

A BILL

FOR

AN ACT TO MAKE PROVISION FOR THE ESTABLISHMENT OF THE NIGERIA EXTRACTIVE INDUSTRY TRANSPARENCY INITIATIVE (NEITI) AND FOR OTHER MATTERS CONNECTED THEREWITH

[]

Commencement.

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

1.-(1) There is hereby established a body to be known as the Nigeria Extractive Industry Transparency Initiative, (hereinafter in this Act referred to as “NEITI”).

Establishment of the Nigeria Extractive Industry Transparency Initiative.

(2) The NEITI-

(a) shall be an autonomous self-accounting body which shall report to the President;

(b) shall be a body corporate with perpetual succession and a common seal;

(c) may sue and be sued in its corporate name; and

(d) may acquire, hold and dispose of seal and personal property.

2.-(1) There is established for the NEITI, the governing body which shall be the National Stakeholders Working Group, (hereinafter in this Act referred to as “the NSWG”.) (2) The NSWG shall be responsible for the formulation of policies, programmes and strategies for the effective implementation of the objectives and the discharge of the functions of the NEITI.

Establishment, membership and appointment of the governing Body of the Nigeria Extractive Industry Transparency Initiative.

(3) Without prejudice to subsection (2), the NSWG shall have power to approve the annual budget and work-plan of the NEITI, as well as ensure the periodic review of programme performance by the NEITI.

(4) The NSWG shall be appointed on a part-time basis by the President and shall consist of a Chairman, Secretary and at least 7 other members, provided that there shall not be more than 15 members at any time.

(5) In making appointments into the NSWG, the President shall, as much as possible, include extractive industry experts, the civil society and members of labour unions in the extractive industry.

(6) The NSWG appointed by the President before the commencement of this Act shall remain valid as if appointed under this Act.

(7) The supplementary provisions set out in schedule to this Act shall have effect with respect to the proceedings of the Governing body.

3.-(1) The Chairman and members of the NSWG shall hold office for

five years and

shall be eligible for re-appointment for another term and no more.

Tenure of office, etc.

(2) The office of the Chairman or member of NSWG shall become vacant if he-

- (a) resigns his appointment by notice in writing under his hand addressed to the President;
- (b) dies;
- (c) becomes of unsound mind or incapable of carrying out his duties;
- (d) becomes bankrupt;
- (e) is found guilty of gross misconduct in relating to the execution of his duties; or
- (f) the President is satisfied that it is not in the interest of NEITI or of the public for the person so appointed to continue in office.

(3) Where a vacancy occurs in the membership of the NSWG, it shall be filled by the President appointing a successor to hold office for the remainder of the term of office of his predecessor, and the successor shall represent the same interest as that member whose exit created the vacancy.

4. The primary objectives of the NEITI are to ensure-

Objectives of NEITI.

- (a) due process and transparency in the payments made by extractive industry companies to the Federal Government and its agencies;
- (b) accountability in the revenue receipts of the Federal Government from extractive industry companies; and

(c) eliminate all forms of corrupt practices in the determination, payments, receipts and posting of revenue accruing to the Federal Government from extractive industry companies.

5. For the purpose of realizing its objectives under this Act, the NEITI shall-

Functions of NEITI.

- (a) develop a framework for transparency in the reporting and disclosure by extractive industry companies of revenue due to or paid to the Federal Government;
- (b) evaluate the practices of extractive industry companies with regard to acquisition of acreages, budgeting, contract, materials procurement and production cost profile in order to ensure due process and transparency;
- (c) ensure transparency in the management of the investments of the Federal Government in extractive industry companies;
- (d) request, as may be deemed necessary, from any company in the extractive industry an accurate record of the cost of production and volume of sale of oil, gas or other minerals extracted by the company at any period;
- (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;

(f) ensure that all payments due to the Federal Government from extractive industry companies, including taxes, royalties, dividend, bonuses, penalties, levies are duly made;

(g) identify weaknesses and undertake measures that will enhance the capacity of any relevant organ of the Federal, State or Local Government having responsibility to monitor revenue payments by extractive industry companies to the Federal Government;

(h) disseminate by way of publication of records, reports or otherwise, any information concerning the revenue of the Federal Government from 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.

6. The members of the NSWG as well as any persons appointed to any of its Special Committees under the schedule may be paid such allowances out of the funds of the NEITI as the President may approve.

Allowances

7.-(1) There shall be established a secretariat for the Nigeria Extractive Industry Transparency Initiative.

Secretariat, appointment of Secretary and other staff of NEITI.

(2) There shall be for NEITI, a Secretary who shall not be below the rank of a Director in the Public Service of the Federation and who shall be appointed by the President.

(3) The Secretary shall-

(a) be responsible for the day to day administration of the Secretariat;

(b) keep the books and records of the NEITI; and

(c) be subject to the supervision and control of NSWG the Governing body of NEITI.

(4) The NSWG may, from time to time, appoint such other staff or consultants as it may deem necessary to assist the NEITI in the performance of its functions under this Act.

(5) Such staff of NEITI or Consultants to it appointed under sub-section (4) shall be appointed on such terms and conditions as the NSWG may determine and approve

8. Service in the NEITI shall be public service for the purposes of the Pension Reform Act, and accordingly, officers and other staff of NEITI shall in respect of the service be entitled to such pension and retirement benefits as are prescribed in the Pensions Reform Act.

Pensions 2004 No.2

9.-(1) The NEITI shall establish and maintain a fund to which shall be paid in such-

Funds of the NEITI.

(a) sums as may be provided by the Federal Government and approved by the National Assembly which shall be released as they become due;

(b) sums as may be advanced to the NEITI by way of gifts, loan and grants.	
10. The NEITI shall apply the proceeds of the Fund established under section 9 of this Act to the-	Expenditure of the NEITI.
(a) cost of administration; (b) payment of salaries allowances and benefits to members of the Governing body NSWG or any of its committees; (c) payment of salaries, remunerations, allowances, pension and retirement benefits to officers and employees of NEITI; (d) payment for all purchases; (e) payment of all contracts, including mobilisation, fluctuations, variations, legal fees and cost on contract administration; and (f) carrying out of other activities that would promote its objectives or are connected to all or any of the functions of NEITI under this Act.	
11. The NEITI may accept gifts of land, money or other property (within or outside Nigeria) on such terms and conditions, if any, as may be specified by the person or organisation making the gift provided that, such terms and conditions are not contrary to or inconsistent with this section and functions and the gift is accepted on the approval of the NSWG.	Gifts to the NEITI.
12. The Governing body of NEITI the NGWG shall, not later than 30 th September in each year, submit to the President an estimate of the expenditure and income of NEITI during the next succeeding year.	Annual estimates and expenditures.
13. -(1) The NEITI shall cause to be kept proper accounts in respect of each year and proper records in relation thereto.	Account and audit.
(2) The NEITI shall cause the accounts of the total revenue which accrued to the Federal Government from the extractive industry companies, its receipts, payments, assets and liabilities to be audited not later than 6 months after the end of each year by independent auditors appointed on such terms and conditions as the governing body of the NEITI may approve.	
(3) On the completion of the audit, the independent Auditor shall submit the report to the NEITI which shall cause same to be published for the information of the public.	
14. The NEITI shall have powers to borrow money from banks with the approval of its governing body.	Power to borrow money.
15. The NEITI shall prepare and submit to the President, not later than 30 th September in each year, a report of its activities during the immediate preceding year, and shall include in such report the audited accounts of the NEITI for that year and the auditor's report thereon.	Annual report.
16. An extractive industry company which-	Offences. 2004 No.

- (a) gives false information or report to the Federal Government or its agency regarding its volume of production, sales and income; or
- (b) renders false statement of account to the Federal Government or its agency,

resulting in the underpayment of revenue accruable to the Federal Government, commits an offence which is deemed to be an economic and financial crime under the Economic and Financial Crimes Commission (Establishment, etc.) Act 2004, and the provisions of that Act relating to investigation and punishment of offenders, as far as they are applicable, shall accordingly.

17.-(1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any officer or employee of NEITI or member of its governing body.

(2) Notwithstanding anything contained in any other law or enactment, no suit shall lie against the Chairman and members of the governing body and any other officer or employee of NEITI for any act done in pursuance or execution of this Act or any other law or enactment or of any public duty or authority or in respect of any alleged neglect or default in the execution of this Act or such law or enactment, duty or authority, unless when instituted-

(a) it is commenced within 3 months after the act, neglect or default complained of; or

(b) in the continuation of damage or injury within six months after the cessation thereof.

(3) No suit shall be commenced against the Chairman and members of the governing body, NEITI or any of its officers before the expiration of a period of one month after written notice of intention to commence the suit shall have been served upon NEITI by the intending plaintiff or his agent.

(4) The notice referred to sub-section (3) of this section shall clearly state the-

(a) cause of action and the reliefs claimed;

(b) particulars of the claim; and

(c) the name and place of abode of the intending plaintiff.

18. A notice, summons or other documents required or authorised to be served on NEITI under the provisions of this Act or any other law or enactment may be served by delivering it to the Secretary of the governing body or by sending it by registered post to the Secretary to the governing body at the principal office of NEITI.

19.-(1) In any suit brought against NEITI, no execution or attachment of process shall be issued against NEITI.

(2) Any sum of money which may by the judgment of any court award against NEITI shall subject to any direction given by court where

Limitation of suits against the NEITI and NSWG. Cap 379, LFN.

Service of documents.

Restriction on execution against the property of NEITI. notice of appeal of the said judgment

has been filed, be paid from the funds of NEITI.

20. The Chairman, a member of the governing body and any officer of NEITI shall be indemnified out of the assets of NEITI against any proceeding, whether civil or criminal, in which judgment is given in his favour, or he is acquitted.

Indemnity of officers.

21. Subject to the provisions of this Act, the President may give to NEITI directives of a general nature or relating generally to matters of policy with regard to the performance by NEITI of its function and it shall be the duty of NEITI to comply with the directives.

Directives by the President.

22. The NSWG may make regulations as it may consider expedient for the purpose of giving effect to the provisions of this Act and for regulating any matter that falls within the scope of the functions of the NEITI.

Regulations.

23. In this Act unless the context otherwise requires-

Interpretation.

“Extractive industry company” means any company in Nigeria that is engaged in the business of prospecting, mining, extracting, processing and distributing minerals and gas including oil, gold, coal, tin, bitumen, diamonds, stones and such like; and includes any agency or body responsible for the payment of extractive industry proceeds to the Federal Government;

“Federal Government” means the Federal Government of Nigeria;

“President” means the President of the Federal Republic of Nigeria;

24. This Act may be cited as the Nigeria Extractive Industry Transparency Initiative Act, 2005.

Short title.

SCHEDULE

Section 2(7)

SUPPLEMENTARY PROVISIONS RELATING TO THE NIGERIA EXTRACTIVE INDUSTRY TRANSPARENCY INITIATIVE, ETC.

Proceeding of the Governing Body

1.-(1) Subject to this Act and section 27 Cap 192, LFN of the Interpretation Act, the governing body may make standing Orders to regulate its proceeding or those of any of its Committees.

(2) The quorum of the governing body of the initiative, the National Stakeholders Working Groups (NSWG) shall be the Chairman or any other person presiding at a meeting in his absence and 4 other members of the governing body and the quorum of any Committee shall be as determined by the governing body.

2.-(1) The Governing body shall meet whenever it is summoned by the Chairman and if the Chairman is required to do so by notice given to him by not less than 4 other members, he shall summon a meeting of the

Governing body to be held within 14 days from the

date on which the notice was given.

(2) At any meeting of the Governing body, the Chairman shall preside but if he is absent, the members present at the meeting shall appoint one of their members to preside at the meeting.

(3) When the Governing body desires to obtain the advice of any person on a particular matter, it may co-opt him for such period as it deems fit, but a person who is a member by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Governing body and shall not count towards a quorum.

(4) The Governing body shall ordinarily meet at such times and places as it may determine, and for not less than four times in a year.

(5) Questions proposed at a meeting of the governing body shall be determined by a simple majority of members present and voting, and in the event of an equality of votes, the Chairman or any other person presiding shall have a second or casting votes.

Committees

3.-(1) The Governing body may appoint one or more Committees to carry out on its behalf such of the functions of NEITI as it may determine.

(2) A Committee appointed under this paragraph shall consist of such number of persons as may be determined by the Governing body and a person shall hold office on the Committee in accordance with the terms of his appointment.

(3) A decision of a Committee shall not have effect until it is confirmed by the Governing body.

Miscellaneous

4.-(1) The fixing of the seal of NEITI shall be authenticated by the signatures of the Chairman and Secretary of the Governing body generally.

(2) Any contract or instrument which, if made or executed by a person not being a body corporate would not be required to be under seal, may be made or executed on behalf of NEITI by the Secretary of the Governing body generally or any other person specifically authorised by the Governing body to act for that purpose.

(3) A document purporting to be duly executed under the seal of NEITI shall be received in evidence and shall, unless the contrary is proved, be presumed to be so executed.

(4) The validity of any proceedings of the Governing body or of a Committee shall not be adversely affected by-

(a) a vacancy in the membership of the Governing body or a committee; or

(b) a defect in the appointment of a member of the Governing body or

Committee

e; or

(c) reason that a person not entitled to do so took part in the proceedings of the Governing body or Committee.

EXPLANATORY MEMORANDUM

This Act makes provisions for the establishment of National Extractive Industry Transparency Initiative, (NEITI) its governing body National Stakeholders Working Group (NSWG) and for other matters connected therewith.