IMPLEMENTING GLOBAL NORMS IN LOCAL CONTEXTS: EVALUATING THE EFFECTIVENESS OF TRANSPARENCY AND ACCOUNTABILITY IN THE NIGERIAN EXTRACTIVE SECTOR

by

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Abstract

Many resource rich developing countries are confronted with a paradoxical situation in which their natural resource wealth coincides with low developmental growth, civil conflict and poor standard of living of citizens. Extractive transparency was conceived on the global scene to address the developmental problems associated with natural resource wealth, based on the assumption that public disclosures of extractive revenues would curtail corrupt practices in the extractive sector and promote the effective governance of natural resources. However, years into its implementation in local contexts, scholars and policymakers are recognizing that the governance structure and political dynamics of the implementing country largely determines its effectiveness. This raises concerns regarding the extent to which transparency as a global norm is transformed when confronted with local realities such as weak institutional quality, infirm regulatory framework, repressive governmental tendencies and institutionalized corruption and how this transformed transparency can be deployed to drive public demands for accountability and developmental gains.

Against this backdrop, this thesis considers how extractive transparency – revenue transparency, beneficial ownership transparency and contract transparency is localized in Nigeria in the context of Nigerian's peculiar socio-political realities. It also considers how citizen engagement and participation in resource governance in Nigeria can be bolstered to propel public demands for accountability based on extractive disclosures. This thesis argues that although extractive transparency in Nigeria is constrained when confronted with Nigeria's peculiar socio-political circumstances, however, this constrained transparency offers opportunities for institutional reforms (such as enshrining auditing and reporting requirements in the extractive sector and empowerment of civil society organizations) and a springboard for public demands for accountability.

Even as scholars and policymakers contend with the institutionalization of transparency and revenue disclosures in local contexts, novel methods of perpetuating corruption in the extractive sector continue to emerge, urging the global community to expand the scope of extractive transparency to accommodate beneficial ownership transparency and contract transparency. These areas of transparency are quite nascent and regulatory frameworks and institutions at local levels are struggling to deal with their complexities, thus, this thesis considers how best to implement them to achieve the desired outcomes within the Nigerian context.

Lay Summary

Many resource rich developing countries such as Nigeria are unable to transform their natural resource wealth into developmental gains and higher standard of living for their citizens. To address the developmental problems associated with natural resource wealth, extractive transparency (public disclosures of details of extractive arrangements) as a mode of natural resource governance was conceived on the global level. However, its subsequent implementation in local levels revealed that good governance framework and quality institutions are required to foster its effectiveness. This good governance framework is almost non-existent in many resource rich developing countries (including Nigeria) leading scholars to question the effectiveness of extractive transparency. Therefore, this thesis examines how best to implement extractive transparency in Nigeria within Nigeria's peculiar socio-political realities to achieve the desired outcomes. It argues that regardless of Nigeria's socio-political challenges, extractive transparency still offers opportunities for institutional reforms and a basis for public demands for accountability.

Preface

This thesis is the original, unpublished, independent work by the author, Oluwakemi Oluwafunmilayo Oke.

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List of Abbreviations

ANAN	Association of National Accountants of Nigeria
BO	Beneficial Ownership
BP	British Petroleum
BRIC	Brazil, Russia, India and China
CAC	Corporate Affairs Commission
CAMA	Companies and Allied Matters Act
COVID-19	Coronavirus Pandemic 2019
CSO	Civil Society Organization
DRC	Democratic Republic of Congo
EFCC	Economic and Financial Crimes Commission
EITI	Extractive Industries Transparency Initiative
EU	European Union
FRCN	Financial Reporting Council of Nigeria
IASB	International Accounting Standards Board
ICAN	Institute of Chartered Accountants of Nigeria
ICT	Information and Communication Technology
IESBA	International Ethical Standards Board for Accountants
IFRS	International Financial Reporting Standards
IMF	International Monetary Fund
KPCS	Kimberly Process Certification Scheme
LPDC	Legal Practitioners' Disciplinary Committee
NEITI	Nigeria Extractive Industries Transparency Initiative
NGO	Non-Governmental Organizations

NNPC	Nigerian National Petroleum Corporation
NSWG	National Stakeholders Working Group
OFC	Offshore Financial Centres
OGP	Open Contracting Partnership
PEP	Politically Exposed Person
PLAC	Policy and Legal Advocacy Centre
PSC	Persons with Significant Control
PWYP	Publish What You Pay
RPC	Rules of Professional Conduct for Legal Practitioners
TFP	Total Factor Productivity
UK	United Kingdom
US	United States

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Most of all, I am grateful to Almighty God, for being my strength, helper and protector. With his strength and favour I am able to conclude this journey.

Dedication

To my rock, strength and fortress. To Him through whom I can do all things

1 Introduction

Natural resource wealth can potentially contribute to development outcomes, but many resource-rich countries are plagued with unsustainability, conflicts, dysfunctional institutions, poor governance, corruption and weak economic performance – U4 Anti-Corruption Resource Centre[1]

A country's natural resources, such as oil, gas, metals and minerals, belong to its citizens. Extraction of these resource can lead to economic growth and social development. However, poor natural resource governance has often led to corruption and conflict. More openness and public scrutiny of how wealth from a country's extractive sector is used and managed is necessary to ensure that natural resources benefit all. – EITI 2016 Progress Report[2]

1.1 Introduction: The Paradox of Plenty

Many resource rich countries, particularly developing countries in Africa, suffer immense economic and developmental decline in spite of their natural resource wealth.[3] These resource rich countries, such as Nigeria and Angola, possess huge reserves of high-value natural resources such as petroleum and mineral products and are major exporters of these products, but are unable to translate their resource wealth into economic sustainability and higher standards of living for their

[1] Marie Chene, "Natural resource management transparency and governance: A literature review focusing on extractive industries", online: < https://www.u4.no/publications/natural-resource-management-transparency-and-governance>

[2] Extractive Industries Transparency Initiative (EITI), "Who we are", online: < https://eiti.org/who-we-are>

[3] Terry Lynn Karl, "The Perils of the Petro-State: Reflections on the Paradox of Plenty" (1999) 53:1 Journal of International Affairs 31 at 32, Michael Ross, "Does Oil hinder Democracy?" (2001) 53:3 World Politics 325 at 325, Andrew Rosser, "Escaping the Resource Curse", (2006) 11:4 New Political Economy 557 at 557, James A. Robinson, Ragnar Torvik and Thierry Verdier, "Political foundations of the resource curse" (2006) 79:2 Journal of Development Economics 447 at 447, Elizabeth David-Barrett and Ken Okamura, "Norm diffusion and Reputation: The Rise of the Extractive Industries Transparency Initiative" (2016) 29:2 Governance 227 at 227 Andrews N, Siakwah P, "The paradox of development troubles in resource-endowed countries" in *Oil and development in Ghana: Beyond the resource curse*, 1st ed (Taylor and Francis, 2020) at 1. Prior to the 1980s, the mainstream idea was that natural resource endowment should propel developmental gains for a country, few scholars objected to the mainstream idea that resource endowment led to economic development for resource rich countries, it was not until the 1990s that the poor economic and social performance of many resource-rich countries caught the attention of scholars and policymakers urging them to reach the conclusion that natural resource wealth in many countries is indeed a curse rather than a blessing.

citizens.[4] In addition to low economic growth, many resource rich countries suffer from other socio-economic challenges resulting from extractive activities, such as environmental degradation and human rights abuses, civil conflict and strife, extreme poverty, and inequality.[5] McFerson rightly notes that, "resource wealth has failed to bring economic development, and, on the contrary, has exacerbated political decay and corruption"[6] in many resource rich developing countries. This phenomenon is popularly known as the "resource curse,"[7] or the "paradox of plenty."[8]

The phenomenon of the "resource curse" and the "paradox of plenty" has attracted immense scholarly interest from scholars and policymakers who have explored the causes and solutions to the economic decline which many resource rich countries suffer in spite of their resource wealth.[9] Early scholars argued that resource rich countries suffered economic decline in comparison to other countries without resource wealth because of an economic situation described as the "Dutch disease."[10] Moise describes the Dutch disease as the "discouragement of domestic production of other exportable products that arises from the abundance of revenue from natural resources".[11] The neglect of other sectors of the economy caused by the Dutch disease lessens the competitiveness of these sectors which subsequently leads to a decline in Total Factor Productivity (TFP) and the economic growth of the country.[12] The consensus amongst recent scholars, however, is that corruption, rent seeking behaviour of political elites, clientelism, and mismanagement of resource rent are the major reasons resource rich developing countries have failed to progressively

[4] Susan Ariel Aaronson, "Limited Partnership: Business, Government, Civil Society, and the Public in the Extractive Industries Transparency Initiative (EITI)" (2011) 31 Public Administration and Development 50 at 50, Paivi Lujala, Christa Brunnschweiler & Ishmael Edjekumhene, "Transparent for Whom? Dissemination of Information on Ghana's Petroleum and Mining Revenue Management" (2020) 56:12 The Journal of Development Studies 2135 at 2135. Botswana is considered the only resource rich country in Africa that has been successful in translating its resource wealth into developmental growth and escaped the negative consequences of resource endowment.
[5] Rosser, *supra* note 3, Siakwah, *supra* note 3
[6] Hazel M. McFerson, "Extractive Industries and African Democracy: Can the "Resource Curse" be Exorcised'? (2010) 11:4 International Studies Perspectives 335 at 337.
[7] Richard Auty, "Sustaining development in mineral economies: The resource curse thesis", (London, Routledge, 1993), Torvik and Verdier, *supra* note 3
[8] Karl, *supra* note 3
[9] *Ibid*
[10] Rosser, *supra* note 3 at 558.
[11] Gian Marco Moise, "Corruption in the oil sector: A systematic review and critique of the literature" (2020) 7:1 The Extractive Industries and Society 217 at 219.
[12] Pedro Vicente, "Does oil corrupt? Evidence from a natural experiment in West Africa" (2010) 92 Journal of Development Economics 28 at 28.

transform their economies and the standard of living of their citizens.[13] Indeed, the evidence demonstrates that resource rents do not benefit the citizens of many resource rich developing countries or lead to any tangible developmental gains because such rent "continues to accrue to unaccountable ruling elites."[14]

To tackle the developmental challenges associated with resource abundance and mismanagement of resource revenues, transparency was promoted on the global scene as a mode of natural resource governance, based on the assumption that "public disclosures would undermine the predatory landscape for elite patronage and clientelistic politics."[15] While it is recognized that there is no panacea to the myriads of challenges that plague resource rich developing countries, it is now widely accepted that transparency and accountability in the governance of natural resources is pivotal to curbing corruption and mismanagement of resource revenues which could propel the attainment of developmental gains in a resource rich country.[16] However, many scholars such as Oge and Boldbaatar et al have argued that the effective implementation of transparency initiatives is contextual and largely dependent on the socio-economic conditions of the implementing country such as its governance structure and institutional quality.[17] This raises pertinent questions, such as, to what extent do local realities transform and constrain transparency as a global norm? How can this transformed and constrained transparency propel accountability, institutional reforms and developmental outcomes in each specific context? This study explores these questions and related issues within the Nigerian context. This study reveals that due to governmental dominance, weak regulatory provisions and poor governance structure in Nigeria, transparency has been constrained

[13] Rosser, *supra* note 3 at 558, Peter Eigen, "Fighting Corruption in a Global Economy: Transparency Initiatives in the Oil and Gas Industry" (2007) 29:2 Hous J Intl L 327 at 333, Ivar Kolstad and Arne Wiig, "Is Transparency the key to reducing corruption in Resource-Rich Countries? (2009) 37:3 World Development 521 at 521.
[14] McFerson, *supra* note 6 at 336.
[15] Nelson Oppong and Nathan Andrews, "Extractive Industries transparency initiative and the politics of institutional innovation in Ghana's oil industry" (2020) 7:4 The Extractive Industries and Society 1238 at 1238, Kolstad and Wiig, *supra* note 13
[16] Aaronson, *supra* note 4, Elgen, *supra* note 13, Virginia Haulfer, "Disclosure as Governance: The Extractive Industries Transparency Initiative and Resource Management in the Developing World" (2010) 10:3 Global Environmental Politics 53 at 53, Elissaios Papyrakis, Matthias Rieger and Emma Giberthorpe, "Corruption and the Extractive Industries Transparency Initiative" (2017) 53:2 The Journal of Development Studies 295 at 297.
[17] Kerem Oge, "Transparent autocracies: The Extractive Industries Transparency Initiative (EITI) and civil society in authoritarian states" (2017) 4:4 The Extractive Industries and Society 816 at 817, D. Boldbaatar, N.C Kunz & E. Werker, "Improved Resource Governance Through transparency: Evidence from Mongolia" (2019) 6:3 The Extractive Industries and Society 775 at 776.

to a constricted, partial and surface level form of information disclosure.[18] This constrained transparency, however, offers opportunities for institutional reforms and a springboard for public demands for accountability[19] in Nigeria's extractive sector for least three reasons. First, it enshrines auditing, reporting and disclosure requirements in the Nigerian extractive sector, which can potentially enhance public understanding of the extractive sector and provide a basis for public demands for accountability.[20] By mandating reporting and disclosure requirements in the Nigerian extractive sector, the public gains access to information about the sector that was previously shrouded in secrecy, enabling them to better understand the sector and empowering them with the necessary information to hold the government and extractive companies accountable.[21] Second, the role of civil society organizations (CSOs) in resource governance is recognized thereby giving CSOs the opportunity to participate and represent the interest of citizens in resource governance dialogues.[22] Third, CSOs through their participation in resource governance and the adoption of advocacy strategies can push for enhanced information disclosure and mobilize public demands for accountability.[23] Therefore, although transparency in Nigeria is constrained, CSOs' participation in resource governance whether through resistance or engagement with relevant actors in the extractive sector "has the potential to increase visibilities and use of information disclosed".[24]

[18] Amanze Ejiogu, Chibuzo Ejiogu & Ambisisi Ambituuni, "The dark side of transparency: Does the Nigeria extractive industries Transparency Initiative help or hinder accountability and corruption control" (2019) 51 The British Accounting Review 1 at 9, Jerome Jeffison, Yaw Ofori and Paivi Lujala, "Illusionary Transparency? Oil Revenues, Information Disclosure, and Transparency" (2015) 28: 11 Society & Natural Resources 1187 at 1189, Moise, *supra* note 11 at 220.

[19] Marjanneke J. Vijge, Robin Metcalfe, Linda Wallbott & Christoph Oberlack, "Transforming institutional quality in resource curse contexts: The Extractive Industries Transparency Initiative in Myanmar" (2019) 61 Resource Policy 200 at 201

[20] Nicholas Shaxson, "Nigeria's Extractive Industries Transparency Initiative: Just a Glorious Audit?" (November 2009) online: < https://eiti.org/files/documents/NEITI%20Chatham%20house_0.pdf>

[21] Bethel Uzoma Ihugba, "A critical analysis of the auditing and reporting functions of Nigeria Extractive Industry Transparency Initiative (NEITI) Act 2007" (2014) 13:3 Journal of International Trade Law and Policy 232 at 237

[22] Musa Abutudu and Dauda Garuba, "Natural Resource Governance and EITI Implementation in Nigeria" (2011) 47 Current African Issues 1 at 23.

[23] Rhuks Ako & Eghosa O. Ekhator, "The Civil Society and the Regulation of the Extractive Industry in Nigeria" (2016) 7:1 Afe Babalola University J. of Sust. Dev. Law & Policy 183 at 188.

[24] Amanze Ejiogu, Chibuzo Ejiogu & Ambisisi Ambituuni, "Corruption fights back: Localizing transparency and EITI in the Nigerian "Penkelemes" (2020) Governance 1 at 1.

1.2 Problem Context: Nigeria's extractive sector and the resource curse thesis

Nigeria is renowned for being Africa's largest producer of oil and the 13th largest producer in the world.[25] Nigeria possesses significant petroleum reserves estimated at "5.2 trillion cubic metres, making it the eighth largest in the world."[26] Since the discovery of oil in the Niger Delta's Oloibiri region in 1956,[27] the Nigerian economy shifted from an agriculture-dependent economy to a petroleum-dependent economy.[28] The petroleum sector accounts for the majority of Nigeria's export revenues and foreign exchange earnings.[29] Besides oil, Nigeria is also endowed with mineral resources; it is reported that the country possesses about 40 different solid mineral deposits in different regions of the country.[30] Nigeria was once a major exporter of raw minerals, however, activities in the sector dwindled due to the discovery of oil.[31] Until recently, the mineral sector has been left undeveloped and unexplored. Over the past 5 years, however, efforts have been made to revive the sector because of the declining price of oil in the international market and the need to diversify the Nigerian economy away from crude oil.[32] Scholars and experts opine that the mineral sector has the potential to fetch more export earnings and revenue for Nigeria than the petroleum sector, if properly managed.[33] The steady decline of oil prices in recent years and the 2020 global pandemic crippled oil prices to an unprecedented low point. Nevertheless, the sector still remains the main driver of the Nigerian economy.[34]

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[25] Uwafiokun Idemudia, "The resource curse and the decentralization of oil revenue: the case of Nigeria" (2012) 35 Journal of Cleaner Production 183 at 183.
[26] OPEC, "Nigeria facts and figures" online: < https://www.opec.org/opec_web/en/about_us/167.htm>
[27] *Ibid.*
[28] *Ibid.*
[29] Eyene Okpanachi, "Confronting the Governance Challenges of Developing Nigeria's Extractive Industry: Policy and Performance in the Oil and Gas sector" (2011) 28:1 Review of Policy Research 25 at 27.
[30] Moses Olade, "Solid Mineral Deposits and Mining in Nigeria: A Sector in Transitional Change" (2019) 2:1 Achievers J. Sci. Research 1 at 1.
[31] *Ibid.*
[32] African Business, "Nigerian mining revival in the works", (September 5, 2019) online, < https://african.business/2019/09/economy/nigerian-mining-revival-in-the-works/> Although there has been discussions and minor actions have been taken to revive the mining sector, however, major actions in this regard started in 2016 after Nigeria fell into recession as a result of decline in oil prices in the international market.
[33] Okpanachi, *supra* note 29, Olade, *supra* note 30, Olasupo Shasore, "Nigeria's Solid Minerals as a source of Economic Development – Tapping a Latent Resource?" (09 November 2018), online: < https://www.mondaq.com/nigeria/mining/753540/nigeria39s-solid-minerals-as-a-source-of-economic-development--tapping-a-latent-resource>
[34] Anna Zalik & Isaac Asume Osuoka, "Beyond transparency: A consideration of extraction's full costs" (2020) 7:3 The Extractive Industries and Society 781 at 781, Chike Olisah, "Nigeria achieves 55% increase in oil earnings for 2018 – NEITI" (March 31 2020), online: < https://nairametrics.com/2020/03/31/nigeria-achieves-55-increase-in-oil-earnings-for-2018-neiti/>

Despite Nigeria's natural resource wealth and the huge earnings it acquires from the exploration of its natural resources, the country has largely been unable to translate it into economic and developmental gains for its citizens.[35] Nigeria is instead characterized as the epitome of the "resource curse" in many scholarly writings, such as in the work of Okpanachi et al and Idemudia, a developmental model which new resource rich countries should avoid emulating in the governance of their natural resources.[36] Scholars like Ingen et al and Betancourt, have compared and contrasted the poor performance of resource rich developing countries with Norway, touted as best success story of prudent natural resource utilisation to achieve socio-economic development.[37] Indeed, the popular slogan amongst academics in natural resource management is "Norway not Nigeria."[38] Corruption and rent seeking behavior of political elites, a phenomenon some scholars have referred to as the "Nigerian disease,"[39] majorly accounts for Nigeria's low developmental growth in spite of its resource wealth. In addition to poor developmental growth, environmental degradation, human rights abuses and civil conflict over the distribution of resource rents—particularly in the Niger Delta region (where the majority of Nigeria's oil reserves are located)—characterize Nigeria's resource governance regime.[40]

Nigeria adopted the Extractive Industries Transparency Initiative (EITI) in 2003 to tackle the developmental and socio-economic challenges associated with resource abundance. The EITI is most widely accepted global standard for the efficient management of natural resources through transparency and accountability.[41] It aims to facilitate the translation of natural resource wealth in

[35] Stephanie Asgill MSc, "The Nigerian Extractive Industries Transparency Initiative (NEITI): Tool for Conflict Resolution in the Niger Delta or Arena of Contested Politics?" (2012) 4:7 Critical African Studies 4 at 6.
[36] Eyene Okpanachi & Nathan Andrews, "Preventing the oil "Resource Curse" in Ghana: Lessons from Nigeria" (2012) 68:6 The Journal of New Paradigm Research 430 at 430, Idemudia, *supra* note 25, Xavier Sala-i-Martin, Arvind Subramanian, "Addressing the Natural Resource Curse: An illustration from Nigeria" (2013) 22:4 Journal of African Economies 570 at 570.
[37] Chiara van Ingen, Requier Wait & Ewert Kleynhans, "Fiscal policy and revenue management in resource-rich African countries: A comparative study of Norway and Nigeria" (2014) 21:3 South African Journal of International Affairs 367 at 367, Roger R. Betancourt, "Oil and Democracy in Cuba: Going towards Nigeria or Norway?" (2012) ASCE 358 at 358
[38] *Ibid*.
[39] Rosser, *supra* note 3, Andrew Williams, "Shining a light on the Resource Curse: An Empirical Analysis of the Relationship between Natural Resources, Transparency and Economic Growth" (2011) 39:4 World Development 490 at 490, Moise, *supra* note 11.
[40] Eghosa E. Osaghae, "Resource curse or resource blessing: the case of the Niger Delta 'oil republic' in Nigeria" (2015) 53:2 Commonwealth & Comparative Politics 109 at 109, Isaac Asume Osuoka, "Beyond transparency: A consideration of extraction's full costs" (2020) 7:3 The Extractive Industries and Society 781 at 781.
[41] EITI, online: < https://eiti.org/who-we-are> , Gilbert M. Khadiagala, "Global and Regional Mechanisms for Governing the Resource Curse in Africa" (2015) 42:1 South African Journal of Political Studies 23 at 23.

resource rich countries into developmental gains.[42] Opacity and mismanagement, however, are still prevalent in the Nigerian extractive sector years into the implementation of the EITI; indeed, Osuoka comments that "during this period patronage networks that reproduce the elite and corrupt practices that they [the government and extractive companies] perpetuate have expanded."[43] These opaque practices still prevail even though Nigeria has moved beyond the initial narrow focus on revenue transparency to accommodate beneficial ownership transparency, while there are public demands to enforce contract transparency.[44] Revenue transparency is the disclosure of payments made by extractive companies to the government and revenues received by the government from extractive companies, beneficial ownership (BO) transparency is the disclosure of the person(s) who ultimately own and control extractive companies while contract transparency is the disclosure of full text of extractive contracts executed between the government and extractive companies.[45] In addition, despite the involvement of CSOs, the EITI in Nigeria has not attracted tangible citizen engagement or spurred public demands for accountability.[46] As will be revealed in the subsequent chapters of this thesis, political elites' control of the EITI, repressive and infirm regulatory provisions and weak institutional quality incapacitates the effective implementation of transparency and accountability in the Nigerian extractive sector.[47] This study therefore seeks to achieve three ends. First, appraise the regulatory framework and practice of revenue transparency, BO transparency, and contract transparency in the Nigerian extractive sector in the context of Nigeria's peculiar socio-economic settings. Second, suggest recommendations for improving the regulatory framework and how Nigeria should implement the EITI to achieve the desired outcomes from its natural resource wealth. Third, consider how citizen engagement and participation in resource governance in Nigeria can be increased and bolstered to propel demands for accountability from the government and extractive companies.

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[42] *Ibid.*

[43] Shaxson, *supra* note 20, Isaac Asume Osuoka, "Cooptation and contention: Public participation in the Nigeria Extractive Industries Transparency Initiative and the demand for accountable government" (2020) 7:3 The Extractive Industries and Society 796 at 796.

[44] Bassey Udo, "NEITI, CSOs demand contract transparency clauses in PIB", (October 30, 2020) online: < https://www.premiumtimesng.com/business/business-news/423806-neiti-csos-demand-contract-transparency-clauses-in-pib.html>

[45] Peter J. Rees, "Revenue transparency: global, not local solutions" (2014) 7:1 Journal of World Energy Law & Business 20 at 20, The EITI Standard 2019, online: <https://eiti.org/files/documents/eiti_standard_2019_en_a4_web.pdf>

[46] Osuoka, *supra* note 43 at 801

[47] Ejiogu et al, *supra* note 24 at 11, Ejiogu et al, *supra* note 18 at 2.

1.3 Significance of Topic

Evaluating the regulatory framework, practice of extractive transparency and accountability in Nigeria is an imperative necessity now for at least five reasons. First, critics of transparency often argue that resource rich developing countries are confronted with many socio political challenges, such as authoritarian and repressive governmental tendencies, weak institutions and poor governance structures, which impede the effective implementation of transparency initiatives in these countries.[48] In this context, critics further argue that what can be achieved in many resource rich developing countries is "partial transparency"[49] or "illusory transparency,"[50] at best, because of their weak and non-democratic governance structures.[51] Therefore, it is important to evaluate how extractive transparency is reshaped and transformed when confronted with local realities in Nigeria and how this reshaped transparency can be utilized to promote the efficient governance of natural resources.

Second, the dwindling prices of crude oil in the international market in recent years has emphasized the need for the prudent management of natural resources revenues to cushion its effect on the Nigerian economy. The dramatic fall in oil prices from 2014 to 2016 plunged the country into an economic recession, from which it had started to recover before oil prices further plummeted to an unprecedent low because of the COVID-19 pandemic.[52] Thus, resource revenues need to be effectively managed through transparency initiatives and other modes of resource governance more than ever for the country to recover and harness benefits from crude oil sale in spite of the decline in prices.

Third, the decline in crude oil prices also underscored the need for the diversification of the Nigerian economy away from crude oil. Policymakers have put forward the mining sector as a viable alternative for Nigeria's export earnings and have put in place measures to revive the

[48] James Van Alstine, "Transparency in Resource Governance: The pitfalls and potential of "new oil" in Sub-Saharan Africa" (2014) 14:1, Global Environmental Politics 20 at 25, Dawda Adams, Subhan Ullah, Pervaiz Akhtar, Kweku Adams & Samir Saidi, "The role of country-level institutional factors in escaping the natural resource curse: Insights from Ghana" (2019) 61 Resources Policy 433 at 433.
[49] Oge, *supra* note 17
[50] Jeffison et al, *supra* note 18 at 1187.
[51] Oge, *supra* note 17, Oppong & Andrews, *supra* note 15.
[52] World Bank Group, "Nigeria in Times of COVID-19: Laying Foundations for a Strong Recovery" (June 2020), online: < http://documents1.worldbank.org/curated/en/695491593024516552/pdf/Nigeria-in-Times-of-COVID-19-Laying-Foundations-for-a-Strong-Recovery.pdf>

sector.[53] It is imperative that transparency and accountability mechanisms are institutionalized in the early stages of the development of the sector to prevent revenue leakages as with the case of the oil sector where opaque dealings are deeply rooted in decades of institutional corruption and opacity.[54] Institutionalising transparency principles and accountability in the Nigerian mining sector from the outset could guarantee the attainment of developmental gains for the country. Fourth, the need for energy transition from fossil fuels to renewable energy and the negative effect it could have on the economy of oil dependent countries such as Nigeria also emphasizes the need for the effective management of natural resources.[55]

Lastly, new methods of perpetuating corruption in the extractive sector—such as awarding extractive licenses to shell companies registered in offshore financial centers and the execution of secret deals—have become popular, urging policymakers to expand extractive transparency from its initial narrow focus on revenue transparency to other forms of extractive transparency such as BO transparency and contract transparency.[56] These emerging aspects of extractive transparency are still nascent and policymakers are grappling to understand their intricacies. Therefore, there is a need to explore and evaluate these emerging aspects of extractive transparency and how to deploy them to combat the new methods of perpetuating corruption in the extractive sector and recommend ways to implement them effectively. This study attempts to do this within the Nigerian context. Furthermore, the importance of evaluating these forms of transparency is underscored for two other reasons. First, Nigeria recently passed the Companies and Allied Matters Act (CAMA) 2020 which expressly mandates the disclosure of beneficial owners of companies; it is imperative

[53] Olasupo Shasore, "Nigeria's Solid Minerals as a source of Economic Development – Tapping a Latent Resource?" (09 November 2018), online: < https://www.mondaq.com/nigeria/mining/753540/nigeria39s-solid-minerals-as-a-source-of-economic-development--tapping-a-latent-resource>

[54] Alexandra Gillies, "Reforming corruption out of Nigerian oil? Part one: Mapping corruption risks in oil sector governance" (2009), online: < https://www.cmi.no/publications/3295-reforming-corruption-out-of-nigerian-oil-part-one>, Nathan Andrews & Eyene Okpanachi, "Depoliticisation and ahistoricism of transparency and accountability via global norms: assessing the EITI in Ghana and Nigeria", (2020) 58:2 Commonwealth & Comparative Politics 228 at 239. Andrew and Okpanachi argue that Nigeria's over dependence on the oil industry during the oil boom led to a neglect in the building of relevant institutions involved in the oil sector, this neglect paved the way for institutionalized corruption and rent capture. They further argue that "this initial institutional logic undermines the probability for the emergence of efficient institutional quality to ensure transparency and accountability in the governance of the oil sector".

[55] Benjamin K. Sovacool, "Is sunshine the best disinfectant? Evaluating the global effectiveness of the Extractive Industries Transparency Initiative (EITI) (2020) 7:4 The Extractive Industries and Society 1451 at 1452. Sovacool opines that "the EITI can be a powerful tool that shifts national energy transition through improved corporate, regulatory, community and market monitoring".

[56] Alexandra Gillies, "Corruption trends during Africa's oil boom, 2005 to 2014" (2020) 7:4 The Extractive Industries and Society 1171 at 1171.

that it is appraised to determine if it can effectively unveil the ultimate owners of extractive companies. Second, the global economic impact of the COVID-19 pandemic has led to a fall in the prices of natural resources due to a contraction in demand; as a result, it is envisaged that extractive companies will begin to renegotiate contracts with host governments mainly to lower the amount of royalty and taxes payable to the government.[57] If this happens, it could lead to what Elisa Peter, Director of Publish What You Pay, describes as a "race to the bottom" situation. Peter opines that "as the financial strain of the pandemic bites and companies and government seek to renegotiate deals, the risk of a race to the bottom in contract terms increases."[58] Therefore, an effective appraisal of contract transparency and its best practices is essential. Finally, the simultaneous implementation of revenue transparency, BO transparency and contract transparency will "enable public disclosure of the parties to extractive sector contracts, the terms of such contracts, the payments they make, and the ultimate beneficiaries of each deal,"[59] giving the public a clearer picture of the extractive value chain.

1.4 Definition of Key Concepts

This thesis explores effective natural resource governance through transparency and accountability, recognizing the fact that citizen engagement is pivotal to translating transparency into accountability demands and propelling the attainment of developmental gains.[60] Before setting out the research questions, certain key concepts will be defined.

1.4.1 Natural Resource Governance

Natural resource governance can be defined as "the norms, institutions and processes that determine how power and responsibilities over natural resources are exercised, how decisions are taken and how citizens—women, men, Indigenous peoples and local communities—participate in and benefit from the management of natural resources."[61] Therefore, natural resource governance

[57] Timothy Laing, "The economic impact of Coronavirus 2019 (Covid-19): Implications for the mining industry" (2020) 7:2 The Extractive Industries and Society 580 at 580.
[58] EITI, "Contract transparency requirement to take effect in January" (December 10, 2020), online: https://eiti.org/news/contract-transparency-requirement-to-take-effect-in-january
[59] EITI, "A year to fight corruption" (December 9, 2020), online: https://eiti.org/news/year-to-fight-corruption
[60] Alexandra Gillies & Antoine Heuty, "Does Transparency Work – The Challenges of Measurement and Effectiveness in Resource-Rich Countries (2011) 6:2 Yale J of Intl Affairs 25 at 30.
[61] IUCN, "Natural Resource Governance Framework", online: < https://www.iucn.org/commissions/commission-environmental-economic-and-social-policy/our-work/knowledge-baskets/natural-resource-

encompasses the regulation of various aspects of natural resources management such as environmental obligations, local content policies, information disclosure, accountability, citizen engagement and participation. It also encompasses the norms and standard of conduct that regulates the actors—the government, extractive companies and citizens—involved in the sector.[62] The purpose of natural resource governance framework is to ensure that natural resources are effectively managed for the good of the country and its citizens. Extractives transparency is a mode of natural resource governance that focuses on the disclosure and accountability aspects of natural resource governance. In this thesis, natural resource governance is utilized to describe "strategies for improving transparency and accountability in the management of natural resources."[63] The use of the term "natural resources" in this thesis refers to "non-renewable resources such as oil, gas, minerals and metals."[64]

1.4.2 Transparency

Transparency can be defined as the public disclosure of information.[65] Public disclosure of information is an obligation incumbent upon governments and companies to openly disclose information to the public about activities and transactions concerning the extraction of natural resources. The information disclosed enables the public to make informed decisions about the activities of governments and companies relating to resource extraction, thus enabling accountability (which is further defined in the next section).[66] Extractives transparency encompasses information disclosure by governments and extractive companies "along the entire extractive sector value chain"[67]—from how extractive contracts are awarded, to disclosure of the terms of extractive contracts, to how revenue is collected and distributed and, ultimately, to how the government applies extractive revenue to public expenditures.[68] Extractive transparency was

governance#:~:text=Natural%20resource%20governance%20refers%20to,from%20the%20management%20of%20natural>

[62] Andres Meija Acosta, "The Impact and Effectiveness of Accountability and Transparency Initiatives: The Governance of Natural Resources" (2013) 31:S1 Development Policy Review 89 at 91.

[63] *Ibid* at 89.

[64] *Ibid*.

[65] Gillies & Heuty, *supra* note 65, Arthur P.J. Mol, "The Future of Transparency: Power, Pitfalls and Promises (2010) 10:3 Global Environmental Politics 132 at 132, Sara Ghebremusse, "Good Governance and Development in Botswana – The Democracy Conundrum" (2018) 11:2 Law and Development Review 913 at 923.

[66] Carolyn Ball, "What is Transparency?" (2009) 11:4 Public Integrity 293 at 298.

[67] EITI, online: <eiti.org>

[68] *Ibid*, Raimund Bleischwitz, "Transparency in the Extractive Industries: Time to Ask for More" (2014) 14: 4 Global Environmental Politics 1 at 1.

initially conceived as revenue disclosures only; however, it has now been expanded to accommodate other forms of transparency, such as BO transparency and contract transparency.[69] Revenue transparency is the disclosure of payments made by extractive companies to the government and the revenue collected by the government from extractive companies. The goal is to provide the public a full picture of revenue flows between the parties and expose any discrepancies between the payment made by extractive companies and revenue received by the government.[70] BO transparency is the public disclosure of "the natural person(s) who directly or indirectly ultimately owns or controls"[71] an extractive company. Contract transparency is the public disclosure of "the full text of any contract, license, concession, production-sharing agreement or other agreement granted by or entered into by, the government which provides the terms attached to the exploitation of oil, gas and mineral resources."[72] These forms of transparency are discussed in more details in Chapter Two of this thesis.

Requiring and enforcing transparency in the entire value chain of extractive industries would aid in curbing illicit financial flows, corruption and financial leakages. The idea behind extractive transparency, and extractive transparency initiatives more broadly, is to facilitate the translation of natural resource wealth into developmental gains for resource rich countries. To achieve this ultimate developmental goal, disclosed information should enhance public understanding of extractive activities, promote citizen participation and spur public accountability demands.[73]

1.4.3 Accountability

Accountability can be defined as "holding authoritative actors both answerable for their actions and also subject to evaluation and redress by those affected by them."[74] It is the process of holding

[69] Extractive Industries Transparency Initiative (EITI): "The EITI Standard 2019, The global standard for the good governance of oil, gas and mineral resources" (15 October 2019). Online: <https://eiti.org/files/documents/eiti_standard_2019_en_a4_web.pdf>

[70] Peter J. Rees, "Revenue transparency: global, not local solutions" (2014) 7:1 Journal of World Energy Law & Business 20 at 20.

[71] EITI, *supra* note 69

[72] EITI, "Contract Transparency: Revealing the terms under which resources are extracted" online: < https://eiti.org/contract-transparency>

[73] Ghebremusse, *supra* note 65, Katherine Heller, "Integrating Social Accountability Approaches into Extractive Industries Projects: A Guidance Note". Extractive Industries and Development Series (May 2016) online: < https://elibrary.worldbank.org/doi/pdf/10.1596/24771>

[74] Michael Mason, "Transparency, accountability and empowerment in sustainability governance: a conceptual review" (2020) 22:1 Journal of Environmental Policy & Planning 98 at 99.

governments and extractive companies responsible for their actions or inactions revealed by disclosed information.[75] Transparency is acknowledged to be a prerequisite for accountability,[76] although it is recognized that the path from transparency to accountability is narrow, contextual and often unclear.[77] Transparency's capacity to stir accountability demands and drive developmental gains is dependent on many factors, such as the quality of disclosed information, capacity of the public to utilize disclosed information and strong institutions to enforce accountability demands.[78] This ambiguous relationship between transparency, accountability and developmental gains has led critics to question the viability of extractive transparency in promoting economic development in resource rich countries.[79] Others have argued that whilst extractive transparency is not a panacea for all the developmental challenges faced by resource rich countries, it could, however, ignite certain socio-economic gains that might have been impossible without the implementation of transparency.[80] A discussion of the criticisms of extractive transparency and the responses to these criticisms is done in Chapter Two of this thesis.

1.4.4 Citizen Engagement

In its most basic form, citizen engagement entails active communication between citizens and government.[81] It presupposes a two-way mode of interaction between citizens and the government, wherein citizens' concerns are articulated and acknowledged by the government, citizens are involved in governmental decision-making processes and are empowered to challenge governmental policies and decisions when necessary.[82] In terms of natural resource governance, Ponican defines citizen engagement as "a continuous relationship and interaction between the citizens and government in extractive resources decision-making and governance processes."[83] It encompasses citizens' active participation and representation in resource governance as well as

[75] Bethel Uzoma Ihugba, "An Examination of the Good Governance Legal Framework of Nigeria Extractive Industry Transparency Initiative (NEITI) Act 2007" (2016) 9:1 Law and Development Review 201 at 207.
[76] Mason, *supra* note 74.
[77] Ghebremusse, *supra* note 65.
[78] Gillies & Heuty, *supra* note 60.
[79] Jonathan Fox, "The uncertain relationship between transparency and accountability" (2007) 17:4-5 Development in Practice 663 at 664.
[80] Gillies & Heuty, *supra* note 60
[81] Japhace Poncian, "ICT, citizen engagement and the governance of extractive resources in Tanzania: Documenting the practice and challenges" (2020) 7:4 The Extractive Industries and Society 1498 at 1499.
[82] Janet Denhardt, Larry Terry, Edgar Ramirez Delacruz & Ljubinka Andonoska, "Barriers to Citizen Engagement in Developing Countries" (2009) 32:14 International Journal of Public Administration 1268 at 1268.
[83] Poncian, *supra* note 81.

citizens' willingness and ability to hold government and extractive companies accountable when necessary.[84] Furthermore, citizen engagement in resource governance should not only be attained but sustained. In this regard, it is described as a "deep and continuous involvement… with the potential for all involved to have an effect on the situation."[85] Citizen engagement with disclosed information is essential in translating transparency into accountability; therefore, it is necessary for achieving accountability, the effective governance of natural resources and could propel the attainment of developmental gains in a resource rich state.[86] Citizen intermediary institutions – the media, parliament and CSOs act as intermediaries between citizens and the governments in resource governance with the aim of facilitating citizens' engagement with extractive disclosures and citizen participation in resource governance.[87] Of all these institutions, CSOs are considered the strongest link between citizens and the government.[88] Chapter Four of this thesis examines citizen engagement in resource governance in detail.

1.5 Research Questions and Methodology

Extractive transparency diffused mainly through the EITI is widely promoted on the global scene as a "global governance norm",[89] necessary for the effective governance of natural resources. However, the socio-political conditions of the implementing country such as its governance structure and institutional quality largely determines its effectiveness. This raise concerns such as to what extent is extractive transparency as a global norm transformed and constrained when confronted with local realities, how can this transformed transparency propel accountability and developmental outcomes. The objective of this thesis is to explore these concerns and related issues within the Nigerian context. To achieve this objective, this thesis explores three research questions, two focusing on transparency and the other focusing on accountability, as follows:

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[84] *Ibid*.
[85] Timothy Adivilah Balagkutu, "Enhancing citizen engagement in natural resource governance: scope, content and input in the operation of the extractive industries transparency initiative" (2017) 4:4 The Extractive Industries and Society 775 at 777.
[86] Gillies & Heuty, *supra* note 60.
[87] Japhace Poncian & Henry Michael Kigodi, "Transparency Initiatives and Tanzania's extractive industry governance" (2018) 5:1 Development Studies Research 106 at 107
[88] *Ibid.*
[89] Poppy Sulistyaning Winanti and Hasrul Hanif, "When global norms meet local politics: Localising transparency in extractive industries governance" (2020) 30 Environmental Policy and Governance 263 at 263.

1. How effective is the regulatory framework and practice of extractive transparency in Nigeria in promoting the effective governance of natural resources taking into consideration Nigeria's peculiar socio-political challenges?

2. How can the regulatory framework and practice of extractive transparency in Nigeria be improved to promote the effective governance of natural resources?

3. How can citizen engagement be bolstered in resource governance in Nigeria to stimulate public demands for accountability?

In answering these research questions, this thesis adopts the doctrinal research method. The doctrinal research method involves the review of relevant literature on a topic and collection of data through legislation, court decisions, and from secondary sources such as articles and commentaries.[90] In addition, the doctrinal method could also involve analysis of the societal context of the law, such as historical analysis, context analysis, and discourse analysis.[91] This thesis employs the doctrinal research method because it is the most relevant method in achieving the three main goals of this study. First, this thesis "identifies, analyzes and synthesises"[92] the regulatory framework of extractive transparency and accountability in Nigeria to determine the extent to which it promotes the effective governance of natural resources and enhances citizen engagement in resource governance. The crux of the doctrinal methodology is identification and critical analysis of the legal doctrine and literature on a particular subject to evaluate its effectiveness in achieving societal desired outcome.[93] Therefore, the doctrinal research method provides the necessary tool for achieving the first goal of this study.

Second, this study examines the practice of extractive transparency in Nigeria by considering the NEITI audit reports, the Nigerian online beneficial ownership register for the extractive sector and best practices for extractive contract disclosures. It further examines how citizen intermediary institutions—the media, parliament and CSOs — can facilitate citizen engagement with extractive

[90] Ian Dobinson and Francis Johns, "Legal Research as Qualitative Research" in Mike McConville and Wing Hong Chui, eds., *Research Methods for Law*, 2nd ed, (Edinburgh: Edinburgh University Press, 2017) 18 at 22.
[91] *Ibid*.
[92] Terry Hutchinson, "Doctrinal Research: Researching the Jury" in Dawn Watkins and Mandy Burton, eds, *Research Methods in Law*, 2nd ed (London: Routledge, 2018) 8 at 13.
[93] *Ibid* at 10.

disclosures and citizen participation in resource governance. The doctrinal method provides the required tool for achieving the second goal of this study. The doctrinal method also encompasses the "study of the law in practice"[94] to determine if the practical application of the law in a subject area is in tandem with the purpose and object of the law, relying majorly on secondary data.[95] The researcher may proceed to determine whether any ineffectiveness of the law is as a result of weak regulatory provisions, poor enforcement of the law or both. Dobinson and Johns refer to this aspect of doctrinal research methodology as "qualitative legal research".[96] Thus, the doctrinal research method provides the necessary tool for evaluating the effectiveness of the practice of extractive transparency and accountability in Nigeria.

Third, this study considers how the peculiar socio-economic conditions in Nigeria affects the effective implementation of extractive transparency and impairs citizen engagement in resource governance. The doctrinal methodology provides support for the achievement of this third goal as the doctrinal method could also entail analysis of the societal context of the law to determine how the broader societal context impairs or enhances the practical application of the law and how the law can incite reforms in societal values and norms.[97] This is based on the understanding that the law does not operate in isolation and broader societal context affects its effectiveness. Thus, legal doctrines on a subject area tend to be examined, "within an acknowledged social context,"[98] drawing "inferences which need to be considered in a range of real-world factual circumstances".[99] Therefore, the doctrinal research method assists this study in considering how the peculiar socio-economic conditions in Nigeria impairs the regulatory framework and practice of extractive transparency and accountability in Nigeria.

1.6 Contribution to the Literature

This thesis contributes to the body of literature on the efficacy of extractive transparency in combating the resource curse in resource rich developing countries in three major ways. First, this study not only considers revenue transparency but also examines the emerging aspects of

[94] *Ibid* at 23.
[95] *Ibid*.
[96] Dobinson and Johns, *supra* note 90 at 19.
[97] *Ibid* at 24.
[98] *Ibid* at 21.
[99] *Ibid* at 24.

extractive transparency – BO transparency and contract transparency within the Nigerian context. Second, it examines how citizen engagement can be bolstered in resource governance in Nigeria to facilitate the translation of transparency into accountability. Lastly, this study considers how local realities in Nigeria affects the effective implementation of extractive transparency and accountability in Nigeria and how transparency implementation influences local institutions, societal values and norms in Nigeria. This section discusses these contributions in detail.

1.6.1 Emerging Aspects of Extractive Transparency

Extractive transparency was originally conceived as revenue transparency only, which is reflected in the literature and relevant policy recommendations.[100] For instance, Haufler comments on the importance of extractive transparency as follows: "proponents argue that if extractive firms disclose publicly their payments to the governments, citizens will be able to hold governments accountable".[101] The exposure of new corruption tactics in the extractive sector has, however, emphasized the need for public disclosure along the entire value chain of the extractive sector. Both BO disclosure and contract disclosure are designed to achieve this objective.[102] By analyzing beneficial ownership transparency and contract transparency within the Nigerian context, this thesis helps fill the gap in the literature in these areas. It is now recognized that these areas of transparency are just as important as revenue transparency; the EITI describes them as "clear emerging priority areas for action."[103] With respect to each of these emerging aspects of transparency, the following sections describes how this research contributes to the literature.

1.6.1.1 Beneficial Ownership Transparency

In several corruption cases involving the extractive sector of developing countries, opaque corporate entities, links to offshore financial centers and hidden ownership interests of political elites are always apparent.[104] After recent scandalous reports and leaks necessitated the recent calls for BO disclosure of extractive companies, many countries have enacted or are taking steps to

[100] Papyrakis et al, *supra* note 16, Haulfer, *supra* note 16 at 58, Gillies, *supra* note 56.
[101] *Ibid*, Haulfer at 53.
[102] *Ibid* at 58, Gillies, *supra* note 56.
[103] EITI, "Using transparency to mitigate corruption", (December 9, 2020), online: < https://eiti.org/blog/using-transparency-to-mitigate-corruption>
[104] Gillies, *supra* note 56.

enact regulations mandating the disclosure of beneficial owners of companies.[105] The newly enacted Nigerian Company Law, CAMA 2020 is one such statute. This thesis examines the legislation to determine the extent to which it facilitates the disclosure of person(s) who ultimately own and control extractive companies and all companies generally. Second, it appraises the online beneficial ownership register for the extractive sector in Nigeria and suggests reforms to enhance its effectiveness. Lastly, it considers the challenge posed by complex ownership structures and their linkages to offshore financial centres to verifying and enforcing BO disclosure and proffers recommendations for dealing with this challenge. This challenge is not peculiar to Nigeria only but other resource rich countries; therefore, this analysis will also be helpful to other countries.

1.6.1.2 Contract Transparency

The secret execution of extractive deals between the government and extractive companies creates opportunities to perpetuate and conceal corrupt dealings in the sector. To curtail this, there have been recent calls for the disclosure of extractive contracts.[106] Some EITI implementing countries have enacted laws requiring the disclosure of extractive contracts, but Nigeria has yet to enact one. This thesis therefore explores how the NEITI Act and certain "sunshine laws" can be used to mandate the disclosure of extractive contracts in Nigeria.[107] It also discusses legal concerns that may arise in the practice of contract transparency and how these concerns can be addressed, as well as best practices for the disclosure of extractive contracts. These discussions are not only useful for Nigeria but other resource rich countries taking steps to commence the disclosure of extractive contracts.

1.6.2 Citizen Engagement in Natural Resource Governance in Nigeria

Transparency does not automatically beget accountability—active citizen engagement with extractive disclosures and citizen participation in resource governance is essential in translating

[105] Jenik Radon & Mahima Achuthan, "Beneficial Ownership Disclosure: The cure for the Panama Papers Ills" (2017) 70:2 Journal of International Affairs 85 at 85.
[106] PWYP website, online: <https://www.pwyp.org/areas-of-work/contract-transparency/>
[107] Sunshine laws are regulations and policies enacted for the purpose of promoting transparency in government and business dealings. Michael K. McLendon & James C. Hearn, "Mandated Openness in Public Higher Education: A Field Study of State Sunshine Laws and Institutional Governance" (2006) 77:4 The Journal of Higher Education 645 at 647

transparency into accountability.[108] Certain institutions—the media, parliament and CSOs—are required to propel citizen engagement and participation in resource governance to spur accountability demands.[109] The literature in this regard has been limited to the role of CSOs in bolstering citizen engagement in resource governance in Nigeria.[110] This thesis goes further to examine how the media and parliament, in addition to CSOs, can bolster citizen engagement in resource governance. In doing this, this thesis also examines how the broader Nigerian societal context affects the veracity of these institutions in propelling citizen engagement in resource governance. In addition, this study explores how Information and communication technology (ICT)[111] and social media platforms can be utilized to promote transparency and accountability in the Nigerian extractive sector, which has not been explored by scholars.[112] This research therefore makes an original contribution in this regard.

1.6.3 Societal Context of the Law

Extractive transparency is conditioned by the local realities of the implementing country such as institutional quality, governance quality and societal norms.[113] As Andrews and Okpanachi opine, "successful domestication of global norms with positive outcomes crucially depend not just on credible regulatory and political institutions but so on the politics through which the institutional 'rules of the game' are implemented and preferences over the use of economics are aggregated".[114] Therefore, this thesis, in addition to its doctrinal analysis of the regulatory framework of extractive transparency considers how local realities in Nigeria, such as societal norms and institutions, condition and transform extractive transparency and how this transformed transparency can beget accountability and propel developmental outcomes. This thesis therefore makes a contribution to the literature on the effectiveness of extractive transparency in Nigeria by not only exploring how

[108] Moise, *supra* note 11.
[109] Poncian & Kigodi, *supra* note 87 at 112.
[110] Osuoka, *supra* note 43.
[111] ICT can be defined as "technologies that provide access to information through telecommunications", this includes social media platform, the internet, mobile phones and other forms of communication devices. TechTerms, "ICT Definition", online: < https://techterms.com/definition/ict>
[112] Poncian, *supra* note 81 at 1498.
[113] Papyrakis et al, supra note 16, Caitlin C. Corrigan, "Breaking the resource curse: Transparency in the natural resource sector and the extractive industries transparency initiative" (2014) 40 Resources Policy 17 at 18, Andrews & Okpanachi, *supra* note 54 at 233.
[114] Andrews & Okpanachi, *Ibid* at 240.

transparency is constrained when confronted with local realities in Nigeria, but how this constrained transparency can be utilized to propel accountability and developmental outcomes.

1.7 Thesis Outline

This introduction forms Chapter One of the thesis. It sets the background to the study, defines the problem, clarifies conceptual issues, frames the research questions, and explains the research methods adopted. Chapter Two assesses transparency as a mode of natural resource governance for the purpose of providing a background understanding of transparency as a social process and information disclosure, which in turn offers a backdrop for a proper understanding of the subsequent chapters of this thesis. The chapter traces the origin of the concept of transparency in the global scene and in the Nigerian context as understood in the extractive sector, highlights and responds to criticism against transparency as a mode of natural resource governance; it also discusses the importance of transparency and factors that make a good transparency regime and highlights its relationship with other normative principles of natural resource governance, such as institutional quality and good governance. Finally, the chapter discusses the importance and the impetus behind the emerging aspects of extractive transparency: beneficial ownership transparency and contract transparency.

Chapter Three discusses the regulatory framework and practice of revenue transparency, beneficial ownership transparency and contract transparency in Nigeria. In examining revenue transparency, it reviews the provisions of the Nigeria Extractive Industries Transparency Initiative (NEITI) Act, 2007 and the NEITI audit reports to determine their effectiveness in enhancing public revenue disclosures and accountability. In considering beneficial ownership transparency, it examines the beneficial ownership disclosure requirement in CAMA 2020 to determine the extent to which its provisions mandate the disclosure of the ultimate owner(s) of companies. It also appraises the efficiency of the online beneficial ownership register for the extractive sector in Nigeria and suggests areas for improvement, while drawing best practices from the administration of the United Kingdom's beneficial ownership register. Finally, it highlights the challenges posed by the complex ownership structures of extractive companies on the enforcement and verification of beneficial ownership disclosures. In terms of contract transparency, whilst recognizing that there is no express regulation mandating the disclosure of extractive contracts in Nigeria, it discusses

how certain sunshine laws in Nigeria can be utilized to mandate the disclosure of extractive contracts. It also discusses the legal concerns that may arise from mandating the disclosure of extractive contracts and best practices for extractive contract disclosure. Lastly, this chapter reviews the ethical responsibilities of professionals – accountants and lawyers in enhancing transparency in the Nigerian extractive sector. This chapter reveals that infirm regulatory provisions, governmental control over the NEITI and institutionalized opacity constrains the efficient implementation of extractive transparency in Nigeria.

Chapter Four examines citizen engagement with extractive disclosures and citizen participation in resource governance in Nigeria. It considers how citizen intermediary institutions—the media, parliament, and CSOs—can bolster citizen engagement in natural resource governance in Nigeria, and the challenges to the effective performance of their role as intermediary institution. Finally, it discusses how ICT and social media platforms can be utilized to promote transparency, accountability and citizen engagement in resource governance in Nigeria. This chapter argues that repressive governmental tendencies, infirm regulations and weak institutional quality impairs effective citizen engagement with extractive disclosures and in natural resource governance in Nigeria. This chapter suggests that CSOs can adopt advocacy strategies to repulse these limitations and fill the void created by infirm extractive regulations.

The final chapter draws upon insight gleaned from the previous chapters to proffer recommendations for improvement, areas for future research and concludes the thesis.

2 Assessing Transparency as a Mode of Natural Resource Governance

2.1 Introduction

Transparency, as a mode of natural resource governance can be conceptualized as information disclosure, wherein it is put forward as a linear model: information is disclosed to a willing capable public who utilizes the disclosed information to make demands for accountability.[115] Alternatively, transparency can be conceived as a social process "involving agents, objects, contexts, power and trusts".[116] Therefore, transparency is explored not just as mere information disclosure but an interactive process, how transparency regime relates with and influences other local institutions, practices and norms as well as how the society influences its implementation.[117] This conceptualization model recognizes that "the linear communication model which underpins the transparency relation between information provider and the public does not exist in a vacuum but rather exists within a social system".[118] Therefore, a wholistic consideration of transparency as information disclosure and social process, is imperative. It is often argued that transparency is most effective when complemented with other institutional reforms; however, there are emerging views suggesting that transparency itself could aid in propelling the growth of weak institutions and actors.[119] Furthermore, a transparency regime should possess certain features to be most effective in spurring accountability demands and it is also understood that the journey from transparency to accountability is not straight forward. As a result, transparency, like many other global concepts, has been heavily criticized; some scholars have questioned the capacity of transparency to bring developmental outcomes in resource rich countries.[120] Many other scholars and the international community, however, have lauded the impact of transparency and continue to promote it as one of the very few methods for the effective management of natural resources.[121]

Against this backdrop, this chapter seeks to unpack transparency as a mode of natural resource governance. The chapter commences by briefly discussing the meaning of the concept of

[115] Ejiogu et al, *supra* note 18 at 4, Vijge et al, *supra* at 200.
[116] Ejiogu et al, *supra* note 24 at 2.
[117] *Ibid*
[118] *Ibid*.
[119] Alexandra Gillies, "Reputational Concerns and the Emergence of Oil Sector Transparency as an International Norm" (2010) 54 International Studies Quarterly 103 at 120
[120] Shaxson, *supra* note 20
[121] Gillies, *supra* note 119.

transparency, features that make a resilient transparency regime and benefits of transparency as a mode of natural resource governance. It then proceeds to trace the evolution of the concept of extractive transparency (in the international scene and in the Nigerian context), the events and actors responsible for its emergence and how it blossomed into a global norm. Then a discussion of the transboundary nature of extractive transparency follows, with a focus on the Extractive Industries Transparency Initiative (EITI). The chapter then proceed to discuss two emerging strands of transparency within the context of extractive transparency: beneficial ownership (BO) transparency and contract transparency. Here, the focus is on providing insights into the nature of these emerging forms of transparency, their importance and the impetus behind their growth. The penultimate section discusses the criticisms against extractive transparency and the responses to these criticisms are also identified and discussed. In its analysis, this chapter reveals that transparency is often transformed by the institutions, values and norms of the implementing country. Furthermore, although transparency may not operate a linear model as expected, it could deliver other ancillary benefits to the implementing country, these benefits are; improved auditing and reporting standard, enhanced public understanding of the extractive sector and empowerment of civil society organizations (CSOs). This chapter aims to provide a background on transparency which will be useful for a proper understanding of the other chapters of this thesis.

2.2 What is Transparency?

As discussed in Chapter One, transparency is an obligation of the government and extractive companies to publicly disclose information to the public that is necessary to empower the public to make informed decisions about their activities and hold them accountable.[122] It entails information disclosure "along the entire extractive sector value chain,"[123] including how extractive contracts are awarded, who they are awarded to, disclosure of the terms of extractive contracts, how revenue is collected and distributed and ultimately how the government applies extractive revenue to public expenditures.[124] Advancing citizens' demands for accountability drives

[122] Ball, *supra* note 66.
[123] EITI, online: <eiti.org>
[124] *Ibid*, Raimund Bleischwitz, "Transparency in the Extractive Industries: Time to Ask for More" (2014) 14: 4 Global Environmental Politics 1 at 1.

extractive transparency.[125] Accountability, on the other hand, is the process of holding government and extractive companies responsible for their actions or inactions based on disclosed information.[126]

2.2.1 Features of a Good Transparency Regime

A transparency regime should possess certain intricate features to be resilient enough to trigger accountability demands and propel developmental gains in an implementing country. This thesis broadly divides these features into three: the nature and quality of information disclosed, presence of strong institutions in the country, and active public engagement with disclosed information.[127] The presence and operation of these features is heavily dependent on the socio-economic conditions and governance structure of the implementing country.[128] This suggests that extractive transparency is conditioned by the societal context it is sought to be applied; it could however, in some instances, influence local institutions and societal norms and practices of the implementing country[129] as will be discussed below.

The nature and quality of disclosed information determines its usability and effectiveness, which is the ability of relevant stakeholders to rely on the disclosed information in making accountability demands.[130] The disclosed information should be "accurate, accessible, and timely."[131] The disclosed information is accurate if it adequately describes the state of affairs being sought to be disclosed clearly, without any form of hidden data or misinformation.[132] For example, failure of a company to state in its disclosure whether its financial statement is based on a disaggregated or

[125] Katherine Heller, "Integrating Social Accountability Approaches into Extractive Industries Projects: A Guidance Note". Extractive Industries and Development Series (May 2016) online: < https://elibrary.worldbank.org/doi/pdf/10.1596/24771>
[126] Ihugba, *supra* note 75.
[127] Mol, *supra* note 65 at 138, Corrigan, supra note 113, Balagkutu, *supra* note 85 at 775.
[128] Oge, *supra* note 17**,** D. Boldbaatar, N.C Kunz & E. Werker, "Improved Resource Governance Through transparency: Evidence from Mongolia" (2019) 6:3 The Extractive Industries and Society 775 at 776.
[129] Vijge et al, *supra* note 19.
[130] Mol, *supra* note 65 at 138.
[131] Natural Resource Governance Institute, "Transparency Mechanisms and Movements: Tools to Foster Openness and Accountability" (March 2015), online: <https://resourcegovernance.org/sites/default/files/nrgi_Transparency-Mechanisms.pdf >, Klaus Dingwerth & Margot Eichinger, "Tamed Transparency: How Information Disclosure under the Global Reporting Initiative Fails to Empower" (2010) 10:3 Global Environmental Politics 74 at 75, Ghebremusse, *supra* note 65.
[132] Mol, *supra* note 65 at 137, Balagkutu, *supr*a note 85 at 776.

project-by-project basis can be misleading thereby impacting the accuracy of the disclosure.[133] To be accessible, the information should be comprehensible, understandable and devoid of technicalities – it should be in plain language.[134] Technical or difficult aspects of the disclosure should be explained in plain language to all relevant stakeholders.[135] For instance, in some countries such as Guinea, technical aspects of disclosed extractive contracts are translated and explained in plain language to enhance their usability by the public.[136] The disclosed information is deemed timely if it is made available to the public at a time when it is capable of influencing their actions.[137] For example, EITI reports published two or three years late (as is the case in Nigeria) may not have the same impact on public engagement as if the report was published immediately after the conclusion of the financial year.[138] The information should be provided in a manner that allows the public to analyze the data to inform demands for accountability and advocacy.[139] The absence of these features in the disclosed information can potentially reduce the quality of the information and undermine the efficiency of disclosed information in spurring accountability demands.[140]

The existence of resilient and reliable institutions in a resource rich nation improves the efficacy of transparency in spurring accountability and may operate together with transparency to translate resource wealth into developmental growth.[141] Corrigan argues "the strength and quality of government and societal institutions are a possible explanation for why some countries succumb to the resource curse while others seem to benefit economically from their natural resources… resource abundance only affects growth rates negatively when institutions are weak."[142] Also,

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[133] James Van Alstine, "Critical reflections on 15 years of the Extractive Industries Transparency Initiative (EITI) (2017) 4:4 The Extractive Industries and Society 766. It is generally recommended that financial disclosure should be made on a project – by – project basis, aggregation basis can hide relevant information from stakeholders.
[134] Dingwerth & Eichinger, *supra* note 131 at 83.
[135] Natural Resource Governance Institute, "Transparency Mechanisms and Movements: Tools to Foster Openness and Accountability" (March 2015), online: <https://resourcegovernance.org/sites/default/files/nrgi_Transparency-Mechanisms.pdf > Disclosed information should be understandable by all stakeholders; it should define or explain key terms, use plain language and highlight key information most relevant to stakeholders.
[136] EITI, "Contract Transparency: Guidance note 7 – Requirement 2.4" (September 2017) online: < https://eiti.org/files/documents/guidance-note-7-contract-transparency.pdf>
[137] Ejiogu et al, *supra* note 18 at 8.
[138] *Ibid*.
[139] NRGI Primer, "Transparency Mechanisms and Movements: Tools to foster openness and Accountability", (February 2018), online: <https://resourcegovernance.org/sites/default/files/documents/nrgi_primer_transparency-mechanisms.pdf>
[140] *Ibid.*
[141] Corrigan, *supra* note 113, Adams et al, *supra* note 48.
[142] *Ibid*, Corrigan.

contrary to the experience of many other resource rich developing countries, Botswana's ability to combat the "resource curse" and harness the economic benefit inherent in natural resource abundance is attributed mainly to the existence of strong institutions in the country.[143] The interconnection between transparency and institutional quality is most apparent in the strength of the mechanisms available in enforcing accountability demands. Challenging the government and extractive companies based on disclosed information is most effective where there is a vibrant civil society to champion the challenge,[144] capable enforcement agencies and an independent judiciary to sanction government agencies and companies based on disclosed information. On the other hand, emerging literature exploring the linkage between extractive transparency and institutional quality seems to suggest that transparency could in some instances enhance the quality of institutions in implementing countries.[145] Particularly, some scholars have opined that the operation of transparency initiatives in some settings has strengthened the participation of CSOs in resource governance.[146] For example, Gillies reports that in Azerbaijan, the enshrinement and operation of the EITI opened up discussions between CSOs and the government for the first time.[147] Therefore, institutional quality influences the veracity of extractive transparency and extractive transparency could in some instances strengthen institutional quality.

Lastly, active public engagement with disclosed information is pivotal in translating extractive transparency into accountability.[148] To achieve this objective, the public should be able to engage with disclosed information, spur discussions and where necessary, challenge the government and extractive companies based on these disclosures.[149] Public engagement in extractive transparency is mostly stimulated by CSOs, the media and the parliament.[150] These institutions bridge the gap between the government and extractive companies on one hand and the public on the other hand. They enhance citizen engagement through the dissemination of information (usually done by the media and CSOs), act as representatives of the people in discussions with government (mostly CSOs) and perform oversight functions over the activities of government and extractive companies

[143] Ghebremusse, *supra* note 65 at 913.
[144] Dingwerth & Eichinger, *supra* note 131 at 76.
[145] Vijge et al, *supra* note 19 at 200, Gillies, *supra* note 119.
[146] Marjanneke J. Vijge, "The (Dis)empowering Effects of Transparency Beyond Information Disclosure: The Extractive Industries Transparency Initiative in Myanmar" (2018) 18:1 Global Environmental Politics 13 at 28
[147] Gillies, *supra* note 119.
[148] Poncian, *supra* note 81 at 1498, Dingwerth & Eichinger, *supra* note 131 at 76, Balagkutu, *supra* note 85 at 775.
[149] Gillies & Heuty, *supra* note 60 at 36, Mol, *supra* note 65 at 136.
[150] Boldbaatar et al, *supra* note 128.

(carried out by parliament and CSOs through probe and challenges in court respectively).[151] Chapter Four of this thesis will consider more broadly the role of these institutions in enhancing public engagement with disclosed information. The absence of these features in a transparency regime reduces transparency to a narrow and surface level form of information disclosure (constrained transparency), however this constrained transparency can still deliver ancillary benefits to the implementing country as will be discussed in the next subsection.

2.2.2 Importance of Transparency as a Mode of Natural Resource Governance

The idea behind transparency initiatives is that shedding light on the activities of the government and companies will curtail corrupt and patronage activities and urge political elites to utilize resource rents for public interest purposes.[152] Aside from this ultimate goal of translating resource wealth into economic gains, transparency may also deliver other ancillary benefits to a resource rich country. In fact there is emerging consensus amongst scholars that although transparency initiatives are yet to yield tangible economic gains in many resource rich countries, particularly in Africa, they have improved broader public understanding of natural resource governance, strengthened public participation in natural resource governance and improved institutional quality in some countries, amongst other things.[153] This section discusses these "side-effects" of transparency in a resource rich country.

Prior to the emergence and proliferation of transparency initiatives, the extractive sector of many countries was characterized by secret dealings between governments and extractive companies.[154] This situation made citizens oblivious to extractive dealings, although they are burdened by the negative impacts of extractive activities such as environmental degradation. This created power asymmetry between the governments and citizens, widening the already huge gap between them and creating a volatile environment susceptible to conflict and strife.[155] To put this opacity into perspective, Shaxson, in commenting on Nigeria's first EITI audit report, notes that "nothing

[151] *Ibid.*
[152] Oppong & Andrews, *supra* note 15.
[153] Gillies & Heuty, supra *note* 60 at 36, Vijge et al, *supra* note 19, Kieren Moffat & Airong Zhang, "The paths to social licence to operate: An integrative model explaining community acceptance of mining" (2014) 39 Resources Policy 61 at 61, Asgill, *supra* note 35 at 18
[154] Andrews & Okpanachi, *supra* note 54 at 229.
[155] Paul Fenton Villar, "The Extractive Industries Transparency Initiative (EITI) and trust in politicians" (2020) 68 Resources Policy 1 at 1.

remotely like this has been done before, let alone published."[156] Shaxson proceeds to argue that although the EITI has not made any significant contribution to economic development in Nigeria, it nonetheless improved public understanding of natural resource management in the country.[157] Before the institutionalization of transparency initiatives in resource rich countries, extractive transactions were secret private arrangements between political elites and extractive companies away from public scrutiny. Therefore, transparency implementation creates an opportunity to enhance public understanding of the extractive sector. Public understanding of natural resource management is important for building public trust (as will be seen below), enhancing accountability and improving public participation and representation in the sector.[158] Opaque dealings in extractive activities breaches citizens' right to be informed about the activities of the government as guaranteed in freedom of information laws in force in many countries. Importantly, the government is required to manage natural resources on behalf of its citizens under the constitution of many resource rich countries,[159] it is only reasonable that the public is aware of how these resources are being managed.[160] Moreover, public understanding of natural resource governance is a precursor to public participation; citizens and CSOs can only participate and make accountability demands if they are knowledgeable about the sector. Also, for local communities close to extraction sites, improved understanding will assist in informing communities' expectations, expose and prepare them for the negative impact of extractive activities and aid them in monitoring the activity.[161] Improved understanding of natural resource governance could also empower local communities with the necessary knowledge to negotiate community development agreements with extractive companies.[162]

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[156] Shaxson, *supra* note 20

[157] *Ibid*.

[158] Vijge et al supra note 19.

[159] For instance, Section 16 and 17(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that natural resources shall be exploited for the good of the citizens and to promote national prosperity. Also, Section 257(6) of the Ghanaian constitution provides that ownership of the country's natural resources shall be vested in the President who shall hold it in trust for the Ghanaian people. In addition, Article 7 of the Liberian Constitution provides that the state shall manage natural resources in a way that ensures maximum citizen participation and economic development of the country.

[160] Vijge et al supra note 19.

[161] Rebecca Iwerks & Varsha Venugopal, "It takes a Village; Routes to Local-Level Extractives Transparency" (February 2016), online: < https://resourcegovernance.org/sites/default/files/documents/sn_transparency_20160809.pdf>

[162] Evaristus Oshionebo, "Community Development Agreements as Tools for Local Participation in Natural Resource Projects in Africa" in Human Rights in the Extractive Industries 77 at 77. Oshionebo describes Community Development Agreements (CDAs) as agreements "negotiated between resource companies and local and indigenous

Secondly, extractive transparency can increase trust between the government and the public to mitigate conflicts. Early literature about the "resource curse" revealed that resource rich countries were also characterized by civil conflicts and unrest due to lack of trust between the government and the public.[163] Disputes over the distribution of resource rents have fueled many armed conflicts in Africa and even led to the emergence of insurgency groups threatening the sovereignty and stability of many already weak states.[164] To what extent can transparency initiatives mitigate conflict over natural resource governance? Asgill explores this question in his analysis of the role of the Nigeria Extractive Industries Transparency Initiative (NEITI) in the resolution of conflict in the Niger Delta region of Nigeria.[165] Whilst Asgill acknowledges NEITI is not a conflict resolution tool, he contends the multi-stakeholder dialogue under the regime could build trust between stakeholders which may contribute to the mitigation of conflict in the region.[166] When citizens are knowledgeable and are represented in extractive governance, it boosts public trust in government institutions, lessens conflicts and confrontations between government and citizens and enhances collaboration between them.[167] Creation of public trust, particularly in fragile and conflict prone states (as is the case with many resource rich developing countries) is crucial to creating political and economic stability. Where trust in government is higher, citizens tend to willingly conform to public policies, thus the tendency for conflict and strife is reduced.[168]

Finally, extractive transparency is also important for building trust between local communities and extractive companies, which can earn companies a "social license to operate."[169] Social license to

host communities for the threefold purpose of promoting the participation of local communities in project execution, ensuring that these communities derive material benefit from resource exploitation, and reducing the adverse impacts of resource development on host communities." Thus, CDAs aim to mitigate the negative impact of extractive activities on host communities and ensure local communities share in the benefits of extractive activities, therefore, local communities need to be empowered with the necessary knowledge to negotiate and harness the maximum benefits from CDAs.

[163] Villar, *supra* note 155.

[164] McFerson, *supra* note 6.

[165] The Niger Delta region of Nigeria holds a large quantity of Nigeria's natural resources and the region has been ridden with conflicts as a result of perceived marginalization by the people and the operation of negative impacts of extractive activities such as environmental degradation and human rights abuses. This situation led to the birth of a major insurgency group in the region known as "Movement for the Emancipation of the Niger Delta (MEND)". Asgill, *supra* note 35 at 18.

[166] *Ibid* at 37.

[167] Poncian, *supra* note 81 at 1498.

[168] Gregory Porumbescu, "Linking Transparency to Trust in Government and Voice" (2017) 47:5 American Review of Public Administration 520 at 520.

[169] Moffat & Zhang, *supra* note 153.

operate can be defined as local community's acceptance and approval of extractive activities.[170] Moffat and Zhang describe social licence to operate, "as a set of meaningful relationships between operational stakeholders based on mutual trust and a set of demands and expectations for how business will operate by local stakeholders and broader civil society".[171] It is important for companies to obtain and maintain a social license to operate throughout the extractive activity to avoid local oppositions.[172] Extractive activities are notorious for causing friction between local communities and companies as a result of the negative impact that extractive activities have on local communities.[173] Public understanding and participation in resource governance, as a result of the institutionalization of transparency initiatives such as the EITI, could potentially mitigate mistrust and conflicts between local communities and extractive companies.[174] For instance, the multi-stakeholder dialogue under the EITI regime could create an avenue for discussions between the local communities and extractive companies, building trust and understanding between the parties. Extractive activities have been disturbed or abruptly discontinued due to local opposition, protests and conflict causing companies huge financial and reputational loss, thus emphasizing the need for companies to obtain a social license to operate in addition to a formal license.[175] Transparency is pivotal to obtaining trust from local communities, which is critical for obtaining a social license to operate.[176] Therefore, extractive companies should not perceive transparency obligations as a mere box ticking exercise which they grudgingly adhere to, but rather as imperative to the continued sustenance of their business activities.

The analysis of the importance of transparency emphasizes that it should not be discarded as a failure based on its inability to bring economic gains to resource rich countries, as argued in some literatures. Instead, the other impacts of transparency discussed above should be acknowledged

[170] *Ibid.*
[171] *Ibid*
[172] Sethulego Matebesi & Lochner Marais, "Social licensing and mining in South Africa: Reflections from community protests at a mining site" (2018) 59 Resources Policy 371 at 373.
[173] Esben Leifsen, Maria-Therese Gustafsson, Maria A. Guzman-Gallegos & Alumt Schiling-Vacaflor, "New mechanisms of participation in extractive governance: between technologies of governance and resistance work" (2017) 38:5 Third World Quarterly 1043 at 1043.
[174] *Ibid.*
[175] Moffat & Zhang, *supra* note 153, Antonio Pedro, Elias T. Ayuk, Christina Bodouroglou, Ben Milligan, Paul Ekins & Bruno Oberle, "Towards a sustainable development licence to operate for extractive sector" (2017) 30 Mineral Economics 153 at 153.
[176] *Ibid*, Moffat & Zhang at 70.

and promoted.[177] Furthermore, it proves that transparency even in its constrained form can still offer opportunities for institutional reforms in the implementing country. Transparency cannot and should not be conceptualized as a panacea to all the developmental challenges confronting resource rich countries.

2.3 Evolution of Transparency as a Mode of Natural Resource Governance

2.3.1 The International Scene

Transparency as a mode of natural resource governance emerged in the late 1990s as a result of advocacy efforts on the part of CSOs, academics and journalists who exposed the developmental challenges and conflicts confronting resource rich countries in spite of their resource wealth.[178] In the 1990s and early 2000s, scholars began to publish academic works revolving around the idea of the "resource curse," in which they highlighted how resource rich countries, despite their resource wealth, still suffer economic and developmental decline compared to other countries without resource wealth.[179] The common consensus amongst scholars is that apart from the economic issue of "Dutch disease,"[180] resource rich countries also suffer from developmental challenges and low economic growth due to corruption, conflicts, and opaque dealings in the extractive sector.[181] This phenomenon has been described as the "Nigerian disease."[182] Almost simultaneously with the work of scholars on this subject is the work of investigative journalists and non-governmental organisations (NGOs), which exposed the mismanagement of extractive

[177] Eigen, *supra* note 13 at 347. Eigen argues that EITI's ability to increase public trust in resource rich countries should be commended.
[178] Acosta, *supra* note 62, Rosser, *supra* note 3, Alstine, *supra* note 48 at 22.
[179] Auty, *supra* note 7, T.L. Karl, "The paradox of plenty: Oil booms and petro-states", University of California Press, Berkeley (1997), Ross, *supra* note 3, Sachs J.D and Warner, A.M (1995) Natural Resource Abundance and Economic Growth Development, Discussion Paper No. 517a. Cambridge MA: Harvard Institute for International Development, Karl, T.L "The Paradox of Plenty: Oil booms and Petro-states" (1997) Berkeley and Los Angeles, CA; University of California Press
[180] The term is used to describe an economic situation where a natural resources boom leads to the appreciation of a country's currency and lessens the competitiveness of other export sectors of the economy. Pedro Vicente, "Does oil corrupt? Evidence from a natural experiment in West Africa" (2010) 92 Journal of Development Economics 28 at 28, McFerson, *supra* note 6 at 344.
[181] Janpeter Schilling, Christina Saulich & Nina Engwicht, "A local and global perspective on resource governance and conflict" (2018) 18:6 Conflict Security & Development 433 at 433.
[182] Rosser, *supra* note 3, Andrew Williams, "Shining a light on the Resource Curse: An Empirical Analysis of the Relationship between Natural Resources, Transparency and Economic Growth" (2011) 39:4 World Development 490 at 490. The Extractive Industries and Society 217 at 219. Nigerian disease as an explanation of the resource curse refers to a situation whereby corruption and rent seeking behavior of political elites inhibits the translation of resource wealth into developmental growth.

funds by corrupt government officials and the use of extractive funds to fuel civil conflicts.[183] Particularly, the Global Witness report published in December 1999[184] revealed the mismanagement of extractive revenues by political elites and multinational extractive companies in Angola whilst the citizenry lived in abject poverty. The report also revealed political elites' use of extractive funds to fuel civil conflicts in Angola.[185] Global Witness attributed the mismanagement of revenues to the opaque nature of the dealings in the sector.[186] The report challenged extractive companies operating in Angola and other resource rich countries to be transparent in their activities.[187] In response to this report, British Petroleum (BP), an oil company operating in Angola at the time, published details of "a US$111 million signature bonus" payment it made to the Angolan government for an off-shore license and undertook to make further payment disclosures.[188] However, BP's disclosure was met with a strong backlash from the Angolan government who threaten to revoke BP's extractive license.[189]

This backlash, however, provided a platform for advocacy groups to cooperate and make the case for the establishment of extractive transparency as a global norm.[190] Subsequently, there was a surge in advocacy and campaigns for the adoption of extractive transparency as an essential standard in the extractive industry, especially in resource rich countries of the Global South.[191] In 2002, advocacy groups came together to form a movement tagged "Publish What You Pay" (PWYP)[192] with the singular goal of bringing pressure to bear on extractive companies to disclose

[183] EITI, "History of the EITI: How it all started, where we went and where we are now" online: < https://eiti.org/history#:~:text=Launched%20in%20December%201999%2C%20it,of%20transparency%20and%20government%20accountability%E2%80%9D.>

[184] Global Witness, "A Crude Awakening: How Angolan state corruption and the lack of oil company and banking transparency has contributed to Angola's Humanitarian and Development Catastrophe" (December 1999) online; < https://www.globalwitness.org/en/archive/crude-awakening-how-angolan-state-corruption-and-lack-oil-company-and-banking-transparency/> There was also the report issued by the Human Rights Watch on Nigeria, titled "The Price of Oil: Corporate Responsibility and Human Rights violations in Nigeria's oil producing communities", which linked the oil industry with violations of political, social and economic rights.

[185] *Ibid*.

[186] *Ibid*, Eigen, *supra* note 13.

[187] EITI, "History of the EITI: How it all started, where we went and where we are now", online: <https://eiti.org/history>

[188] Haufler, *supra* note 16 at 61.

[189] David-Barrett & Okamura, *supra* note 3 at 229.

[190] *Ibid*.

[191] *Ibid.*

[192] Gilles & Heuty, *supra* note 60 at 27. The Publish What You Pay initiative is a coalition of NGOs such as Global Witness and Human Rights Watch, it was also supported by George Soros, the founder of Open Society Institute, the name, "Publish What You Pay" was derived from the Global Witness' Crude Awakening report.

the revenue they pay to governments.[193] The idea then, and now, was that if extractive companies "publish what they pay" to the government, the public will have the required knowledge and evidence to hold their government accountable.[194] In addition, international financial institutions, such as the World Bank and the International Monetary Fund (IMF), also began to promote transparency initiatives. The World Bank, for example, introduced the Extractive Industries Review, whose goal was the promotion of sustainable development and transparency in the extractive sector.[195]

The commodity boom of the early 2000s also contributed to the push for transparency as a normative basis for the governance of natural resources.[196] The boom led to the surge in commodity prices and a subsequent increase in foreign investment in resource rich developing countries, but it did not lead to tangible socio-economic development. Instead, the commodity boom further emphasized the mismanagement of natural resource wealth by the political elite and economic challenges in these countries.[197] The expectation at the time was that increases in foreign investment would enhance economic growth and alleviate developmental challenges. The increase in foreign investment, however, did not result in the anticipated outcomes of economic growth; instead, poverty increased and the standard of living declined.[198] This boom further exacerbated civil conflicts in many already volatile states.[199] Critics concluded that the paradox of boom and poverty in resource rich countries of the Global South was the result of many factors, but chief among the factors was the total lack of transparency in the management of natural resource revenues.[200] This marked lack of transparency and accountability exacerbated poor governance, corruption, inequality, and civil conflict. In this context, advocacy groups concluded that the most

[193] Haufler, *supra* note 16 at 62.
[194] Moise, *supra* note 11 at 220. Other notable advocacy group that sprung up at the time, in addition to PWYP, include, Revenue Watch, Transparency International, and International Alert; they all advocated for transparency in the extractive sector as a means for addressing the developmental challenges faced by resource rich countries.
[195] Alstine, *supra* note 133 at 767, Gilles & Heuty, *supra* note 60 at 27.
[196] Acosta, *supra* note 62.
[197] *Ibid*.
[198] Sefton Darby., "The Transparency and Accountability Initiative-Natural Resource Governance Strategic Summary, S.E.B Strategy Report. London Open Society Foundation.
[199] Time Hyde, "A "dark side" to the commodity boom in Africa" (June 28, 2017), online: < https://www.aeaweb.org/research/a-dark-side-to-the-commodity-boom-africa>
[200] Acosta, *supra* note 62.

feasible way to address the paradox of commodity boom and economic challenges was transparency in natural resource governance.

Thus, the collaborative advocacy work of various civil society groups with different visions and missions, combined with the chain of events in the extractive sector and global economy, expedited the institutionalization of extractive transparency as a global norm.[201] Indeed, scholars such as Haulfer, David-Barrett and Okamura have noted that transparency as a norm of resource governance is the result of "complementarities with broader global norms, intersection of a number of complementary agendas and overlapping transnational networks."[202]

Transparency's rise to prominence in the global scene at the time emphasized the need for the creation of a globally accepted initiative for the institutionalization and implementation of transparency norms. The PYWP coalition, established following the release of the controversial Global Witness report, initially emerged as the recognized institution for the implementation of extractive transparency norms.[203] However, the initiative failed to gain wide acceptance for two major reasons. First, since the initiative focused on the "supply side of corruption,"[204] it required only extractive companies to disclose what they pay to host governments so citizens can hold their government accountable. This model of transparency was critiqued for being flawed because it required disclosure from only one party, limiting disclosures to exhibit "only part of the revenue picture."[205] Second, extractive companies were unwilling to comply because one sided disclosure on their part without the support of host governments might put compliant companies at a competitive disadvantage compared to other companies not bound by disclosure requirements.[206] Extractive companies were also concerned that one sided disclosure on their part may affect their business relationship with host governments.[207] Actors in the global scene, particularly extractive companies, called for a broader initiative that would mandate disclosure from both governments and extractive companies.[208] The EITI, therefore, emerged to curb the inadequacies inherent in the

[201] Alstine, *supra* note 133.
[202] Haufler, *supra* note 16 at 54, David-Barrett & Okamura, *supra* note 3 at 229.
[203] Isaac Asume Osuoka, "From rules to standards: Civil society contestations, EITI and the missing link to accountability in Nigeria: Interview with Faith Nwadishi" (2020) 7 The Extractive Industries and Society 820 at 820.
[204] David-Barrett & Okamura, *supra* note 3.
[205] Shaxson, supra note 20
[206] *Ibid*, David-Barrett & Okamura, *supra* note 3.
[207] Asgill, *supra* note 35 at 13.
[208] Moise, *supra* note 11 at 220.

PYWP framework by mandating disclosures from governments and extractive companies, giving the public a full picture of revenue flows in the extractive sector.[209] The EITI put forward a "partnership" approach between governments, extractive companies and the public through its multi-stakeholder framework.[210] According to Shaxson, "this unthreatening approach leading to political acceptance largely explains why EITI, not PWYP, can claim to be the world's pre-eminent international initiative seeking to tackle the transparency aspects of the resource curse."[211] Since its launch in 2003, the EITI has blossomed into the accepted global standard for extractive transparency norms.[212] The next section provides a more detailed overview of the EITI.

Today, extractive transparency and by extension the EITI has evolved from its initial narrow focus on revenue disclosure to encompass other aspects of extractive transparency, particularly, beneficial ownership transparency and contract transparency.[213] These "new" forms of transparency, as with revenue transparency, emerged following scandalous leaks of information and corruption that exposed loss of revenue and financial leakages as a result of questionable ownership structures of companies and secretive extractive deals. The Panama Papers leak of 2016, for example, exposed the loss of extractive revenues due to unclear ownership structures of extractive companies.[214] It was also reported that the Congolese government secretly sold mining concessions at an undervalue between 2010 – 2012 to questionable corporate entities registered in offshore financial centers, depriving its citizens the much-needed revenue for the growth of key sectors of the economy.[215] Opaque corporate entities registered in offshore financial centers, secret ownership interests of political elites and secretly executed extractive deals are common themes inherent in most extractive corruption cases in developing countries.[216] This has mandated calls for beneficial ownership transparency and contract transparency in the extractive sector, which

[209] Asmara Klein, "Pioneering extractive sector transparency. A PWYP perspective on 15 years of EITI" (2017) 4:4 The Extractive Industries and Society 771 at 772.
[210] Aaronson, *supra* note 4.
[211] Shaxson, *supra* note 20
[212] EITI, "Who we are", online: < https://eiti.org/who-we-are>, Vijge et al, *supra* note 19 at 200.
[213] EITI, "History of the EITI: How it all started, where we went and where we are now", online: <https://eiti.org/history>, Klein, *supra* note 209.
[214] Radon & Achuthan, *supra* note 105 at 87.
[215] *Ibid.*
[216] *Ibid.*

have gained acceptance as global norms.[217] Expanding extractive disclosures to encompass beneficial ownership and contract disclosures would offer the public a clearer picture of the entire extractive value chain. These emerging aspects of transparency will be considered in more detail in Section 2.5 of this chapter.

2.3.2 The Nigerian Context

To tackle the developmental and socio-economic challenges associated with resource abundance, Nigeria became a member of the EITI.[218] Former President Olusegun Obasanjo led the adoption of the EITI framework in November 2003 under the auspices of the Nigeria Extractive Industries Transparency Initiative (NEITI), which was officially launched in February 2004[219] and signed into law in May 2007.[220] Nigeria was among the first states to formally give its support to implement the EITI,[221] with Azerbaijan and Ghana,[222] and it was also the first country to formally enact the EITI into its national law.[223] Nigeria, considered the "flagship"[224] of the EITI during the early stages of its adoption internationally,[225] was further applauded because the NEITI went beyond the stipulated EITI minimum standard at the time.[226] Based on Nigeria's reputation for corruption and mismanagement of natural resource wealth, the willingness of the country to implement the EITI was received with great surprise and support by the international community.[227]

A number of factors contributed to Nigeria's move to implement the EITI. First, the country at the time of the adoption of the EITI was a newly democratic country and was undergoing other

[217] EITI, "Beneficial Ownership: Revealing who stands behind the Companies", online: < https://eiti.org/beneficial-ownership>, EITI, "Contract transparency: making contracts Accessible for citizens", online: < https://eiti.org/contract-transparency>
[218] Shaxson, *supra* note 20
[219] *Ibid.*
[220] Okpanachi, *supra* note 29.
[221] The EITI states that Nigeria, Azerbaijan, Ghana and Kyrgyz Republic were the first countries to support and implement the EITI. EITI, "History of EITI: How it all started, where we went and where we are now" online: < https://eiti.org/history>
[222] Benjamin K. Sovacool & Nathan Andrews, "Does transparency matter? Evaluating the governance impacts of the Extractive Industries Transparency Initiative (EITI) in Azerbaijan and Liberia" (2015) 45 Resources Policy 183 at 188.
[223] *Ibid.*
[224] Shaxson, *supra* note 20
[225] *Ibid*, Eigen, *supra* note 13 at 339.
[226] Ejiogu et al, *supra* note 18 at 6.
[227] Abutudu & Garuba, *supra* note 22 at 5.

economic reforms.[228] Indeed, Shaxson notes that because the NEITI "piggybacked upon major reforms that were happening anyway, [it] was allowed to flourish, temporarily, amid the reformist political climate from 2003–2006".[229] These institutional reforms were geared towards improving the investment climate of the country to attract foreign investment.[230] Secondly, Nigeria's adoption of the EITI at the time was a move to boost the country's reputation amongst the international donor community, which had pressured Nigeria to institute institutional reforms to reduce corruption and earn debt relief. The adoption of the EITI as an institutional reform earned the country the Paris Club debt relief.[231] At the time, this debt relief was described as Nigeria's "biggest achievement."[232] Lastly, personal motives of the then president, Olusegun Obasanjo, also informed the country's move to join the EITI. President Obasanjo aspired to receive commendations from the international community and other African countries for the institutional reforms he instigated in Nigeria.[233] Shaxson notes that he wanted to be hailed as a "Mandela", a "big man on the African scene" and to gain support for his ambition for a "third term" as president.[234] Since its adoption in Nigeria, the NEITI has flourished amidst corruption and executive control from the narrow revenue transparency objectives it was established to promote to accommodate BO transparency. There have also been recent calls for the implementation of contract transparency.[235] Nigeria's desire to retain "satisfactory progress" status under the validation process of the EITI[236] and to foster its reputation in the international community have been the impetus behind the growth of the NEITI despite the corruption prevalent in the country.

[228] Okpanachi, *supra* note 29 at 28.
[229] Shaxson, supra note 20.
[230] *Ibid*, Chilenye Nwapi, "Enhancing the Effectiveness of Transparency in Extractive Resource Governance: A Nigerian Case Study" (2014) 7:1 The Law and Development Review 23 at 27, Alexandra Gillies, "Obasanjo, the donor community and reform implementation in Nigeria" (2007) 96:392 The Round Table 569 at 580.
[231] *Ibid*, Gillies.
[232] Shaxson, *supra* note 20.
[233] Gillies, *supra* note 230 at 573.
[234] *Ibid.*
[235] Premium Times, "NEITI, CSOs demand contract transparency clauses in PIB", (October 30, 2020), online: < https://www.premiumtimesng.com/business/business-news/423806-neiti-csos-demand-contract-transparency-clauses-in-pib.html>
[236] The validation process under the EITI regime, assesses implementing countries' progress in implementing the requirement of the EITI into their domestic operations. After this assessment, countries' that fail to meet up with the minimum requirements of the EITI may be temporarily suspended or in extreme cases delisted. Satisfactory progress status implies that the country has implemented major aspects of the EITI's requirement. EITI, "EITI board oversight of EITI implementation", online: < https://eiti.org/files/documents/eiti_standard2019_a4_en-36-42_board_oversight_of_implementation.pdf>

2.4 Transparency as a Global Norm

Transparency is widely accepted as an effective tool for the governance of natural resources.[237] This wide acceptance has led to the proliferation of voluntary transparency initiatives, laws and regulations by home and host countries imposing transparency obligations on extractive companies.[238] Global transparency demands by advocacy groups and the weakness of host country laws had prompted home countries to impose transparency obligations on their companies operating abroad, although critics like Gillies, David-Barrett and Okamura argue that industrialized countries adopted transparency regulations due to reputational concerns.[239] Canada, the US and the European Union have enacted binding laws mandating the disclosure of payments made by their extractive companies to foreign governments.[240] It is expected that the collective implementation of these regulations will cover the majority of publicly listed extractive corporations.[241] Additionally, their effective implementation could help curb the supply side of corruption – curtail extractive companies from offering bribes or other unjust enrichment to political elites in exchange for private gains.[242] However, these home country transparency laws have been criticized for their lack of uniform reporting standards, lack of clarity as to the type of payment required to be disclosed which leaves room for different interpretations and inadequate enforcement mechanisms.[243] The influence of transnational extractive companies over policies and

[237] Martijn C. Vlaskamp, "Good Natural Resource Governance: How Does the EU Deal with the Contestation of Transparency Standards?" in Johansson-Nogues E. Vlaskamp M., Barbe E. (eds) European Union Contested, Norm Research in International Relations. (Springer, Cham), 95 at 95, Winanti & Hanif, *supra* note 89

[238] Gilbert M. Khadiagala, "Global and Regional Mechanisms for Governing the Resource Curse in Africa" (2015) 42:1 South African Journal of Political Studies 23 at 23.

[239] Gillies, *supra* note 119 at 103, David-Barrett & Okamura, *supra* note 3.

[240] In the United States, Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) mandates the Security and Exchange Commission to issue rules requiring extractive companies to include in their annual report details regarding any payment made by the company or its subsidiary or any company under its control to a foreign government or Federal Government. In Canada, the Extractive Sector Transparency Measures Act, SC 2014, c 39, s. 376 also imposes disclosure obligations of foreign payments made by extractive companies. Finally, European Union Accounting Directive and Transparency Directive requires member states to require extractive and logging companies to disclose payments they make to foreign governments annually.

[241] Jeremy Sandbrook, "Will the new Transparency Reporting Initiatives Impact Corruption in the Extractive Industry?" (September 2016) online: < https://integritas360.org/wp-content/uploads/2015/07/Transparency-Intiatives-in-the-Extractive-Industry-by-Jeremy-Sandbrook.pdf>

[242] David-Barrett & Okamura, *supra* note 3.

[243] Sophie Lemaitre, "Illicit financial flows within the extractive industries sector: a glance at how legal requirements can be manipulated and diverted" (2019) 71 Crime, Law and Social Change 107 at 107, Connor Bildfell, "The Extractive Sector Transparency Measures Act: Critical Perspectives" (2016) 12:2 McGill Journal of Sustainable Development Law 233 at 233. For instance, Lemaitre argues that while the EU Accounting directive establishes clear rules regarding which payments should be disclosed, it does not define various categories of payments, leaving it up to extractive companies to make their own determination.

governance structures in their home countries prevents the proper enforcement and application of these laws; particularly in the United States, the lobbying activities of extractive companies is the main reason for the dormancy of Section 1504 of the Dodd-Frank Act[244] years after its enactment into law.[245] This Section requires the US Security and Exchange Commission to issue rules requiring extractive companies to include details of payments made by them or their subsidiaries to foreign governments in their annual report, several attempts by the commission to issue a rule giving effect to the section has been thwarted.[246]

Also, several voluntary initiatives have emerged, such as the EITI, PWYP and the Kimberly Process Certification Scheme (KPCS),[247] which advocate for the institutionalization of transparency as a mode of natural resource governance. The most widely accepted of these voluntary initiatives is the EITI, which has been domesticated into the national laws of many resource rich countries. This section provides an overview of the EITI, its goals and a quick review of the literature on the effectiveness of the EITI in driving developmental reforms in resource rich countries.

2.4.1 The EITI: an overview

The EITI is the most widely implemented initiative that seeks to enhance the efficient management of natural resources through transparency and accountability.[248] It aims to facilitate the transformation of resource wealth in resource rich countries into developmental gains.[249] Founded in September 2002 by then UK Prime Minister, Tony Blair, at the World Summit for Sustainable Development in Johannesburg and kicked off in June 2003,[250] the EITI has developed to be the "global standard" for the advancement of accountability and transparency in the "management of

[244] Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010, s 1504. The section is titled "Disclosure of payments by resource extraction issuers".
[245] Kerem Oge, "To disclose or not to disclose: How global competition for foreign direct investment influences transparency reforms in extractive industries" (2016) 98 Energy Policy 133 at 139.
[246] Celia R Taylor, "Disclosure of Payments under the US Dodd-Frank Act: the 'Resource Extraction Rule" (2013) 31:1 Journal of Energy & Natural Resources Law 55 at 59. The first rule was published in August 2012 which was challenged in court by the American Petroleum Institute, the challenge was upheld, and a court cancelled the rule, the commission published another rule in 2016, however, the Congress terminated the rule pursuant to the Congressional Review Act.
[247] *Ibid*, Andrew Williams, "Shining a light on the Resource Curse: An Empirical Analysis of the Relationship between Natural Resources, Transparency, and Economic Growth" (2011) 39:4 World Development pp. 490-505.
[248] Khadiagala, *supra* note 238.
[249] Andrews & Okpanachi, *supra* note 54 at 229.
[250] Aaronson, supra note 4 at 53.

oil, gas and mineral resources".[251] It is currently the most widely accepted institution with a duty of enhancing extractive transparency as a global norm.[252] Currently, fifty-three countries have publicly committed to implementing the EITI Standard.[253] Participation in the EITI is voluntary—if a country undertakes the initiative and incorporates it into its domestic law, all extractive companies operating in its domestic space are expected to adhere to it.[254] The EITI has also garnered support from international financial institutions, international development agencies, and international CSOs that fund the activities and operations of national counterparts in member countries.[255]

Over the years, the EITI has evolved into a "governance regime" with "membership standards, compliance verification and governing structures".[256] As a transnational natural resource governance system, the EITI:

> …is a multi-stakeholder initiative involving multinational and state-owned extractive companies, host governments, home governments, business and industry association, international financial institutions, investors and civil society groups, which have established a broad consensus on the ways and means of revenue transparency. The EITI emphasizes the prudent use of natural resources wealth and dictates that the management of such wealth should be exercised in the interests of national development.[257]

Originally intended as a voluntary initiative for the disclosure of payments made by extractive companies to governments and revenue received by governments from extractive companies, the EITI has progressed into a comprehensive tool advocating for transparency "along the whole extractive industry value chain."[258] This includes BO disclosure and contract disclosure.[259] The EITI 2019 Standard currently includes the regulatory framework guiding disclosure requirements

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[251] EITI, online: < https://eiti.org/who-we-are> ,
[252] Wojciech Ostrowski, "Transparency and global resources: Exploring linkages and boundaries" (2020) 5 The Extractive Industries and Society 788 at 793.
[253] EITI, online: <https://eiti.org/content/these-51-countries-are-eiti>, Villar, *supra* note 155.
[254] Ostrowski, *supra* note 252.
[255] Paivi Lujala, "An analysis of the Extractive Industry Transparency Initiative Implementation process" (2018) 107, World Development 358, Andrew Rosser & Widya Kartika, "Conflict, contestation, and corruption reform: the political dynamics of the EITI in Indonesia" (2020) 26:2 Contemporary Politics 147 at 147.
[256] Jennifer J. Riter, "An Exploration of the Extractive Industries Transparency Initiative as a Model of Incorporating Collaborative Accountability into Collective Global Governance" (2019) 40:4 U Pa J Intl L 839 at 872.
[257] Sovacool & Andrews, *supra* note 222 at 183.
[258] EITI, online: < https://eiti.org/who-we-are> , Siri Aas Rustard, Philippe Le Billon, Paivi Lujala, "Has the Extractive Industries Transparency Initiative been a Success? Identifying and Evaluating EITI Goals", (2017) 51 Resources Policy 151 at 151.
[259] *Ibid*.

for implementing countries.[260] It puts into action the EITI principles, which emphasizes that a country's natural resource wealth should benefit all its citizens.[261] The EITI is founded on the idea that transparency, promoted through multi-stakeholder dialogue,[262] can facilitate the efficient management of natural resources.[263]

2.4.2 How effective is the EITI?

Despite the wide recognition of the EITI as the hallmark of extractive transparency, scholars have questioned its effectiveness.[264] In evaluating the success of the EITI in enhancing the effective management of natural resources, scholars have used different standards, resulting in varied conclusions.[265] Rustad, Le Billon and Lujala reviewed the literature evaluating the effectiveness of the EITI and contend that the basis for the evaluation of the effectiveness of the EITI can be broadly divided into "institutional, operational and developmental goals."[266] There seems to be a consensus amongst scholars that the EITI has been successful in achieving its institutional goals and partially effective in attaining its operational goals.[267] It is arguable that the EITI has been largely successful in achieving its institutional goal of promoting transparency as a global norm for the efficient management of natural resources,[268] although some major oil producing countries such as the BRIC countries (Brazil, Russia, India and China) are yet to sign up.[269] Since they are major oil producing countries, their participation in the EITI would be beneficial in advancing the

[260] EITI, "EITI Standard 2019" online: <https://eiti.org/document/eiti-standard-2019#download >
[261] Contained in the foreword to the EITI standard 2019 written by Fredrick Reinfeldt, Chair of the EITI board 2016-2019 on 17 June 2019
[262] The multi-stakeholder approach of the EITI mandates partnership and dialogue between governments, extractive companies and civil society organizations thereby fostering public participation and representation in natural resource governance.
[263] Vijge et al, *supra* note 19.
[264] Alstine, *supra* note 133.
[265] Moise, *supra* note 11 at 220, Paivi Lujala, "An analysis of the Extractive Industry Transparency Initiative Implementation Process" (2018) 107 World Development 358 at 359.
[266] Rustad et al, *supra* note 258, Moise, *supra* note 11 at 220. Institutional goal consists of establishing the EITI has a "recognized brand" and diffusing transparency as a global norm, operational goal entails promoting public participation in natural resource governance particularly, civil society organizations and setting reporting standards and developmental goal consists of enhancing economic growth of a country, reducing corruption and improving standard of living.
[267] *Ibid.*
[268] *Ibid.*
[269] Moise, *supra* note 11, Patricia Galvao Ferreira, "The Extractive Industries Transparency Initiative (EITI): Using Global Hybrid Regulation to Promote Domestic Governance Reform" in Oxford Book Publication Forthcoming, online: < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3559659#> Nathan Andrews, "A Swiss-Army Knife? A Critical Assessment of the Extractive Industries Transparency Initiative (EITI) in Ghana" (2016) 121:1, Business and Society Review 59 at 62.

institutionalization of transparency as a global norm for the effective management of natural resources. Regardless, their non-participation does not negate EITI's accomplishment of institutionalizing transparency as a global norm so far.

In accessing the effectiveness of the EITI in achieving its operation goals, scholars, like Vijge et al, have argued that the EITI has driven certain reforms in some implementing countries.[270] For instance, the EITI auditing and reporting requirement urged many implementing countries to commence formal audits of their natural resource sector and publicly publish the result of the audit.[271] Also, the effectiveness of the EITI in promoting public understanding and enhancing the involvement of civil society organizations in natural resource governance through its mandatory multi-stakeholder dialogue has been acknowledged.[272] Although some scholars argue that the EITI may have increased public participation in natural resource governance by involving CSOs in multi-stakeholder dialogues, this participation is minimal, largely unimpactful and has not significantly empowered CSOs in making accountability demands.[273] The ability of the EITI to attain operational goals is mainly dependent on the societal context in which it operates. For instance, whilst the operation of the multi-stakeholder approach in democratic settings further empowered CSOs, its application in semi-democratic and non-democratic settings merely enabled their recognition.[274] This in itself can also be considered an achievement. This also emphasizes that transparency even in its constrained form may still nudge certain institutional reforms in the implementing country.

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[270] Vijge et al, *supra* note 19.
[271] Shaxson, *supra* note 20.
[272] Rustard et al, *supra* note 258 at 201 Dykstra argues that the EITI has been very successful in empowering civil society organizations. Page Dykstra, "Learning from Success and Challenges" (March 2011), online: < http://www.abdn.iraqrevenuewatch.org/data.resourcegovernance.org/htdocs/old_eiti/downloads/EITI_lessons_2011-02-23.pdf>
[273] Oge, *supra* note 17 at 816, Saipira Furstenberg, "Consolidating global governance in nondemocratic countries: Critical reflections on the Extractive Industries Transparency Initiative (EITI) in Kyrgyzstan" (2015) 2:3 The Extractive Industries and Society 462 at 469, Aaronson, *supra* note 4 at 57. Oge examined the effectiveness of the EITI in empowering civil society organizations particularly in non-democratic settings and finds that civil society rights were not improved pursuant to the country's EITI membership.
[274] Vijge, *supra* note 146, Vijge notes that a major challenge in this regard is that most EITI implementing countries are mostly non-democratic and semi democratic countries and low public participation in governance. Marie Chene, "Natural resource management and transparency and governance: A literature review focusing on extractive industries" U4 Helpdesk Answer 2017:8, Michelsen Institute. Anti-corruption Resource Centre. Online: <https://www.u4.no/publications/natural-resource-management-transparency-and-governance.pdf>

Assessing the effectiveness of the EITI to achieve developmental objectives has proved difficult as empirical research on this has been inconclusive.[275] Most of the literature evaluating this question seems to suggest that the EITI has been ineffective in providing any tangible economic outcome or reducing corruption in implementing countries.[276] For instance, Corrigan argues that the EITI has made some positive impact on economic development but it has not substantially impacted corruption.[277] Also, Sovacool contends that the EITI has reduced information asymmetry between the government and the public in implementing countries but has not successfully delivered developmental outcomes.[278] On the other hand, some scholars have warned that evaluating the effectiveness of the EITI based on economic and developmental outcomes is overly ambitious and stretching the mandate of the EITI too far. These scholars base their argument on the fact that there is no basis for measuring the developmental impact of the EITI and that other factors affect economic growth in a country.[279] Rustad, Le Billon and Lujala aptly argue that "whether the EITI has had an impact on developmental goals remains an open question as it is challenging to identify the correct measurements for impact and many evaluations assess goals that are over-inflated compared to what the initiative formally seeks to achieve."[280] The EITI itself has also argued along the same lines, urging scholars to evaluate it based on realistic standards rather than far-fetched economic and developmental expectations.[281] This thesis aligns with this position, expecting direct economic gains from the implementation of the EITI may be too ambitious, and that other factors independent of the EITI determines a country's ability to achieve economic growth. To the extent that the EITI is achieving its institutional goal of advancing transparency as a global norm in natural resource governance and partially achieving some of its operational goals, it can be deemed successful. This is not to argue that the EITI cannot enhance developmental growth in a country—the implementation of the EITI with other viable governance

[275] Joseph Mawejje, "Natural resources governance and tax revenue mobilization in sub Saharan Africa: The role of EITI" (2019) 62 Resources Policy 176 at 178.
[276] Papyrakis et al, *supra* note 16 at 295, Oge, *supra* note 245 at 133, Kerem Oge, "Which transparency matters? Compliance with anti-corruption efforts in extractive industries" (2016) 49 Resources Policy 41 at 41.
[277] Corrigan, *supra* note 113 at 28. In another study, it was found that country EITI membership has not improved economic development and governance; Benjamin K. Sovacool, Gotz Walter, Thijs Van de Graaf & Nathan Andrews, "Energy Governance, Transnational Rules, and the Resource Curse: Exploring the Effectiveness of the Extractive Industries Transparency Initiative (EITI)" (2016) 83 World Development 179 at 179.
[278] Sovacool, *supra* note 55.
[279] Gillies & Heuty, *supra* note 60 at 28, Rustard et al, *supra* note 258.
[280] *Ibid*, Rustard et al.
[281] *Ibid*, EITI, "Our purpose", online: <eiti.org>

and institutional reforms could ultimately bring developmental growth. However, the EITI should not be solely burdened with the goal of attaining economic and developmental gains.

2.5 Emerging Aspects of Extractive Transparency

Traditionally, extractive transparency has been limited to revenue and payments disclosure by companies and governments. In recent years, transparency advocates have pushed for disclosure in the entire value chain of the extractive sector,[282] which encompasses BO transparency and contract transparency.[283] The push for disclosure in these aspects is attributed to a renewed understanding of the volatile nature of extractive industries and how easily corruption and illicit financial flows can occur at any part of the value chain.[284] The EITI as the most widely accepted transparency initiative has facilitated information disclosure in these aspects. The 2019 EITI Standard requires all implementing countries and companies to disclose beneficial owners of extractive companies as from 1 January 2020 and mandates contract term disclosure in implementing countries as from 1 January 2021.[285] International financial institutions, voluntary organizations and civil society groups are also in support of these emerging areas of extractive transparency.[286] Furthermore, imposing disclosure requirements in early stages of extractive projects such as BO disclosure can expose and potentially curtail avenues for corruption and illicit financial flows in extractive projects.[287]

This section discusses BO transparency and contract transparency with a view to providing background understanding of their scope, impetus behind their emergence and their importance. It

[282] Haulfer, *supra* note 16 at 58.
[283] Marie Chene, "Natural resource management and transparency and governance: A literature review focusing on extractive industries" U4 Helpdesk Answer 2017:8, Michelsen Institute. Anti-corruption Resource Centre. Online: <https://www.u4.no/publications/natural-resource-management-transparency-and-governance.pdf>
[284] Samaram Malick Njie, "Illicit Financial Flows and the Extractive Sector in Africa" (March 2015), online: <https://ruor.uottawa.ca/bitstream/10393/32312/1/NJIE%2C%20Samaram%20Malick%2020151.pdf>
[285] Clause 2.4 and 2.5 of the 2019 EITI standard, online: < https://eiti.org/files/documents/eiti_standard_2019_en_a4_web.pdf>
[286] Oxfam Briefing Paper, "Contract Disclosure Survey 2018: A review of the contract disclosure policies of 40 oil, gas and mining companies" online: < https://www.pwyp.org/wp-content/uploads/2019/05/bp-contract-disclosure-extractives-2018-030518-en.pdf>
[287] Uwafiokun Idemudia, "The Extractive Industry Transparency Initiative and Corruption in Nigeria: Rethinking the links between Transparency and Accountability". (2013) 27 Access to Information in Africa; Law, Culture and Practice.

sets the scene for subsequent discussions in Chapter Three of this thesis, which examines BO and contract terms transparency in the context of the Nigerian extractive sector.

2.5.1 Beneficial Ownership Transparency

A beneficial owner of a company is "an individual who ultimately controls a company's actions and/or receives its profits."[288] The 2019 EITI Standard defines a beneficial owner as "the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity."[289] The recent appeal for BO disclosure in the extractive sector is credited to the information leak through the Panama Papers, which uncovered the loss of billions of dollars in extractive revenues as a result of opaque and dubious ownership structures of extractive companies.[290]

Transnational extractive corporations are renowned for their complex ownership structures, usually spanning across different jurisdictions (mostly linked to offshore financial centers) and utilizing different forms of corporate entities/arrangements such as shell companies, nominee shareholding and trusts.[291] While there are genuine business reasons for why extractive companies may adopt complex ownership structures, they create opportunities for corruption, illicit financial flows, tax evasion and avoidance of liability for wrongful conducts such as environmental degradation and human rights abuses.[292] Where the ultimate beneficial owner is hidden behind

[288] Aaron Sayne, Erica Westenberg and Amir Shafaie, "Owning up: options for disclosing the identities of beneficial owners of extractive companies", (August 2015), Natural Resource Governance Institute. Online: <https://resourcegovernance.org/sites/default/files/nrgi_Beneficial%20Owners20150820.pdf>

[289] The EITI Standard 2019

[290] Radon & Achuthan, *supra* note 105. Also, it is reported that developing countries lose $1 trillion annually as a result of extractive dealings involving entities with unclear ownership structures.

[291] United Nations Conference on Trade and Development, Press Release, "Increasingly complex ownership structures of multinational enterprises poses new challenges for investment policymakers" online: <https://unctad.org/en/pages/PressRelease.aspx?OriginalVersionID=303> David Jancsics, "Offshoring at Home? Domestic Use of Shell Companies for Corruption" (2017) 19:1 Public Integrity 4 at 4. A Shell company is an anonymous "incorporated company with no independent operations, significant assets, ongoing business activities or employees". They are usually registered in offshore financial centers and cannot be traced back to their ultimate owners, thus, providing anonymity to the real owner while also guaranteeing the owner's control over the company. A nominee shareholding arrangement is where a third party is registered as the official holder of shares in a company in place of the real owner of the shares, the purpose of this arrangement is to shield the identity of the real owner of the shares. A legal document such as a declaration of trust or a nominee shareholding agreement is executed by the parties stating that the shares are only held by the nominee shareholder in trust for the real owner. A trust is a legal arrangement that allows a person hold shares or other assets in a company on behalf of a beneficiary. The goal of these legal arrangements is concealment of the identity of ultimate owner(s) of the companies while also giving them power to control and direct the company. Therefore, real owners of companies are able to perpetuate illicit financial flows and other inappropriate business conducts under the cover of secrecy and authorities are unable to identify and hold them accountable for their actions.

[292] *Ibid*

shrouds of opaque corporate entities, it is impossible to deter corrupt practices and hold legal persons accountable for corruption. Importantly, opaque and complex ownership structures of extractive companies conceal ownership interests of "politically exposed persons" (PEPs) in these companies.[293] The problem with PEPs hidden ownership interests is that it is often derived from patronage networks within extractive companies that sell extractive rights below market value in exchange for a stake in the company, depriving the country of needed resource revenues.[294] In most corruption scandals involving the extractive sectors of resource rich developing countries, the use of vague corporate entities (such as shell companies), hidden ownership interests of PEPs, and links to offshore financial centers are most apparent.[295] To put this linkage into perspective, Radon and Achuthan explain the convoluted ownership structure of a mining company in Azerbaijan as follows: "70 percent of the mine was owned by a company, which in turn was owned by four shell companies, one of which was a UK-based company that was in turn owned by three companies, one of which was a UK-based company that was in turn owned by three companies incorporated in Panama and found to be controlled by the president's daughters".[296] Opaque structures such as this effectively conceal hidden ownership of PEPs and enables corrupt and patronage dealings by political elites in the governance of natural resources.

Recognizing the danger inherent in concealing beneficial owners of extractive companies, regulatory agencies and the international community in general now push for laws mandating the disclosure of beneficial owners of companies.[297] Some EITI implementing countries have enacted laws mandating the disclosure of beneficial owners of extractive companies and established beneficial ownership registers pursuant to the EITI 2019 Standard. Nigeria is amongst the first countries to establish such a register. The newly enacted Companies and Allied Matters Act

[293] Sayne et al, *supra* note 288. A PEP is "an individual who is or has been entrusted with a prominent public function."
[294] Aaron Sayne, Alexandra Gillies and Andrew Watkins, "Twelve Red Flags: Corruption Risks in the Award of Extractive Sector Licenses and Contracts" (March 2017), online: < https://resourcegovernance.org/sites/default/files/documents/corruption-risks-in-the-award-of-extractive-sector-licenses-and-contracts.pdf>
[295] Gillies, *supra* note 56.
[296] Radon & Achuthan, *supra* note 105 at 89. This is also exhibited in the case of the Malabu oil scandal in Nigeria, where a former minister of petroleum created a scam company, using other people as shareholders of the company, granted the company ex extractive license amounting to millions of dollars at an undervalue and partnered with other international companies to undertake the extractive activity.
[297] *Ibid.* Outside of the extractive sector, beneficial ownership disclosure is also gaining momentum, for instance the Fourth Anti-Money Laundering Directive of the European Commission mandates member countries to enact beneficial ownership disclosure laws. The Financial Action Task Force also regulates beneficial ownership disclosure in the international scene.

(CAMA) 2020 also mandates the disclosure of beneficial ownership interests of companies generally.[298] BO disclosure is quite nascent, and regulatory agencies are still grappling to deal with the complexities of this form of disclosure. The need for transboundary and intergovernmental cooperation (due to transboundary ownership structures of companies), as well as secret dealings in offshore financial centers, makes verification and enforcement of beneficial ownership disclosure almost elusive.[299] Chapter Three discusses beneficial ownership transparency within the Nigerian context and identifies and addresses the challenges of transboundary cooperation in the enforcement of BO disclosures.

2.5.2 Contract Transparency

Contract transparency refers to "the disclosure of the full text of any contract, license, concession, production-sharing agreement or other agreement granted by or entered into by, the government which provides the terms attached to the exploitation of oil, gas and mineral resources."[300] Contracts executed between extractive corporations and governments are pivotal documents that establish the duties, rights and obligations of governments and companies in extractive projects.[301] Worth millions of dollars over multiple years, extractive contracts greatly impact the economic and environmental trajectory of a country.[302] Yet, citizens who are often directly affected by the negative impact of resource extraction, such as environmental degradation and human rights violations, are usually unaware of the terms of these contracts.[303] Usually, political elites prioritize their personal interests first when negotiating the terms of these contracts, neglecting the public concerns.[304] Secretive extractive contracts also conceal hidden ownership interests of PEPs, while

[298] EITI, "20/20 vision on corporate ownership", (December 16, 3019) online: < https://eiti.org/blog/2020-vision-on-corporate-ownership> Other countries such as Kyrgyz Republic, the United Kingdom and Myanmar have established beneficial ownership register and enacted laws mandating the disclosure of beneficial owners of companies.
[299] Radon & Achuthan, *supra* note 105.
[300] EITI, "Contract Transparency: Revealing the terms under which resources are extracted" online: < https://eiti.org/contract-transparency>

[301] Paul Bagabo, Onesmus Mugyenyi, Siragi Magara & Paul Twebaze, "Contract Transparency in Uganda's Petroleum and Mining Sectors", online: <https://media.africaportal.org/documents/Contract_transparency_in_uganda.pdf> Beyond the fiscal aspects, contracts may also contain other terms including environmental mitigation and protection measures, land use and rights, and provisions dealing with the displacement of local communities and their rights.
[302] *Ibid.*
[303] Oxfam, *supra* note 286. In the constitution of most resource rich countries, ownership of the natural resources is vested in the citizens and the government is enjoined to manage these resources for the benefits of the people, therefore, the people are entitled to know how their resources are sold and under what terms they are granted to extractive companies.
[304] *Ibid*

enabling corruption and illicit financial flows in the sector. For example, it is reported that the Democratic Republic of the Congo's (DRC) government secretly granted extractive rights to companies lower than their value, robbing the country and its citizens of billions of dollars that could have financed healthcare or education in the country.[305]

The benefits of contract transparency are immense. First, contract disclosure contextualizes other types of extractive disclosures. In particular, it provides background to understand revenue disclosure.[306] For example, it helps the public determine if companies are even paying the right amount of royalties and taxes to the government. Second, it reveals to the public the obligations of parties under the contract, importantly, in relation to issues such as environmental protection and impact assessment which generally improves public understanding of natural resource governance.[307] Public understanding of natural resource governance is vital to negotiating community development agreements with extractive companies.[308] Finally, contracts will be negotiated and drafted more cautiously where companies and governments are aware that the contract would have to be disclosed.[309] Contract transparency can lessen the power disparity between companies and the state, aiding governments and citizens to negotiate favourable deals with extractive companies.[310] On the part of companies, contract transparency addresses perceived concerns of corruption in the negotiation process.[311]

The recent calls for extractive contract transparency stems from the exposure of corruption vulnerabilities inherent in secretive contracts such as in the DRC case discussed above and the benefits inherent in contract disclosure practices.[312] Implementation of contract transparency like other forms of extractive disclosure is not without its difficulties; concerns regarding the disclosure of sensitive information and confidentiality clauses in extractive contracts are often paramount.

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[305] PWYP website, online: <https://www.pwyp.org/areas-of-work/contract-transparency/>
[306] Oxfam, *supra* note 286.
[307] *Ibid*
[308] *Ibid*
[309] Rob Pitman, "Six Transparency Steps Toward Better Extractives Governance in Ukraine", Natural Resource Governance Institute's blog, (August 2017) online: <https://resourcegovernance.org/blog/six-transparency-steps-toward-better-extractives-governance-ukraine>
[310] Evelyn Dietsche, "Balancing mining contracts and mining legislation: experiences and challenges" (2019) 32 Mineral Economics 153.
[311] *Ibid* at 162.
[312] Natural Resource Governance Institute, "Contract Transparency" (January 2010), online: < https://resourcegovernance.org/analysis-tools/publications/contract-transparency>

Chapter Three discusses these issues more broadly within the Nigerian context and also discusses best practices for contract disclosure.

2.6 Is Transparency the Way?

2.6.1 Critiques of Transparency as a Mode of Natural Resource Governance

Despite its wide acceptance as a tool for the efficient management of natural resources, concerns have arisen about the effectiveness of transparency and the EITI more broadly in promoting efficient natural resource governance, reversing the resource curse and promoting developmental growth.[313] The criticisms against transparency as a mode of natural resource governance and the EITI framework can be broken down into three categories. First, critics of transparency and the EITI argue that it is premised on the assumption that information disclosure will have a domino effect—information once disclosed is received by an empowered public who utilize it to demand greater accountability leading to better natural resource governance and efficient management of resource rents by the government, which ultimately leads to the translation of natural resource wealth into economic development for the country.[314] Fenster criticizes this reasoning as follows: "transparency theory's flaws result from a simplistic model of linear communication that assumes that information, once set free from the state that creates it, will produce an informed, engaged public that will hold officials accountable."[315] Critics argue that transparency and the EITI standard assumes and demands too much from the government, the quality of information disclosed, the public, and accountability institutions.[316]

Second, critics argue that transparency and the EITI framework are inadequate alone and needs to be complemented by other forms of institutional and governance reforms to be effective in

[313] Paivi Lujala & Levon Epremian, "Transparency and natural resource revenue management: empowering the public with Information?" in Aled Williams & Philippe LeBillon (ed.), Corruption, Natural Resources and Development, chapter 4, pp. 58-68, Edward Elgar Publishing at 59, Gillies & Heuty, *supra* note 60, Vijge, *supra* note 146 at 15. The effectiveness of transparency initiatives, particularly, the EITI has attracted many scholarly interests, different scholars have used different metrics in evaluating its effectiveness and the common consensus seem to be that the EITI has generally been effective in reversing the resource curse and all the plague that comes with resource abundance such as corruption, conflict, poor economic growth etc. These literatures were analyzed extensively in section 2.4 of this chapter discussing the EITI.
[314] *Ibid*, Haulfer, *supra* note 16 at 64.
[315] Mark Fenster, "The Opacity of Transparency", (2006) 91 Iowa Law Review 885 at 885.
[316] *Ibid*.

translating resource wealth into economic gains.[317] Weak, inept and corrupt institutions may hinder the effectiveness of the EITI. Complementary reforms, quality institutions and governance structures are required to operate side by side with EITI requirements to effectively harness the benefits of resource abundance.[318] For instance, the absence of quality educational institutions will impact the ability of the citizens to understand and engage with EITI disclosures.[319] Following a study into EITI implementation in the Ghanaian extractive sector, Adams et al argue that transparency and accountability initiatives such as the EITI should be complemented with "quality institutions and quality governance"[320] to be effective. Furthermore, Oge argues that the EITI may not succeed in the presence of clientelism and rent seeking political elites who benefit from maintaining the status quo of secret dealings and opaque transactions.[321] They could therefore work to hinder full transparency, which could be in the form of exerting control over the operations of the EITI (as seen in many EITI implementing countries such as Nigeria and Ghana).[322]

Third, critics also argue that the potential cost of transparency on extractive companies and the government in terms of the cost of administering the EITI is high and there is a business risk of disclosing commercial sensitive information to competitors and the public.[323] The financial cost of monitoring, reporting and disclosing information in the entire extractive sector value chain is quite high due to the complexities of the sector,[324] making transparency compliance burdensome for extractive companies. Also, on the part of the government, there are associated costs to administering a transparency regime such as the EITI, such as operating, monitoring, and enforcement costs.[325] Furthermore, concerns have arisen about the potential of extractive transparency, particularly contract terms transparency, to undermine the competitive position of extractive companies by disclosing "sensitive" information that their competitors operating in

[317] Kolstad & Wiig, *supra* note 13 at 524, Adams et al, *supra* note 48.
[318] Alstine, *supra* note 48.
[319] Kolstad & Wiig, *supra* note 13 at 524, Adams et al, *supra* note 48.
[320] *Ibid*, Adams et al.
[321] Oge, *supra* note 276 at 44.
[322] Oppong & Andrews, *supra* note 15.
[323] OECD, "Corruption in the Extractive value chain: Typology of Risks, Mitigation Measures and Incentives" (2016) online: <http://www.oecd.org/dev/Corruption-in-the-extractive-value-chain.pdf>
[324] *Ibid*, Martijn C. Vlaskamp, "Good Natural Resource Governance: How Does the EU Deal with the Contestation of Transparency Standards?" in Johansson-Nogues E. Vlaskamp M., Barbe E. (eds) European Union Contested, Norm Research in International Relations. (Springer, Cham), 95 at 100.
[325] Annie Sturesson & Thomas Zobel, "The Extractive Industries Transparency Initiative (EITI) in Uganda: Who will take the lead when the government falters?" (2015) 2:1 The Extractive Industries and Society 33 at 35.

other jurisdictions might not be obliged to disclose.[326] Not all resource rich countries have adopted the EITI or other transparency initiatives;[327] therefore extractive companies operating in these countries do not have an obligation to disclose, making disclosure unappealing to other companies operating under a transparency regime. This also hinders the growth of extractive transparency as a global standard.[328]

2.6.2 Response to Criticism of Transparency as a Mode of Natural Resource Governance

This thesis acknowledges the criticisms against transparency as a mode of natural resource governance and responds to the criticisms as follows: first, it is understood that extractive transparency and EITI framework does not have a domino effect; the disclosure of information will not automatically create an empowered public who are willing to utilize the disclosed information to demand more accountability from the government. However, it is argued that transparency and EITI implementation can be considered as the first step towards enlightening the public and a springboard for public demands of accountability. Transparency can be viewed as an "entry point" for further demands of accountability, crucial for the effective management of natural resources. Without disclosure of information and transparency, there will be no basis for accountability demands.[329] Riter aptly describes the relationship between transparency and accountability as "the right to information is not accountability in itself, but is instrumental to it, and transparency does not automatically produce accountability but is a necessary but insufficient condition for it."[330] Although some scholars have argued that information disclosure and EITI implementation may indeed have a domino effect in some contexts, information disclosure has triggered accountability demands from relevant stakeholders that would have been impossible without the disclosures.[331] In addition, the institutional reforms of a transparency regime should not solely be conceived from a linear perspective. As Vijge et al argue, the EITI should not be perceived from a "liner trajectory of enhanced transparency – in the form of EITI report – leading

[326] Connor Bildfell, "The Extractive Sector Transparency Measures Act: Critical Perspectives" (2016) 12:2 McGill Journal of Sustainable Development Law 233 at 248, Vlaskamp, *supra* note 324.
[327] EITI, "The BRICS countries should open their extractives: Why they are not part of the EITI – and why they should be" (September 2014) online: < https://eiti.org/blog/brics-countries-should-open-their-extractives>
[328] Bleischwitz, *supra* note 124 at 4.
[329] Kolstad & Wiig, *supra* note 13.
[330] Riter, *supra* note 256 at 860.
[331] Sturesson & Zobel, *supra* note 325.

to accountability, facilitated by civil society participation in multi-stakeholder groups".[332] Instead, the effect of EITI's institutional reform on the implementing country is "characterized by spin-off effect, dynamic interlinkages, reinforcing cycles and emerging trade-offs and limitations of different aspects of institutional quality".[333] Admittedly, the capacity of transparency for triggering accountability demands is contextual and depends on other factors such as the governance structure of the country, existing reforms and the influence of relevant stakeholders.

Secondly, this thesis recognizes that transparency and EITI implementation without the presence and operation of strong institutions and quality governance in resource rich countries may be inadequate for stimulating developmental growth. Although, the EITI is more effective when complemented with strong institutions, its operation in states characterized by weak institutions will not entirely eradicate its effectiveness. On the contrary, it could be used as a tool for gradually advancing the development of frail institutions. For example, suspicions of discrepancies between payments made by extractive companies and revenue received by the government could ignite accountability demands from previously dormant CSOs. As discussed above, there is emerging literature that suggests transparency has propelled institutional growth in some countries.[334] For instance, Vijge et al suggest that EITI implementation led to enhanced empowerment, participation and representation of civil society organizations in natural resource governance in Myanmar.[335] Whilst the linkage between transparency initiatives, particularly the EITI (based on its multi-stakeholder approach), to the empowerment of CSOs as an institution is apparent, the effect of transparency on the growth of other institutions—such as the judiciary and law enforcement agencies—might prove more nebulous. However, accountability demands from CSOs and other stakeholders may propel the growth of other institutions such as law enforcement agencies to accommodate their demands. Also, the EITI cannot automatically transform institutional corruption or rent-seeking behavior of political elites that typify resource-rich developing

[332] Vijge et al, *supra* note 19 at 208.
[333] *Ibid*.
[334] Sturesson & Zobel, *supra* note 325.
[335] *Ibid*. Also in Azerbaijan, it was reported that EITI disclosures initiated the first ever conversation between the government and civil society organizations, this achievement is described as more trailblazing than the actual transparency disclosures. Alstine, *supra* note 133 at 768.

countries; rather, it can make corruption in these countries less attractive and difficult to perpetuate as it increases the probability of exposure.[336]

Lastly, this thesis acknowledges that the cost and financial burden inherent in monitoring and reporting disclosures could be high. However, the cost of opacity and corruption in the absence of transparency is higher. The compliance costs of the EITI in the long run would be far less than the cost of opaque dealings and mismanagement of resource rent on the public. Also, EITI disclosures could pose competitive challenges to extractive companies; nevertheless, the mere presence of commercially sensitive information is not enough to prevent disclosure when it is in the public interest. Thus, continuous adherence to transparency obligations by governments and companies would strengthen the acceptance of transparency as a global standard for all companies. Moreover, non-adherence by some companies may pose reputational risks for them as transparency gains more acceptance. Also, commentators have noted that since the financial terms of many extractive deals are known within the industry, the argument advanced by extractive companies that transparency would cause competitive harm is untenable.[337] Chapter Three of this thesis considers more broadly the issue of extractive transparency and the disclosure of sensitive information by extractive companies, and how these interests should be balanced.

In conclusion, this thesis recognizes that transparency in itself is insufficient for addressing the multifaceted institutional, economic and societal challenges confronted by resource-rich countries; instead, it could ignite certain institutional reforms necessary for the attainment of developmental gains. Whilst it is acknowledged that the influence of extractive transparency is complex and harnessing its full benefits is largely contextual,[338] it is broadly acclaimed and supported. It remains one of the few methods of enhancing effective natural resource governance.[339]

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[336] Andrew Williams, "Shining a light on the Resource Curse: An Empirical Analysis of the Relationship between Natural Resources, Transparency and Economic Growth" (2011) 39:4 World Development 490 at 498.
[337] Oxfam, *supra* note 286.
[338] Benjamin K. Sovacool, Gotz Walter, Thijs Van de Graaf, Nathan Andrews, "Energy Governance, Transnational Rules, and the Resource Curse: Exploring the Effectiveness of the Extractive Industries Transparency Initiative (EITI)" (2016) 83 World Development 179 at 180.
[339] *Ibid*.

2.7 Conclusion

Transparency is now widely accepted as a mode of natural resource governance necessary for curtailing corruption, mismanagement of natural resource revenue and opaque dealings in the extractive sector. Since its emergence, it has risen to become a global norm, majorly institutionalized by the EITI, the leading transparency initiative. In addition, it has expanded from its initial narrow focus on revenue transparency to accommodate other forms of extractive transparency, such as beneficial ownership transparency and contract transparency. As discussed in this chapter, this expansion is attributed to the proliferation of new methods of committing corruption in the extractive sector, including granting extractive licences to sham companies registered in offshore financial centers, executing secret deals between governments and extractive companies and the concealment of PEPs ownership interests behind shrouds of opaque corporate entities.

As argued in this chapter, a transparency regime should possess certain intricate features to be resilient enough to trigger public demands for accountability and propel developmental gains in an implementing country. These features are strong institutional quality, a resilient information disclosure mechanism that is accurate, accessible, and timely, as well as active citizen engagement with disclosed information. If these features are lacking in a transparency, transparency may merely deliver a constrained and narrow form of information disclosure, however this constrained transparency can still deliver opportunities for institutional reforms in the implementing country. In exploring the linkage between transparency and other normative resource governance concepts such as institutional quality and good governance; this chapter revealed that transparency even in its narrow and constrained form is capable of facilitating of nudging positive institutional reforms in an implementing country. A prime example of this is the novel recognition and empowerment of CSOs in many countries due to the implementation of the EITI and its multi-stakeholder requirement. Furthermore, this chapter argued that transparency and transparency initiatives such as the EITI should not be conceptualized as an antidote to the economic challenges confronting resource rich developing countries, and that transparency alone should not be expected to deliver economic and developmental growth in resource rich countries. Instead, this chapter suggested that other institutional reforms attained as a result of the EITI, such as increased public understanding of the extractive sector, improved auditing and reporting standards in implementing

countries and enhanced participation of CSOs in resource governance, should be recognized and acknowledged. The continued implementation of transparency initiatives in addition to other institutional reforms may propel the attainment of economic growth in an implementing country. The purpose of this chapter was to set the scene for subsequent discussions in this thesis, particularly Chapter Three, which considers the regulatory framework and practice of extractive transparency in the Nigerian extractive sector.

3 Analysis of Transparency in the Nigerian Extractive Sector

3.1 Introduction

The preceding chapter discussed extractive transparency and its resultant institution, the Extractive Industries Transparency Initiative (EITI), as the global governance standard for the effective management of natural resources, noting in particular that the effectiveness of transparency is contextual, and its efficiency is largely dependent on the socio-political conditions of the implementing country. Drawing from the discussions in the previous chapter, this chapter considers how transparency is localized within the Nigerian context. It explores how extractive transparency is constrained when implemented in the Nigerian extractive sector and confronted with the peculiar socio-political conditions in Nigeria. This chapter argues that weak regulatory framework and enforcement mechanisms, institutionalized corruption and repressive governmental tendencies constrains the effectiveness of the EITI in Nigeria. It, however, posits that EITI implementation in Nigeria enshrines auditing, reporting and disclosure requirements in the Nigerian extractive sector. This enables citizens gain access to information that was previously veiled in secrecy, thus, empowering citizens with the necessary knowledge to hold the government and extractive companies accountable. Therefore, extractive transparency even in its constrained form in Nigeria offers opportunities for improving public understanding of the extractive sector and provides a springboard for public demands for accountability. Furthermore, civil society organizations' (CSOs) advocacy efforts can serve as a tool for resisting governmental dominance (the main factor contributing to this constrained transparency) and utilize Nigeria's constrained transparency to spur public demands for accountability. CSOs advocacy strategies and participation in resource governance can also fill the void created by weak regulatory provisions and poor enforcement mechanisms in the Nigerian extractive sector to push for enhanced information disclosure.

This chapter is divided into four sections. Section 3.2 examines the germane provisions of the Nigeria Extractive Industries Transparency Initiative (NEITI) Act and discusses how the Act constrains the efficient implementation of revenue transparency in Nigeria. It then proceeds to discuss the NEITI audit reports, revealing the lapses inherent in them. Section 3.3 then discusses beneficial ownership transparency in Nigeria, focusing on the beneficial ownership disclosure

provisions contained in the Companies and Allied Matters Act, 2020. This part also appraises the online beneficial ownership register recently established by the NEITI and discusses how complex ownership structures of extractive corporations may hinder the global implementation of beneficial ownership transparency. Section 3.4 discusses contract transparency in the Nigerian extractive sector and emphasizes the need for the enactment of a law or regulation expressly mandating contract disclosure in Nigeria. It also discusses potential challenges Nigeria may encounter in the implementation of extractive contract transparency. This part concludes by recommending best practices for Nigeria in the implementation of contract transparency drawn from other EITI implementing countries and international organizations. Finally, Section 3.5 examines the ethical responsibilities of professionals – accountants and lawyers in enhancing transparency in the Nigerian extractive sector.

3.2 Revenue Transparency in the Nigerian Extractive Sector

3.2.1 Review of the Regulatory Framework of Revenue Transparency in Nigeria

The EITI is institutionalized through the Nigeria Extractive Industries Transparency Initiative (NEITI) in Nigeria, an anti-corruption body that seeks to promote transparency and accountability in the Nigerian extractive sector.[340] The NEITI's regulatory framework is codified and implemented under the NEITI Act, 2007.[341] The NEITI Act also establishes the NSWG, the governing body of the NEITI 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".[342] In essence, the NSWG is the multi-stakeholder governance body of the NEITI, the NSWG performs the transparency and accountability functions of the NEITI under the NEITI Act in addition to its functions under the Act. Although, the aim of the NEITI Act is to promote transparency in the entire value chain of the Nigerian extractive sector, the provisions of the NEITI Act are largely limited to the regulation of revenue transparency. The reason for the narrow scope of the Act can be attributed to the fact that at the time of its enactment in 2007, revenue transparency was promulgated globally. Subsequent scandals necessitated the emergence of other

[340] Ejiogu et al, *supra* note 24 at 5. The explanatory memorandum of the NEITI Act states that the main purpose of the NEITI is to 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", Section 1 of the NEITI Act.
[341] Nigeria Extractive Industries Transparency Initiative (NEITI) Act, 2007, Asgill, *supra* note 35 at 30.
[342] NEITI Act, Section 5

forms of extractive transparency. This section appraises the transparency, accountability, enforcement and multi-stakeholder governance provisions of the NEITI Act to evaluate the extent to which they promote the transparency and accountability objective of the NEITI Act. This section also explores the strength of the NEITI audit reports in achieving its transparency objective.

3.2.1.1 Transparency and Accountability in the NEITI Act

To achieve its transparency and accountability objectives under the NEITI Act, the NEITI is vested with certain duties under Section 3 of the Act, including to "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".[343] Furthermore, it has the power to obtain from any extractive company details of its cost of production and the volume of oil and other natural resources extracted by the company. Importantly, it has the authority to demand from any extractive company or government agency the exact amount paid to and received by the government for any period of time.[344]

As laudable as these powers vested in the NEITI are, they are limited by the fact that the exercise of these powers should not be "prejudicial to contractual obligations or proprietary interests"[345] of extractive companies or "sovereign obligations"[346] of the federal government. These exceptions create opportunities for extractive companies and government agencies to evade disclosure and accountability obligations under the Act. Even more damaging, these limiting clauses are not defined in the Act, giving extractive companies and the government the power to define the scope of these clauses and determine their applicability. An analysis of the possible definition and scope of these clauses is important to delineate the extent to which they limit disclosure and accountability under the Act. Contractual obligations of an extractive company can be interpreted to mean terms and obligations, particularly confidentiality obligations contained in extractive contracts signed between the company and the government. Extractive companies could evade disclosure obligations under the Act by invoking confidentiality clauses contained in extractive contracts. This could potentially constrain the NEITI from achieving its transparency and

[343] NEITI Act, Section 3(a)
[344] NEITI Act, Section 3 e of the
[345] NEITI Act, Section 3 (b), (d) and e of the specifically
[346] *Ibid.*

accountability objectives. Interestingly, the recent global push for extractive contract transparency has shaken the potency of confidentiality clauses in shielding extractive companies and governments from disclosure obligations.[347] In addition, most confidentiality clauses contained in extractive contracts recognize the superiority of an express law mandating disclosure of the terms of the contract. This exception underscores the importance of contract transparency—if extractive contracts are publicly disclosed, the NEITI will be able to properly delineate the rights and obligations of the parties under the contract and proffer recommendations against contract terms that may insulate companies from making necessary disclosures under the Act. The "proprietary interest" exception could be interpreted to encompass the rights of extractive companies over their activities, licence and all the rights and control that pertains to it.[348] The implication of this exception is that the NEITI is precluded from performing its duties under the Act in a manner that may potentially affect a company's ownership interest or its extractive activity. While it is recognized that the proprietary and ownership interest of a company should be protected to maintain a favourable foreign investment climate, the protection should not be inconsistent with the laws of the host country such as transparency and accountability obligations mandated under the law.

The Act is also silent on the meaning and scope of the "sovereign obligation" exception granted to the federal government under the Act. This exception could be interpreted to mean obligations of the federal government under international law, specifically international investment agreements.[349] Investment agreements are acclaimed for granting investors wide investment protections without imposing any corresponding obligations upon them.[350] While investment protection standards granted to investors under investment agreements are usually broad, it is doubtful if they would be interpreted broadly enough to shield companies from extractive disclosure obligations in host sates.[351] Also, new investment agreements now recognize the need

[347] Ernest Toochi Aniche, "A Critique of the Enforcement of Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007 in Nigerian Oil and Gas Sector" (2013) 14:2 British Journal of Arts and Social Sciences 98 at 102.
[348] Upcounsel, "Proprietary Interest: Everything You Need to Know", online: <https://www.upcounsel.com/proprietary-interest>
[349] Marc G. Pufong, "State Obligation, Sovereignty, and Theories of International Law" (2001) 29:3 Politics & Policy 478 at 478.
[350] Zoe Phillips Williams, "Investor-State Arbitration in Domestic Mining Conflicts" (2016) 16:4 Global Environmental Politics 32 at 36.
[351] Caroline Henckels, "Protecting Regulatory Autonomy through Greater Precision in Investment Treaties: The TPP, CETA and TTIP" (2016) 19 Journal of International Economic Law 27 at 27.

for investors to adhere to the laws of the host state in the conduct of their business activities.[352] Based on this, the "sovereign obligation" exception might not be strong enough to shield extractive companies and the government from disclosure obligations under the Act. Regardless, these exceptions can potentially inhibit the transparency objectives under the Act as extractive companies and government agencies may evade disclosure obligations using these exceptions as justification.[353] None of these exceptions are defined under the Act, therefore, extractive companies and the government are indirectly granted the power to determine the scope and applicability of these exceptions and inform the NEITI.[354] In a situation where the NEITI disagrees with a company or the government on the interpretation and scope of any of these exceptions, the parties would have to resort to the court for interpretation.[355]

3.2.1.2 The Multi-Stakeholder Governance Structure of the NEITI

The NEITI Act established the National Stakeholders Working Group (NSWG) and assigned it the duty of formulating "policies, programmes and strategies for the effective implementation of the objectives"[356] of the Act. As the body vested with the duty of executing the functions and objectives of the NEITI under the Act,[357] The NSWG is the multi-stakeholder governance body of the NEITI. As discussed in Chapter Two, the EITI requires that implementing countries operate through a multi-stakeholder body comprising of equal representatives of the government, extractive companies and civil society organizations (CSO). However, the composition and autonomy of the NSWG inhibits it from achieving its transparency and accountability objectives under the Act as well as its multi-stakeholder objectives under the EITI framework.

The NSWG is comprised of relevant stakeholders in the extractive sector—representatives of extractive companies, civil society organizations, labour organizations and experts in the extractive sector.[358] All six geopolitical regions in Nigeria are represented on the NSWG board;[359] however,

[352] *Ibid.*
[353] Abutudu & Garuba, *supra* note 22 at 19.
[354] Bethel U Ihugba, "Compulsory Regulation of CSR: A Case Study of Nigeria" (2012) 5:2 J Politics & L 68 at 76.
[355] Bethel Uzoma Ihugba, "A critical analysis of the auditing and reporting functions of Nigeria Extractive Industry Transparency Initiative (NEITI) Act 2007" (2014) 13:3 Journal of International Trade Law and Policy 232 at 241.
[356] NEITI Act, Section 5(2)
[357] *Ibid.*
[358] NEITI Act, Section 6(2)
[359] *Ibid.*

there is no guidance as to how these individuals are selected. Therefore, they could be affiliated with CSOs, extractive companies or government institutions. Today, the majority of the stakeholders represented on the NSWG are affiliated with the extractive industry—representatives of extractive companies, industry experts and representatives of labour organizations.[360] Therefore, instead of having equal representation of government, extractive companies and CSOs, the NSWG appears to be skewed in favour of extractive companies and the extractive industry.[361] This explains why despite scandalous reports of embezzlements and opaque dealings in the Nigerian extractive sector, no extractive company has been held accountable under the Act.[362]

In addition, the autonomy and independence of the NSWG is severely compromised under the Act in terms of selection of its members, reporting duty and financial independence. The Nigerian President is vested with the duty of selecting members of the NSWG and appointing its executive secretary.[363] The President is required to select the members from representatives of extractive companies, CSOs and other aforementioned groups. This provision gives the President and by extension, the executive arm of the government, wide control over the NSWG which undermines its independence from government dominance. It has been reported that previous Presidents of Nigeria have selected NSWG members based on patronage and bias rather than merit.[364] Individuals selected based on patronage and favoritism will likely owe their allegiance to the President rather than to the efficient implementation of their duties.[365] In addition, CSOs under the EITI framework are central to the enforcement of the initiative as they act as representatives of the public, therefore, their involvement in the initiative should be devoid of any interference or influence from the government. Bestowing the President with the power to select a CSO representative on the NSWG interferes with the effective participation of CSOs under the initiative.[366] For example, former President Yar'Adua neglected to confer with CSOs before appointing a CSO representative on board the NSWG during his tenure.[367] Although, it is reported

[360] Ihugba, *supra* note 75 at 214.
[361] *Ibid.*
[362] *Ibid.*
[363] NEITI Act, Section 6(2) & (3)
[364] Ejiogu et al, *supra* note 24 at 12
[365] *Ibid.*
[366] Idemudia, *supra* note 25.
[367] Osuoka, *supra* note 203 at 824.

that CSOs have campaigned against this sort of arbitrary appointments by Nigerian Presidents.[368] CSOs representation on board the NSWG is considered more broadly in Chapter Four of this thesis.

Furthermore, the President is granted oversight power over the NSWG under the Act. The NSWG is mandated to report to the President and the National Assembly details of all its activities each year and, specifically, its expenditures and income.[369] It is difficult to justify the need for the NSWG to report to the President under the Act whilst it is necessary for the NSWG to report to a body to make it accountable; reporting to the National Assembly alone will suffice. Granting the President selection and oversight powers over the NSWG essentially places the NSWG under the control of the President and by extension the executive arm of government. Commentators have argued that the reason the President is granted oversight and appointment powers over the NSWG is an attempt by the government to control the NSWG and ensure that the body is malleable to the wants of the executive arm of government, an attempt to "capture" the NEITI.[370] This is exacerbated by the fact that the NEITI is principally reliant on the federal government for its funding.[371] Failure of the federal government to release appropriate and timely funds to the initiative can constrain the activities of the NEITI. As will be discussed in the analysis of NEITI audit reports below, inadequate funds is a major reason behind delays in publicizing the reports, which is a critical component of the board's work.[372]

3.2.1.3 Enforcement Provisions of the NEITI Act

The NSWG is granted wide duties under the Act but insufficient powers to enforce its duties. Specifically, the Act creates several offences under section 16, such as providing false information, report, or statement of account, which are punishable by fine or imprisonment. However, the Act does not grant the NEITI nor the NSWG the power to prosecute these offences.[373] Scholars such as Nwapi and Ihugba have opined that the inability of the NEITI or the NSWG to prosecute offences committed under the Act undermines the effectiveness of the initiative in achieving its

[368] Ejiogu et al, *supra* note 24 at 11.
[369] NEITI Act, Section 14
[370] Ejiogu et al, *supra* note 24 at 13.
[371] NEITI Act, Section 13
[372] Ejiogu et al, *supra* note 24 at 11.
[373] Ihugba, *supr*a note 355 at 237.

transparency and accountability goals.[374] Knowledge of offenders without the power to prosecute them is counterproductive, and this could be one of the major reasons why no extractive company or government agency has been held accountable under the Act despite news of scandals and probes by the National Assembly.[375]

Since the NEITI does not have power to prosecute offenders under the Act, the prosecutorial powers under the Act would be exercised by the Attorney General of the Federation or the Economic and Financial Crimes Commission (EFCC).[376] These agencies are often reluctant to prosecute government agencies and government affiliated organizations; their activities are mostly partisan and skewed in favour of the government in power.[377] This could pose a significant challenge to the prosecution of government agencies and extractive companies who violate the provisions of the NEITI Act.[378] On the other hand, it has been argued that, the exercise of prosecutorial powers by the Attorney General or the EFCC could be a platform for further communications and cooperation between anti-corruption agencies of the federal government for the purpose of achieving the objective of the Act and the general eradication of corruption in Nigeria.[379]

The effective prosecution of offences under the Act is also reliant on the strength of institutions such as law enforcement agencies and the judicial system.[380] For example, a vibrant judicial system and active enforcement agencies could propel prosecutions under the Act; however, these institutions are not resilient enough in Nigeria to enforce these prosecutorial powers against transnational extractive corporations and government agencies. This prosecutorial provision remains dormant in the statute book, unenforced against any company or government officials.

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[374] *Ibid,* Nwapi, *supr*a note 230 at 35.
[375] *Ibid.*
[376] Abutudu & Garuba, *supra* note 22 at 23, Ihugba, *supra* note 354 at 76, C.I. Umeche & P.N. Okoli, "An Appraisal of the Powers of the Attorney General of the Federation with Respect to Criminal Proceedings Under the Nigerian Constitution" (2008) 34:1 Commonwealth Law Bulletin 43 at 44, Emmanueal Obuah, "Combating Corruption in a "failed" State: The Nigerian Economic and Financial Crimes Commission (EFCC)" (2010) 12:1 Journal of Sustainable Development in Africa 27 at 41. Section 174 of the Nigerian Constitution bestows upon the Attorney General of the Federation the power to prosecute any offence created by an Act of the National Assembly. The EFCC Establishment Act, 2003 vests upon the EFCC the power to prosecute a broad range of financial and economic crimes in Nigeria including governance fraud. Therefore, both the Attorney General of the Federation and the EFCC can exercise the prosecutorial powers created under the NEITI Act.
[377] *Ibid.*
[378] *Ibid.*
[379] Abutudu & Garuba, *supra* note 22 at 20.
[380] Nwapi, *supra* note 230 at 35.

This is a prime example of how the effectiveness of extractive transparency is reliant on the strength of institutions in the implementing state, as explained in the previous chapter. The enforcement powers of the NEITI are also limited by defenses granted to offenders under the Act, which permits an individual to escape liability if he can prove that the offence was committed without his knowledge or that he took all necessary steps to prevent the commission of the crime.[381] This gives allowance for directors of extractive companies or government officials to escape liability by alleging that they are unaware of the concealment of necessary information. The inefficiencies of the transparency, accountability, enforcement and multi-stakeholder governance provisions of the NEITI Act contributes significantly to the constrained form of extractive transparency prevalent in Nigeria's extractive sector.

3.2.2 Review of NEITI Audit Reports

One of the primary functions of the NEITI under the NEITI Act is to appoint independent auditors to undertake a comprehensive yearly audit of the extractive sector, for the purpose of "auditing the total revenue which accrued to the Federal Government for that year from extractive industry companies, in order to determine the accuracy of payments and receipts."[382] The audit is required to encompass "physical, process and financial audit"[383] and be published publicly upon completion. The NEITI audit reports form the crux of revenue transparency in the Nigerian extractive sector, as it seeks to reconcile the revenue received by the government and payments made by extractive companies, expose any discrepancies to the public as well as proffer recommendations for the improvement of the sector.[384]

The NEITI audit report standard has been applauded for its broad scope, as it surpasses the EITI narrow reporting standard, which only requires financial audits, to include physical and process audits.[385] This wide reporting standard attempts to reconcile the quantity of natural resources supposedly produced, the quantity exported and revenue claimed to be accrued by companies and

[381] NEITI Act, Section 16 (5) (a)
[382] NEITI Act, Section 4(1)
[383] Ejiogu et al, *supra* note 24 at 12.
[384] Andrew Chenge & Chikelue Ofuebe, "Resource rent to riches: Exploring NEITI Oil and Gas Audits and Financial Sustainability in Nigeria, 2012" (2020) XXI:1 Nigerian J of Public Administration and Local Govt. Publications 2 at 4.
[385] Eigen, *supra* note 13 at 340, Shaxson, *supra* note 20, Osuoka, *supra* note 203 at 821.

payments made to the government, to identify and block any form of financial leakages.[386] Therefore, the NEITI is able to determine if payments made by companies to the government in the form of taxes and royalties is commensurate with their levels of production.[387] Furthermore, NEITI audit reports publish payments on a company by company basis and project by project basis as opposed to the traditional aggregate basis.[388] Eigen hails the NEITI audit report, stating that "Nigeria has gone beyond the most basic level of EITI and requires the open publication of not only aggregated payments from all companies to government, but also the breakdown by individual company, production field, and category of payment."[389] This audit reporting standard earned Nigeria an EITI award in 2013 for "going beyond the EITI minimum standard."[390] Particularly, the first NEITI audit report for the oil and gas sector for the period between 1999–2004 published in June 2005 was well acclaimed locally[391] and internationally,[392] as it not only went beyond the EITI minimum reporting standard, but also revealed huge discrepancies between revenue received by the government and payments made by extractive companies.[393] Furthermore, the report was well received because it was the first time an audit was ever done on the Nigerian extractive sector.[394] According to Shaxson, "these reports, which are publicly available have contributed significantly to better transparency in Nigeria's oil sector, collecting and publishing an array of detailed and useful information for the first time. Nothing remotely like this has been done before, let alone published."[395] The 1999–2004 audit report, the momentum it generated and the attention it received might be adjudged to be the greatest achievement of the NEITI to date and one of the key achievements of the EITI.[396] Following the publication of this audit report and the

[386] Abutudu & Garuba, *supra* note 22 at 19.
[387] Asgill, *supra* note 35 at 31.
[388] M. Muller, "Turning the curse into a blessing: A convenient Illusion. Lessons from the Nigerian EITI process" in Geological Resources and Good Governance in Sub-Saharan Africa – Runge & Shikwati (eds) 2011, Taylor & Francis Group, London 69 at 69.
[389] Eigen, *supra* note 13 at 340.
[390] Nwapi, *supra* note 230 at 25.
[391] Okeke & Aniche, "A Critique of the Enforcement of Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007 in Nigerian Oil and Gas Sector" (2013) 14:2 British Journal of Arts and Social Sciences 98 at 104, Eyene Okpanachi, "Confronting the Governance Challenges of Developing Nigeria's Extractive Industry: Policy and Performance in the Oil and Gas Sector" (2011) 28:1 Review of Policy Research 25 at 38.
[392] Muller, *supra* note 388.
[393] Shaxson, *supra* note 20.
[394] Abutudu & Garuba, *supra* note 22, Asgill, *supra* note 35 at 33. The report not only revealed discrepancies in disclosures but also revealed the opacity in the management of the extractive sector, lack of cooperation between public institutions involved in the Nigerian extractive sector and weakness in the accounting and record keeping system of the sector.
[395] Shaxson, *supra* note 20, Asgill, *supra* note 35 at 31.
[396] Ejiogu et al, *supra* note 18 at 2.

subsequent 2005 report, the NEITI began to gain popularity amongst scholars and the international community as a viable natural resource governance tool capable of promoting developmental reforms in the Nigerian extractive sector and translating Nigeria's resource wealth into developmental gains.[397] For instance, Muller notes that "the Nigeria Extractive Industries Transparency Initiative started off as a success and thus created high expectations among the international community."[398] Abutudu and Guraba also align with this position when they state "the EITI process can be seen to have considerably widened the anti-corruption space in Nigeria by promoting transparency and accountability in extractive resource governance."[399]

However, years into the implementation of the NEITI, the acclaim of the initial audit report began to ebb away and the opacity of the NEITI audit reports began to unveil itself. The quality of information disclosed in these reports typically do not meet the minimum standard of timeliness, comprehensiveness and accuracy required of any form of disclosed information,[400] as discussed in the preceding chapter. The NEITI reports are usually two years late. Although the EITI permits two years delay in publishing audit reports at the maximum,[401] NEITI's report sometimes is delayed by up to three years at times. Late publication has the potential of reducing the relevance of the information disclosed as the audits will not be synchronous with the trends and occurrences in the sector as at the time of its publication. Therefore, its capacity to spur meaningful public accountability demands would be decreased.[402] The NEITI attributes these delays in publication to lack of timely funding to procure the audits and execute the audit process.[403] In accordance with the NEITI Act, the initiative relies on the federal government for funding. When disclosures are not made timeously, they are largely ignored by the public unless it is made relevant by debates in the parliament or an embezzlement scandal.[404]

[397] Eigen, *supra* note 13 at 340, Oladele Rotimi & Aderemi Adetunji Abdul-Azeez, "Revenue Generation and Transparency in Nigeria Oil and Gas Industry: Position of Nigeria Extractive Industries Transparency Initiative (NEITI)" (2013) 4:6 Research on Journal of Finance and Accounting 99 at 105.
[398] Muller, *supra* note 388.
[399] Abutudu & Garuba, *supra* note 22 at 23.
[400] Ejiogu et al, *supra* note 18 at 7.
[401] EITI 2019 Standard, Clause 4.8
[402] Ejiogu et al, *supra* note 18 at 7.
[403] Ejiogu et al, *supra* note 24 at 11.
[404] Ejiogu et al, *supra* note 18 at 4.

Secondly, the technical terms and jargon inherent in the NEITI audit reports precludes its comprehensiveness by the general public.[405] The reports seem to be published for technical experts only and not for public analysis or even civil society organization consideration; the summaries of these reports published alongside main reports are also largely unhelpful.[406] Although the press and CSOs have tried to correct this anomaly by publishing highlights of these reports, such as the exact amount owed to the government by extractive companies, or a brief summary.[407] In spite of this, a simplified and comprehensible version of the entire report is necessary to ensure it spurs public discussions and public demands for accountability. Scholars such as Osuoka and Ejiogu et al have argued that the reason NEITI audit reports have been unable to spur public debates and accountability demands is partly because only technical experts understand them—the public and even members of parliament and CSOs are unable to comprehend them.[408]

Lastly, the inaccuracies of the information purported to be reported and the data utilized in generating the NEITI audit reports grossly undermines their reliability.[409] In this regard, three major issues contribute to this dilemma. First, the EITI permits implementing countries to rely on existing data from government agencies and extractive companies in compiling and generating their audit report.[410] Therefore, any lapse or misinformation inherent in the data collected from government agencies and extractive companies in producing the audit reports would be absorbed by the audit reports, undermining their credibility.[411] The opacity in the accounting and reporting standards of Nigerian government agencies engaged in extractive activities is well-known.[412] For instance, the Nigerian National Petroleum Corporation (NNPC), the state oil company is notorious for grand corruption and lack of proper management and record keeping; in fact, it is adjudged to be the most corrupt state oil corporation in the world.[413] Yet, NEITI audit reports are generated using data collected from government agencies such as the NNPC, this undermines the accuracy

[405] Ihugba, *supra* note 354 at 76, Elisa Lopwz Lucia, Joanna Buckley, Heather Marquette & Neil McCulloh, "Lessons from Nigeria for improved thinking and working politically in the extractives sector" 37:S1 Development Policy Review 16 at 20.
[406] Osuoka, *supra* note 203 at 821.
[407] Asgill, *supra* note 35 at 33.
[408] Ejiogu et al, *supra* note 18 at 6, Osuoka, *supra* note 203 at 821.
[409] *Ibid*, Ejiogu et al.
[410] Clause 4.9 of the EITI 2019 Standard, EITI, "Guidance note 24: Data quality and assurance" (July 2016) online: <https://eiti.org/files/documents/guidance-note-24-data-reliability.pdf>
[411] Ejiogu et al, *supra* note 18 at 6.
[412] Shaxson, *supra* note 20.
[413] Nwapi, *supra* note 230 at 26.

of the information purported to be reported to the public in these reports. This situation is further exacerbated by the fact that the exact quantity of oil produced by the country is unknown due to inefficient measuring systems,[414] and the absence of facilities to measure oil quantities.[415] The quantity of oil produced is measured based on export disclosures made by extractive companies without any form of subsequent verification.[416] Furthermore, the amount of oil lost to bunkering (oil theft, smuggling and diversion) is also unknown and unaccounted for in the audit reports, as political elites' vested interests in oil bunkering hinders the exposure and prevention of oil bunkering.[417] Since the NEITI does not have the capacity to independently and accurately make and support its findings, it has to rely on data provided by extractive companies, which is often plagued by murky accounting standards adopted by some companies.[418] Therefore, a company may decide to report less income than it actually receives each year since the exact quantity of oil it produces is unknown. These inaccuracies and lapses inherent in the reporting and accounting standards undermine the veracity of the NEITI audit reports, thus indirectly validating unreliable and largely inaccurate information.[419] Also, implementation of the recommendations contained in the audit reports are usually slow or largely ignored.[420] This exhibits an unwillingness on the part of the government to enhance transparency in the Nigerian extractive sector.

These inadequacies identified in the generation of NEITI audit reports and the shortcomings of the NEITI Act transforms the NEITI into a constrained transparency – providing only a narrow, surface level form of disclosure. Government control over the initiative and the manner in which the NEITI audit reports are generated provides allowance for the government to utilize the NEITI as a tool for the further conceal corrupt and opaque practices it was established to expose.[421] While the NEITI has led to more public disclosures, and NEITI's reporting is an achievement in itself, these disclosures have however not led to tangible accountability demands nor less corruption as

[414] Eyene Okpanachi, "Confronting the Governance Challenges of Developing Nigeria's Extractive Industry: Policy and Performance in the Oil and Gas Sector" (2011) 28:1 Review of Policy Research 25 at 38, Osuoka, *supra* note 203 at 821.
[415] Asgill, *supra* note 35 at 31.
[416] Idemudia, *supra* note 25 at 137, Osuoka, *supra* note 203 at 823.
[417] Asgill, *supra* note 35 at 39.
[418] Eyene Okpanachi, "Confronting the Governance Challenges of Developing Nigeria's Extractive Industry: Policy and Performance in the Oil and Gas Sector" (2011) 28:1 Review of Policy Research 25 at 38
[419] Ejiogu et al, *supra* note 18 at 8.
[420] Asgill, *supra* note 35 at 39.
[421] Ejiogu et al, *supra* note 18 at 9.

initially envisioned by scholars, policymakers and the international community.[422] Recent literature such as the work of Ejiogu et al now conceptualizes NEITI as a tool used by political elites to further patronage activities, clientelism and corruption in the extractive sector.[423] Ejiogu et al. opine that grand corruption in Nigeria has tainted the NEITI such that it is now a form of "corrupted transparency."[424] They however argue that this corrupted transparency is still required to curtail corruption and opacity in the Nigerian extractive sector because "this corrupted transparency is taken hold of by CSOs and used to drive accountability".[425] As it provides CSOs with the information and platform to make demands for accountability and push for improved information disclosure standards. Therefore, "transparency becomes part of the problem as well as part of the solution" in Nigeria.[426] In line with this position, this thesis posits that the infirm transparency and accountability provisions of the NEITI Act and the inadequacies of the NEITI audit reports transforms transparency into a constrained form of transparency in Nigeria. Nonetheless, CSO advocacy strategies (such as public awareness campaigns) can serve as viable "counterforce" against this form of constrained transparency and political elites' control over the NEITI.[427] Transparency, even in its constrained form is still required in Nigeria to promote the participation of CSOs in natural resource governance, provide a platform for CSOs to make demands for institutional reforms and facilitate citizen engagement in resource governance. Chapter Four of this thesis considers more broadly how CSOs can utilize Nigeria's constrained transparency to make accountability demands and push for reforms in Nigeria's transparency regime.

3.3 Beneficial Ownership Transparency in the Nigerian Extractive Sector

As with the case of revenue transparency, Nigeria is one of the first EITI countries to implement beneficial ownership (BO) transparency in its extractive sector.[428] Nigeria commenced the

[422] *Ibid* at 11, Nwapi, *supra* note 230 at 23, Shaxson, *supra* note 20.
[423] Ejiogu et al, *supra* note 24 at 1, Oppong & Andrews, *supra* note 15 at 6.
[424] Ejiogu et al, *supra* note 24 at 1.
[425] *Ibid.*
[426] *Ibid.*
[427] *Ibid*, Evaristus Oshionebo, "Corporations and Nations: Power Imbalance in the Extractive Sector" (2018) 77:2 American Journal of Economics and Sociology 419 at 437.
[428] EITI, "Beneficial Ownership: Revealing who stands behind the Companies", online: < https://eiti.org/beneficial-ownership>; Chilenye Nwapi, Chinwe Ezeigbo & Oluwakemi Oke, "Developments in beneficial ownership disclosure in the extractive industry in Nigeria" (2021) The Extractive Industries and Society 443 at 443.

implementation of BO transparency in its extractive sector by establishing an online register even in the absence of a binding law enabling it[429] (a new company law enacted in August 2020 now requires the disclosure of beneficial owners of companies operating in Nigeria). BO disclosure requirements in the extractive sector are nascent, therefore regulatory frameworks and practices are still emerging internationally to deal with the complexities of BO disclosures. This section analyses the regulatory framework of BO disclosure in Nigeria and examines the effectiveness of the online register in promoting public disclosure of the ultimate owners of extractive companies of beneficial ownership for the extractive sector in Nigeria. The challenge posed by complex and opaque ownership structures of extractive companies on the verification and enforcement of BO disclosures is also discussed in this section.

3.3.1 Analysis of the Regulatory Framework of Beneficial Ownership Transparency in Nigeria

The Companies and Allied Matters Act, 2020[430] (CAMA 2020) enacted in August 2020 is the only law mandating the disclosure of beneficial owners of companies in Nigeria. However, as will be discussed further below, even its provisions do not adequately mandate the disclosure of person(s) who ultimately own and control a company; the Act merely mandates legal ownership disclosure.[431] This is a significant challenge to BO disclosures because the enormous difference between a legal owner and a beneficial owner forms the core of the objective of disclosing the actual and ultimate owners of extractive companies.[432] A legal owner is a legal person publicly listed as a director or shareholder of a company while a beneficial owner is a natural person(s) who ultimately owns and controls a company.[433] A legal owner could also be a beneficial owner of a company, however, as discussed in Chapter Two, many extractive companies are renowned for their complex ownership structures which effectively conceals their beneficial owners, using legal owners as a front. In most instances, a search of the company's records reveals who the legal owners of the company are – shareholders and directors, however beneficial owners are often

[429] *Ibid.*
[430] Companies and Allied Matters Act, 2020
[431] The widely accepted definition of beneficial owner of a company is the person who "ultimately owns or controls" a company.
[432] NEITI, "The Need to Know who owns what in Nigeria's Extractive Sector", (May 2016) online: < https://eiti.org/files/documents/policy_dialogue_on_beneficial_ownership_final.pdf>
[433] Nwapi et al, *supra* note 428 at 447.

hidden behind corporate arrangements such as nominee shareholding and trusts arrangements, this underscores the importance of BO disclosures.[434] Prior to the enactment of CAMA 2020, the previous Companies and Allied Matters Act, 2004[435] (CAMA 2004) only required the disclosure of legal owners of companies and was completely silent on beneficial ownership disclosure.[436] The CAMA 2004 was the law in force when Nigeria established its online beneficial ownership register for extractive companies; it "governed all initiatives and actions on beneficial ownership disclosure that NEITI undertook."[437] Therefore, a quick review of ownership disclosure in the CAMA 2004 will be undertaken and the changes made by the CAMA 2020 will be discussed.

The CAMA 2004 required companies and shareholders to disclose legal ownership interests to the Corporate Affairs Commission (CAC). Section 27(3) of CAMA 2004 provides that "a subscriber of the memorandum who holds the whole or any part of the shares subscribed by him in trust for any other person shall disclose in the memorandum that fact and the name of the beneficiary". Also, Section 94 of CAMA 2004 gave public companies the discretion to request any of its members to disclose if they hold shares in the company as a beneficial owner and to signify such disclosure against the name of the member in the register of members of the company. Furthermore, the CAMA 2004 required a person who is a substantial shareholder in a public company to give details of his ownership in the company (substantial shareholding is defined under the CAMA 2004 as 10 per cent voting rights).[438] While the objective of these provisions is to mandate some form of disclosure of who the shareholders and directors of the company are, they are inadequate in identifying the beneficial owners of companies. This omission to require the disclosure of beneficial owners of companies in CAMA 2004 is one of the inadequacies which the CAMA 2020 sought to remedy.

The CAMA 2020 retains most of the provisions of CAMA 2004 relating to legal ownership disclosure; however, it makes certain alterations and additions. The CAMA 2020 reduced the threshold for substantial shareholding disclosure in public companies to 5%, lower than the 10%

[434] *Ibid.*
[435] Companies and Allied Matters Act (Nigeria), Cap C20, Laws of the Federation 2004
[436] Radon & Achuthan, *supra* note 105, Nigeria Extractive Industries Transparency Initiative, "Beneficial Ownership Transparency in Nigeria", online: < https://www.neiti.gov.ng/index.php/neiti-legal-and-institutional-framework-contracts-and-licenses?view=faq&catid=1>
[437] Nwapi et al, *supra* note 428 at 447.
[438] CAMA, 2004, Section 95

threshold requirement in CAMA 2004.[439] This widened the scope of substantial shareholding disclosure requirement under Nigerian company law, enough to cover the disclosure of substantial legal ownership interests in companies; but it still falls short of mandating beneficial ownership disclosure. Section 119 of CAMA 2020 introduced a disclosure requirement for individuals with "significant control over a company" (in both private and public companies). This section provides that individuals "with significant control over a company" should disclose to the company within seven days of becoming one and the company shall in turn notify the corporate affairs commission of this disclosure. The company is required to indicate in its register of members details of persons with significant control over the company and maintain a register of persons with significant control.[440] This register of members is only open to members of the company; non-members of the company can only access it with the company's permission.[441] "Significant control" under the Act is defined as an individual who directly or indirectly holds at least 5% shares or interest in a company or 5% voting rights in a company or persons who exercises significant influence over a company or an individual who has the right to appoint or remove members of board of a company.[442] Admittedly, this definition is broad enough to cover a wide range of ownership interests in a company; however this definition falls short of the internationally recognized definition of beneficial owner, which is an "individual who ultimately owns and controls a company."[443] Certain beneficial owners hidden under opaque corporate entities and other legal ownership arrangements can still evade the "significant control" disclosure requirement under CAMA 2020. The provision is also flawed for vesting the burden of disclosure on individuals—if an individual with "significant control over a company" fails to make a disclosure, there would be no record of such control. A better method would be to vest the burden of disclosure directly on the company and the company should be penalized for failure to disclose to the corporate affairs commission.[444] In addition, the register of members where details of the disclosure is recorded is not open to the public, a person interested in searching the register of members requires the

[439] CAMA 2020, Section 120
[440] CAMA 2020, Section 119 (3) & (4)
[441] CAMA 2020, Section 112(2)
[442] CAMA 2020, Section 868, Alsec Nominees Limited, "CAMA 2020 – Highlights of Changes in Governance and Management", online: < https://www.uubo.org/media/1973/cama-2020-highlights-of-changes-in-governance-and-management.pdf>
[443] Sayne et al, *supra* note 288.
[444] Nwapi et al, *supra* note 428 at 438.

permission of the company to access it.[445] Therefore, beneficial ownership disclosures made by individuals under the CAMA 2020 is not open to public scrutiny. Based on this analysis, it is safe to conclude that the CAMA 2020 only vaguely mandates beneficial ownership disclosure of extractive companies and other companies generally. Therefore, as with revenue transparency, BO transparency in Nigeria only provides a narrow form of disclosure (constrained transparency) as the CAMA 2020 merely mandates legal ownership disclosure and not beneficial ownership disclosure.

Under the NEITI Act, there is no explicit provision requiring the disclosure of beneficial owners of extractive companies operating in Nigeria. The reason for this might be that at the time the Act was enacted in 2007, revenue transparency had been emphasized while other forms of extractive transparency, such as BO transparency, had just begun to gain momentum. Regardless of this omission, the NEITI can still, pursuant to other provisions of the Act, impose beneficial ownership disclosure obligations upon extractive companies in Nigeria. Under Section 2 of the Act, the NEITI is required to eliminate all forms of corrupt practices in the determination and payments of revenue accruing to the Federal Government from extractive companies.[446] "Corrupt practices" can be interpreted to mean concealment of beneficial owners of extractive companies to further patronage arrangements with politically exposed persons (PEPs) or to evade tax and environmental liabilities. The NEITI is also required to ensure that extractive transparency practices with the current EITI Standard.[447] The EITI 2019 Standard requires all implementing countries to enforce beneficial ownership disclosure from 1 January 2020 and maintain a publicly available register of beneficial owners of extractive companies.[448] Based on this obligation, the NEITI has a duty to impose a beneficial ownership disclosure requirement on extractive companies operating in the Nigeria via a regulation or policy pursuant to Section 17 of the Act. Section 17 of the NEITI Act grants the NSWG (the implementing body of the NEITI), the discretionary powers to develop policies and regulations necessary for the implementation of other provisions of the Act and that fall within the mandate of the NEITI. Pursuant to this provision, the NSWG formulated the roadmap for the

[445] CAMA 2020, Section 112(2)
[446] NEITI Act, Section 2(c)
[447] NEITI Act, Section 2(e)
[448] EITI 2019 standard, Clause 2.5

implementation of beneficial ownership disclosure in Nigeria[449] and subsequently conducted a pilot assessment,[450] in line with the EITI Standard. Although these initiatives do not create binding obligations on extractive companies to make BO disclosures, they do analyze the general feasibility of the enforcement of BO disclosures in Nigeria, highlight implementation challenges and provide recommendations for its efficient implementation. While they are not policy documents or regulations mandating the disclosure of beneficial owners of extractive companies in Nigeria, they are a step in the right direction towards the enactment of a binding regulation mandating BO disclosure.

The preceding analysis has shown that the CAMA 2020 loosely mandates the disclosure of beneficial owners of companies through its provision on disclosure of persons with significant control over the company because the definition of significant control is insufficient to encompass the disclosure of person(s) who ultimately own and control a company. Therefore, a law or policy is needed that expressly requires the disclosure of beneficial owners of extractive companies.[451] The NEITI Act could be amended to include mandatory disclosure of beneficial owners of extractive companies. Alternatively, the NSWG can issue a regulation pursuant to its powers under section 17 requiring the disclosure of beneficial owners of extractive companies in Nigeria. For this law or regulation to be effective, it must meet certain requirements. The law or policy should provide for a low minimum ownership threshold of disclosure; the NEITI is considering 5% threshold,[452] which is in line with the current 5% threshold under the CAMA 2020. However, the proposed 5% ownership threshold appears to be too high, given the immense financial benefits inherent in the extractive sector, where ownership or control interest as low as 1% could yield a

[449] NEITI, "The Roadmap on the Implementation of Beneficial Ownership Disclosure in Nigeria" online: < https://eiti.org/files/documents/neiti-bor-281216.pdf> The roadmap considers issues such as; legal and regulatory framework for BO Disclosure in Nigeria, the definition of BO and proposed threshold for BO disclosure in Nigeria, PEPs and BO disclosure and data collection administration for BO disclosure in Nigeria.

[450] NEITI, "Pilot Assessment of Beneficial Ownership (BO) Disclosure: Nigeria's Experience", online: < https://eiti.org/files/nigeria_bo_pilot_report.pdf> This serves as a report of the pilot BO disclosure scheme conducted by the NEITI following EITI's directive for implementing countries to conduct a pilot scheme, the report states the format in which the data were collected from companies, ways in which information submitted by companies were verified and changes faced in the collection of data. An examination of the said report reveals that the data collected were geared towards legal ownership disclosure and not beneficial ownership disclosure, this is however a good standing point for the enforcement of BO disclosures in Nigeria.

[451] Ruth Olurounbi, "Nigeria waits for promises to be fulfilled: The National Assembly has waited more than six months for the president to give his assent to anti-corruption legislation" (12 November 2019) online: <https://www.petroleum-economist.com/articles/politics-economics/africa/2019/nigeria-waits-for-promises-to-be-fulfilled>

[452] NEITI, *supra* note 449.

person significant financial value.[453] To be most effective, a minimum threshold for disclosure should be dispensed with entirely. The law or policy should also disallow certain "inappropriate beneficial ownership interests",[454] such as PEPs' ownership interests in extractive companies.[455] The law or policy should also make provisions for administrative issues such as the verification of BO disclosures, mode of disclosure, collection of BO disclosures and training of law enforcement agencies to investigate BO disclosures. It should also take into consideration legal concerns that may arise from publication of BO disclosures, such as privacy and confidentiality issues.[456] Finally, the regulation should impose onerous penalties for noncompliance and false declarations by extractive companies.[457] Having discussed the regulatory framework of BO transparency in Nigeria, this chapter will now proceed to examine the practice of BO transparency in the Nigerian extractive sector.

3.3.2 Nigeria's Online Register of Beneficial Ownership for the Extractive Sector

Nigeria introduced a form BO transparency in December 2019 by establishing an online beneficial ownership register, despite the absence of enabling legislation.[458] Nigeria established the online register in line with its commitment made at the 2016 Anti-Corruption Summit in London to open a register of beneficial ownership for extractive companies[459] and in compliance with EITI's requirement for implementing countries to create a beneficial ownership register by January 2020.[460]

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[453] BudgIT, "Beneficial Ownership Reform in Nigeria: Key insights for citizens and policy makers" online: <http://fixouroil.com/wp-content/uploads/2019/09/Beneficial-Ownership-Reform-in-Nigeria_Key-Insights_September-26th_2019.pdf>

[454] Erica Westenberg, "Leveraging Beneficial Ownership Information in the Extractive Sector" (October 2018) online: < https://resourcegovernance.org/analysis-tools/publications/leveraging-beneficial-ownership-information-extractive-sector>

[455] *Ibid*

[456] *Ibid.*

[457] *Ibid.*

[458] Nwapi et al, *supra* note 428.

[459] Bassey Udo, "Nigeria set to open extractive industry ownership register – Here's how it will work" (May 2020) online(news):< https://www.premiumtimesng.com/business/business-news/367378-nigeria-set-to-open-extractive-industry-ownership-register-heres-how-it-will-work.html> , NEITI, "Beneficial Ownership Portal", online: < https://bo.neiti.gov.ng/>

[460] Clause 2.5 of the EITI 2019 Standard mandates all implementing countries to establish and maintain a public register of beneficial ownership of extractive companies from 1 January 2020.

The register is a laudable first step towards implementing beneficial ownership transparency in the Nigerian extractive sector and the country has been commended for this step.[461] OpenOwnership, (a non-profit organization promoting BO transparency)[462] describes Nigeria's online register of beneficial ownership as "Africa's first beneficial ownership register, and the first globally to focus on the lucrative oil, gas and mining sectors."[463] OpenOwnership also commended the register saying, "the register itself is a solid first step with good functionality and innovations such as the inclusion of licencing data."[464] The NEITI created separate registers for the oil and gas sector and the mining sector, and both registers are "searchable by companies, assets and individuals."[465] The NEITI also guarantees to regularly update the information contained in both registers when they are made available.[466] Both registers are freely searchable by anyone and the website can perform basic searches. More importantly, company information is available for cumulative download, which enables the information on beneficial owners of companies on the website to be used "in connection with global data sets,"[467] promoting the strength of the global online beneficial ownership register. A search on any company reveals the list of company shareholders and their share of ownership.[468]

Despite the commendable features of this register, there are several lapses inherent in the administration of the register and the information it discloses. First, the register mostly contains information on legal owners of companies—company shareholders are disclosed but not beneficial owners. Also, corporate entities registered in other jurisdictions (mostly in offshore financial

[461] Open Ownership, "Our quick assessment of Nigeria's first public register: a strong start, but more to be done". Online(news) < https://www.openownership.org/news/our-quick-assessment-of-nigerias-first-public-register-a-strong-start-but-more-to-be-done/>

[462] Open Ownership, "About", online: < https://www.openownership.org/about/>

[463] Open Ownership, *supra* note 461.

[464] *Ibid*. Many other countries have committed to or are in the processing of creating beneficial owner registers, in the EU as a requirement of the Fourth Anti-Money Laundering Directive, all the EU members are mandated to set up beneficial ownership registers of companies from January 2020. Also, the UK in 2016 established its register of beneficial ownership titled, "People with Significant Control (PSC) register", it is said to be the first register of beneficial ownership in the world, although not focused on the extractive sector. Federico Mor, "Register of beneficial ownership" (7 August 2019) online: <intranet.parliament.uk/commons-library>

[465] NEITI, "Beneficial Ownership Portal", online: < https://bo.neiti.gov.ng/>, BudgIT, "Beneficial Ownership Reform in Nigeria: Key insights for citizens and policy makers" online: <http://fixouroil.com/wp-content/uploads/2019/09/Beneficial-Ownership-Reform-in-Nigeria_Key-Insights_September-26th_2019.pdf>

[466] *Ibid*.

[467] Open Ownership, *supra* note 461.

[468] Proshare, "NEITI launches Beneficial Ownership Portal" (December 12, 2019) online: < https://www.proshareng.com/news/Oil%20&%20Gas/NEITI-Launches-Beneficial-Ownership-Port/48408#>

centres) are listed as beneficial owner of most companies.[469] Naming a corporate entity as beneficial owner of another corporate entity reveals little about who ultimately owns and controls the company. A further search would have to be conducted on the corporate entity listed as beneficial owner or shareholder to reveal the owners behind the named corporate entity. This situation becomes even more complicated in instances where the corporate entity named as shareholder or beneficial owner possesses a complex ownership structure spanning various jurisdictions; uncovering the ultimate owner(s) in such cases proves far too difficult. The next section discusses the challenge posed by the complex ownership structure of extractive companies on BO disclosure and verification. A more effective approach the NEITI can adopt is to require companies to disclose natural persons as beneficial owners in addition to legal ownership disclosure. This way, the disclosure will reveal identifiable natural person(s) as beneficial owner and shareholder(s) of the company. If corporate entities are listed as beneficial owners and shareholders under the disclosure regime, a further search would have to be conducted to reveal the natural person(s) who own and control the company.

Also, the NEITI should focus on collecting information on beneficial ownership and not just legal ownership. Information on the ownership interest of PEPs is also absent in the register.[470] Unveiling the hidden ownership interests of PEPs in extractive companies is one of the major reasons behind the recent push for BO disclosure. A study of major corruption cases in the extractive sector revealed that more than half of the cases involved PEPs' hidden ownership interests in extractive companies.[471] Public disclosure of PEPs' beneficial ownership interests in extractive companies is extremely important to deter corruption and illicit financial flows in the Nigerian extractive sector. PEPs and political elites in Nigeria are notorious for creating sham companies and other opaque legal structures to launder the country's wealth.[472] A prime example of this conduct is a well-known case of a former Nigerian petroleum minister who awarded an oil

[469] NEITI, "Search Result for: Shell Nigeria Exploration and Production Company Limited (SNEPCo)" online: < https://bo.neiti.gov.ng/og_search>
[470] Open Ownership, *supra* note 461.
[471] Westenberg, *supra* note 454.
[472] Ike Onyiliogwu, "Money Laundering by Politically Exposed Persons in Nigeria: Consequences and Combative Measures" (2018) 29 Economic Crime Forensics Capstones, online: < https://digitalcommons.lasalle.edu/cgi/viewcontent.cgi?article=1029&context=ecf_capstones> . According to Nigeria's President, Muhammadu Buhari, $150 billion has been stolen from the government in 10 years by PEPs and other political elites in positions of authority.

block to a company (at gross undervalue), Malabu Oil, in which he owned substantial interest in and used other individuals to front as shareholders of the company.[473]

Secondly, the register lacks "unique identifiers"[474] for companies. The beneficial ownership register only provides names of companies, which could prove problematic when attempting to differentiate companies with similar names on the register.[475] The importance of effectively distinguishing between companies with similar names is recognized under the law, specifically, trademark law and passing off law. The rationale behind this is that the public should not be misled and confused when trying to distinguish between companies with similar names and be empowered to make informed purchasing decisions.[476] This reasoning is also important under a disclosure regime; the public should be provided sufficient information about companies and individuals to be able to effectively identify the companies and individuals sought to be disclosed. Therefore, unique identifiers, such as the registered number or address of the company, are important to effectively distinguish between companies. Finally, verification of BO disclosures made by companies should be undertaken before uploading the disclosed information to the portal. The NEITI states that the information contained in the register was garnered from NEITI's audit reports over time;[477] in most cases, these reports only contain legal ownership information. Cooperation between relevant government agencies could improve the verification of companies' disclosure.

The Nigerian beneficial ownership register can garner a few lessons from the administration of the UK's beneficial ownership register, known as the register of Persons with Significant Control (PSC), the PSC is a public register of beneficial owners for all companies.[478] While the PSC has its own lapses, similar to some of Nigeria's discussed above,[479] there are best practices that can be adopted from its administration since it was the first beneficial ownership register in the world.[480]

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[473] Gillies, *supra* note 56 at 6
[474] Open Ownership, *supra* note 461
[475] *Ibid.*
[476] Catherine W. Ng, "The Law of Passing Off – Goodwill Beyond Goods" (2016) 47 International Review of Intellectual Property and Competition Law" 817 at 821.
[477] NEITI, "Beneficial Ownership Portal", online: < https://bo.neiti.gov.ng/>
[478] OpenOwnership and Global Witness, "Learning the lessons from the UK's public beneficial ownership register" (October 2017) online: < https://www.openownership.org/uploads/learning-the-lessons.pdf> The PSC was established pursuant to the amended Companies Act 2015, the Act mandates companies to identify and disclose persons with significant control over the company to the Companies House.
[479] *Ibid*. They include; absence of adequate unique identifiers for disclosed beneficial owners and unreliable verification mechanism for disclosed information.
[480] *Ibid.*

First, the PSC is required to be updated within 28 days after a change in beneficial ownership of a company.[481] Therefore, the data on the register is up to date and reliable. The administrators of the PSC register (Companies House) recognize that legal entities and arrangements are susceptible to changes based on business demands. The PSC's register discloses the full name of the owner, date of birth, country of residence, nationality, address and the nature of their interest and control in the company.[482] Nigeria should consider adopting this detailed method of disclosure to enable users to accurately identify the listed beneficial owner. Although this form of detailed disclosure could raise privacy and safety concerns in some instances,[483] these concerns should be offset by the need for disclosure in the public interest. The administrators of the PSC register (Companies House) address this issue by limiting full disclosure where it is likely to pose safety risk to the beneficial owner or there is a need to protect sensitive information concerning the beneficial owner sought to be disclosed.[484] Nigeria can also adopt this approach by restricting full disclosure where it is likely to pose safety or privacy risk to the beneficial owner, however, innocuous information such as the name and nationality of the beneficial owner should still be disclosed and made public. Second, onerous penalties are imposed on companies for failure to provide accurate information,[485] which could aid in deterring companies from providing false information. Lastly, the Companies House, obtains regular feedback from users of the register, particularly CSOs, to determine the efficiency of the register in meeting their demands.[486] This enables administrators of the register to understand whether the register is effectively achieving its purpose. This practice, if adopted in Nigeria, could ignite public engagement with disclosed information and trigger public demands for accountability. Having considered the regulatory framework and practice of BO transparency in the Nigerian extractive sector, this chapter will proceed to discuss the challenge posed by the complex ownership structures of extractive companies on BO transparency implementation and verification.

[481] *Ibid.*
[482] Paul Michael Gilmour, "Lifting the veil on beneficial ownership: Challenges of implementing the UK's registers of beneficial owners" (2020) 23:4 Journal of Money Laundering Control 717 at 721.
[483] *Ibid.*
[484] *Ibid.*
[485] OpenOwnership and Global Witness, *supra* note 478.
[486] *Ibid.*

3.3.3 Challenge of complex ownership structures and Offshore financial centres

Transnational extractive corporations are illustrious for their complex, multilayered and opaque ownership structures spanning various countries, involving different forms of legal arrangements and often owning subsidiaries in offshore financial centres (OFCs).[487] For example, Oshionebo describes the ownership structure of Sierra Leone Hard Rock (SL) Limited, a mining company, as "[operating] through three separate offshore holding companies (two registered in Guernsey and one in Bermuda) with a primary owner registered in Bermuda, owned in turn by three separate holding companies (two of which were registered in London and one in China)."[488] Also, Extractive Hub (an initiative promoting the efficient management of the extractive sector)[489] states that BP owns "a total of 1,180 affiliates in 84 countries, nearly every upstream operation passed back through chains that were three of four stages deep, and there were some chains of 14 separate incorporations, before they passed back to BP Plc, the holding company listed on the London stock exchange."[490] PEPs of resource rich countries utilize this cluster of ownership arrangements and corporate entities to conceal their ownership interests in extractive companies.[491] How can government agencies unveil the beneficial owner(s) of extractive companies with this form of complicated ownership structure? How can they verify beneficial ownership disclosures made by these companies?

To effectively regulate and implement BO disclosures involving companies with convoluted ownership structures, international and institutional cooperation is required to enhance information sharing, verification of disclosures and enforce deterrence measures.[492] International initiatives are taking steps to facilitate global cooperation in the implementation of BO disclosures by creating platforms for the coordination of global efforts promoting BO disclosure.[493] For instance, OpenOwnership has established a global BO register through the collection of data from national

[487] Oshionebo, *supra* note 427 at 423; Extractive Hub "Beneficial Ownership & Networks of Incorporation" Online: < https://www.extractiveshub.org/servefile/getFile/id/4198>
[488] *Ibid.*
[489] Extractive Hub, "Our purpose", online: < https://www.extractiveshub.org/main/aboutus/content/3>
[490] Extractive Hub "Beneficial Ownership and Networks of Incorporation", online: < https://www.extractiveshub.org/servefile/getFile/id/4198>
[491] Radon & Achuthan, *supra* note 105 at 89.
[492] Westenberg, *supra* note 454.
[493] Pietro Toigo, "Beneficial ownership of extractive companies: Are we walking the walk?" (August 3, 2016) online: < https://www.linkedin.com/pulse/beneficial-ownership-extractive-companies-we-walking-walk-toigo>

BO registers of different countries.[494] The European Union (EU), pursuant to the 5th anti-money laundering Directive, (an EU directive regulating the prevention of the use of EU's financial system for money laundering and terrorist financing purposes),[495] is also making efforts towards a transboundary BO disclosure platform.[496] The effectiveness of these global BO registers would be strengthened by the synchronisation of BO disclosure regulations and standards across different jurisdictions.[497]

Accessing and harmonizing BO information across different jurisdictions has its own peculiar challenges. First, countries set up BO registries using different disclosure standards and requirements. In some cases, BO disclosures are not searchable by members of the public due to privacy concerns or restrictions placed on the usage of data, while some countries are yet to set up BO registries.[498] Furthermore, the data collected about the beneficial owners differ; some countries, such as Nigeria, are merely collecting information on legal ownership (only the name of such legal/beneficial owner is disclosed in the register). Generally, the EITI standard requires the disclosure of the name, nationality, country of residence of the beneficial owner and whether the beneficial owner is a PEP.[499] National BO registries need to make data open and standardized to promote the establishment and administration of a global BO register.[500] This might be difficult to achieve in instances where enacted laws or regulations are already in place codifying the required standard of disclosure; amending the law or regulation to be in harmony with the global standard may be tedious.

Furthermore, the difference in BO definitions, thresholds and the legal requirement for disclosure across various jurisdictions poses a challenge to transboundary cooperation and sharing of information.[501] BO definitions differ across various statutes as well; it could be defined in terms of shareholding, share capital, ownership interest, voting rights, right to benefit, or right to

[494] Open Ownership Register online: <https://register.openownership.org/>
[495] Directive (EU) 2018/843 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, online: < https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018L0843>
[496] Toigo, *supra* note 493
[497] *Ibid.*
[498] EITI, "Legal Approaches to beneficial ownership transparency in EITI countries" (June 2019) online: < https://eiti.org/files/documents/legal_approaches_to_beneficial_ownership_transparency_in_eiti_countries.pdf>
[499] *Ibid.*
[500] Open Government Partnership Global Report, "Anti-Corruption Initiatives: Beneficial Ownership" online: < https://www.opengovpartnership.org/wp-content/uploads/2019/05/Global-Report_Beneficial-Ownership.pdf>
[501] EITI, *supra* note 498.

control.[502] BO disclosure minimum thresholds also differ across jurisdictions. National legislation often contains a minimum threshold to qualify as beneficial owner, which usually range from 5% to 25%.[503] For instance, Nigeria has set a 5% minimum threshold for "persons with significant control" under the CAMA 2020. The UK and the EU in general set the threshold for beneficial ownership disclosure at 25% capital ownership or voting right. Cameroon set a 5% share/capital ownership, while in the Kyrgyz Republic and Peru, it is set at 10% of share/capital ownership.[504] In some instances, these thresholds might not identify the authentic beneficial owner of the company where such person controls a company without holding any equity or shareholding in the company.[505] In addition, the minimum disclosure threshold of 25% for the extractive sector is too high because of the lucrativeness of the sector—a threshold as low as 1% can yield a person significant financial value. Based on the lucrativeness of the extractive sector, perhaps a minimum threshold for disclosure should be dispensed with entirely to require the disclosure of all beneficial owners of extractive companies irrespective of percentage ownership or shareholding.[506] Also, countries adopt different definitions of beneficial ownership; some definitions are broad enough to cover many forms of corporate entities and legal arrangements, while some definitions are so constricting as in the case of Nigeria that it merely requires legal ownership disclosures.[507]

Finally, the linkage of many transnational extractive companies to OFCs poses a major challenge to the enhancement of international cooperation on BO disclosure verification and enforcement.[508] OFCs provide a secure business environment for companies due to lenient tax rates and minimal disclosure requirements.[509] These jurisdictions conceal beneficial ownership information through

[502] *Ibid.*
[503] *Ibid.*
[504] *Ibid*
[505] Transparency International, "Beneficial Ownership: How to find the real owners of secret Companies" online: < https://images.transparencycdn.org/images/2017_Report_BeneficialOwnershipRealOwners_English.pdf>
[506] *Ibid.*
[507] Mark Fenwick, Erik P.M. Vermeulen, "Disclosure of Beneficial Ownership after the Panama Papers" online: < https://www.ifc.org/wps/wcm/connect/56cbec95-6d90-42e5-b05d-7849907de64a/Focus-14.pdf?MOD=AJPERES&CVID=ltk4eU2>
[508] The International Monetary Fund defines an offshore financial center (OFC) as "a country or jurisdiction that provides financial services to nonresidents on a scale that is incommensurate with the size and the financing of its domestic economy". PEPs and political elites in Africa even use these jurisdictions to launder the nation's wealth. Olatunde Otusanya & Sarah Lauwo, "The role of Offshore financial centres in elite money laundering practices: evidence from Nigeria" (2012) 15:3 Journal of Money Laundering Control 336 at 337.
[509] Extractives Hub, "Beneficial Ownership & Networks of Incorporation" online: < https://www.extractiveshub.org/servefile/getFile/id/4198>

the creation of corporate entities such as shell companies by anonymous means.[510] In almost all corruption scandals involving African extractive sectors, the use of OFCs are always apparent.[511] The famous Panama Papers leak exhibited how legal entities created in these jurisdictions considerably complicate the identification, verification and enforcement of BO disclosures.[512] As a result of this leak, there have been calls for OFCs to improve their information collection standard and decrease the secrecy involved in their business dealings.[513] This leak has also prompted more coordinated global efforts by regulators in enhancing the implementation and enforcement of BO disclosures.[514] Since the efforts described above are in their infancy, it is still difficult to determine if they would potentially shed more light on secret ownership and opaque legal entities registered in OFCs. This chapter continues with a discussion on contract transparency in the Nigerian extractive sector.

3.4 Contract Transparency in the Nigerian Extractive Sector

There is no express law or policy in Nigeria mandating the government and extractive companies to disclose extractive contracts. However, it is anticipated that Nigeria will take steps towards the publication of extractive contracts in accordance with the EITI 2019 Standard, which requires implementing countries to commence the public disclosure of extractive contracts by January 2021.[515] Nigeria has made a number of public commitments to publish extractive contracts. The most notable of these commitments is its statement at the Anti-Corruption Summit in London in 2016, wherein Nigeria joined the open contracting partnership (OGP) and committed to the "full implementation" of the principles of open contracting data, one of which is the publication of extractive contracts.[516] However, the country is yet to take any meaningful steps towards the

[510] Paul Michael Gilmour, "Lifting the veil on beneficial ownership: Challenges of implementing the UK's registers of beneficial owners" Journal of Money Laundering Control online: < https://www.researchgate.net/publication/340276942_Lifting_the_veil_on_beneficial_ownership_Challenges_of_implementing_the_UK's_registers_of_beneficial_owners>
[511] Gillies, *supra* note 56 at 9.
[512] Dun & Bradstreet, "The Intricacies of Ownership and Control: Understanding Beneficial Ownership Structures", online: < https://www.dnb.com/content/dam/english/dnb-solutions/dnb-understandin-beneficial-ownership-structures-v7-USA-FINAL.pdf>
[513] Gillies, *supra* note 56 at 9.
[514] Fenwick & Vermeulen, *supra* note 507.
[515] Clause 2.2, 2.3 and 2.4 of the 2019 EITI Standard. Implementing countries are required to disclose contracts made or amended after January 2021 and encouraged to disclose contracts entered into before January 2021.
[516] Rob Pitman and Anne Chinweze, "The case for Publishing Petroleum Contracts in Nigeria" (March 2018) online: <https://resourcegovernance.org/sites/default/files/documents/the-case-for-publishing-petroleum-contracts-in-nigeria.pdf>, Independent Reporting Mechanism (IRM): Nigeria Design Report 2019-2021, online: <

implementation of these commitments. Pending the enactment of a binding regulation requiring the disclosure of extractive contracts, this section analyzes relevant policies and laws in Nigeria that can be used to compel the disclosure of extractive contracts. It then proceeds to identify and address common legal concerns associated with extractive contract disclosure. Lastly, it considers best practices necessary for the effective implementation of contract transparency, drawing insights from practices adopted by countries who have commenced the disclosure of extractive contracts. This section also offers recommendations to improve the public disclosure of extractive contracts in Nigeria.

3.4.1 Review of Regulatory Framework of Contract Transparency in the Nigerian Extractive Sector

Under Nigerian law, there is no specific regulation or policy requiring the public disclosure of extractive contracts, despite the numerous public commitments the country has made. However, pending the enactment of a law, the NEITI Act and some "sunshine laws"[517] (sunshine laws are laws promoting transparency in governmental activities)[518] can be used to compel the public disclosure of extractive contracts. As will be discussed below, these sunshine laws have limitations and can only be used as interim regulatory instruments and cannot substitute the place of a binding law mandating the public disclosure of extractive contracts.[519]

Although the NEITI Act does not expressly mandate the disclosure of extractive contracts, the NEITI is however required under the NEIT Act to ensure that Nigeria's extractive transparency standard and practices are in tandem with the global EITI Standard.[520] The EITI 2019 Standard requires all implementing countries to "publicly disclose all contract and license awards that provide for the terms attached to the exploitation of oil, gas and minerals,"[521] and to take steps to

https://www.opengovpartnership.org/wp-content/uploads/2020/10/Nigeria_Design_Report_2019-2021_for-public-comment.pdf> In its Action plan for 2019-2021, Nigeria committed to the "public disclosure of extractive sector contracts, licenses, permits, payment to government and revenue stream", it also undertook to create and maintain an online portal for the publication of extractive contracts.

[517] Michael K. McLendon & James C. Hearn, "Mandated Openness in Public Higher Education: A Field Study of State Sunshine Laws and Institutional Governance" (2006) 77:4 The Journal of Higher Education 645 at 647.

[518] *Ibid.*

[519] NEITI, "The Need to Know who owns what in Nigeria's Extractive Sector", (May 2016) online: < https://eiti.org/files/documents/policy_dialogue_on_beneficial_ownership_final.pdf>

[520] NEITI Act, Section 2(e)

[521] The EITI Standard 2019, online: < https://eiti.org/files/documents/eiti_standard2019_a4_en.pdf>

identify and address any legal or practical hindrances to public contract disclosure.[522] The NEITI therefore has a duty to facilitate the disclosure of extractive contracts in line with EITI 2019 Standard. The NEITI can compel the disclosure of extractive contracts by making a regulation under Section 17 of the Act. This section empowers the NSWG (the governing body of the NEITI) to make regulations necessary for "giving effect" to other provisions of the Act or to fulfil its duties under the Act. Based on this authority, the NSWG can enact a regulation mandating the public disclosure of extractive contracts signed between the government and extractive companies. It can also establish and maintain a portal wherein extractive contracts will be published to the public. This would be in line with the activities of the governing body of other EITI implementing countries, such as the Philippines and Azerbaijan, which publish extractive contracts on their national websites.[523] However, as discussed in section 3.2.1.2 above, the NSWG may be impeded from exercising these powers under the NEITI Act due to government's influence over the body.

Certain sunshine legislation in Nigeria can also serve as viable regulatory instruments to compel the disclosure of extractive contracts. However, these are merely complementary laws, and a binding law or regulation is still needed to mandate disclosure of extractive contracts.[524] The Freedom of Information Act, the Public Complaints and Commission Act and the Public Procurement Act are the most relevant sunshine laws in Nigeria that can be used to compel the disclosure of extractive contracts. The Freedom of Information Act establishes the right of any person to demand any information under the control or held by any public institution or official in Nigeria.[525] CSOs and the public can request the disclosure of extractive contracts from public institutions under the auspices of this Act. However, the viability of the Act in mandating public disclosure of extractive contracts may be hindered in two ways. First, the disclosure is not made public—it is made only to the individual(s) that demands it[526] (although nothing precludes a CSO that obtains extractive contracts pursuant to the Act from making it public). Second, public institutions can refuse to release information under the Act if the information contains trade secrets

[522] Clause 2.2, 2.3 and 2.4 of the 2019 EITI Standard.
[523] EITI, "Contract Transparency in Oil, Gas and Mining: Opportunities for EIT Countries" (June 2018) online: < https://eiti.org/files/documents/2018_eiti_contract_transparency_brief.pdf>
[524] NEITI, "The Need to know who owns what in Nigeria's Extractive Sector", (May 2016) online: < https://eiti.org/files/documents/policy_dialogue_on_beneficial_ownership_final.pdf>
[525] Freedom of Information Act 2011, Section 1(1)
[526] Section 12 contains conditions in which the public institution may deny an application for any information.

or interferes with the contractual rights of a third party.[527] This exception could serve as justification for public institutions to deny an application for disclosure of extractive contracts. Protection of trade secrets and the presence of confidential clauses in extractive contracts are the major arguments usually proffered by extractive companies and governments to decline the disclosure of extractive contracts. They argue that extractive contracts contain trade secrets and information which could pose competitive risk to their business if disclosed and made public.[528] The next section discusses this issue in more detail. In addition, the Freedom of Information Act contains many exceptions and limitations that erodes its ability to be used as a disclosure instrument.[529] This could limit the overall strength of the Act in promoting extractive contract disclosure.

Under the Public Complaints Commission Act,[530] the commission established under the Act is vested with the power to request any information from any organization, including the private sector, upon receiving a complaint,.[531] The commission investigates complaints concerning administrative actions taken by public authorities, government officials and companies.[532] Aina notes that the Commission has wide investigator powers, "to receive complaints from members of the public against maladministration and misuse of administrative machinery by any public authority and companies or their officials".[533] The objective of the commission is to curb governmental agencies' use of administrative power to dominate and oppress citizens and protect citizens' human and information rights, thus, serving as a check on the activities of the government.[534] In particular, the commission has a duty to investigate administrate actions that appear contrary to a law or policy in Nigerian or mistake in law.[535] On concluding an investigation, the commission may direct the appropriate public authority or company to take certain steps such as alliterating or cancelling the offending administrate action or direct the public authority to take

[527] Freedom of Information Act, Section 15,
[528] Bagabo et al, *supra* note 301
[529] Oberiri Destiny Apuke, "An Appraisal of the Freedom of Information Act (FoIA) in Nigeria" (2017) 13:1 Canadian Social Science 40 at 40.
[530] Public Complaints Commission Act, Cap P37 LFN, 2004. The duties and power of the Public Complaints Commission performs similar duties as an Ombudsman in other parts of world.
[531] Public Complaints Commission Act, Section 5(c)
[532] Aina Kunle, "The Relevance of Public Complaints Commission to Nigeria's Democratic Development" (2012) 3 International Journal of Advanced Legal Studies and Governance 1 at 4.
[533] *Ibid* at 1.
[534] *Ibid.*
[535] *Ibid* at 5.

certain actions.[536] Furthermore, where the commission is of the opinion that a law or policy is inadequate, it may refer the complaint to the appropriate legislative body or other public authority.[537] Aina opines that this power could serve as a check on the effectiveness of laws and regulations and an opportunity to amend infirm regulatory provisions.[538] A person can file a complaint concerning perceived corrupt practices on the part of governmental agencies engaged in the extractive sector and request for the disclosure of extractive contracts associated with the alleged corrupt practice. However, there are limitations on the powers of the commission under the Act, first, the a compliant cannot be made in instances where the complainant has not "exhausted all available legal or administrative procedures"[539] or where "the complainant has no personal interest."[540] In addition, the commission's investigative powers are further limited by the prohibition on investigating of any matter that is "pending before the National Assembly, the Council of State or the President."[541] Also, complaints under the Act are prohibited from being made public.[542] These limitations are not in line with international best practices on public investigatory duties and it also hinders the commission from fulfilling its investigatory and impartiality role.[543] Using this Act to demand extractive contract disclosure might prove difficult based on its limitations.

Finally, the Nigerian Public Procurement Act[544] contains regulatory provisions promoting transparency in the award of government contracts in all sectors of the Nigerian economy.[545] The Act regulates the procurement of goods, works and services undertaken by the Federal Government of Nigeria, it applies to all contracts in the public sector including the extractive sector.[546] The Act attempts "to streamline the process of award of contracts in Nigeria in order to check abuse of power such as inflation of contract, award of phony contracts and other corrupt acts

[536] Public Complaints Commission Act, Section 7
[537] Public Complaints Commission Act, Section 7(2)
[538] Kunle, *supra* note 532 at 9.
[539] Public Complaints Commission Act, Section 6
[540] Public Complaints Commission Act, Section 6
[541] *Ibid.*
[542] Public Complaints Commission Act, Section 8
[543] Aina, *supra* note 532 at 9.
[544] Public Procurement Act, Vol. 94 No. 65, 2007
[545] Fabian Teichmann, Marie-Christin Falker & Bruno S. Sergi, "Extractive industries, corruption and potential solutions. The case of Ukraine" (2020) 69 Resources Policy 1 at 4.
[546] Andrew G. Mandelbaum (Development Gateway, Inc.), "Open Contracting Scoping Study: Nigeria" (March 9, 2017), online: < https://developmentgateway.org/wp-content/uploads/2020/10/Open-Contracting-West-Africa-Nigeria-Development-Gateway.pdf>

in the award of government contracts".[547] The right of public access to procurement process and contracts is recognized under the Public Procurement Act which imposes a duty on the Bureau to make certain disclosures with respect to procurement processes.[548] This include publicizing procurement process, maintaining a portal for all source of information on government procurement and electronically publishing major contracts as well as maintaining a database of contractors.[549] While disclosure and transparency of the procurement process for extractive contracts will not provide full details of extractive contracts to the public, it could provide certain cogent details concerning the extractive project such as the name of the awardee, duration, location of the contract. Mandelbaum notes that the application of the Public Procurement Act to the Nigerian extractive sector since 2015 is a good step that should be promoted and enhanced, this could be done "through targeted support to the NEITI for working closely with procuring entities in the extractives sector in order to institutionalize disclosure practices".[550] In addition, the public can deploy the Freedom of Information Act discussed above to access more information on details of procurement processes and records not disclosed by the Bureau. However, lack of competence on the part of procurement officials in performing their functions under the Act, and general interference of political elites in procurement processes hinders transparency of procurement processes in Nigeria.[551] This may also hinder the public from accessing necessary details on extractive contracts.

Overall, these sunshine laws are not strong enough to mandate disclosure of extractive contracts; thus, a binding regulation is required to compel the disclosure of extractive contracts. This can either be achieved by the NEITI passing a new regulation under the NEITI Act or amending the NEITI Act to require the disclosure of extractive contracts. Having established the need for the enactment of a contract disclosure legislation in Nigeria, this chapter will proceed to discuss some

[547] Osaretin Aigbovo & Lawrence Atsegbua, "Nigerian anti-corruption statutes: an impact assessment" (2013) 16:1 J. Money Laund. Control 62 at 70.
[548] *Ibid.*
[549] Public Procurement Act, Section 5
[550] Mandelbaum, *supra* note 546. Prior to 2015, the Minister of Petroleum exercised its discretionary powers under the Petroleum Act to award petroleum contracts.
[551] Sope Williams-Elegbe, "A Comparative Analysis of the Nigerian Public Procurement Act against International best practice" (2015) 59:1 J Afr L 85 at 97.

legal concerns associated with extractive contract transparency and how Nigeria and other resource rich countries can address these concerns.

3.4.2 Legal Concerns Arising from Contract Transparency

While contract transparency has gained wide support and acceptance, certain critiques have been raised about its implementation. The most common arguments concern adherence with confidentiality obligations contained in extractive contracts and the need to safeguard commercially sensitive information and trade secrets.[552] These arguments, as will be discussed below, are frail arguments, self-imposed by the parties to the contracts to preclude disclosure and should not thwart contracts transparency in Nigeria.

Extractive companies and governments argue that confidentiality clauses contained in extractive contracts preclude them from being disclosed.[553] As a result of this argument, contract transparency has proven elusive in some countries. For example, in Ukraine, extractive contracts were unable to be disclosed due to confidentiality clauses contained in the contracts.[554] This argument depicts a myopic view of extractive contracts as purely private contracts entitled to the privacy enjoyed by private actors in private commercial arrangements. Generally, the purpose of confidentiality clauses in commercial contracts is to protect sensitive information or trade secrets contained in such contracts from getting into the hands of competitors or other third parties.[555] Breach of such clauses could entitle a party to terminate the contract or claim compensation. Commercial contracts are private agreements that typically involve private parties acting on their accord; they solely enjoy the benefit of the contract and endure the obligations arising from the contract alone. Extractive contracts, on the other hand, though commercial in nature and often involve private companies, have far reaching effects on third parties outside the contracts; therefore, they should not be considered to have the same status as private contracts or enjoy the

[552] EITI, "Contract Transparency in Oil, Gas and Mining: Opportunities for EITI Countries" (June 2018) online: < https://eiti.org/files/documents/2018_eiti_contract_transparency_brief.pdf>
[553] *Ibid.*
[554] *Ibid.*
[555] Upcounsel, "Confidentiality clause sample: everything you need to know" online: < https://www.upcounsel.com/confidentiality-clause-sample#:~:text=A%20confidentiality%20clause%20(also%20referred,to%20others%20without%20correct%20authorization.>

same level of privacy as purely commercial contracts.[556] In many countries, ownership of natural resources is vested in the people—governments manage it on their behalf and act as their agent in extractive contracts. Conceptualizing extractive contracts as mere private contracts can have far reaching implications on people who bear the brunt of extractive activities. Unlike private contracts, parties outside the contract endure the adverse effects of extractive activities.[557]

Furthermore, confidentiality clauses in extractive contracts are illusory obstacles to disclosure created by the parties and, in most cases, can be waived by the parties. These clauses contain exceptions that are not insurmountable. The mutual consent of all parties is recognized in many confidentiality clauses as an exception to the clause. In some instances, the confidentiality obligation is dispensed with if the information purported to be kept confidential is already in the public domain. In addition, confidentiality clauses in extractive contracts usually permit disclosure if disclosure is required by a law or regulation.[558] However, confidentiality clauses could also be used as a weapon to impede the enactment of a law or regulation mandating the disclosure of extractive contracts.[559] Under the NEITI Act, for example, extractive companies and the government can evade disclosure obligations on the grounds of contractual requirements.[560] Based on this provision, extractive companies operating in Nigeria could nullify an attempt by the government to mandate contract disclosure. In other EITI implementing countries, like Liberia, the domestic EITI law has been used to quash the potency of confidentiality clauses in extractive contracts.[561] Interestingly, a review of confidentiality clauses contained in Nigerian extractive contracts revealed that many of the clauses allow disclosure if required to "comply with statutory obligations or the requirements of any governmental agency or rules of a stock exchange."[562] Therefore, with the necessary political will and relevant regulation, contract transparency can be mandated in Nigeria.[563] Importantly, a regulation mandating contract disclosure may only be applicable to subsequent contracts entered into after the enactment of the regulation (existing

[556] James Gathii, Ibironke Odumosu-Ayanu, "The Turn to Contractual Responsibility in the Global Extractive Industry" (2015) 1 Business and Human Rights Journal 69 at 76.
[557] *Ibid*, Oxfam, *supra* note 286.
[558] Rosenblum & Maples, *supra* note 565.
[559] *Ibid.*
[560] NEITI Act, Section 3
[561] LEITI Act, Clause 5.0, LEITI, "Concessions, Contracts and Agreements", online: < http://www.leiti.org.lr/contracts-and-concessions.html>
[562] Pitman and Chinweze, *supra* note 516.
[563] *Ibid.*

contracts might not be covered since laws generally do not apply retroactively).[564] Attempting to expand the applicability of the contract disclosure legislation to contracts executed before the enactment of the regulation may trigger claims such as investor-state claims on the part of extractive companies against the host state from, particularly if existing contracts contain stabilization clauses freezing the law of the host state at the time the contract was made.[565] For instance, in Cote d'Ivoire, extractive companies argued that the contract transparency provision of a newly enacted law could not apply retroactively therefore, the law should not quash confidentiality clauses contained in existing contracts.[566]

The protection of commercially sensitive information and trade secrets is another argument often canvassed in favour of continued contract secrecy. Commercially sensitive information and trade secrets are information core to a company's business. Disclosure of this information to competitors or the public may harm businesses and contribute to competitive disadvantage.[567] The EITI recognizes "seismic data, samples, well logs, [and] geological structure maps"[568] as trade secrets in the extractive sector. The argument that extractive contract disclosure would expose trade secrets or commercially sensitive information is flawed for a number of reasons. First, primary extractive contracts, like petroleum sharing contracts, neither contain trade secrets nor commercially sensitive information.[569] Typically, primary extractive contracts contain information concerning royalties and taxes, environmental and social impact assessment, and local content requirements.[570] This information, although sensitive, cannot cause competitive harm to the company if disclosed. Non-disclosure, on the other hand, can potentially have an adverse effect on communities affected by extractive activities. The Natural Resource Governance Institute (an initiative promoting the effective governance of natural resources)[571] analysis of Nigerian extractive contracts revealed that these contracts do not typically contain commercially sensitive

[564] *Ibid*. For instance, In Cote d'Ivoire, extractive companies argued that the contract transparency provision of a newly enacted law could not apply retroactively therefore, the law should not quash confidentiality clauses contained in previous contracts.
[565] Rosenblum & Maples, *supra* note 565.
[566] EITI, "Contract Transparency in Oil, Gas and Mining: Opportunities for EITI Countries" (June 2018) online: < https://eiti.org/files/documents/2018_eiti_contract_transparency_brief.pdf>
[567] *Ibid.*
[568] *Ibid.*
[569] Bagabo et al, *supra* note 301.
[570] *Ibid.*
[571] Natural Resource Governance Institute, "About Us", online: < https://resourcegovernance.org/about-us>

information that, if disclosed, could pose competitive risk for extractive companies operating in Nigeria.[572]

Second, terms of extractive contracts are usually widely known in the industry since it is typical for contracts to be signed by a consortium of companies because of the huge monetary value and large size of extractive contracts. Parties to these contracts may also change over time as a result of mergers, acquisitions or other forms of business restructuring.[573] Extractive contracts containing commercially sensitive information are required to be disclosed under stock exchange filings requirements.[574] Through stock exchange disclosure and other commercial transactions such as business restructuring, terms of extractive contracts become widely known in the industry. Finally, disclosure for public interest purposes should truncate secrecy for private and commercial interests. The mere presence of commercially sensitive information or trade secrets should not preclude the disclosure of extractive contracts in public interest. Protecting the public interest demands that extractive transactions between the government and extractive companies are fully transparent and devoid of any opacity to ensure the optimal management of natural resources will propel developmental gains for the society.[575]

3.4.3 Best Practices recommendation for Contract Transparency

Many EITI implementing countries have embraced contract transparency. The EITI reports that Liberia, Peru, Philippines, and Malawi, amongst others, not only have contract disclosure policy in force but also maintain platforms for the publication of extractive contracts.[576] Also, in the global community, contract transparency is gaining wide support, particularly amongst international financial organizations, voluntary organizations and CSOs. International NGOs, such as Resource Contracts[577] and Open Oil Repository,[578] maintain and operate online global contract

[572] Pitman & Chinweze, *supra* note 516
[573] EITI, "Contract Transparency in Oil, Gas and Mining: Opportunities for EITI countries" (June 2018) online: < https://eiti.org/files/documents/2018_eiti_contract_transparency_brief.pdf>
[574] Open Contracting Partnership, "Promises are vanity, contracts are reality, transparency is sanity" online: <https://www.open-contracting.org/wp-content/uploads/2016/02/OCP2016_EITI_brief.pdf>
[575] Oxfam, *supra* note 286.
[576] EITI, "Contract Transparency in Oil, Gas and Mining: Opportunities for EITI countries" (June 2018) online: < https://eiti.org/files/documents/2018_eiti_contract_transparency_brief.pdf>
[577] Resourcecontracts.org is an online global depository of publicly available extractive contracts. Resource Contracts, "An online repository of Petroleum and Mining Contracts" online: < https://www.resourcecontracts.org/>
[578] Columbia Centre on Sustainable Investment, "Contract Transparency: Who, What, How, When?" online: < http://ccsi.columbia.edu/files/2016/04/Contract-Transparency-Who-What-When-Where-Feb-2015.pdf>

depositories. Some companies also voluntarily publish extractive contracts on their websites.[579] This subsection identifies and discusses some contract disclosure best practices adopted by these countries and international organizations and considers how Nigeria can adopt these best practices. These best practices are also in line with the features of a resilient transparency regime discussed in Chapter Two.

The first step for Nigeria is to enact a law or policy mandating contract disclosure. The law or policy should define the scope of disclosure, which should be broad enough to create a strong disclosure framework that mandates extract contract disclosures, the disclosure should be accurate, clear and precise.[580] The regulation should require full disclosure of extractive contracts including annexes, addendums and any subsequent amendments to the contract. The status of the contract should also be disclosed (whether the contract is active or replaced or terminated or completed.)[581] For instance, in some EITI implementing countries, the contract disclosure law only requires disclosure of the "main terms"[582] of the contract. In other instances, a summary of the contract or only a portion of the contract is published.[583] Incomplete and opaque disclosures would not provide the public with full details of the contract that are necessary to spur public debate and accountability. Full disclosure is also in line with the EITI 2019 Standard, which requires the disclosure of the "full text of any contract and agreement, full text of any annex and addendum and full text of any alteration or amendment".[584] Closely related to the scope of disclosure, is the timing of disclosure—the disclosure rule should mandate publication of contracts as soon as they are executed or within a reasonable time after execution.

In addition, the format of contract disclosure determines its usability. Contracts should be made available both online and offline; an offline copy is necessary to make the contract within the reach of people who do not have access to the internet.[585] For online disclosure, the disclosure format

[579] EITI, "Contract Transparency in Oil, Gas and Mining: Opportunities for EITI countries" (June 2018) online: < https://eiti.org/files/documents/2018_eiti_contract_transparency_brief.pdf>
[580] *Ibid*
[581] Pitman & Chinweze, supra note 516
[582] Don Hubert Robert Pitman "Past the Tipping Point? Contract Disclosure within EITI" March (2017) Online: < https://eiti.org/files/documents/past-the-tipping-point-contract-disclosure-within-eiti.pdf>
[583] *Ibid.*
[584] Clause 2.4 (d) of the EITI 2019 Standard.
[585] EITI, "Contract Transparency in Oil, Gas and Mining: Opportunities for EITI Countries" (June 2018) online: < https://eiti.org/files/documents/2018_eiti_contract_transparency_brief.pdf>

should be both PDF and searchable so users would be able to search the portal by company, project, date or any other available criteria.[586] A searchable format allows users to search and identify the relevant portion of the contract that they are interested in.[587] This disclosure format is already being adopted by some EITI countries and global online repositories.[588] Furthermore, the provision of plain language explanation of extractive contracts significantly enhances the public's usability and understanding of the contracts. Non-expert users of disclosed contracts can ingest plain language versions to improve their understanding. This plain language version should be translated as close as possible to the original so key terms would not be omitted in the translation. Resource Contracts, an online global repository,[589] and the government of Guinea[590] have adopted the use of plain language explanation of extractive contracts. Some EITI implementing countries are also adopting this disclosure format of extractive contracts.[591] In addition, public education on disclosed contracts by CSOs, including their implication and impact, would greatly enhance the public usability of disclosed contracts and spur public demands for accountability.[592]

Finally, conscious linkage of disclosed contracts with other agreements regulating extractive activities, as well as other forms of extractive transparency such as revenue transparency and BO transparency, enhances the effectiveness of contract transparency in improving public understanding of the extractive sector and spurring public accountability demands.[593] In addition to primary extractive contracts, other agreements either directly or indirectly regulate extractive activities. One such agreement is international investment agreements, typically in the form of bilateral investment treaties signed between countries that protect investors' interests in contracting states. Understanding the implications of the broad rights and limited obligations

[586] Anne Chinweze, "Nigeria Petroleum Contracts should be Disclosed, here are four ways to make that happen" (21 June 2018) online: < https://resourcegovernance.org/blog/nigeria-petroleum-contracts-should-be-disclosed-here-are-four-ways-make-happen>
[587] Pitman & Chinweze, *supra* note 516.
[588] *Ibid.*
[589] Resource Contracts, "An online repository of Petroleum and Mining Contracts" online: < https://www.resourcecontracts.org/>
[590] Guinea Resource Contracts, "A directory of Resource Contracts from Guinea" online: < https://www.contratsminiersguinee.org/>
[591] EITI, "Contract Transparency: Guidance note 7 – Requirement 2.4" (September 2017) online: < https://eiti.org/files/documents/guidance-note-7-contract-transparency.pdf>
[592] Bagabo et al, *supra* note 301.
[593] Don Hubert Robert Pitman "Past the Tipping Point? Contract Disclosure within EITI" March (2017) Online: < https://eiti.org/files/documents/past-the-tipping-point-contract-disclosure-within-eiti.pdf>

usually granted to investors in investment agreements, and how this influences the terms of extractive contracts and the overall conduct of extractive activities, would improve public understanding of the rights and obligations of extractive companies.[594] Public understanding of the impact of investment agreements on extractive contracts and activities, and the exposure of the power asymmetries inherent in these agreements, could make host governments more attentive to public concerns when negotiating investment agreements. Furthermore, connecting disclosed contracts with other forms of extractive disclosures such as revenue disclosures and BO disclosures enhances public understanding of the extractive sector. Contract disclosure contextualizes other forms of extractive disclosure, in particular revenue disclosure because it increases public knowledge of the amount of royalties and taxes payable by extractive companies to the government.[595] Therefore, implementing countries should connect disclosed extractive contracts with revenue disclosures and the disclosure of beneficial owners of extractive companies—this would give the public a fuller picture of the extractive value chain.[596]

3.5 Review of Professionals' Ethical role in enhancing Transparency in the Nigerian Extractive Sector

Professionals - accountants and lawyers specifically, play important roles in the extractive industry and in the extractive transparency and accountability regime. Accountants prepare financial statements and audit reports which form the crux of revenue disclosures in Nigeria's extractive transparency framework. Lawyers provide legal advice and support, negotiate and draft extractive contracts and undertake corporate arrangements on behalf of clients (the government and extractive companies) in the extractive industry.[597] Therefore, the expertise, ethical standard and compliance culture of these professionals in the performance of their professional duties is crucial to the effective governance of natural resources and strengthening Nigeria's transparency regime. In line with this school of thought, Scholars such as Sunder have argued that ethical code of conducts and compliance norms of professional associations could in some instances be more effective in propelling positive developmental outcomes and reforms than codified rules and

[594] *Ibid*
[595] Oxfam, *supra* note 286.
[596] *Ibid*
[597] Coumba Doucoure Ngalani, "Negotiation of Fair Contracts for a Sustainable development of Extractive Industries in Africa", online: < https://ecdpm.org/great-insights/growth-to-transformation-role-extractive-sector/negotiation-fair-contracts/>

regulations.[598] The major reason for this, as Sunder explains is that, "unlike formal rules and regulations, adherence to social norms is rooted in the anticipation or even fear of others' disapproval of deviations from the norms".[599] Furthermore, compliance norms are flexible and easily adaptable to regulatory demands and changes in the profession and allows for consultation from relevant stakeholders of the profession.[600] Lastly, the enforcement mechanism and disciplinary procedure of compliance norms are speedier than formal laws as there is less bureaucracy and formalities in the process. Based on this, this section examines the ethical role of professionals – accountants and lawyers in enhancing transparency and accountability in the Nigerian extractive sector. It reviews the efficacy of the ethical codes of conduct and regulatory compliance norms regulating accountants and lawyers in the performance of their professional duties to determine how effective they are in promoting the efficient governance of natural resources.

3.5.1 The role of Accountants

The integrity of the accounting profession, financial reporting and auditing is crucial to the development and sustainability of countries and companies. Ethical and accurate financial reporting is necessary to provide reliable information to consumers, governments and companies to enable them to make informed decisions.[601] This is evident in the fact that murky accounting standards and unethical accounting practices are one of the major reasons behind the collapse of reputable companies such as WorldCom and Enron.[602] As Amaka and Ugwoke opine, ethical accounting promotes the "economic system at the global level, due to its ability to generate information that helps in shaping various stakeholder decisions, thus a healthy economic system needs accounting professionals who are committed to ethical and moral values".[603] As with the

[598] Shyam Sunder, "Minding our manners: Accounting as social norms" (2005) 37 The British Accounting Review 367 at 371, Pablo E. Navarro & Jose Juan Moreso, "Applicability and Effectiveness of Legal Norms" (2005) 16 Law and Philosophy 201 at 201.
[599] *Ibid*, Sunder.
[600] *Ibid.*
[601] Omimi-Ejoor Osaretin Kingsley, Oghogho Gina and Osahenoma Vivian, "A Comparative Study of Accounting Standards in Nigeria, United Kingdom and United States of America" (2014) 3:2 Journal of Economics and Finance 1 at 1.
[602] *Ibid.*
[603] Dr Egiyi Modesta Amaka and Dr. R. O. Ugwoke, "The level of Compliance with the code of ethical values for professional Accountancy Practice in Nigeria" (2019) 10:11 International Journal of Mechanical Engineering and Technology 177 at 178.

broader society, ethical and accurate accounting standards is crucial to the effectiveness of extractive transparency and accountability initiatives. If accurate and ethical accounting practices is enshrined in Nigeria, the quality of financial statements prepared by the government and extractive companies and by extension NEITI audit reports would be stronger thus, enhancing the quality of revenue disclosures under Nigeria's transparency regime. As discussed in Section 3.2.2, the poor and unreliable quality of the NEITI audit reports impedes the effectiveness of extractive transparency in Nigeria and constricts Nigeria's transparency regime to a surface level form of information disclosure.

The accounting profession in Nigeria is regulated by a binding legislation and ethical codes of conduct. The Financial Reporting Council of Nigeria Act[604] is the major legislation regulating financial reporting and ethical accounting practice in Nigeria. The Act establishes the Financial Reporting Council of Nigeria (FRCN), the major objective of the FRCN is to "formulate and publish in the public interest, accounting standards to be observed in the preparation of financial statements and to promote the general acceptance and adoption of such standards by preparers and users of financial statements".[605] The FRCN is also required to "ensure accuracy and reliability of financial reports and corporate disclosures, pursuant to the various laws and regulations currently in existence in Nigeria".[606] Importantly, the FRCN is mandated to create and publish accounting and financial reporting standards to be utilized by public interest entities in the preparation of financial statements.[607] To enforce this duty, the FRCN is empowered under the Act to request public interest entities in Nigeria to comply with its auditing and financial reporting standards and serve a notice on any public interest entity to amend its financial statements to ensure conformity with its standards.[608] Public interest entities under the Act include the government, governmental organizations and companies required under a law to file financial statements with public regulatory authorities.[609] Based on this definition, relevant governmental agencies engaged in the Nigerian extractive sector and extractive companies will be required to adhere to the FRCN's accounting and reporting standard in the preparation of their financial statements. It is doubtful if

[604] Financial Reporting Council of Nigeria Act, 2011
[605] Kingsley et al., *supra* note 601 at 3.
[606] Financial Reporting Council of Nigeria Act, Section 11
[607] Financial Reporting Council of Nigeria Act, Section 8
[608] Financial Reporting Council of Nigeria Act, Section 58
[609] *Ibid.*

this provision is being enforced by the FRCN because the Nigerian extractive sector greatly suffers from paucity of accounting and financial reporting standard. In general, the FRCN is empowered to enforce compliance with its accounting, auditing and financial reporting standards established under the Act against accountants, public entities and other relevant stakeholders.[610] Penalties for non-compliance with FRCN accounting and reporting standards include deregistration of a professional, warning, six months imprisonment and monetary fines.[611]

In addition to the Financial Reporting Council of Nigeria Act, international ethical codes of conduct regulate accounting reporting and ethical accounting practice in Nigeria.[612] The International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board (IASB)[613] regulates accounting reporting and ethical code of conduct of accounting professionals in Nigeria.[614] The IFRS are "series of accounting pronouncements published by the International Accounting Standards Board to help preparers of financial statements, throughout the world, produce and present high quality, transparent and comparable financial information".[615] The purpose of the IFRS is to make "financial statements understandable, comparable, relevant, and reliable in the financial markets around the world".[616] The FRCN is required to ensure that its accounting and reporting standard is in conformity with the IFRS standard.[617] Nigeria adopted the IFRS to attract foreign investments, enshrine uniformity of accounting reporting in Nigeria and align Nigeria's accounting standard with the globally accepted standard.[618] Also, professional accounting bodies in Nigeria - the Institute of Chartered Accountants of Nigeria (ICAN) and the Association of National Accountants of Nigeria (ANAN) require their members to adhere to the International Code of Ethics for Professional Accountants issued by the International Ethical Standards Board for Accountants (IESBA) in their accounting

[610] Financial Reporting Council of Nigeria Act, Section 7(2)
[611] Financial Reporting Council of Nigeria Act, Section 64
[612] N Grace Ofoegbu & Ndubuisi Odoemelam, "International financial reporting standards (IFRS) disclosure and performance of Nigeria listed companies" (2018) 5:1 Cogent Business & Management 1 at 1.
[613] The International Accounting Standards Board (ISAB) is in charge of setting a comprehensive and widely acceptable global accounting standards that require transparent information disclosure in financial statement and financial reporting.
[614] Kingsley et al., *supra* note 601 at 3.
[615] *Ibid*.
[616] Ofoegbu & Odoemelam, *supra* note 612.
[617] Financial Reporting Council of Nigeria Act, Section 8
[618] John Onyemaechi Odo, "Adoption of IFRS in Nigeria: Challenges and the Way Forward" (2018) 8:8 International Journal of Academic Research in Business and Social Sciences 426 at 427.

practice.[619] The objective of the IESBA is to "serve the public interest by setting high-quality ethics standards for professional accountants".[620] The fundamental accounting principles enshrined in the IESBA Code of Ethics are; integrity, confidentiality, professional competence and due care, objectivity and professional behavior.[621] In line with the features of a resilient transparency regime discussed in chapter two, the IESBA also emphasizes comprehensibility, timeliness and accuracy as qualities of a good financial reporting standard to enhance usability of financial statements and reports.[622] The rationale behind the adoption of these international accounting ethical codes of conduct in Nigeria is to enhance the integrity of the profession and gain public confidence and trust in the profession.[623]

Although the accounting profession in Nigeria is regulated by a number of legal norms and ethical codes of conduct as discussed above, unethical, murky and fraudulent accounting practices are still prevalent in Nigeria.[624] An empirical study conducted by Amaka et al. and Cletus et al. into the extent to which accountants in Nigeria adhere to ethical codes of conduct revealed that there is a low rate of adherence to accounting ethical codes in the practice of accounting in Nigeria.[625] The reason for this low compliance rate is attributed to the endemic nature of corruption in Nigeria, lack of knowledge of the ethical norms of the profession, lack of competence, weak societal value and overlapping ethical codes of conduct.[626] Majorly, the endemic nature of corruption in Nigeria makes adherence to ethical norms in any profession very difficult. This non-adherence to ethical accounting standards in the accounting profession in Nigeria is aptly reflected in the paucity of the NEITI audit reports and the Nigerian extractive sector transparency regime. Stronger enforcement and deterrence mechanisms as well as training of accountants are required to encourage adherence to ethical accounting norms in Nigeria.[627] Perhaps an independent department under the FRCN

[619] *Ibid* at 435.
[620] International Ethics Standards Board for Accountants, "Handbook of the International Code of Ethics for Professional Accountants" (2018 edition), online: < https://www.ifac.org/system/files/publications/files/IESBA-Handbook-Code-of-Ethics-2018.pdf>
[621] *Ibid.*
[622] Ejiogu et al., *supra* note 18.
[623] Amaka et al., *supra* note 603 at 334.
[624] *Ibid* at 335.
[625] *Ibid.*
[626] *Ibid*, Loveday A. Nwanyanwu, "Accountants' Ethics and Fraud Control in Nigeria: The Emergence of a Fraud Control Model" (2018) 4:1 Journal of Accounting, Finance and Auditing Studies 130 at 138.
[627] Abdulkadir Madawaki, "Adoption of International Financial Reporting Standards in Developing Countries: The Case of Nigeria" (2012) 7:3 International Journal of Business and Management 152 at 157.

should be established and charged with the sole responsibility of monitoring and enforcing compliance with accounting ethical norms particularly amongst public interest entities such as governmental agencies and extractive companies.[628] Compliance with ethical accounting norms by accountants in Nigeria would aid in enhancing the quality of revenue disclosures made under Nigeria's transparency regime and repulse the constrained form of transparency prevalent in the Nigerian extractive sector.

3.5.2 The role of Lawyers

Lawyers are key participant in the extractive industry as they provide legal services such as legal advisory services, legal support services, corporate advisory and contract drafting and negotiation services to relevant stakeholders in the extractive sector (government and extractive companies).[629] Therefore, lawyers engaged in the extractive industry need to be ethical in their conduct and perform their professional duties within the bounds of the law. Unethical conducts or non-compliance with relevant regulations by lawyers in the representation of clients in extractive dealings could impede the effectiveness of transparency and accountability initiatives.[630] For instance, the panama paper leak revealed how lawyers assisted extractive companies to conceal beneficial ownership interests and hide ownership interests of politically exposed persons (PEPs) in extractive companies by registering shell companies in offshore financial centers amongst other things.[631] As discussed in chapter two, the panama paper leak is the major reason behind the recent calls for the disclosure of beneficial owners of extractive companies. This leak also raised concerns regarding the ethical responsibilities of lawyers involved in the incorporation of companies in offshore financial centers and provision of corporate advisory services.[632]

The Rules of Professional Conduct for legal practitioners[633] (RPC) and the Legal Practitioners Act[634] establishes ethical codes of conduct for lawyers in Nigeria. The RPC requires a lawyer to

[628] *Ibid*.
[629] Ngalani, *supra* note 597.
[630] *Ibid*, Ibrahim Abdullahi, "The Role of Legal Practitioners in the Fight against Corruption in Nigeria" (2016) 4:3 International Journal of Innovative Legal & Political Studies 25 at 25.
[631] Heather M. Field, "Offshoring Tax Ethics: The Panama Papers, Seeking Refuge from Tax and Tax Lawyer Referrals" (2017) 62:35 Saint Louis University Law Journal 35 at 35.
[632] *Ibid* at 36.
[633] Rules of Professional Conduct for Legal Practitioners, 2007
[634] Legal Practitioners Act, Cap L11, LFN 2004

"uphold and observe the rule of law, promote and foster the cause of justice, maintain a high standard of professional conduct, and not engage in any conduct which is unbecoming of a legal practitioner".[635] Also, it provides that a lawyer shall not assist a client or non-lawyer in the "unauthorized practice of the law".[636] In addition, the RPC provides that a lawyer shall represent the interest of his client within the bounds of the law and refuse to provide legal representation and support to a client who insist on acting contrary to the provision of any regulation in force in Nigeria.[637] In summary, the RPC require lawyers to represent the interest of clients within the confines of the law and restrain clients from acting contrary to the law. A lawyer is permitted to withdraw from a matter or employment of a client if the client insists on breaching the law or adopting an illegal procedure in achieving his desired result.[638] The Legal Practitioners' Disciplinary Committee (LPDC) established under Section 10 of the Legal Practitioners Act is charged with the responsibility of determining complaints of breach of ethical code of conduct by lawyers in Nigeria. The LPDC "serves as watchdog in the legal profession and guards against undesirable practices among legal practitioners due to its disciplinary functions".[639] Members of the public and other lawyers can make a complaint against a lawyer for breach of ethical duties.[640] Penalties for misconduct or breach of ethical obligations contained in the RPC includes warning, suspension and removal from the profession.[641]

Unlike many other professional associations in Nigeria, the LPDC regularly receives, hears and determine complaint of misconduct (from the public and other lawyers) against lawyers who breach ethical responsibilities contained in the RPC and the Legal Practitioners Act.[642] Many of the cases brought before the committee bothers on ethical misconduct of lawyers which causes detrimental harm or monetary loss to clients and conducts that unduly interfere with the administration of justice system. The typical complaints heard by the LPDC include –

[635] Rules of Professional Conduct for Legal Practitioners, Rule 1
[636] Rules of Professional Conduct for Legal Practitioners, Rule 3
[637] Rules of Professional Conduct for Legal Practitioners, Rule 15
[638] Rules of Professional Conduct for Legal Practitioners, Rule 21
[639] I.L.I. Ikimi, "Fate of a legal practitioner in Nigeria adjudged guilty of professional misconduct" (2019) 10:2 Nnamdi Azikiwe University Journal of International Law and Jurisprudence 131 at 134.
[640] Lawpadi, "How to make a Complaint against a lawyer in Nigeria", online: < https://lawpadi.com/make-complaint-lawyer-nigeria/#:~:text=The%20body%20which%20regulates%20the,of%20the%20Legal%20Practitioners%20Act.>
[641] Section 11 of the Legal Practitioners Act
[642] Anthony S. Aladekomo, "Growing cases of Lawyers' misconduct in Nigeria and Corrective measures", online: < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3685149>

misappropriation of clients' fund, negligence in handling clients' case, offering of bribe, contempt of court and abuse of court process.[643] There are fewer complaints brought before the LPDC bothering on failure of a lawyer to represent his client within the bounds of the law, thus, allowing for the proliferation of ethical misconducts such as provision legal support for the concealment of beneficial owners of extractive companies. However, it is anticipated that the increase in the use of the LPDC disciplinary framework will urge lawyers be more cautious in representing and advising client and be more inclined to represent clients within the bounds of the law.[644] To ensure compliance with ethical norms by lawyers, this thesis recommends increased awareness and legal training for lawyers on professional ethics (particularly the need to represent clients within the confines of the law) and stiffer penalties for breach of ethical responsibilities regardless of the status of the lawyer.[645] By representing clients within the bounds of the law and ensuring clients' compliance with relevant regulatory provisions, lawyers can promote the effective governance of natural resources and corruption eradication in the extractive sector.[646]

3.6 Conclusion

While transparency is widely embraced and promoted internationally as a viable governance standard for the effective management of natural resources, studies have emphasized that its effectiveness in local contexts is often shaped or constrained in the case of Nigeria by the regulatory framework, institutions and politics of the implementing country. Also, the exposure of new corruption tactics in the extractive sector necessitated the expansion of extractive transparency beyond its initial narrow focus on revenue transparency to accommodate other forms of transparency, such as BO transparency and contract transparency. These emerging forms of transparency are still nascent, as regulatory frameworks and practices are still evolving to deal with their complexities. Like with revenue transparency, their effective implementation in national contexts is also shaped or constrained (like the case of Nigeria) by the unique socio-economic conditions of the implementing country. This chapter explored how extractive transparency is transformed and constrained in Nigeria when confronted with infirm regulatory policies, governmental dominance and weak institutions. Section 3.2 of this chapter focused on revenue

[643] *Ibid.*
[644] *Ibid.*
[645] *Ibid.*
[646] Abdullahi, *supra* note 630.

transparency and discussed the provisions of the NEITI Act and the NEITI audit reports. The review of the transparency, accountability, enforcement, as well as multi-stakeholder governance provisions of the NEITI Act has revealed that the Act contains many infirm sections, and exceptions capable of watering down the effectiveness of the NEITI in enhancing transparency and accountability- birthing a constrained transparency regime. Also, the Act indirectly vests control of the NEITI in the executive arm of the government, which poses a risk to the unbiased implementation of the Act. This risk is evident in the NEITI audit reports—these audit reports do not meet the standard of comprehensiveness, timeliness and accuracy required of disclosed information under a transparency regime. As has been discussed in this chapter, systemic corruption and weak reporting standards of government agencies are the reasons for the weak nature of NEITI audit reports. The operation of all these factors transforms and reshapes Nigeria's transparency regime to a constrained form of transparency - providing only a narrow, surface level form of disclosure.

Section 3.3 of this chapter examined the regulatory framework and practice of beneficial ownership transparency in Nigeria. The analysis of the beneficial ownership disclosure provisions of the CAMA 2020 revealed that its provisions do not effectively mandate the disclosure of person(s) who ultimately own and control extractive companies and companies generally. The online register of beneficial owners of extractive companies in Nigeria, though commendable as a good first step towards the facilitation of BO disclosure in Nigeria, merely contains details of legal owners of companies instead of beneficial owners. Furthermore, corporate entities registered in OFCs are mainly listed as legal owners of companies in the register, which reveals little about the person(s) who ultimately own and control the company. Therefore, as with the case of revenue transparency, BO disclosure in Nigeria provides a constrained form of information disclosure (providing narrow and surface level information) by disclosing legal owners of companies instead of beneficial owners of extractive companies. This chapter also addressed the challenge posed by the complex and opaque ownership structures of extractive companies on the enforcement and verification of BO disclosure. This chapter suggested that international and institutional cooperation is required to facilitate the verification and enforcement of BO disclosures. Section 3.4 of this chapter then examined contract transparency; it analysed the "sunshine laws" that can be used to mandate contract disclosure in Nigeria pending the enactment of a law requiring the disclosure of extractive contracts. The effectiveness of these sunshine laws in mandating contract

disclosure, however, is limited and they cannot replace the need for a binding law requiring the disclosure of extractive contracts. Certain legal concerns, such as confidentiality clauses in extractive contracts and the need to protect trade secrets, are often raised to thwart the implementation of contract transparency. This chapter however explored the veracity of these concerns and concluded that they are self-imposed obstacles that can be dispensed with by the parties to the agreement. Lastly, to harness the benefits of contract transparency, certain best practices are required to be embedded in the disclosure mechanism. This chapter defined these best practices as the wide scope of disclosure – full contract should be disclosed, easily accessible format of disclosure and linkage of disclosed contracts with other forms of extractive disclosure and agreements. Section 3.5 of this chapter reviewed the ethical roles of professionals – accountants and lawyers in promoting the effective governance of natural resources. This chapter revealed that strict adherence to ethical norms by professionals engaged in the extractive industry is necessary to enhance the quality of extractive disclosures and eradicate corruption in the extractive sector.

As discussed in this chapter, governmental dominance, weak regulatory provisions (particularly NEITI Act and CAMA 2020), institutionalized corruption reshapes transparency in Nigeria into a constrained form of transparency. And in certain instances, the NEITI could be utilized as a tool to further opaque practice and corruption. As suggested in this chapter, CSOs' activism can serve as a potent counterforce to repel this constrained transparency – in particular, governmental dominance which majorly fuels this constrained transparency. Furthermore, CSOs can utilize this constrained transparency to propel public demands for accountability, demand institutional reforms and enhanced information disclosure regime. The next chapter considers how CSOs and other citizen intermediary institution (press and the parliament) facilities citizen engagement in NEITI disclosures and in resource governance which is necessary for the translation of transparency into accountability and propelling the attainment of development gains in Nigeria.

4 Transparency and Citizen Engagement in Nigeria

4.1 Introduction

The purpose of extractive transparency, as discussed in Chapter Two, is to empower citizens with the required information and evidence to hold the government and extractive companies accountable, promoting the more efficient management of natural resources.[647] Citizen engagement with extractive disclosures and more broadly, in resource governance, enhances the translation of transparency into accountability which could propel the attainment of developmental gains in a resource rich state.[648] The importance of citizen engagement, participation and representation in resource governance explains why many transparency initiatives, such as the Extractive Industries Transparency Initiative (EITI), are institutionalized as multi stakeholder initiatives between the government, extractive companies and civil society organizations (CSOs) who act as representatives of the citizens.[649] However, citizen engagement with extractive disclosures, and citizen participation and representation in natural resource governance generally, does not occur spontaneously; certain institutions—the media, parliament and CSOs—must educate, synthesize and spur citizens into making accountability demands and represent citizens in natural resource dialogues.[650] The ability of these institutions to facilitate citizen engagement in resource governance is further dependent on myriads of interconnected factors such as the strength and expertise of these institutions, the extent of governmental control over the institution, the allowance granted to them under relevant laws and the unique socio-economic conditions of the state.[651] This chapter contends that while these institutions could serve as viable links for strengthening citizen engagement with extractive disclosures under the Nigerian Extractive Industries Transparency Initiative (NEITI) regime and in resource governance in Nigeria, they are incapacitated by limited understanding of the extractive sector, state dominance manifested in the form of repressive regulatory provisions and authoritarian tendencies, as well as the absence of the rule of law and democracy. Conversely, these institutions, particularly CSOs, could harness the strength of public awareness campaigns and other advocacy strategies to repulse these limitations

[647] Haulfer, *supra* note 16.
[648] Gillies & Heuty, *supra* note 60.
[649] Aaronson, *supra* note 4.
[650] Poncian & Kigodi, *supra* note 87 at 112.
[651] *Ibid.*

(which also contribute to constrained information disclosure as discussed in Chapter Three) and push for enhanced citizen engagement with disclosures under the NEITI regime and improved governance of natural resources.

This chapter analyses citizen engagement with extractive disclosures under the NEITI regime and citizen participation in natural resource governance in Nigeria. It builds on the discussions in the previous two chapters on transparency and the implementation of transparency in the Nigerian extractive sector by exploring how citizen engagement with NEITI disclosures and in resource governance can be enhanced to facilitate the translation of transparency into accountability in Nigeria. Furthermore, it discusses how CSOs can harness the strength of advocacy strategies to repulse governmental dominance and infirm regulatory provisions, which are the main factors reshaping transparency into a constrained form in Nigeria. It also examines how CSOs, the press and the parliament through their role as citizen intermediary institutions can utilize Nigeria's constrained transparency to spur public demands for accountability. This is based on the understanding that citizen engagement with extractive disclosures under the NEITI regime, and citizen participation and representation in resource governance in Nigeria, is essential to inciting necessary reforms to Nigeria's transparency regime and facilitating public demands for accountability. The chapter commences by discussing the meaning and importance of citizen engagement in resource governance. It proceeds to discuss the role of the media, parliament and CSOs in bolstering citizen engagement, participation and representation in natural resource governance. The discussion then focuses on the role of CSOs in enhancing citizen engagement under the NEITI regime, which is broadly divided into three distinct roles: expertise role, representative role and oversight role. An analysis of the challenges hindering CSOs from effectively performing these roles is also considered. Finally, this chapter considers the influence of information and communication technology (ICT) in promoting citizen engagement in resource governance in Nigeria.

4.2 Why is Citizen Engagement Important?

Citizen engagement in resource governance is the interaction between citizens and the government in the governance process.[652] It encompasses citizens' active participation and representation in

[652] Poncian, *supra* note 81 at 1500.

resource governance and citizens' willingness and ability to hold government and extractive companies accountable when necessary.[653] Accountability on the other hand is the process of holding the government and extractive companies responsible for their actions or inactions based on disclosed information under a transparency regime.[654] Citizen engagement in resource governance is central to the effectiveness of transparency initiatives and the efficient management of natural resources.[655] The underlying assumption behind transparency initiatives, particularly the EITI, is that transparency empowers citizens with the required information to make accountability demands from the government thereby urging political elites to utilize resource rents for developmental purposes rather than for personal interests and nudge political elites to make institutional reforms necessary for the efficient management of natural resources.[656] It is further assumed that citizens' demands for accountability, as well as citizens' active participation in resource governance, will make opaque dealings harder to perpetuate by the government as the risk of exposure would be higher. Therefore, citizen engagement bridges the gap between transparency and accountability and enhances the translation of resource wealth into developmental gains.[657]

Citizen engagement and participation in resource governance also facilitates trust between stakeholders—citizens, government and extractive companies—thus diffusing potential conflicts and mistrust that may arise from extractive activities or the distribution of resource rents.[658] When citizens are active participants in resource governance and are informed of key governance decisions such as how resource rent is collected and expended, there will be less room for violent conflict and mistrust.[659] Citizen participation in resource governance and governance generally, enhances the legitimacy of the government, governance structures and decisions thereby strengthening democracy in the implementing country. Attaining this level of political and structural stability is necessary in many fragile resource rich developing countries.[660] Ultimately, ownership of natural resources is constitutionally vested in the citizens of many countries—the

[653] *Ibid*
[654] Ihugba, *supra* note 75 at 207.
[655] Vijge et al, *supra* note 146 at 16.
[656] Poncian & Kigodi, *supra* note 87 at 108.
[657] Ibid, EITI, "Kyrgyz Republic – Investigating beneficial ownership in the extractive industries" (April 28, 2017), online: < https://eiti.org/blog/kyrgyz-republic-investigating-beneficial-ownership-in-extractives-industries>
[658] Furstenberg, *supra* note 273 at 462.
[659] Asgill, *supra* note 35 at 18.
[660] Furstenberg, *supra* note 273 at 462.

government is only mandated to manage these resources on behalf of the citizens. Therefore, citizens should be knowledgeable about the sector and be represented in its governance.[661]

4.3 How is Citizen Engagement Incited?

Citizen engagement with extractive disclosures and in resource governance does not occur spontaneously; certain actors and elements are required to facilitate citizens' understanding of disclosed information, represent citizens in natural resource dialogues and ignite citizens' demand for accountability. Key elements are required to effectively stimulate and attain full citizen engagement with extractive disclosures and in resource governance. First, educating and sensitizing citizens about resource governance issues, such as drawing citizens' attention to extractive disclosures and explaining the disclosures in simplified formats, is critical.[662] Second, citizens' views should be incorporated into natural resource governance, which entails actively representing citizens in resource governance dialogues and discussions.[663] Lastly, monitoring the activities of the government and extractive companies, raising public awareness of deviation from agreed norms, as well as deploying advocacy strategies to ensure compliance with necessary regulations.[664] This way citizen intermediary institutions with and on behalf of citizens are able to demand adherence to internationally recognized rules of extractive transparency from the government and extractive companies and spur public demands for accountability.

Certain institutions act as intermediaries between citizens and the governments in resource governance and facilitate citizen engagement with extractive disclosures. These institutions are the media, parliament and CSOs.[665] They perform (jointly and individually) the functions discussed above, with the aim of bolstering citizen engagement with extractive disclosures and in resource governance.[666] Of all these institutions, CSOs are considered the strongest link between citizens and the government.[667] This section discusses the role of the media, parliament and CSOs in enhancing citizen engagement with extractive disclosures and in resource governance. It discusses

[661] Vijge et al, *supra* note 19 at 201.
[662] Poncian & Kigodi, *supra* note 87 at 112.
[663] *Ibid.*
[664] *Ibid.*
[665] Aaronson, supra note 4.
[666] Poncian & Kigodi, *supra* note 87 at 107, Aaronson, *supra* note 4 at 53.
[667] *Ibid.*

how NEITI implementation and the broader societal contexts impairs these institutions from performing their intermediary role and recommends methods for improvement.

4.3.1 The Role of the Media

The media performs the role of information disseminator, watchdog and agenda setter in facilitating citizen engagement with extractive disclosures and in resource governance.[668] The aim is to inform, educate and sensitize citizens on extractive disclosures and developments in the extractive sector, empowering them with the necessary knowledge to hold the government and extractive companies accountable.[669] Furthermore, by drawing public attention to developments in the extractive sector, they act as a watchdog over the activities of relevant actors and frame the agenda for public discussions necessary for spurring public demands for accountability.[670]

The media has been fairly active in disseminating information on NEITI audit reports, extractive transparency and resource governance issues in Nigeria.[671] For instance, Abutudu and Garuba state that the National Stakeholders Working Group (NSWG)—the governing body of the NEITI—collaborates with a media team to disseminate and share information concerning the NEITI, including its audit reports, in order to raise public awareness to the content of the reports.[672] However, due to the technical nature of NEITI audit reports as discussed in Chapter Three, members of the press are unable to understand the reports which precludes them from adequately educating and sensitizing the public on the content of the reports.[673] Even when the audit reports are disseminated to the public in their original convoluted form, they will be "ignored by their target audience because they are unintelligible."[674] In addition, the extractive sector itself is technical and requires special knowledge to adequately understand and report on key issues in the sector.

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[668] Mian Ahmad Hanan, Noshina Saleem, Aniqa Ali and Sahifa Mukhtar, "Role of Media in Strengthening Democracy in Pakistan: Journalists' Perception (2016) 31:1 South Asian Studies 331 at 333.
[669] Poncian & Kigodi, *supra* note 87 at 112.
[670] Michael Behrman, James Canonge, Matthew Purcell and Anya Schiffrin, "Watchdog or lapdog? A look at press coverage of the extractive sector in Nigeria, Ghana and Uganda" (2012) 33:2 African Journalism Studies 87 at 87.
[671] Abutudu & Garuba, *supra* note 22 at 45, Osuoka, *supra* note 203 at 824.
[672] *Ibid*, Abutudu & Garuba. The media also reports on scandals and corruption in the extractive sector, it has also been effective in reporting issues of environmental degradation and human rights abuses by extractive companies.
[673] Osuoka, *supra* note 203 at 824.
[674] Ejiogu et al, *supra* note 18 at 1.

This has led media reporting on the NEITI audit reports and other occurrences in the Nigerian extractive sector to be "news-focused"[675]— consisting more of press releases and brief highlights of developments in the sector that do not provide adequate background context or information to sufficiently educate and sensitize the reader.[676] This form of reporting does little to enhance public understanding of resource governance issues and spur public debates or frame agenda for public discussions.[677] Another reason for this paucity in reporting can be attributed to the fact that published news articles on developments in the extractive sector are sponsored press releases undertaken simply to inform the public as a box ticking exercise, without the candid intention of actually educating and sensitizing the public.[678]

Lastly, broader societal challenges—such as government's control and ownership of media houses, lack of funding as well as harassment and intimidation of reporters—precludes the media from performing its role as information disseminator and agenda setter in facilitating citizen engagement with extractive disclosures.[679] These challenges are covertly facilitated by bad governance, absence of rule of law and weak democracy—the operation of all these factors gives room for government manipulation and harassment.[680] However, the ubiquity of online reporting and social media platforms has removed information dissemination from the exclusive purview of media houses and journalists, bypassing some of these challenges. Citizens are now actively engaged in information sharing and dissemination known as "Citizen Journalism,"[681] therefore citizens are able to independently disseminate information and spur public discussions on scandals and corruption in the sector.[682] The influence of ICT and social media platforms in facilitating

[675] Michael Behrman, James Canonge, Matthew Purcell and Anya Schiffrin, "Watchdog or lapdog? A look at press coverage of the extractive sector in Nigeria, Ghana and Uganda" (2012) 33:2 African Journalism Studies 87 at 87
[676] *Ibid*, Erika Rodrigues and Anya Schiffrin, "Digital Technologies and the Extractive Sector: The New Wave of Citizen Journalism in Resource-Rich Countries", B. Mustsvairo (ed), Participatory Politics and Citizen Journalism in a Networked Africa, The Editor(s) 2016 123 at 124
[677] *Ibid*.
[678] *Ibid*, Behrman et al.
[679] *Ibid*, Poncian & Kigodi, *supra* note 87 at 114, Anya Schiffrin, "Power and Pressure: African media and the Extractive Sector" (2009) 62:2 Journal of International Affairs 127 at 128.
[680] *Ibid*.
[681] Joseph Wilson and Fancis Iloani Arinze, "Citizen Journalism Practice in Nigeria: Trends, Concerns and Believability" in Jonathan Bishop, Perspectives on the Information Society 333. Citizen Journalism refers to the use of social media by the public to gather and disseminate information and rise public debate, SaharaReporters.com is cited as a prime example of this form of journalism. Wilson and Arinze define it as "citizen exercise of the functions of gathering, processing and dissemination of information".
[682] Osuoka, *supra* note 203 at 824

citizen engagement in natural resource governance in Nigeria is considered more broadly in the later part of this chapter.

4.3.2 The Role of the Parliament

The parliament performs the role of watchdog and agenda setter for facilitating citizen engagement with extractive disclosures, and in resource governance more broadly. The parliament draws public attention to irregularities in the extractive sector by exercising its oversight powers over the activities of the executive arm of government through probes and investigations, thus stimulating public discussions and public demands for accountability.[683] In Nigeria, the National Assembly can bolster citizen engagement with NEITI disclosures and in resource governance by debating NEITI audit reports in parliamentary sessions, conducting probes and investigations into allegations of opaque practices in the extractive sector, as well as imposing sanctions on offenders when necessary.[684]

Unfortunately, the National Assembly has not effectively utilized its constitutionally enshrined oversight powers to analyse and debate NEITI audit reports on the floor of the parliament or investigate allegations of misconduct into the management of natural resources. This lapse is one of the major reasons why citizen engagement with NEITI audit reports and its disclosures is low. Scholars such as Osuoka and Garuba have opine that if NEITI audit reports are frequently debated on the floor of the parliament, public attention will be drawn to the existence and content of these reports, thus inciting public debates and accountability demands.[685] In fact, the National Assembly has never debated or discussed NEITI audit report on the floor of the house.[686] In this regard, Garuba notes that "since we resorted to EITI and conducted the first audit covering 1999–2004 in

[683] World Bank Institute "Parliamentary Oversight of the Extractive Industries Sector", online: < https://agora-parl.org/sites/default/files/parliamentary_oversight_and_the_extractive_industries.pdf>, Femi Omotoso and Olayide Oladeji, "Legislative Oversight in the Nigerian Fourth Republic" in J.Y. Fashagba et al. (eds.), The Nigerian National Assembly, Advances in African Economic, Social and Political Development, Springer Nature Switzerland AG 2019 57 at 64. Under Nigerian law, the oversight function of the parliament is enshrined in Section 88 of the Constitution which empowers the National Assembly with the power of conducting investigations into any issue to which it has power to make laws and generally investigate the activities of any government agency.

[684] Ngozi Nwogwugwu & Adebola Ishola, "Legislators and their Oversight functions in Policy Implementation in Nigeria" (2019) 6:3 International Journal of Humanities Social Sciences and Education 93 at 95, Osuoka, *supra* note 203 at 824

[685] *Ibid*, Osuoka, *supra* note 43 at 801, CISLAC, "Government's attitude towards NEITI encourages corruption", online: < https://cislacnigeria.net/government-attitude-to-neiti-reports-encourage-corruption-in-oil-sector-rafsanjani/>

[686] *Ibid.*

2006, the National Assembly has never sat on a single day to discuss the numerous reports before them."[687] In addition, the National Assembly rarely utilizes its investigatory powers to probe the management of natural resources by the government and extractive companies. Often times, the National Assembly exercises its investigatory power in instances of obvious corruption allegation and when strong public opinion urges them to probe allegations of misconduct.[688] For example, following public agitations decrying mismanagement of extractive revenues during the Occupy Nigeria protest of 2012, the National Assembly set up two ad-hoc committees to investigate allegations of misappropriation of petroleum subsidy funds, these committees were established to pacify the public and bring a halt to the protest.[689]

The National Assembly's failure to effectively perform its oversight function over the management of the extractive sector can be attributed to several reasons. First, is the lack of proper understanding of the sector; for instance, due to the complexities of NEITI audit reports, they are unable to understand and discuss its contents at their hearings or launch investigations into suspicions of corruption arising from the reports.[690] Setting up a special committee in the National Assembly exclusively in charge of resource governance issues could aid in mitigating this challenge. Another reason is the preponderance of vested pecuniary interests in the extractive sector—members of the National Assembly are known to also benefit from opaque dealings in the sector.[691] The epidemic nature of corruption in Nigeria, weak governance and democratic institutions, as well as sheer ineptitude on the part of legislative members, also impairs them from efficiently exercising their oversight power over the sector.[692]

[687] Osuoka, *supra* note 43 at 801.
[688] Osuoka, *supra* note 203 at 824, Femi Omotoso and Olayide Oladeji, "Legislative Oversight in the Nigerian Fourth Republic" in J.Y. Fashagba et al. (eds.), The Nigerian National Assembly, Advances in African Economic, Social and Political Development, Springer Nature Switzerland AG 2019 57 at 66. For instance, following the famous Occupy Nigeria nation-wide protest of 2012, the National Assembly set up two ad-hoc committees to investigate allegations of misappropriation of petroleum subsidy funds. These investigations were undertaken to appease the public following the mass public protest against corruption and mismanagement of the extractive sector
[689] *Ibid.*
[690] Ejiogu et al, *supra* note 18 at 2.
[691] Omotoso & Olayide Oladeji, *supra* note 688.
[692] *Ibid.*

4.3.3 The Role of Civil Society Organizations

Civil society organizations are recognized as crucial institutions in the enhancement of democracy and good governance in any society because they bolster citizen engagement, participation and representation in governance by acting as an intermediary between the public and the state.[693] For instance, Schultz and Uzochukwu opine that CSOs can be conceptualized "as an alternative to, and check on state power, and hence a necessary peg in the democratization process."[694] They enhance citizen understanding of governments' activities, monitor the activities of the state and mobilise public opinion against the state where necessary, thus acting as a counterforce against state dominance.[695] As with broader societal governance, CSOs have been recognized as crucial institutions in the effective governance of natural resources.[696] This is because they facilitate citizen engagement in natural resource governance by educating and sensitizing citizens about extractive disclosures, representing citizens in resource governance dialogues, igniting public awareness campaigns and public demands for accountability. Based on this, scholars such as Oshionebo and Chazan have argued that CSOs can potentially act as counterweight against government and extractive companies' dominance in promoting transparency and accountability in the governance of natural resources.[697] In addition, CSOs through the adoption of advocacy strategies can urge the government and extractive companies to adhere to formal rules governing the extractive sector and push for enforcement of these rules.[698] The EITI also recognizes that "the

[693] E. Remi Aiyede, "The Dynamics of Civil Society and the Democratization Process in Nigeria" (2003) 37:1 Canadian Journal of African Studies 1 at 4, Jeanne Elone, "Backlash Against Democracy: The Regulation of Civil Society in Africa" 7:2 Democracy & Society

[694] Grace Chikoto-Schultz & Kelechi Uzochukwu, "Governing Civil Society in Nigeria and Zimbabwe: A Question of Policy Process and Non-State Actors' Involvement" (2016) 7:2 Nonprofit Policy Forum 137 at 139.

[695] Uwem Essia & Afzal Yearoo, "Strengthening civil society organizations/government partnership in Nigeria" (2009) 4:9 International NGO Journal 368 at 369.

[696] Omede Adedoyin Jolade & Bakare, Adebola Rafiu, "The Impact of Civil Society Organizations on Sustainable Development in Development Countries: The Nigerian Experience" (2014) 8:1 African Research Review 205 at 207, Kendra Dupuy, Lise Rakner & Lucas Katera, "Civil Society's role in petroleum sector governance: The case of Tanzania" (February 2019), online: < https://www.cmi.no/publications/6850-civil-societys-role-in-petroleum-sector-governance-the-case-of-tanzania>

[697] Oshionebo, *supra* note 427 at 436, Evaristus Oshionebo, "Transnational Corporations, Civil Society Organisations and Social Accountability in Nigeria's Oil and Gas Industry" (2007) 15:1 African J of Intl & Comparative L 107 at 112, Cynthia A Williams, "Civil Society Initiatives and Soft Law in the Oil and Gas Industry" (2004) 36:2&3 NYUJ Int L & Pol 457 at 461, Chikoto-Schultz & Uzochukwu, *supra* note 694 at 138, Naomi Chazan, "Africa's Democratic Challenge" (1992) 9:2 World Policy Journal 279 at 282, Robert Fatton Jr., "Africa in the Age of Democratization: The Civic Limitations of Civil Society" (1995) 38:2 African Studies Review 67 at 67.

[698] Ako & Ekhator, *supra* note 23 at 188.

active participation of civil society in the EITI process is key to ensure that the transparency created by the EITI leads to greater accountability."[699]

The EITI firmly institutionalized the role of CSOs in resource governance by adopting the multi-stakeholder approach to governance. The multi-stakeholder approach mandates equal participation between the government, extractive companies and CSOs (representing the public) in the management of natural resources, thus promoting citizen engagement, participation and representation in resource governance.[700] The EITI's multi-stakeholder approach to resource governance has been commended as a significant feature of the EITI as it not only empowers CSOs who were previously largely excluded from governance dialogues in many resource rich developing countries, but it also enhances citizen engagement and participation in resource governance.[701] CSOs are considered the strongest link between citizens and the government in resource governance.[702] Scholars such as Oshionebo have recognized the power of CSOs in promoting efficient resource governance as they can potentially act as counterbalance against the power yielded by extractive companies and the government and "because of their capacity to generate conduct-influencing norms".[703] Therefore, CSOs are instrumental in repulsing constrained transparency in Nigeria, by resisting governmental dominance and pushing for adherence to internationally recognized transparency standards. Furthermore, CSOs are important in transforming Nigeria's constrained transparency into accountability through the facilitation of citizen engagement with extractive disclosures and citizen participation in resource governance. Having established the central role of CSOs in promoting effective resource governance, the next section considers in detail the roles played by CSOs in promoting citizen engagement in extractive disclosures and citizen participation in resource governance and the challenges confronted by CSOs in performing these roles.

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[699] EITI, "Protocol: Participation of civil society", online: < https://eiti.org/files/documents/eiti-standard_protocol_participation-civil-society_en.pdf>

[700] Aaronson, *supra* note 4 at 51, Oge, *supra* note 17, EITI, "Multi-Stakeholder governance: The power of Three", online: < https://eiti.org/oversight>. EITI implementing countries are required to establish a multi-stakeholder group (MSG) to administer the implementation of the initiative, this includes publication of annual EITI audit reports and ensuring compliance with EITI's requirements, the exact mandate of the multi-stakeholder group differs across countries, it is usually pursuant to the national law of the implementing country.

[701] Aaronson, *supra* note 4 at 51.

[702] *Ibid* at 53.

[703] Oshionebo, *supra* note 427 at 436

4.4 Analysis of Roles Played by CSOs in Natural Resource Governance

This section discusses how Nigerian CSOs enhance citizen engagement with NEITI disclosures and citizen representation in resource governance by examining their three core roles—expertise, representation and oversight[704]—with the goal of evaluating their effectiveness.

4.4.1 Expert Role of Civil Society Organizations

The expert role of CSOs in resource governance encompasses "information collection, dissemination and analysis."[705] The goal is to enhance citizen's understanding of the extractive sector and extractive disclosures and empower them with the necessary knowledge required to hold leaders and extractive companies accountable.[706] To make information understandable and usable by the public, CSOs should not merely collect and disseminate information but should also analyse and reproduce the information in a comprehensible format for the public through a widely accessible medium.[707] This information provision function also creates a communication channel and "feedback loop" between the public and the government, wherein public concerns are articulated to the government and proposed decisions of the government are communicated to the public, thus reducing information asymmetry between citizens and the government.[708]

Nigerian CSOs perform this expert role by disseminating NEITI audit reports, disseminating information on policy developments and other occurrences in the extractive sector through press releases, public statements and social media posts.[709] CSOs, in collaboration with the NEITI, were active in disseminating information through roadshows, media campaigns and community town

[704] Kendra Dupuy, Lise Rakner & Lucas Katera, "Civil Society's role in petroleum sector governance: The case of Tanzania" (February 2019), online: < https://www.cmi.no/publications/6850-civil-societys-role-in-petroleum-sector-governance-the-case-of-tanzania>, Aaronson, *supra* note 4, Eghosa Osa Ekhator, "The Roles of Civil Society Organizations in the Extractive Industries Transparency Initiative in Nigeria" (2014) 16:2 International Journal of Not-for-Profit Law 47 at 50.

[705] Barbara Gemmill-Herren and Abimbola Bamidele-Izu, "The Role of NGOs and Civil Society in Global Environmental Governance", (January 2002), online: < https://www.researchgate.net/publication/228786506_The_role_of_NGOs_and_Civil_Society_in_Global_Environmental_Governance> *Ibid*, Dupuy et al.

[706] *Ibid*, Ako & Ekhator, *supra* note 23 at 189.

[707] *Ibid*

[708] *Ibid*

[709] Cyril Obi, "Nigeria: The Role of Civil Society in the Politics of Oil Governance and Revenue Management", I. Overland (ed.), Public Brainpower at 201 at 201.

hall meetings to raise public awareness of the NEITI, its functions and its audit reports.[710] However, these actions dwindled due to lack of funds, CSOs' limited understanding of NEITI reports and absence of the media to propagate these actions.[711] The NEITI audit reports, which form the crux of extractive transparency in Nigeria, are intended to inform the public of yearly revenue flows between the government and the companies as well as discuss other cogent developments in the sector. It also contains recommendations for the improvement of resource governance in Nigeria.[712] However, the technical nature of these reports makes it difficult for CSOs to perform their expert role of information dissemination and analysis.[713] For instance, in an interview of a former leader of the Publish What You Pay (PYWP) group in Nigeria (Faith Nwadishi), Osuoka revealed that CSOs do not understand the NEITI audit reports even in its simplified format which precludes their ability to explain it to the public.[714] This overly technical mode of reporting EITI audit report is not peculiar to Nigeria; Klein notes that "EITI reports demand sophisticated levels of expertise in order to be critically analysed."[715] In addition, although CSOs are presumed to be expert in the sector therefore saddled with the responsibility of educating citizens on extractive disclosures, however, the extractive sector requires advanced and specialist knowledge to effectively understand and engage in the sector.[716] Many Nigerian CSOs lack the advanced knowledge and technical expertise of the extractive sector which hinders them from effectively performing their expertise role of educating and sensitizing the public on NEITI disclosures and the extractive sector in general.[717]

Lastly, as discussed in Chapter Three, the delays in the publication of NEITI audit reports also reduces their capacity to attract public interest and spur public demands for accountability since they are not published simultaneously with the happenings of the sector.[718] Ejiogu, Ejiogu and Ambituuni rightly argue that for CSOs and the public to fully engage with disclosed information,

[710] Abutudu & Garuba, *supra* note 22 at 23, Ako & Ekhator, *supra* note 23 at 189.
[711] Osuoka, *supra* note 203 at 824, Ekhator, *supra* note 704 at 48.
[712] Andrew Chenge & Chikelue Ofuebe, "Resource rent to riches: Exploring NEITI Oil and Gas Audits and Financial Sustainability in Nigeria, 2012" (2020) XXI:1 Nigerian J of Public Administration and Local Govt. Publications 2 at 4.
[713] Osuoka, *supra* note 203 at 824.
[714] *Ibid*.
[715] Klein, *supra* note 209 at 772.
[716] Abutudu & Garuba, *supra* note 22 at 23
[717] *Ibid*.
[718] Ejiogu et al, *supra* note18 at 2.

the information should be "timely, understandable and faithfully represent the phenomena which it claims to represent."[719]

4.4.2 Representative Role of Civil Society Organizations

CSOs' representative role entails actively participating on behalf of citizens in natural resource governance. This representative role is expected to have a "democratization effect in resource governance"[720] by countering the interests and positions of the government and extractive companies. Here, CSOs are expected to fully and actively participate in resource governance discussions and policy developments on behalf of citizens in order to articulate their concerns to the state and advocate for an effective resolution. Through this representative role, CSOs also engage in policy formulation and implementation in resource governance.[721] CSOs' active involvement in resource governance can potentially reduce state dominance over natural resources and provide less opportunities for the perpetuation of opaque and corrupt practices in the sector.[722] CSOs' active participation in resource governance also pressures the government and extractive companies to adhere to internationally recognized transparency regulations, thus, pushing back against constrained transparency as in Nigeria's case. As discussed in Section 4.3.3, the EITI's multi-stakeholder approach has institutionalized the representative role of CSOs in implementing countries.[723] The EITI requires the "full, independent, active and effective participation of civil society"[724] in the initiative's implementation.[725]

CSOs' representative role is recognized and enshrined under the NEITI Act. Section 6 (d) of the NEITI Act requires a representative of CSOs to be appointed to the NSWG board. CSO representation on the NSWG is meant to enhance their participation in NEITI implementation and natural resource governance in Nigeria. As Abutudu and Garuba argue, "by virtue of its representation in the NSWG, civil society is expected to contribute to NEITI policy formulation

[719] *Ibid*.
[720] Dupuy et al, *supra* note 704.
[721] Abutudu & Garuba, *supra* note 22 at 23
[722] Dupuy et al, *supra* note 704.
[723] Klein, *supra* note 209 at 772.
[724] EITI, "Protocol: Participation of civil society", online: < https://eiti.org/files/documents/eiti-standard_protocol_participation-civil-society_en.pdf>
[725] *Ibid.*

and programme design."[726] However, this representative role is unfortunately weakened by the same Act that establishes it in two ways. First, CSOs are underrepresented on the NSWG—the Act requires the appointment of just one CSO representative amongst 15 other members.[727] Second, the President is given the power under the Act to appoint this representative on behalf of CSOs.[728] These limitations suppress CSOs voices and concerns in resource governance dialogues. The President's power of appointment impairs CSOs' full, active and independent involvement in the NEITI as such appointment would likely be based on patronage rather than on merit.[729] These constraints on CSOs' representative role can be interpreted as a deliberate attempt by the government to retain control of the initiative and suppress avenues for citizen representation in the sector.[730] As a result, scholars like Ejiogu et al, Abutudu et al and Ekhator have argued that the representative role of CSOs in resource governance in Nigeria is weak and almost non-existent.[731] CSOs should be independent of any form of control by the government to effectively represent citizens.[732] Nigerian CSOs have campaigned against their underrepresentation on board the NSWG and the power granted to the president to appoint a representative on their behalf.[733] These advocacy efforts became stronger when President Yar'adua failed to confer with CSOs before appointing the NSWG representative on their behalf.[734] These efforts led to the execution of a Memorandum of Understanding between CSOs and the NEITI which requires, amongst other things, for the president to consult with CSOs before appointing their NSWG representative.[735] However, the ultimate power of appointment still lays with the President.[736] Nonetheless, this is a prime example of how CSOs advocacy strategies can be deployed to repulse weak regulatory provisions which heavily contributes to Nigeria' constrained form of transparency. By campaigning against their underrepresentation on board the NSWG and the power granted to the

[726] Abutudu & Garuba, *supra* note 22 at 23
[727] Ejiogu et al, *supra* note 18 at 2.
[728] Abutudu & Garuba, *supra* note 22 at 45
[729] Ejiogu et al, *supra* note 18 at 2.
[730] *Ibid.*
[731] Ejiogu et al, *supra* note 18 at 2, Abutudu & Garuba, *supra* note 22 at 45, Ekhator, *supra* note 704 at 48, Ejiogu et al, *supra* note 24 at 11, Idemudia, *supra* note 25 at 137.
[732] Chikoto-Schultz & Uzochukwu, *supra* note 694.
[733] Osuoka, *supra* note 203 at 824.
[734] *Ibid.*
[735] Ekhator, *supra* note 704 at 51.
[736] *Ibid*, Also, a Civil Society Organization Steering Committee was established as an NEITI committee to enhance CSO representation and participation in the NEITI. Ekhator states that through this committee, "CSOs and the NEITI board are partners in the various outreach programs and activities organized by the NEITI".

president to appoint a representative on their behalf under the NEITI Act, they were able to propel certain positive reforms and remedy some of the inefficiencies of the NEITI Act.

Another major concern arising from the CSOs' representative role in Nigeria is the extent to which appointed CSOs actually represent citizens. Do CSOs effectively engage with citizens? How knowledgeable are they about the concerns of the public, particularly grassroots and historically marginalized groups? In Nigeria, CSOs are more active at the federal level, often neglecting issues relating to local concerns.[737] CSO representative on board the NSWG is usually selected from internationally recognized transparency groups such as the PWYP Nigeria overlooking other less popular CSOs who are often closer to the grassroot people.[738] In this regard, Osuoka argues that, "by conflating civil society with the professional NGO, and entrenching a few NGOs in the EITI process, the NEITI has had limited resonance in the discourses and social action of a divided public."[739] Osuoka further argues that this situation stems from the fact that the EITI process is "informed by a Euro-Western imaginary of a unilineal relationship between civil society and the state, shaped by western liberalism's notion of a single public sphere."[740] By selecting only a few CSOs integrated within the federal level on board the NSWG, the concerns and interests of grassroot people are not sufficiently represented.[741] Based on this, it is difficult for NEITI disclosures to garner meaningful public interest and spur public demands for accountability. To adequately represent the interest of all citizens on board the NSWG, this thesis suggests increased cooperation between CSOs operating at the federal and local level.[742] Having discussed the expertise and representative role of CSOs, this chapter will now proceed to examine CSOs' oversight and advocacy role.

[737] Jolade et al., *supra* note 696 at 220.
[738] Osuoka, *supra* note 43 at 796
[739] *Ibid.*
[740] *Ibid.*
[741] *Ibid.*
[742] Naomi Chazan, "Africa's Democratic Challenge" (1992) 9:2 World Policy Journal 279 at 290, Titilope Mamattah, "Building Civil Society in West Africa: Notes from the Field", E. Obadare (ed,,), The Handbook of Civil Society in Africa 153. Collaboration and cooperation amongst CSOs at all levels was the major reason why CSOs garnered wide public support in the Occupy Nigeria movement of 2012, as Mamattah opines, "the Occupy Nigeria protest of January 2012 drew mass public support and was successful because of the manner in which CSOs in the country unified solidly against the government".

4.4.3 Oversight and Advocacy Role of Civil Society Organizations

To perform this role, CSOs monitor the activities of the government and extractive companies to ensure compliance with accepted rules, draw public attention to deviations from these rules and pressure them into conforming with formal laws and internationally recognized codes of conduct. This role has an "accountability effect in resource governance."[743] The goal here is to discourage and expose inappropriate conduct by relevant actors, as well as advocate for the adoption of best practices in resource governance.[744] To pressure the government and extractive companies into adherence with accepted standards of behaviour, CSOs adopt strategies such as lobbying, demonstrations, boycotts, public awareness campaigns, public interest litigation and mobilise public protests to articulate their concerns.[745] These strategies are potent tools for countering state dominance and deterring corrupt and inappropriate practices in the governance of natural resources. In fact, Oshionebo argues that these advocacy efforts "[serve] somewhat the same function as state regulation."[746] In the same vein, Ako and Ekhator opine that "the void created in the extractive sector by non-performance of government regulatory bodies and the non-implementation of existing legal enactments is gradually being filled by CSOs."[747] These scholars seem to suggest that CSOs' advocacy strategies could oppose the anomalies that beset the sector, such as inadequate regulation, government and extractive companies' dominance, and corrupt practices. Therefore, CSOs advocacy strategies are vital instruments for opposing constrained transparency in Nigeria, specifically the major factors contributing to constrained transparency - governmental dominance, infirm regulatory provisions and weak enforcement mechanisms. The power in CSOs' advocacy was evident in the early 2000s when CSOs and other advocacy groups were vocal against the rampant environmental degradation and human rights abuses committed by extractive companies in the conduct of their activities in Nigeria.[748] These advocacy efforts, and

[743] Dupuy et al, *supra* note 704.
[744] Ekhator, *supra* note 704 at 50.
[745] Chikoto-Schultz & Uzochukwu, *supra* note 694 at 159.
[746] Oshionebo, *supra* note 427 at 437, Oshionebo, *supra* note 697 at 112.
[747] Ako & Ekhator, *supra* note 23 at 188.
[748] *Ibid*, Oshionebo, *supra* note 697 at 113, Ekhator, *supra* note 704 at 50.

the attention it elicited from the international community, prompted governments and extractive companies to make necessary reforms to policy and business practices.[749]

However, Nigerian CSOs' advocacy efforts promoting effective resource governance have been less effective.[750] The only notable CSO advocacy effort pushing for improved management of extractive revenue was the Occupy Nigeria protest of 2012, although this protest did not stem from NEITI audit reports or any of its disclosures.[751] The protest was ignited by the President Jonathan's announcement rescinding the fuel subsidy on petroleum products and an increase in the price of petrol to almost three times its price per litre, which led to a subsequent spike in the prices of goods and services.[752] Even though the protest was not directly instigated by poor extractives governance, it decried the mismanagement of the extractive revenue, political elites' corrupt practices and bad governance in general. The protest has been generally deemed successful as it yielded some positive reforms, spurred public accountability demands like never before and elicited a political response from the government.[753] However, CSOs failed to sustain the public mobilisation created by the Occupy Nigeria protest to spur further public accountability demands using NEITI audit reports and disclosures.[754] This could have drawn wider public attention to the existence of NEITI disclosures and ignited enhanced public accountability demands using NEITI disclosures. This could have incited tangible institutional and regulatory reforms in resource governance in Nigeria.[755]

Nigerian CSOs could potentially promote citizen engagement with NEITI disclosures and citizen participation in resource governance through their expertise, representative and oversight role discussed above. However, governmental control over the NEITI and infirm regulatory provisions in the NEITI Act impairs them from effectively performing these roles. Conversely, as Oshinebo

[749] Oshionebo, *supra* note 427 at 115, Ako & Ekhator, *supra* note 23 at 189 These reforms include, the increase in self-regulatory practices by extractive companies, the rise in the number of community development agreements between companies and host communities and consultation of local communities before the commencement of extractive activities. These reforms also encouraged judicial activism in support of CSOs and host communities.
[750] Osuoka, *supra* note 43 at 796.
[751] *Ibid*.
[752] Jolade et al., *supra* note 696 at 216.
[753] Osuoka, *supra* note 43 at 801, Ako & Ekhator, *supra* note 23 at 191. This protest prompted parliamentary probes by the House of Representatives into resource governance and the probes uncovered mismanagement of petroleum subsidy funds. The probes also led to prosecution of government officials and companies involved in the scandal, however, the cases were subsequently withdrawn from the court before final adjudication.
[754] *Ibid*
[755] *Ibid*, Osuoka.

and Ako et al opine, CSOs can adopt advocacy strategies such as lobbying, public awareness campaigns and public protest to repulse state dominance and repressive regulatory framework which also impairs the total adherence to transparency standards in Nigeria.[756] These strategies tend to drive positive reforms on the part of the government and extractive companies.[757]

4.5 Challenges to the Effective Participation of Nigerian Civil Society Organizations' in Natural Resource Governance

The preceding section discussed some of the challenges confronting CSOs in the performance of their expert, representative and advocacy roles within the framework of NEITI implementation. This section focuses on how the broader socio-political challenges in Nigeria impairs them from effectively performing their roles in resource governance. As Williamson and Rodd rightly argue "CSO advocacy is only as effective as the space allowed by government, the resource available from funders, and their own internal capacity."[758] This section broadly divides these challenges into CSOs internal inadequacies, state dominance over CSOs, and broader societal challenges.[759]

CSOs' internal inadequacies impair their ability to effectively perform their expert, representative and advocacy roles in the governance of natural resources.[760] Chief amongst these internal constrains is lack of funding and technical expertise.[761] Lack of expertise and technical understanding of the extractive sector limits CSOs' ability to effectively participate, advocate for regulatory reforms in the sector and stimulate public demands for accountability. This lack of expertise is reflected in their inability to understand the technical NEITI audit reports and provide a simplified version for public understanding.[762] In addition, high level technical expertise is required to understand the extractive sector, which many CSOs do not possess, thus constraining their full participation in the governance of the sector. In terms of funding, CSOs are reliant on the government and international donors for funding. Some have argued that this reliance strips them

[756] Oshionebo, *supra* note 697 at 112, Ako & Ekhator, *supra* note 23 at 188.
[757] *Ibid*
[758] R. Taylor Williamson & Joshua Rodd, "Civil Society advocacy in Nigeria: promoting democratic norms or donor demands?" (2016) 16:19 BMC International Health and Human Rights 1 at 1.
[759] *Ibid*, Oshionebo, supra note 427 at 438.
[760] *Ibid*, Ako & Ekhator, *supra* note 23 at 193.
[761] Chazan, *supra* note 742 at 290.
[762] Osuoka, *supra* note 203 at 824.

of the autonomy and independence need to conduct their duties.[763] It also reduces the legitimacy of CSOs in the eyes of the populace as they are perceived to owe allegiance to the government and international donors and not to the general public.[764] Yet these donations and funding are essential to their operations and continuity.[765] This funding has however, dwindled over the years and has greatly impaired CSOs' capacity to properly perform their core functions, including information dissemination and mass mobilisation.[766] This is reflected in their inability to conduct meaningful public awareness campaigns on NEITI audit reports.[767]

In addition, the lack of cooperation and internal strife amongst CSOs inhibits them from effectively performing their roles. These disagreements and conflicts can be attributed to personality clashes and disparity in advocacy strategies. This division and lack of coordination between CSOs has also been exploited by the government and its agencies.[768] For example, the disagreements within the Publish What You Pay (PWYP) coalition led to the formation of another CSO called the Coalition for Accountability and Transparency in Extractive Industry, Forestry and Fisheries in Nigeria.[769] Proliferation of CSOs without due coordination amongst them weakens their capacity to collectively represent citizens in resource governance dialogues and enhance citizen engagement with extractive disclosures.[770] This division and lack of convergence amongst CSOs has been described as "collective action problem in social activism."[771] Oshionebo aptly notes that this problem arises from "the conflicting interests, priorities, and orientations of CSOs as well as differences in strategies for achieving corporate accountability objectives".[772]

Furthermore, corruption on the part of CSOs diminishes their credibility and legitimacy in the eyes of the public, leading to a decline in public trust and confidence.[773] The pervasiveness of corruption

[763] Darren Kew & Modupe Oshikoya, "Escape from Tyranny: Civil Society and Democratic Struggles in Africa", E. Obadare (ed,,), The Handbook of Civil Society in Africa 10.
[764] *Ibid*. In certain instances, the government spreads negative rhetoric about CSOs and NGOs, propagating narratives of NGOs and CSOs as money laundering vehicles rather than advocacy groups.
[765] Kew & Oshikoya, supra note 763.
[766] Osuoka, *supra* note 203 at 824, Chazan, *supra* note 742 at 290.
[767] *Ibid*
[768] Abutudu & Garuba, *supra* note 22. Abutudu and Garuba reports that inflaming divisions amongst CSOs "has been one strategy of the NEITI secretariat in the past to keep key civil society activists in check".
[769] Shaxon, *supra* note 20.
[770] Abutudu & Garuba, *supra* note 22.
[771] Oshionebo, *supra* note 697 at 121.
[772] *Ibid*, Oshionebo, *supra* note 427 at 439.
[773] Daniel Jordan Smith, "Corruption, NGOs, and Development in Nigeria" (2010) 31:2 Third World Quarterly 243 at 246.

in all spheres and social gatherings in Nigeria enables it to strive in civic spaces such as advocacy groups. In some cases, leaders of CSOs, in exchange for monetary gain or other forms of gratifications, have abruptly halted advocacy efforts against the government.[774] Based on this, the public generally perceive CSOs and NGOs as advocates of change as well as accomplices in government corruption.[775] In this regard, Smith contends "a central question in the study of corruption in Nigeria, including in the local NGO sector, is how ordinary citizens can be, paradoxically, active participants in the social reproduction of corruption, even as they are also its primary victims and its principal critics."[776]

In order to manage their internal inadequacies, this thesis suggests that CSOs adopt internal improvement mechanisms to enhance their credibility and effectiveness. These mechanisms could be in the form of regular reviews and reporting of their activities to the public, or other forms of internal self-regulatory measures such as adopting a voluntary code of conduct. Jolade et al and Essia et al have opined that these forms of internal regulation could potentially be more desirable and effective than external regulation by the government, as regulatory oversight by the government is usually done in a bid to "emasculate" CSOs.[777] However, critics like Burger and Seabe have argued that CSOs' self-regulation has shortcomings, including the "lack of operational standards, enforcement mechanisms and sanctions."[778] Nevertheless, internal self-regulatory mechanisms are important to serve as a check on CSOs' activities, which could also aid in strengthening their credibility in the eyes of the populace.

Governmental dominance over CSOs also impairs them from effectively participating in resource governance. State dominance over CSOs in Nigeria is evident in repressive regulatory oversight, government control over the NEITI, underrepresentation of CSOs in the NEITI, as well as outright intimidation and harassment of CSOs by the government.[779] The Companies and Allied Matters

[774] Victoria N. Azu, "The Challenges of Civil Society Organizations in Democratic Sustenance in Nigeria" (2019) 7:5 Global Journal of Political Science and Administration 26 at 38.
[775] Smith, *supra* note 773.
[776] *Ibid* at 246.
[777] Uwem Essia & Afzal Yearoo, "Strengthening civil society organizations/government partnership in Nigeria" (2009) 4:9 International NGO Journal 368 at 374, Omede Adedoyin Jolade & Bakare Adebola Rafiu, "The Impact of Civil Society Organizations on Sustainable Development in Developing Countries: The Nigerian Experience" (2014) 8:1 African Research Review 205 at 220.
[778] Ronelle Burger & Dineo Seabe, "NGO Accountability in Africa", E. Obadare (ed,,), The Handbook of Civil Society in Africa 87.
[779] Ako & Ekhator, *supra* note 23 at 193, Azu, *supra* note 774.

Act (CAMA) 2020 contains novel provisions granting the Corporate Affairs Commission (CAC), and by extension the government, regulatory oversight over CSOs and other non-governmental organizations (NGOs) in Nigeria. Although this regulatory oversight is in tandem with the regulation of CSOs in other parts of the world, commentators such as the Policy and Legal Advocacy Centre (PLAC) (an NGO promoting good governance and citizen participation in governance in Nigeria)[780] have opined that because of their broad and discretionary language, these provisions could be deployed by the government to exert dominance over the activities of CSOs and NGOs.[781] For instance, under the CAMA 2020, the CAC is granted wide discretionary powers to conduct investigations into the affairs of NGOs and non-profit organizations registered under the Act, revoke an association's certificate of registration, obtain court ordered suspension of trustees and impose restrictions on their financial transactions.[782] Potentially, the CAC's regulatory powers over CSOs could be employed as a weapon of dominance and oppression over the activities of NGOs and CSOs under the pretext of public interest regulation.[783] Furthermore, as discussed in section 4.4.2, government control over CSOs' participation in the NEITI is exerted through underrepresentation of CSOs on the NSWG and the power granted to the president to appoint a CSO representative on the NSWG.[784] Finally, in certain instances, the government has resorted to intimidation and harassment to suppress the activities of CSOs. An example of this is the deployment of police and military personnel to repel civil protesters through the use of force and weapons.[785]

Lastly, the operation of the rule of law and the general socio-political climate of a country determines the extent to which CSOs can thrive and perform their key functions. As Oshionebo rightly notes, "democracy, rule of law, and responsible governance are fundamental conditions that must be attained before we can expect civil groups to flourish and thrive in Nigeria."[786] The

[780] PLAC, "PLAC Profile", online: < https://placng.org/i/plac-profile/>
[781] PLAC, "Analysing the Regulation of Non-Profits, Registered as Incorporated Trustees under "PART F" of the new CAMA", online, < https://placng.org/i/wp-content/uploads/2020/09/CAMA-Analysis.pdf> In other jurisdictions such as the UK, the Companies oversight body is insulated from control by the executive arm of government and it is only answerable to the parliament.
[782] Section 8, 839, 842 and 850 of CAMA 2020
[783] PLAC, *supra* note 781. In other jurisdictions such as the UK, the Companies oversight body is insulated from control by the executive arm of government and it is only answerable to the parliament.
[784] Ejiogu et al, *supra* note 24 at 11
[785] Azu, *supra* note 774 at 38, Chazan, *supra* note 742 at 292
[786] Oshionebo, *supra* note 697 at 127.

active operation of the rule of law, democracy and quality institutions curbs state dominance over CSOs and provides them with the required resources to perform their advocacy role.[787] For instance, an independent judiciary and competent law enforcement agencies are required to enforce CSOs' accountability demands,[788] which could foster CSOs' capacity and willingness to mobilise collective activism against the government.[789] As Andrews and Okpanachi comment, "Nigeria's history demonstrates that it has not been lucky in entrenching the democratic ideal as the system of rule has gravitated between outright authoritarianism or democracy characterized by obviation of popular sovereignty or abrogation of the electorate".[790] Ironically, CSOs' advocacy efforts may counteract repressive and authoritarian governmental tendencies,[791] which suggests that although CSOs' activism could be restrained by repressive tendencies on the part of the government, CSOs' activism are also necessary to oppose repressive and authoritarian governmental tendencies. Having established that CSOs are crucial to bolstering citizen engagement in resource governance, the next section will consider how CSOs and the NEITI can deploy Information and Communication Technology (ICT) to further strengthen their capacity to facilitate citizen engagement in resource governance.

4.6 Information and Communication Technology, Natural Resource Governance and Citizen Engagement

Information and communication technology (ICT),[792] especially online and social media platforms, are drastically altering the way information is provided, distributed and utilized.[793] ICT provides a low cost and easily accessible platform for information sharing, as well as an opportunity to reach a wider and diverse audience.[794] With limited resources, public awareness

[787] Dingwerth & Eichinger, *supra* note 131 at 76.
[788] *Ibid*. For instance, where the judiciary is independent, it will be more included in promoting judicial activism necessary to adjudicate public interest litigation.
[789] Azu, *supra* note 774.
[790] Andrews & Okpanachi, *supra* note 54 at 240.
[791] Chazan, *supra* note 742 at 290.
[792] ICT can be broadly defined as "technologies that provide access to information through telecommunications", this includes social media platform, the internet, mobile phones and other forms of communication devices. TechTerms, "ICT Definition", online: < https://techterms.com/definition/ict>
[793] Kalliopi Kyriakopoulou, "Authoritarian States and Internet Social Media: Instruments of Democratisation or Instruments of Control?" (2011) 21 Human Affairs 18 at 18.
[794] Farid Shirazi, Ojelanki Ngwenyama and Olga Morawczynski, "ICT expansion and the digital divide in democratic freedoms: An analysis of the impact of ICT expansion, education and ICT filtering on democracy" (2010) 27:1 Telematics and Informatics 21 at 21.

can be speedily stimulated and amplified.[795] Based on its ability to bypass the barriers inherent in traditional modes of citizen engagement in governance and reach a wide range of participants, scholars such as Kyriakopoulou, Kumar et al and Phang et al have posited that ICT and social media platforms could serve as viable instruments for strengthening democracy and a counterforce against repressive and authoritarian governments.[796] Just as with broader societal governance, ICT can be deployed to bolster citizen engagement with extractive disclosures and in resource governance because it is an easy, widely accessible and cost effective channel for information dissemination, promoting a transparency effect. It also provides a platform for quick stimulation of public awareness campaigns and mobilization of collective action, promoting an accountability effect.[797] This raises the pertinent question: to what extent can ICT enhance citizen engagement with NEITI disclosures and in resource governance in Nigeria? In answering this question, this section examines how the NEITI deploys ICT and social media channels in making disclosures and suggests methods for improvement. It also considers how CSOs and advocacy groups can utilize ICT tools to spur public awareness and public accountability demands. This section further discusses the challenges inherent in the use of ICT in boosting citizen engagement in resource governance.

The EITI encourages the use of ICT platforms, specifically government and national EITI websites, to issue public disclosures. The EITI requires that disclosures be "in an open data format online,"[798] and that implementing countries should publicise the availability of the disclosures.[799] In line with this, the NEITI utilizes ICT platforms to provide extractive disclosures to the public. The NEITI publishes its annual audit reports for both the oil and gas and mining sector on its website;[800] it also utilizes social media platforms such as Twitter and Facebook to provide snippets of its audit reports and other key developments in the extractive sector.[801] The Nigerian beneficial

[795] Victoria Ibezim-Ohaeri, "Confronting Closing Civic spaces in Nigeria", online: < https://sur.conectas.org/en/confronting-closing-civic-spaces-in-nigeria/>
[796] Chee Wei Phang and Atreyi Kankanhalli, "A Framework of ICT Exploitation for E-Participation Initiatives" (2008) 51:12 Communications of the ACM 128 at 128, Nanda Kumar and Roumen Vragov, "Active Citizen Participation using ICT Tools" (2009) 52:1 Communications of the ACM 118 at 118, Kyriakopoulou, *supra* note 793.
[797] Poncian, *supra* note 81.
[798] *Ibid*, Clause 7.2 EITI 2019 Standard
[799] *Ibid*. Other natural resource governance initiatives such as Open Government Partnership (OGP),OpenOwnership and Resource contracts project also promote the use of ICT in providing extractive disclosures to the public.
[800] NEITI, "NEITI audit reports", online: < http://www.neiti.gov.ng/>
[801] Twitter, "NEITI Nigeria", online: < https://twitter.com/nigeriaeiti?lang=en> , Facebook, "NEITI Nigeria", online: < https://www.facebook.com/nigeriaeiti/>

ownership register for the extractive sector is predominantly online—the register is freely searchable by users and basic searches can be undertaken on the website.[802] NEITI's use of ICT platforms for information sharing is commendable as it reaches a broad audience. However, the lapses in the quality of NEITI disclosures and the technical challenges inherent in the administration of the BO register hinders the NEITI's use of ICT. Also, the information disclosed on NEITI's social media pages are complex and technical, impeding public understanding of the information sought to be disclosed. Furthermore, comments and replies by the public on NEITI's social media posts are often ignored without a response from NEITI.[803] Citizen engagement in resource governance requires more than just information provision; a two-way communication channel between the citizens and the government wherein citizens' concerns are articulated and addressed is lacking.[804] Social media platforms provide an effective low cost method of achieving this two way communication channel, therefore it is recommended that NEITI harness these platforms to promote citizen engagement with its disclosures. Additionally, technical issues, such as broken and inaccessible websites and inconsistent social media posts, negates NEITI's use of ICT in enhancing citizen engagement. These lapses reduce NEITI disclosures on ICT and social media platforms to a "box-ticking exercise" undertaken simply to fulfil EITI requirements and not to enhance citizen engagement with extractive disclosures. It is also recommended that NEITI and the government deploy social media platforms to disseminate information concerning environmental and social issues in the extractive sector, including employment opportunities, environmental reporting and concise details of the public expenditure of resource rents. Balagkutu and Klein have opined that reporting on environmental and social concerns not only attracts and sustains public interest in extractive disclosures but also imposes stricter reporting and responsibility duties on extractive companies.[805]

The Occupy Nigeria protest of 2012 illustrated the efficacy of social media platforms in spurring public demands for accountability in resource governance, CSOs can learn from this experience in deploying social media platforms in spurring public awareness and public accountability demands.[806] The protest was largely successful because CSOs and advocacy groups were able to

[802] NEITI, "Beneficial Ownership Portal", online: < https://bo.neiti.gov.ng/>
[803] Twitter, "NEITI Nigeria", online: < https://twitter.com/nigeriaeiti/status/1328801847742705666>
[804] Poncian, *supra* note 81at 9.
[805] Balagkutu, *supra* note 85 at 776, Klein, *supra* note 209 at 772.
[806] Osuoka, *supra* note 43 at 796.

reach a broad spectrum of audience and mobilise mass support in favour of the movement through the use of social media platforms.[807] This underscores the importance of ICT and social media for facilitating public awareness and public demands for accountability in the governance of natural resources. CSOs and advocacy groups can employ social media channels to stimulate public awareness campaigns, mobilize collective action and organize public protests, which could translate transparency into accountability.[808] ICT platforms provide immense support for public awareness, social and collective activism in several ways. First, advocacy groups are able to bypass the limitations and regulations imposed by the government on traditional media and reach a wider audience including grassroots communities that are often excluded in governance dialogues.[809] Second, these platforms provide a sense of collective identity across the public that activists can mobilize in support of a collective movement.[810] Third, public awareness campaigns and collective action are ignited expeditiously and with limited resources.[811] As Dey and Olabode opine, "ICTs have the potential to alter the flow of political information, reduce the cost of conventional forms of participation as well as create a new low-cost forms of participation, which can ultimately lead to an increase in participation in social movements."[812] This thesis recommends that Nigerian CSOs deploy social media platforms to raise public awareness of NEITI audit reports and disclosures and mobilise public demands for accountability when necessary. This way, CSOs would be further empowered to challenge Nigeria's constrained transparency (narrow and surface

[807] Adrija Dey and Shola Olabode, "A Comparative Study of the Delhi Nirbhaya Protests and Occupy Nigeria Movement: Evaluating Uses of ICTs and Social Media", Protest Technologies and Media Revolutions 177 at 189, Jolade et al., *supra* note 696 at 215. The power of social media in propagating social movement is evident in its use in the just concluded protest in Nigeria against police brutality under the hashtag "#EndSars". This protest gained wide support and recognition both locally and internationally that it became a huge threat and counterforce against the repressive Nigerian government who resorted to the use of force against protesters to quell the protest. While this protest against police brutality is not directly linked to resource governance, it however reinforces the strength in the use of social media platforms in propagating a movement as well as its viability in advocating for good governance and accountability from repressive governments. The Guardian, "Nigeria cracks down on 'end Sars' protesters, alleging terrorism", online: < https://www.theguardian.com/world/2020/nov/13/nigeria-cracks-down-on-end-sars-protesters-alleging-terrorism>

[808] R. Kelly Garrett, "Protest in an Information Society: a review of literature on social movements and new ICTs" (2006) 9:2 Information, Communication & Society 202 at 202, Nahed Eltantawy and Julie B. Wiest, "Social Media in the Egyptian Revolution: Reconsidering Resource Mobilization Theory" (2011) 5 International Journal of Communication 1207 at 1207, Jeroen Van Laer & Peter Van Aeist, "Internet and Social movement action Repertoires" (2010) 13:8 Information, Communication & Society 1146 at 1146, Poncian, *supra* note 81.

[809] Dey & Olabode, *supra* note 807 at 178

[810] Garrett, *supra* note 808 at 205.

[811] Anastasia Kavada, "Creating the collective: social media, the Occupy Movement and its constitution as a collective actor" (2015) 18:8 Information, Communication & Society 872 at 874.

[812] Dey & Olabode, *supra* note 807 at 178.

level information disclosure regime) and utilize this constrained transparency to make demands for accountability.

While ICT tools and social media platforms could potentially bolster citizen engagement with extractive disclosures and in resource governance, their use comes with some challenges. First, governments have recognized the potency of social media platforms for articulating citizens' demands for accountability and mobilising mass protests, and have begun to regulate its use by citizens.[813] For instance, in the aftermath of the just concluded protest against police brutality in Nigeria, key members of the government began calling for the regulation of citizens' use of social media under the pretext of stopping the spread of "fake news".[814] In other countries, like Egypt, governments have cut off citizens' access to internet service where demonstrations and social activism through social media platforms became a strong counterforce against the government.[815] Second, the use of ICT and social media for facilitating citizen engagement in resource governance could exclude certain members of the public who do not have access to the internet connection nor possess the necessary skills and resources required to effectively engage with ICT tools and social media.[816] Finally, there is the risk of spreading inaccurate information and citizens' inability to differentiate facts from fabrication.[817] Regardless, the advantages of deploying ICT and social media platforms to bolster citizen engagement and participation in resource governance outweigh the drawbacks, and they are speedily gaining traction as viable instruments for enhancing citizen participation in governance.[818]

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[813] Poncian, *supra* note 81.

[814] Quartz Africa, "Nigerians are bracing for another government attempt to regulate social media after national protests", online: < https://qz.com/africa/1926334/endsars-nigerian-government-looks-to-regulate-social-media/>, Garrett, *supra* note 808 at 214. In some countries this regulation is already in place, for instance, the Chinese government censors and screens messages passing through the internet to regulate the type of messages being disseminated to the public.

[815] Nahed Eltantawy and Julie B. Wiest, "Social Media in the Egyptian Revolution: Reconsidering Resource Mobilization Theory" (2011) 5 International Journal of Communication 1207 at 1216. For instance, in heat of the 2012 protest in Egypt, the government cut off citizens' access to internet and phone communication in a bid to quell the protest. Also, the Nigerian government also unsuccessfully tried to do this during the Occupy protest of 2012.

[816] Poncian, *supra* note 81 at 1502. According to Poncian this could "reproduce inequalities and exclusion of the less educated, women and the poor".

[817] Garrett, *supra* note 808 at 215.

[818] Kyriakopoulou, *supra* note 793 at 18.

4.7 Conclusion

Citizen engagement is crucial to the effectiveness of transparency initiatives. Citizen engagement with extractive disclosures and citizen participation in resource governance more broadly is necessary for translating transparency into accountability. Unfortunately, as revealed in this chapter, NEITI audit reports and disclosures have yet to attract meaningful citizen engagement or stir public accountability demands, impeding the effectiveness of the NEITI. As Osuoka comments, "in the over ten years that EITI has been operating in Nigeria, the country has seen limited public response to disclosures of extractive payments and maleficence in the financial dealings of the government and oil and gas companies."[819] This chapter argued that the reason for this low public response to NEITI disclosures is state dominance, lack of expertise and weak institutional quality of citizen intermediary institutions—the media, parliament and CSOs—required to bolster citizen engagement and participation under the NEITI regime. As discussed in this chapter, these institutions are unable to understand the technical NEITI audit reports, precluding the media and CSOs from educating the public about its content and hindering the parliament from debating it at their hearings. Governmental dominance over the media and CSOs—through repressive regulatory oversight, state reliance for funding and outright intimidation and harassment—impedes them from performing their role of bolstering citizen engagement in resource governance. Furthermore, this chapter argued that certain unique socio-economic conditions in Nigeria, such as the endemic nature of corruption, absence of the rule of law and democracy and the preponderance of vested interest in the extractive sector, impedes the attainment of full citizen engagement with extractive disclosures and the effective management of natural resources.

Nevertheless, these challenges are not insurmountable; to tackle some of them, this chapter suggested that CSOs adopt strategic public awareness and mass mobilisation campaigns to oppose state dominance and repressive governmental tendencies. As Oshinebo rightly argued, these advocacy strategies "serves somewhat the same function as state regulation."[820] Therefore, CSOs advocacy strategies can also be employed to fill the vacuum created by the infirm regulatory framework under the NEITI regime thus, repulsing Nigeria's narrow and surface level disclosure

[819] Osuoka, *supra* note 43 at 796.
[820] Oshionebo, *supra* note 427 at 437, Oshionebo, *supra* note 697 at 112.

regime. CSOs are powerful instrument in repulsing Nigeria's constrained transparency and urging the government and extractive companies to adhere to internationally recognized transparency standards as well as utilizing Nigeria's constrained transparency to make accountability demands. The effectiveness of CSOs' advocacy strategies was evident in the campaign against environmental degradation by extractive companies and the Occupy Nigeria protest of 2012. In addition, this chapter suggested that ICT and social media platforms be deployed to advance citizen engagement with extractive disclosures and citizen participation in resource governance in Nigeria. As revealed in this chapter, social media provides a low cost and easily accessible mode of information dissemination and a forum for two-way communication between citizens and the government, thus promoting a transparency effect in resource governance. Social media platforms also provide a forum for CSOs and advocacy groups to speedily launch public awareness campaigns and stir public demands for accountability, thus promoting an accountability effect in resource governance. ICT tools and social media platforms are gaining traction as viable instruments for enhancing citizen participation in governance.

5 Conclusion

5.1 Introduction

This study examined how extractive transparency and accountability is localized in Nigeria. It considered the regulatory framework and practice of revenue transparency, beneficial ownership (BO) transparency and contract transparency in Nigeria in the context of Nigeria's peculiar socio-economic settings. In doing this, this study examined how transparency as a global norm is transformed and constrained when confronted with local realities in Nigeria such as infirm regulatory provisions, governmental dominance, institutionalized corruption and weak institutional quality. Also, the exposure of new corruption tactics in the extractive sector necessitated the expansion of extractive transparency beyond its initial narrow focus on revenue transparency to accommodate BO transparency and contract transparency. These emerging forms of transparency are still nascent, as regulatory frameworks and practices are still evolving to deal with their complexities. Therefore, this study examined these emerging aspects of extractive transparency, how to deploy them to combat new corruption tactics in the sector and recommended ways to effectively implement them within the Nigerian context. This concluding chapter discusses the findings and recommendations of this study, highlights areas for future research and concludes the thesis.

5.2 Findings and Recommendations

Extractive transparency and its resultant institution, the Extractive Industries Transparency Initiative (EITI), have gained prominence as global standards for the effective governance of natural resources and for deterring corrupt practices in the extractive sector. To be most effective, however, transparency should be complemented with a resilient regulatory framework, strong institutions and the political will to beget accountability and propel developmental outcomes.[821] This good governance framework is almost non-existent in many resource rich developing countries, leading scholars such as Andrews and Okpanachi to question the efficacy of transparency initiatives in these states.[822] Some scholars like Vijge et al and Gillies, on the other hand, suggest that the implementation of transparency could nudge positive institutional reforms

[821] Haulfer, *supra* note 16 at 53.
[822] Andrews & Okpanachi, *supra* note 54 at 228.

in countries characterized by weak institutions and governance structures.[823] This study explored how transparency is constrained when confronted with local realities in Nigeria and how transparency implementation influences local institutions and norms in Nigeria. This study revealed that governmental dominance, weak regulatory provisions and institutionalized corruption in Nigeria reduces extractive transparency to a narrow surface level form of information disclosure (constrained transparency). However, this constrained transparency offers opportunities for institutional reforms and a basis for public demands for accountability. First, it establishes auditing, reporting and disclosure standards in the Nigerian extractive sector. This enables citizens gain access to information that was previously veiled in secrecy, thus, empowering citizens with the necessary knowledge to hold the government and extractive companies accountable.[824] Second, civil society organizations (CSOs) are recognized as participants and representative of citizens in natural resource governance dialogues. Through their participation in resource governance and the adoption of advocacy strategies, CSOs can push for enhanced information disclosure and spur public demands for accountability. This thesis revealed that CSOs advocacy strategies can serve as a viable "counterforce" against governmental dominance, they can also be utilized to fill the vacuum created by infirm regulatory provisions and weak enforcement mechanisms. The potency of CSOs' advocacy strategies can be enhanced by the use of Information and communication technology (ICT) and social media platforms, this way public awareness and public mobilization can be speedily stimulated and amplified. This thesis suggested that CSOs harness the power in their advocacy strategies through the use of ICT and social media platforms to push for institutional reforms in Nigeria's transparency regime, resist governmental dominance over the extractive sector, improve public understanding of the extractive sector and spur public demands for accountability.

In discussing transparency as a mode of natural resource governance, Chapter Two argued that transparency should not be idealized as an antidote to the socio-economic challenges confronting resource rich countries and it should not solely be expected to deliver economic gains in implementing countries. Rather, it urged scholars and policymakers to acknowledge other achievements transparency initiatives have delivered such as institutionalization of extractive

[823] Vijge et al, *supra* note 19 at 200, Gillies, *supra* note 119 at 120.
[824] Shaxson, *supra* note 20.

auditing and reporting standards, recognition and empowerment of CSOs and enhanced citizen participation in resource governance in implementing countries. The continued adherence to transparency standards and other institutional reforms could aid in propelling developmental gains in resource rich developing countries.

Chapter Three considered extractive transparency implementation in Nigeria and revealed certain provisions of the Nigeria Extractive Industries Transparency Initiative (NEITI) Act that weakens the effective implementation of transparency and accountability in the Nigerian extractive sector. Chief amongst these infirm provisions discussed were the exceptions granted to extractive companies and government agencies to evade disclosures and the control given to the executive arm of government over the initiative. The efficacy of NEITI audit reports, which form the crux of revenue disclosures in Nigeria, have been eroded due to many flaws—they do not meet the standard of timeliness, comprehensiveness and accuracy required of any form of extractive disclosure. The inadequacies of the NEITI audit reports have also been attributed to political elites' vested interests in resource extraction, political dynamics, non-adherence to ethical accounting practices by accounting professionals and institutionalized corruption in the Nigerian extractive sector. Based on this, Chapter Three posited that extractive transparency in Nigeria is transformed into a constrained form of disclosure regime, providing narrow and surface level information. This study suggested that CSOs' advocacy strategies, such as public awareness campaigns, lobbying and mass mobilization, should be utilized to repulse political elites' control over the NEITI and the Nigerian extractive sector.

Corruption risks can occur at any stage of the extractive sector value chain, leading transparency supporters to advocate for increased extractive disclosures beyond revenue disclosures.[825] This informed this thesis to move beyond the narrow focus on revenue transparency to examine beneficial ownership transparency and contract transparency within the Nigerian context. Nigeria recently commenced the implementation of BO transparency; thus, the regulatory and enforcement framework is still quite nascent. Chapter Three reviewed the BO disclosure provisions contained in the Companies and Allied Matters Act (CAMA) 2020 and concluded that its provisions are not strong enough to compel the disclosure of ultimate owners of companies. In response, this study

[825] Haulfer, *supra* note 16.

suggested that the provisions of the Act be amended to require the disclosure of natural person(s) who ultimately own and control companies. Additionally, Chapter Three discussed some of the inadequacies of the Nigerian online beneficial ownership register for the extractive sector such as the absence of details of politically exposed persons (PEPs) ownership, disclosure of legal owners instead of beneficial owners and the absence of unique identifiers for companies. It recommended that Nigeria adopt some best practices from the administration of the UK beneficial ownership register. In addition, the chapter considered the challenges posed by the complex ownership structures of extractive companies to the enforcement and verification of BO disclosures, which has been exacerbated by the fact that many of these companies have subsidiaries registered in offshore financial centers that are notorious for their secret dealings. International and institutional cooperation is needed to enhance information sharing and verification to effectively enforce BO disclosures on extractive companies with opaque ownership structures. In discussing contract transparency, Chapter Three considered how confidentiality clauses and the need to protect commercially sensitive information in extractive contracts have often been raised as legal barriers to extractive contract disclosure. However, these legal barriers are illusory barriers invoked by parties to the contract to prevent disclosure, but they can be waived. Finally, Chapter Three suggested best practices for effective contract disclosure, including full disclosure of extractive contracts, with the addendums and amendments, as well as the provision of plain language versions of extractive contracts to enhance public understanding.

Citizen engagement with extractive disclosures and citizen participation in resource governance is pivotal to translating transparency into accountability. Chapter Four discussed the role of the media, parliament and CSOs in facilitating citizen engagement with extractive disclosures. Repressive governmental tendencies and weak regulatory framework impair these institutions from effectively performing their citizen intermediary role in Nigeria's natural resource governance. The chapter suggested that CSOs' advocacy strategies be harnessed to repulse some of these challenges. ICT and social media platforms could aid in promoting transparency and accountability in resource governance as they provide a low-cost channel for speedy information dissemination and the mobilisation of public awareness campaigns. The chapter suggested that the NEITI and CSOs leverage social media platforms to enhance citizen engagement with extractive disclosures and citizen participation in resource governance.

5.3 Areas for Future Research

The extractive sector is a volatile sector and corruption can be perpetuated at any stage of the extractive value chain. This realization informed the need to expand extractive transparency from its initial narrow focus on revenue transparency to other forms of transparency such as beneficial ownership transparency and contract transparency. However, other aspects of extractive transparency require scholarly attention, such as public expenditure disclosure, environmental and social impact disclosure and local content disclosure.[826] These areas have yet to be explored by scholars and they are important forms of disclosures that could aid in curbing corrupt practices in the sector. Furthermore, scholars such as Balagkutu, Klein and Adunbi have mentioned that the inclusion of these form of disclosures in EITI audit reports will attract and sustain public interest in these reports as they are issues which directly affects citizens.[827]

This thesis considered beneficial ownership transparency and the challenges posed by the complex ownership structures of extractive companies in the enforcement and verification of BO disclosures. This thesis argued that international cooperation is required to effectively implement and enforce BO disclosures. The thesis, however, did not venture into in depth analysis of how this international cooperation can be carried out, particularly with respect to offshore financial centers that are notorious for secret dealings. This is important to unmasking hidden ownership interests of PEPs which are often obtained through patronage networks, bribery and other forms of opaque dealings and hidden under shrouds of opaque corporate entities. Therefore, an area for future research is how international cooperation can be undertaken to promote the verification and enforcement of BO disclosures.

[826] Kolstad & Wiig, supra note 13 at 521, Balagkutu, *supra* note 85 at 776, Jesse Salah Ovadia, "Local content and natural resource governance: The case of Angola and Nigeria" (2014) 1:2 The Extractive Industries and Society 137 at 140. Public expenditure disclosure relates to disclosure of the breakdown of how extractive revenues are applied to public spending and infrastructure in the country. Environmental and social impact disclosure entails disclosure of the extent of environmental degradation caused by extractive activities and social impact of extractive activities on host communities such as pollution, civil conflict caused by extractive activities and deforestation. Local content disclosure is the disclosure of the extent to which extractive companies utilize human and material resources of the host state in the conduct of their extractive activities such as, the number of citizens of the host country employed by the extractive companies and national industry participation in the extractive sector.

[827] *Ibid*, Balagkutu, Klein, *supra* note 209 at 772, Omolade Adunbi, "Extractive Practices, oil corporation and contested spaces in Nigeria" (2020) 7:3 The Extractive Industries and Society 804 at 804.

Lastly, whilst this thesis discussed how certain peculiar socio-economic conditions in Nigeria such as institutionalized corruption and repressive governmental tendencies affects the effective implementation of extractive transparency in Nigeria, it did not use empirical data, either qualitative or quantitative; it relied primarily on secondary data. A suggested future area for research is an empirical analysis on how the socio-economic challenges in Nigeria affects the implementation of the NEITI. Particularly, future research can focus on analysis of the factors behind the low citizen engagement with NEITI disclosures and how this can be remedied.

5.4 Concluding remarks

The political dynamics and governance structure of EITI implementing countries shapes and transforms extractive transparency and largely determines its effectiveness. Unfortunately, most resource rich developing countries are characterized by weak governance, authoritarian governmental tendencies and infirm regulatory framework which constrains the effectiveness of transparency in these countries. Due to these challenges, extractive transparency initiatives such as the EITI might not be as effective as it ought to be in resource rich developing countries; however, the EITI's role in promoting institutional reforms should not be overlooked. In particular, the EITI paved the way for the novel recognition and empowerment of CSOs in many countries due to its multi-stakeholder approach, leading to enhanced citizen representation and participation in resource governance. This is important because citizen engagement with extractive disclosures and citizen participation in resource governance is pivotal to spurring public demands for accountability. Furthermore, CSOs are necessary for promoting good governance of natural resources as they can through the adoption of advocacy strategies such as public awareness campaigns and mass mobilization resist governmental dominance over the extractive sector and push for the adoption of enhanced information disclosure regime.

Even as scholars and policymakers grapple with the institutionalization of transparency and revenue disclosures at the local level within "established normative frameworks,"[828] novel methods of perpetuating corruption in the extractive sector continue to emerge, urging policymakers to expand the scope of extractive transparency to include other forms of disclosures, as was the case with BO and contract disclosures. As discussed in this thesis, the effective

[828] Winanti & Hanif, *supra* note 89.

implementation of these forms of emerging disclosures have not been without challenges, particularly with respect to BO transparency. Regardless, BO transparency and contract transparency needs to be institutionalized and implemented to curb avenues for corrupt and opaque practices in the extractive sector.

In conclusion, transparency initiatives cannot automatically eradicate institutionalized corruption, rent seeking behaviour of political elites, repressive governmental tendencies and the dependent relationship that exist between host developing countries and extractive companies. However, they should not be discarded; rather their "incremental changes should be leveraged over time,"[829] to propel the attainment of sustainable development outcomes.

[829] Andrews & Okpanachi, *supra* note 54 at 245.

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