section 16 (1) (b) NEITI Act, 2007). For company directors, a penalty of US\$30,000 fine and or two years imprisonment on conviction is stipulated (Section 16 (5) and (6), NEITI Act, 2007).

However, NEITI does not have the power to arrest or prosecute defaulters. Since NEITI has no prosecutor or police powers, it has to rely on the office of the Attorney General of the Federation (AGF) or the Economic and Financial Crimes Commission (EFCC) to enforce its provisions (Ihugba, 2012; Okeke & Aniche, 2013) [39, 56]. This has acted as a huge limitation because in principle, NEITI has tremendous powers to achieve its objective, but practically, NEITI lacks the ability to enforce its provisions thereby weakening its ability to ensure company compliance.

Section 16 of the NEITI Act stipulates sanctions against breach of NEITI provisions but does not give NEITI the prosecutorial powers to enforce this provision. The sanctions are against companies or their officials and government officials who give false information or report, render false statement or account, refuse or delay to render statements or account that result in loss of revenue to the Federal Government of Nigeria. According to the Act, a company found guilty of any of these offences will be liable to the equivalent of US\$200,000 fine, recovery of the lost revenue and may lose its license to operate. Directors of guilty companies, unless otherwise proved innocent, and colluding government officials, are also liable to a fine of the equivalent of US\$30,000 and or two years

imprisonment. These provisions in the Act have not been effectively enforced as no records of such prosecutions have been published to serve as a deterrent to culpable parties. Thus, while the NEITI Act gives it the powers and authorities to look into accounts, it does not empower it to prosecute defaulters. Thus, there are instances where companies fail to file or publish their annual returns, as well as remit payments and NEITI becomes handicapped in pragmatically addressing such issues since it has to go through the regulatory agencies. This has created room for companies to persistently violate their obligatory responsibilities to government. Figure 3 and table 2 illustrate revenues remitted by companies to government by respective years from 2015 to 2020.



Source: NEITI Audit Reports, 2015 – 2020

Fig 3: Companies' Payments in the Oil & Gas Sector by Years (2015-2020) – Cumulative analysis per year

Table 2: Companies' Payments in the Oil & Gas Sector by Years (2015-2020) – Difference & percentage difference per year

years	2020 us \$'000	2019 us \$'000	2018 us \$'000	2017 us \$'000	2016 us \$'000	2015 us \$'000	total us \$'000
total payments	11,838,596	18,902,090	16,621,926	10,799,454	9,078,848	12,140,815	79,381,729
difference	(7,063,494)	2,280,164	5,822,472	1,720,606	(3,061,967)	0	
% difference	-37%	14%	54%	19%	-25%	0	

Source: NEITI Audit Reports, 2015 – 2020

Figure 3 and table 2 clearly reveal that there have been issues of inconsistencies in company payments for oil and gas revenues to government, resulting to cases of fluctuations in payments and declining revenues as earlier explained.

In addition to the analysis made above, a contributing factor preventing compliance from companies is the issue of confidentiality provisions. The retention of these provisions or clauses in the NEITI Act creates loopholes which are readily exploited by companies who hide under the protection of these provisions to avoid compliance with disclosing information on their operations (Igwe, 2011; Okeke & Aniche, 2013) [38, 56]. These companies insist on incomplete or minimum disclosures arguing that complete or maximum disclosures may harm proprietary interests.

This has given the oil and gas multinationals an egress which equips them with the means to escape the penalties of non-compliance to the transparency and accountability provisions of the NEITI Act, thus, rendering enforcement and implementation of the Act difficult for the NEITI.

The objectives of NEITI as stated in the NEITI Act are too ambiguous and open-ended. For example Section 2(c) of the Act empowers NEITI to “eliminate all forms of corrupt practices in the determination, payments, receipts and posting of revenue accruing to the Federal Government from extractive industry companies”. This particular clause gives a very broad or wide range of responsibilities to NEITI, most of which are already undertaken by other agencies such as the DPR, FIRS, OAGF among others (Igwe, 2011; Okeke, 2014) [38, 57]. Since the clause which

defines the NEITI objectives does not give NEITI a clear coordinating role, it creates room for functional duplication which puts NEITI and the complementary agencies in collusion against each other in the cause of performing their statutory duties or functions.

Specifically, Section 3(c) of the NEITI Act prescribes a function for NEITI to “ensure transparency and accountability in the management of the investment of the Federal Government in all extractive industry companies”. This function partly falls within the scope of the functions currently carried out by National Petroleum Investment Management Service (NAPIMS) in the oil and gas industry. Similarly, Section 3(j) of the NEITI Act that mandates or empowers NEITI to “ensure that all fiscal allocations and statutory disbursements due from the Federal Government to statutory recipients are duly made” appears to be also in conflict with the functions of the Revenue Mobilization, Allocation and Fiscal Commission (RMAFC).

Apart from the conflict with complementary agencies, there are also conflicts between the functions of NEITI and some other federal government agencies that are not directly related to the functioning of NEITI but required to support in the enforcement of aspects of the NEITI Act (Ihubga, 2012; Okeke & Aniche, 2013) ^[39, 56]. For example, some aspects of the NEITI Act dealing with offences, convictions, penalties and sanctions, as provided in Section 2(c) of the Act, are in conflict with the statutory functions of anticorruption agencies like the EFCC and Independent Corrupt Practices and Other Related Offences Commission (ICPC). Although the NEITI Act stipulates certain sanctions for offences relating to violations of the EITI Principles, the law is silent on the procedure to apprehend, prosecute and punish the culprits or violators.

Section 6 (1) NEITI Act 2007, empowers the president to appoint 15 persons as representatives into the NSWG. The NSWG are to be appointed from extractive industry companies, civil society, labour unions in the extractive industries, experts in the extractive industry and one person each from the six geopolitical zones of Nigeria. The Act gives the president power to appoint the NSWG without any reference to the stakeholder constituencies or the National Assembly (Ihubga, 2012) ^[39]. This to a large extent has tendencies to undermine their independence and disrupts the transparency and accountability objectives of NEITI.

Review measures in the NEITI Act for improved natural resource revenue governance

The general responsibility of NEITI as contained in the NEITI Act should be redrafted so that it becomes more specific in nature. Under Section 2 (c) of the Act, the NEITI is “charged with the responsibility 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 of Nigeria”. This responsibility is too broad and thus overlapping with the mandate of other government agencies involved in the revenue management process. Therefore, there is the need for NEITI’s mandate to be streamlined as this will help to eliminate unnecessary duplication of responsibilities between NEITI and complementing government agencies.

The NEITI Act needs to be reviewed to correct existing limitations that are exploited by companies operating in the oil and gas sector. The confidentiality clauses or provisions

in the NEITI Act should be reviewed so as to empower NEITI to demand full disclosure from companies regarding certain category of revenues. Confidentiality clauses or other clauses that are for the purpose of preventing access to information and documents by third parties should not apply in respect of any information or documents relating to the payments of taxes, royalties, fees and bonuses of whatever nature.

Still on the issue of confidentiality clauses, any company involved as licensee, lessee or contractor should for each license and each lease provide a yearly summary of all revenues and costs on which the payments of taxes, royalties, fees and bonuses of whatever nature were based on. It should be further emphasized that the process for maintaining confidentiality of proprietary industrial information should be clarified, and contract transparency should be well established in line with modern trends.

Regarding the issue of enforcement, a short term solution requires that NEITI strengthens its mandate with stronger links and cooperation with other anti corruption agencies in Nigeria in Nigeria like the ICPC and EFCC which have prosecutorial powers. The expectation is that the anti corruption agencies with the powers of arrest and prosecution would use the audits to ensure realization of the need for entities covered under the audit to be transparent in their operations and for recipients to be accountable for revenue received by them.

However, for longer term solution, NEITI needs constitutional powers to enforce its sanctions against defaulting operators in Nigerian extractive industries. Considering the rate at which NEITI’s authority and mandate are being undermined by operators particularly in the oil and gas sector, it was crucial for sanctions and penalties as well as procedures and measures for enforcement to be clearly specified in the enabling Act, so that NEITI can hold government and companies for not complying with minimum disclosure standards in the management of the revenue accruing from the extractive industries. If the powers to enforce sanctions are granted and judiciously applied in Nigeria, it would compel relevant government agencies and operators in the extractive industries to embrace revenue transparency in the management of revenues.

Apart from being empowered to carry out enforcement for defaulting companies, NEITI should also be empowered to carry out enforcement for accountability of revenues from government. That is to say that, NEITI should be empowered to directly hold government to account for resource revenues generated instead of working through civil society to achieve this goal. Since NEITI is empowered to demand for transparency from companies and government, it becomes necessary that NEITI is also empowered to demand for accountability from both entities if it is to serve as an effective tool for natural resource revenue governance in the Nigerian oil and gas sector.

Summary of findings

1. Although the NEITI Act stipulates transparency and accountability as the core objectives of NEITI, its provisions on modus of operation focuses more on transparency and gives less consideration to how accountability can be achieved.
2. The NEITI Act has enhanced disclosure of financial, physical and statutory allocation flows but failed to

ensure that natural resource revenues are utilized by government to improve the socioeconomic well being of the people.

3. The NEITI Act needs to be reviewed to strike a balance between its transparency and accountability mandate, and also to block loopholes that are exploited by stakeholders in the extractives industries sector.

Conclusion

The NEITI Act occupies an important place in Nigeria's socio-economic reform agenda. It constitutes the legal basis for the establishment of NEITI which represents a national domestication of the global EITI, aimed at natural resource centered development. The NEITI assumes that resource led development is only possible, when governments of resource rich countries recognize that it is their sovereign duty to manage their country's resource revenues for the benefits of all their citizens. However, measured against NEITI's broader goals as stipulated in the NEITI Act, NEITI has not proved to be the silver bullet to Nigeria's resource revenue management problems, thus, the increasing clamor by citizens for better governance and social accountability for natural resource use.

References

1. Aaronson SA. Limited partnership: Business, government, civil society and the public in the Extractive Industries Transparency Initiative (EITI). *Public Administration and Development*,2011:31(1):50-63.
2. Abutudu M, Garuba D. Natural resource governance and EITI implementation in Nigeria. Uppsala: Nordiska African Institute, 2011.
3. Acosta AM. The impact and effectiveness of accountability and transparency initiatives: The governance of natural resources. *Development Policy Review*,2013:31(1):89-105.
4. Adewumi JO. Governance in the Nigerian extractive industries: From a human development perspective, (Unpublished LL.M Thesis), Loyola University, Chicago, 2013.
5. Ahmed Z. NEITI: The prospects, issues and challenges, 2012. Retrieved from <https://www.imf.org/external/np/.../za.pdf>
6. Ahmed Z. EITI implementation in Nigeria: Outcomes, impacts and challenges. Geneva: United Nations Conference on Trade and Development (UNCTAD), 2014.
7. Ahmed Z. (n.d.). 10 years of NEITI reports: What have we learnt, 2014. Retrieved from www.neiti.org.ng/index.php?q=publications/ten-years-neiti-reports-what-have-we-learnt
8. Arezki R, Van der Ploeg F. Can the natural resource curse be turned into blessing? The role of trade policies and institutions. *International Monetary Fund (IMF) Working Paper*,2007:55:1-36.
9. Asgill S. The Nigerian Extractive Industries Transparency Initiative (NEITI): Tool for conflict resolution in the Niger Delta or arena of contested politics? *Critical African Studies*,2012:4(7):4-57.
10. Auty R. Sustaining development in mineral economies: The resource curse. London: Routledge, 1993.
11. Auty R. The political economy of resource driven growth. *European Economic Review*,2001:45:839-846.
12. Barma N, Kaiser K, Minh Le T, Vinuela L. Rents to riches? The political economy of natural resource led development. Washington: The World Bank.
13. Bature BG. An empirical study of the Nigerian Extractive Industries Transparency Initiative (NEITI). (Unpublished PhD Thesis), Robert Gordon University, 2014.
14. Chenge AA, Ofuebe C. Resource rents to riches: Exploring NEITI oil and gas audits and financial sustainability in Nigeria (2012- 2020). *Nigerian Journal of Public Administration and Local Government*,2020:21(1):2-17.
15. Chenge AA, Oigbochie AE, Udoh E. Natural resource revenue governance and economic development in Nigeria: Examining the role of Nigeria Extractive Industries Transparency Initiative (NEITI). *International Journal of Social Science and Economic Research*,2022:7(6):1458-1487.
16. Collaborative Africa Budget Reform Initiative [CABRI] Revenue management in the extractives sector in Africa. Highveld Park: CABRI.
17. Collier P. The bottom billion: Why the poorest countries are falling and what can be done about it. Oxford: Oxford University Press, 2007.
18. Congleton RD, Hillman AL, Konrad K. Forty years of research on rent seeking: An overview. In R. D. Congleton, A. L. Hillman & K. Konrad (Eds.). *Forty years of research on rent keeping 1*. Berlin: Springer, 2008.
19. Corrigan CC. Breaking the resource curse: Transparency in the natural resource sector and the Extractive Industries Transparency Initiative. *Resources Policy*,2014:40:17-30.
20. Darby S. Natural resource governance: New frontiers in transparency and accountability. Cambridge: Open Society Foundation, 2010.
21. David-Barrett E, Okamura K. Norm diffusion and reputation: The rise of the Extractive Industries Transparency Initiative. *Governance*,2016:29(2):227-246.
22. Deacon RT, Rode A. Rent seeking and the resource curse, 2012. Retrieved from <http://www.econ.ucsb.edu/~deacon/RentSeekingResourceCurse%20Sept%202026.pdf>
23. Eghosa OE. The roles of civil society organizations in the Extractive Industries Transparency Initiative in Nigeria. *International Journal of Not-for-Profit Law*,2014:16(2):47-52.
24. EITI. Extractive Industries Transparency International source book. Oslo: EITI Secretariat, 2005.
25. EITI. The EITI standard. Oslo: The EITI Secretariat, 2015a. Retrieved from <http://eiti.org/files/English-EITI-STANDRAD.pdf>
26. EITI. EITI progress report 2015: Making transparency matter. Oslo: The EITI Secretariat, 2015b. Retrieved from <http://progrep.eiti.org/2015/glance/executive-message>
27. EITI. How to become an implementing country, 2016. Retrieved from <http://eiti.org/implement-eiti>
28. Ewere AO. NEITI and good governance in Nigerian oil industry. Benin City: Ambik Press, 2011.
29. Florini A. Making transparency work. *Global environmental politics*,2008:8(2):14-16.

30. Garuba DS, Ikubaje JG. The Nigeria Extractive Industries Transparency Initiative and Publish What You Pay. In M McNeil & C Melana (Eds.), *Demanding good governance: Lessons from social accountability initiatives in Africa*. Washington: World Bank, 2010, 137-162.
31. Garuba DS. Is there need for EITI reloaded? An assessment of the EITI process. In M. Roll & S. Sperling (Eds.), *Fuelling the world, failing the region? Oil governance and development in Africa's Gulf of Guinea*. Abuja: Friedrich-Ebert-Stiftung (FES), 2011, 171-181.
32. Gaventa J, McGee R. The impact of transparency and accountability initiatives. *Development Policy Review*,2013;31(1):3-28.
33. Gillies A. Reputational concerns and the emergence of oil sector transparency as an international norm. *International Studies quarterly*,2010;54(1):103-126.
34. Haufler V. Disclosure as governance: The Extractive Industries Transparency Initiative and resource in the developing world. *Global Environmental Politics*,2010;10(1):53-73.
35. Hausmann R, Rigobon R. An alternative interpretation of the resource curse: Theory and policy implications. National Bureau of Economic Research (NBER) Working Paper,2002;9424:1-45.
36. Hilson G, Maconachie R The extractive industries transparency initiative: Panacea or White Elephant for Sub-Saharan Africa? In J. Richards (Ed.), *Mining, Society, and a Sustainable World*. Berlin Heidelberg: Springer, 2009, 469-491.
37. Igbuzor O. (n.d.). Nigeria Extractive Industries Transparency Initiative (NEITI): An evaluation of strategy, processes and practices. Retrieved from <http://www.otiveigbuzor.com/wp-content/uploads/2013/12/NEITI-an-evaluation-of-strategy-processes-and-practices.pdf>
38. Igwe U. Making NEITI Act 2007 work, 2011. Retrieved from <http://www.punchng.com/article>.
39. Ihugba BU. Compulsory regulation of CSR: A case study of Nigeria. *Journal of Politics and Law*,2012;5(2):68-81.
40. Karl T. Oil led development: Social, political and economic consequences. Stanford University, Center on Democracy, Development and the Rule of Law (CDDRL) Working Paper,2007;80:1-36.
41. Karl TL. *The paradox of plenty: Oil booms and petro states*. Berkeley: University of California Press, 1997.
42. Kasekende E, Abuka C, Sarr M. Extractive industries and corruption: Investigating the effectiveness of EITI as a scrutiny mechanism. *Resources Policy*,2016;48:117-128.
43. Keblusek ME. Is EITI really helping improve global good governance? Examining the resource curse, corruption and Nigeria's EITI implementation experience, 2010. Retrieved from <http://nidprodev.org/EITI%20-%20Nigeria%20Analysis.pdf>
44. Khadiagala GM. Global and regional mechanisms for governing the resource curse in Africa. *South African Journal of Political Studies*,2015;42(1):23-43.
45. Kirana C. (n.d.). *Promoting natural resources revenue transparency and accountability*. New York: Revenue Watch Institute (RWI).
46. Kretzmann S, Nooruddin I. *Drilling into debt: An investigation into the relationship between debt and oil*. Washington & London: Oil Change International, Jubilee USA and Institute for Public Policy Research, 2005.
47. Manzano O, Rigobon R. Resource curse or debt overhang? National Bureau of Economic Research (NBER) Working Paper,2001;8390,1-37.
48. Natural Resource Governance Institute (NRGI). *Legal framework: Navigating the web of laws and contracts governing extractive industries*. New York: NRGI, 2015.
49. NEITI. NEITI Establishment Act, 2007.
50. NEITI. NEITI handbook. Abuja: NEITI Secretariat, 2011.
51. NEITI. Basic steps in the NEITI audit process, 2012. Retrieved from www.neiti.org.ng
52. NEITI. NEITI handbook. Abuja: NEITI Secretariat, 2013a.
53. NEITI. Report on revenues, deductions and analysis of disbursement of supervisory and regulatory agencies of the Federal Government, 2007 – 2011. Abuja: NEITI Secretariat, 2013b
54. NEITI. Nigeria Extractive Industries Transparency Initiative: A collective responsibility, 2016. Retrieved from www.neiti.org.ng
55. Nwapi C. Enhancing the effectiveness of transparency in extractive resource governance: A Nigerian case study. *The Law and Development Review*,2014;7(1):23-47.
56. Okeke VOS, Aniche ET. A critique of the enforcement of Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007 in Nigerian oil and gas sector. *British Journal of Arts and Social Sciences*,2013;14(2):98-108.
57. Okeke VOS. The political economy of enforcing NEITI Act 2007 in the oil and gas sector: A critical appraisal of Nigeria Extractive Industries Transparency Initiative (NEITI). *Global Advanced Research Journal of Management and Business Studies*,2014;3(3):90-99.
58. Okpanachi E. Confronting the governance challenges of developing Nigeria's extractive industry: Policy and performance in the oil and gas sector. *Review of Policy Research*,2011;28(1):25-47.
59. Oladele R, Aderemi AA. Revenue generation and transparency in Nigeria oil and gas industry: Position of Nigeria Extractive Industries Transparency Initiative (NEITI). *Research Journal of Finance and Accounting*,2013;4(6):99-114.
60. Olcer D. Extracting the maximum from the EITI. Organization for Economic Cooperation and Development (OECD) Development Centre Working Paper,2009;276:1-52.
61. Papyrakis E, Gerlagh R. The resource curse hypothesis and its transmission channels. *Journal of Comparative Economics*,2004;32(1):181-193.
62. Ross M. *Extractive sectors and the poor*. Washington: Oxfam America, 2001.
63. Shaxon N. *Nigeria's Extractive Industries Transparency Initiative: Just a glorious audit?* London: Chatham House (The Royal Institute of International Affairs), 2009.
64. Soreide T, Truex R. Multi stakeholder groups for better sector performance: A key to fighting corruption in

- natural resource governance. *Development Policy Review*,2013:31(2):203-217.
65. Soreide T, Truex R. Multi stakeholder groups for better sector performance: A key to fighting corruption in natural resource governance. *Development Policy Review*,2013:31(2):203-217.
 66. Sovacool BK, Andrews N. Does transparency matter? Evaluating the governance impacts of the Extractive Industries Transparency Initiative (EITI) in Azerbaijan and Liberia. *Resources Policy*,2015:45:183-192.
 67. Uzoigwe MU. Exploring multi-stakeholder initiatives for natural resource governance: The example of the Nigerian Extractive Industries Transparency Initiative (NEITI). (Unpublished PhD Thesis), University of Birmingham, 2011.
 68. Van Alstine J. The rhetoric and reality of transparency in energy governance: The Extractive Industry Transparency Initiative and Publish What You Pay campaign. Leeds: Sustainability Research Institute, 2011.
 69. Van Alstine J. Transparency in resource governance: The pitfalls and potentials of 'new oil' in Sub Saharan Africa. *Global Environmental Politics*,2014:14(1):20-39.
 70. Wilson E, Van Alstine J. Localizing transparency: Exploring EITI's contribution to sustainable development. London: International Institute for Environment and Development, 2014.
 71. Winanti PS, Haniff H. When global norms meet local politics: Localizing transparency in extractive industries governance. *Environmental Policy and Governance*,2020:30:263-275.
 72. Yanuardi Y, Vijge MJ, Biermann F. Social-ecological reflexivity of extractive industry governance? The case of Extractive Industries Transparency Initiative in Indonesia. *Environmental Policy and Governance*, 2022, 1-12.
 73. Yaw-Ofori JJ, Lujala P. Illusionary transparency? Oil revenues, information disclosure and transparency. *Society and Natural Resources*,2015:28(11):1187-1202.