Nigeria's Extractive Industries Transparency Initiative

Just a Glorious Audit?

Nicholas Shaxson

November 2009

CHATHAM HOUSE

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Preface

This is an independent report about Nigeria's implementation of the Extractive Industries Transparency Initiative (EITI) process, a global initiative that seeks to promote transparency in company payments and government revenues from oil, gas and mining. EITI is a voluntary initiative that countries sign up to; companies do not sign up though they can be official supporters. As of August 2009, 30 mineral-rich countries including Nigeria are 'candidate' countries implementing EITI. This means they have met four sign-up indicators. Only one candidate country, Azerbaijan, has met the far more stringent validation procedures; it became EITI's first (and currently only) 'compliant' country in February 2009.

The global EITI process, launched in 2002, has attracted significant media attention worldwide and has been widely praised. It has been called 'one of the centrepieces of global efforts to tackle the "resource curse" and translate natural resource wealth into genuine development for producing countries'.[1] The UN General Assembly unanimously adopted a resolution in September 2008 backing the EITI, and numerous strongly supportive statements have emerged from the G8 and several other bodies.

Nigeria has for some time been regarded as a flagship of EITI because of its relative success in publishing detailed data and for the relatively weighty institutional structure that has been allowed to build up inside the country. Other factors that have contributed to the perception of NEITI as an EITI success include the fact that for a while it enjoyed apparently strong political commitment; and the fact that it has been engaged for a long time: former Nigerian President Olusegun Obasanjo committed to EITI in November 2003 and launched Nigeria EITI, known as NEITI, in February 2004, right at the start of the global EITI process.

But, looking past the praise, is NEITI (and, by implication, EITI) working? There seems to be a range of opinions lying between three main positions.

1. Some see it as, if not a magic bullet to deal with the so-called 'resource curse', at least a powerful driver of beneficial reform.
2. Others see it as a potentially useful but limited entry point into a difficult area.
3. There are those who see EITI as a rather meaningless, distracting box-ticking exercise – in effect little more than a reputational tool for companies, governments and donor agencies.

This report appraises NEITI's track record to date. It aims to answer some broad overlapping questions:

- To what extent has NEITI helped foster better transparency?
- What other reforms, if any, did it drive?
- Has NEITI led to better accountability, governance and development outcomes?
- Do NEITI's achievements match what it ostensibly sets out to do?
- Have changes been sustained, and are they sustainable?
- What broad conclusions can be drawn, for NEITI and for the wider EITI process?

The conclusions fit most easily with the second position – that it has proved to be a (temporarily) useful entry point into a difficult area – but of course the picture is more nuanced and complex.

1 'EITI can help solve energy insecurity': 60 second Q&A with EITI head, Critical Resource, October 2008, http://www.c-resource.com/view_article.php?aid=95.

Almost no truly independent reports have been produced on NEITI. Much has been written about it, of course, but in large measure by groups or individuals that are somehow connected to NEITI, and as such not truly independent. Much of the existing published material has concentrated heavily on what is happening in civil society, sometimes at the expense of the wider political and economic context. This report attempts instead to focus most strongly on the political and economic context, to try to understand better the deeper political and economic drivers of the NEITI process and broader reform in Nigeria.

Research and sources

This research is based primarily on fieldwork conducted by the author in Nigeria in November/December 2008 and in London, as well as interviews in person or by telephone with people in Washington and London from January to April 2009. It is complemented by a detailed document review including news reports, prior reports and other materials. For time and budgetary reaons, new research and interviews were not conducted after publication of the 2005 audit in August 2009.

Most sources contacted directly expressed an unwillingness to be named because they are close to the EITI process or the wider Nigerian political system, and several were reluctant even to be named in a final list of interviewees. Therefore, many of the direct and indirect quotes provided in the report are anonymous. The author also wishes to thank a number of referees for their helpful comments on earlier drafts.

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About the Author

Nicholas Shaxson is an Associate Fellow with the Africa Programme at Chatham House, and the author of *Poisoned Wells: The Dirty Politics of African Oil* (2007). Having begun his experience in Africa's oil zones while serving as a Reuters correspondent in Luanda from 1993 to 1995, he has been the author of the Economist Intelligence Unit reports on Angola since 1997 and Gabon from 1997 to June 2009. He has written on the politics and economics of oil-dependent countries along the West African coast for numerous publications including the *Financial Times*, *Africa Confidential*, *African Energy*, *Oxford Analytica* and various others. He is currently also a consultant to the Tax Justice Network and is working on a book on tax havens, to be published by Random House.

Executive Summary

The Nigeria Extractive Industries Transparency Initiative (NEITI) is a subset of the global Extractive Industries Transparency Initiative (EITI), and for some time NEITI has been regarded by many actors as the global EITI's flagship programme, or at least one of the two foremost national chapters of EITI (along with Azerbaijan's.) As Peter Eigen, chairman of the board of EITI, put it, with respect to global EITI:

> *The great moment of triumph was when President Obasanjo of Nigeria said I am going to allow the companies operating in Nigeria to publish what they pay to me, to my government, and in fact I will make it mandatory: they have to publish what they pay and I will publish what I received. That was basically the breakthrough.*[2]

This report seeks to explore the extent to which NEITI has lived up to its goals, potential and reputation, in terms of two broad goals: improving transparency, on the one hand, and fostering better governance (including civil society participation), on the other. It reaches a few broad conclusions. The six main points outlined below are expanded in a more detailed list of conclusions at the end of this report.

1. *NEITI's shining success consists of the audit reports of the 1999–2004 oil sector accounts themselves.* These reports, which are publicly available, contributed to significantly better transparency in Nigeria's oil industry, 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. The reports went far beyond the basic core requirements of global EITI; it produced not only raw data on the industry and on tax and other fiscal matters; but it also provided crucial and useful insights into processes involved in the industry that have helped many insiders and outsiders to see the oil sector in overview for the first time.

2. *EITI and NEITI did not drive reforms in Nigeria.* Instead, they piggybacked upon major reforms that were happening anyway. NEITI was allowed to flourish, temporarily, amid the reformist political climate from 2003 to 2006. Although NEITI did not drive reforms, it did shape some of the outcomes – notably the audit reports – of processes of reform.

3. *Measured against EITI's and NEITI's broader goals of fostering better governance and accountability, the initiative has not shown impressive results,* and so far it is hard to see how better transparency has led, in turn, to better governance in Nigeria.

4. *Civil society is supposed to be a key end user of EITI reports, but NEITI has performed poorly in this respect.* NEITI's attempts to build capacity in civil society have shown meagre results: although it has *informed* civil society it is hard to find evidence that it has significantly *empowered* or energized it, or enabled it in any serious way to 'call Nigeria's rulers to account', as some have put it. This cannot be achieved simply by providing civil society with information – including the publication of a popular audit to make otherwise hard-to-understand audit reports comprehensible to a much broader audience. Some non-governmental actors have expressed the hope that is a matter

2 From the EITI video on the EITI front page: http://eitransparency.org/eiti/video.

of not having put enough effort and resources into supporting civil society; this report argues that the problems involved are deeper and more structural and will not be overcome simply with more effort in support of civil society initiatives.

5. *The audience that has made most meaningful use of the NEITI reports are mostly located within elite circles and in government.* These circles include the National Assembly, various ministries, advisers, policy-makers, and so on. NEITI can point to some successes here. The reports may also have been a boon to oil industry consultants in particular.

6. Measured against the narrower goals identified by David Goldwyn in his dealings with Nigeria's rulers – to increase transparency and trust in the system – *a stronger, though still not overwhelming, case can be made for calling NEITI a success.*

The political momentum for NEITI has now mostly stalled, although prospects for future reform have not withered entirely. A second NEITI report including the 2005 data was finalized in 2007, but was only published in August 2009. The initiative is not entirely dormant, but the vitality that used to characterize NEITI has largely ebbed Given that Nigeria has often been held up as arguably EITI's showcase project (with the possible exception of Azerbaijan), these conclusions potentially pose serious questions for the global initiative as a whole.

These statements should be accompanied by a note of caution. First, Nigeria is a special case; as Goldwyn noted:

> *Nigeria was* sui generis. *The reasons they wanted such a broad-based audit are unlikely to be repeated elsewhere: every country has a different problem. For example, in Latin America, most of the data is already public. In Trinidad you have a different problem: educating the public in a polarized political environment; in Peru the issue is sub-national derivation.*

It is the personal belief of this author, based on some 15 years' research into the politics of oil-producing countries along the West African coast, that it is often a mistake to extrapolate lessons drawn from mineral-dominated states such as Nigeria and apply them to other types of countries. Whatever conclusions are reached in this report about the effectiveness or otherwise of transparency in promoting positive change, the only safe lesson to draw is that these are applicable to Nigeria – and perhaps partly to some other mineral-rich states. Mineral resources provide rulers with the potential for unusually strong untrammelled power, severely curbing the citizenry's influence. These constraints are often not present in non-mineral states,[3] where the causal link between transparency and better accountability and governance is likely to be entirely different. If transparency has not had the desired effects in Nigeria, as this report suggests, that does not mean it cannot work elsewhere.

What is more, transparency reforms may take very many years to bear fruit, and it may simply be too early to draw firm conclusions. In particular, Nigeria has embarked on but has not completed the process of validation – under which candidate countries have to meet certain quite intrusive standards. If civil society cannot organize properly, or if there is not a free press, for example, validation will not happen. Nigeria has until 9 March 2010 to complete this process. This, plus the fact that this was an extremely limited research project in terms of funding and time allocated, suggest strongly that more research in years to come would be worth considering.

3 It has been argued, however, that some aid-dependent states suffer from this same problematic principal–agent relationship, with aid making rulers accountable to donors, thus disempowering citizens.

Abbreviations

bpd	barrels per day
CBN	Central Bank of Nigeria
CSOs	civil society operators
DfID	Department for International Development (UK)
DPR	Department of Petroleum Resources
EFCC	Economic and Financial Crimes Commission
EITI	Extractive Industries Transparency Initiative
FIRS	Federal Inland Revenue Service
GIS	Goldwyn International Strategies
GW	Global Witness
HRW	Human Rights Watch
IAG	International Advisory Group
IOCs	international oil companies
MOU	Memorandum of Understanding
NEEDS	National Economic and Empowerment Development Strategy
NEITI	Nigeria Extractive Industries Transparency Initiative
NGO	Non-governmental organization
NNPC	Nigeria National Petroleum Corporation
NSWG	National Stakeholder Working Group
OGIC	Oil and Gas Implementation Committee
PSI	Policy Support Instrument
PWYP	Publish What You Pay
SEEDS	State Economic and Empowerment Development Strategy
SPDC	Shell Petroleum Development Company
VFM audit	value-for-money audit
$	US dollar

1 Introduction

1.1 Global EITI

The Extractive Industries Transparency Initiative (EITI) is a global project involving an array of companies in the resource sectors; 'host' governments of countries where resource extraction takes place; 'home' countries where the extractive companies are resident, and non-governmental organizations (NGOs) and other interested actors. EITI was launched by the UK Prime Minister, Tony Blair, in 2002. Its core aim is 'to strengthen governance by improving transparency and accountability in the extractives sector'[4] and it 'supports improved governance in resource-rich countries through the verification and full publication of company payments and government revenues from oil, gas and mining'. Detailed information about the initiative can be found on the Global EITI website www.eitransparency.org (and on the Nigeria EITI – NEITI – website, www.neiti.org.ng); this introduction highlights a few key points.

First, the so-called '*resource curse*' *thesis* is relatively new: the notion that mineral resources, like oil, can actually harm countries that produce them (or, at the very least, contribute to their failure to reach their apparent potential) only started to emerge into mainstream academic forums in the mid-1990s,[5] and into the popular mainstream about five years later. Early landmark studies such as *Natural Resource Abundance and Economic Growth,* a paper by Jeffrey Sachs and Andrew Warner, or Terry Lynn Karl's *The Paradox of Plenty*, emerged in 1995 and 1997 respectively; Global Witness' December 1999 report *A Crude Awakening,* focusing on Angola, was also a landmark in terms of popularizing the problem, although specialist publications such as *Africa Confidential* had been pursuing these issues for some time. EITI was launched – initially just as a concept – in 2002; Nigeria EITI was launched in 2004, and a board for the EITI International Secretariat was only appointed in 2006. The process – both globally and in Nigeria – is therefore still very new and it is fair to say it is in something of a 'test phase'. As remarked in the Preface, little independent research has been conducted on NEITI; this is also somewhat true of the global EITI process.

Second, EITI was set up partly in response to the work of the *Publish What You Pay (PWYP)* coalition and the key non-governmental organization (NGO) driving that coalition: London-based Global Witness (GW), backed by the Open Society Institute (and subsequently the Revenue Watch Institute, which became independent from the Open Society Institute in June 2006).[6] To understand EITI, one needs to highlight the differences between its basic approach and origins and those of PWYP. The two initiatives complement each other, and are intertwined with each other, but in a sense they also compete with each other (and this has had an impact in Nigeria, as explained below).

PWYP started by following Global Witness' path-breaking work in Angola, notably the 1999 report *A Crude Awakening* (which followed GW's December 1998 diamond report, *A Rough Trade*). These reports highlighted in graphic terms how oil revenues had helped a relatively small and secretive elite to remove themselves from normal links of political accountability, and explored the very real human costs associated with this. The report's core recommendations focused mainly on the issue of *revenue* transparency (as opposed to expenditure transparency) in Angola, and subsequent reports, bolstered

4 http://eitransparency.org/eiti/summary.

5 Though the World Bank's *Oil Windfalls, Blessing or Curse?* in 1988 pre-empted this broader emergence by a few years.

6 The founding members of the coalition were Global Witness, CAFOD, Open Society Institute, Oxfam GB, Save the Children UK and Transparency International UK, but GW played the driving role.

by new IMF data on Angola's so-called 'missing billions',[7] colourful investigations in Paris into the 'Elf Affair' and other episodes, and emerging academic and other research, helped build momentum for the strong focus on revenues and revenue losses resulting from opaque practices. The key antidote to these problems was offered from the outset of the Global Witness campaigns in 1999 – transparency; primarily to provide information to citizens of mineral-rich countries that would enable them to 'call their leaders to account', thus leading to better governance. (This last point may seem self-evident but in fact one of the core elements of this NEITI report will be to examine in a Nigerian context whether the notion that better transparency leads to better governance has proved valid.)

Originally PWYP sought to have companies 'Publish What You Pay' to increase transparency in resource-rich countries. The coalition sought to achieve this substantially through measures such as changes in companies' stock exchange listing requirements, accounting standards (with the close collaboration of Richard Murphy of Tax Research UK) and other mandatory measures, which would in theory override local legislation guaranteeing secrecy in troubled, mineral-rich states.

The PWYP approach had two main challenges, however: one technical and one political. First, using these mechanisms for disclosure would tend to yield only part of the revenue picture: they would not, for example, easily capture financial flows from and to state oil companies. Second, the more 'mandatory' approach is politically difficult: in particular, companies dislike being forced into disclosure because it potentially puts them at a competitive disadvantage *vis-à-vis* less scrupulous or constrained competitors.

EITI sought to fill these two gaps. First, by involving producer governments directly in the process, it would enable a more complete picture of state mineral revenues to be built up than PWYP might achieve. Second, by making this a collaborative approach involving companies and governments, it would be seen as less threatening by them. This hope has certainly been vindicated – many mineral-extracting companies have enthusiastically embraced EITI, and many have spurned PWYP – though that has also meant that a number of mineral-rich countries, especially in the Gulf states, have simply not played ball. 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.

A technical shortcoming of both initiatives is that they are vehicles to promote revenue transparency, but largely ignore expenditure. This means they tackle only a part of a bigger problem. This is partly the result of history: the problem in Angola, where these initiatives began, was at that time substantially a revenue problem, but in many other countries (including Nigeria) expenditure is generally a bigger issue in terms of transparency and corruption.

Civil society actors have broadly embraced EITI (despite the element of institutional competition or tension between it and PWYP) and there is a large overlap in terms of supporters and membership. However, there is also some suspicion that EITI has taken some of the wind out of the sails of PWYP, and that interests that support EITI, such as big oil companies, have helped shape its agenda, potentially in malign ways. According to Alexandra Gillies:

> *Thanks to successful advocacy campaigns, developing country oil sector operations began to pose increasing levels of reputational risk to Western governments, international institutions and corporations. These actors responded to this scrutiny by facilitating the evolution of transparency into a widely-cited oil sector 'best practice'. However, the self-interests of these actors also altered the course of the norm's definition and institutionalization in ways which may constrain its eventual impact on industry behaviours.*[8]

7 Based on the IMF's Angola staff report for the 2002 Article IV consultation, a confidential document obtained by Reuters and analysed in detail by Human Rights Watch.

8 Alexandra Gillies, 'Reputational Agendas and the Emergence of Oil Sector Transparency as an International Norm', forthcoming in *International Studies Quarterly*, Centre of International Studies, Cambridge University, 2009.

Subsequently, PWYP has sought to join up a call for companies to 'Publish What You Pay' with a desire for governments to 'Publish What You Earn' and an expansion of the scope of its areas of concern (including looking at contracts and licensing procedures). This has theoretically brought it closer to EITI's more technically comprehensive picture, and PWYP has had some success with some mandatory legislative and regulatory achievements in Europe and the United States.[9] Along with EITI, it has also expanded into working directly with civil society groups in producer countries in Africa and elsewhere.

The third key point is that, despite the initial heavy focus on Angola by Global Witness and Human Rights Watch (HRW), the two main non-governmental drivers of the PWYP/EITI processes, Angola never joined EITI, and currently there appears to be no sign that it will do so any time soon. *Nigeria was never an initial focus.* Arvind Ganesan of HRW added:

> *I don't think GW or PWYP ever published anything on Nigeria prior to the EITI process. There was no 'Crude Awakening' for Nigeria. It is an anomaly, since they weren't really subject to the same type of scrutiny that Angola received by Global Witness and HRW. HRW regularly published on oil in Nigeria from 1999 onwards, but it was more focused on security and human rights, not revenue transparency, until 'Chop Fine'[10] in 2006.*

This would tend to support some of the findings below – that drivers of reform originated substantially in Nigeria, not from outside.

Fourth and finally, *EITI is evolving*. It has been expanding its tools, in response to experience and criticisms. The current focus is on 'validation' of candidate countries: essentially, they jump over relatively easy hurdles to become candidate countries; validation is far more stringent. In April 2008 the World Bank announced its support for an expansion of the scope of the initiative, in an informal initiative it has called EITI++, to enable countries to use EITI not only to monitor resource revenues, but to provide a slate of different options that also includes looking at decisions on resource extraction, managing price volatility, expenditure and other aspects of natural resource management that do not fall within the scope of 'traditional' EITI.[11] EITI++ has not made much headway yet; Arvind Ganesan described it as 'more slogan than reality'. There is also some internal discussion about the extent to which EITI should focus on 'broadening' (that is, signing up more countries), potentially at the expense of 'deepening' (that is, providing more support to existing operations, and to the validation process by which countries are to become 'compliant').

1.2 Nigeria's oil industry

The petroleum sector in Nigeria has in the past few years typically (though this fluctuates) accounted for about 80% of fiscal revenues, 90–95% of export revenues, and 30–35% of GDP. As in all other oil-rich states in the region, the oil sector is an enclave that provides a tiny proportion of overall employment, and it has relatively few direct linkages with the rest of the economy. Nigeria's production capacity is about 2.5m barrels per day, making it Africa's largest producer (though turmoil in the oil-rich Niger Delta in 2008 cut production – allowing Angola, whose production rose to 2.0m bpd, to overtake Nigeria during that year before OPEC cuts forced production down again). Much of Nigeria's oil is exported to Europe and the United States; Nigeria provided 362,000 bpd of crude oil to the United States in 2008, about 7.7% of total US oil imports.[12]

Oil revenues are divided between the three tiers of government: federal, state and local. The federal government typically gets about half of revenues; the 36 state governments about a quarter; and the 774

9 See more at http://www.publishwhatyoupay.org/ or www.openthebooks.org.

10 Human Rights Watch, *Chop Fine: The Human Rights Impact of Local Government Corruption and Mismanagement in Rivers State, Nigeria*, January 2007, http://www.hrw.org/en/reports/2007/01/30/chop-fine.

11 See World Bank Group and Partners Launch EITI++, 12 April 2008, http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:21727772~pagePK:34370~piPK:34424~theSitePK:4607,00.html.

12 See http://tonto.eia.doe.gov/dnav/pet/pet_move_impcus_a2_nus_ep00_im0_mbbl_m.htm. An official chronology of the oil industry in Nigeria is available at www.nnpcgroup.com/history.htm.

local governments about a fifth. The rest flows to special funds. Governance is generally better at the central level than at the state and local levels (though some state governments are fairly well regarded), and while various checks have been put in place at a central level, such as a Due Process Office (now Bureau of Public Procurement), a Public Procurement Act and a Fiscal Responsibility Act, these have no jurisdiction over many financial flows at state level (though a few of these kinds of checks have also been adopted in some states.)

Allocations to state and local governments from the Federation Account are heavily distorted by a 13% share of derivation from locally produced natural resources (almost wholly oil and gas), paid to the states where these resources are produced. In December 2008, for example, data published on the finance ministry website[13] showed that oil-rich Rivers State (population c. 5.5 million) received a total 20.7 billion Naira ($150m) net allocation for the month, while Lagos state (population 18 million) received just 5.6 billion Naira.[14] Yet poverty rates are generally higher and infrastructure is poorer in the oil-rich states, prompting many Nigerians to wonder where all the money goes.[15]

Legislation for an unprecedented and very large-scale shake-up of the oil industry is advancing slowly; opinions differ as to whether the legislation is ultimately going to overcome the political hurdles and be implemented.

Nigerians are rather cynical about their oil industry, and rightly so: despite several hundred billion dollars in budget revenues from the oil sector in past decades, Nigeria's GNI per capita is below the sub-Saharan African average, according to the World Bank,[16] and poverty rates remain very high.

An overview of some of the key players in Nigeria's oil industry is provided in Annex 2.

1.3 NEITI: brief history and context

NEITI came to prominence in Nigeria from the end of 2003 – and achieved a surprising level of political clout – amid a period of reformist zeal led by President Olusegun Obasanjo and a few reformers. This period of zeal ended roughly in mid-2006, and although some reforms have happened since then, there has been much slippage. NEITI was a flagship of the reform programme, and is considered a flagship of global EITI. Short technical histories of NEITI and EITI are available on their respective websites, and a chronology of the main events is provided in Annex 1.

NEITI set itself a hugely ambitious agenda, far beyond the requirements of global EITI. This agenda, and the drivers behind it, is explored in sections 2.2 and 2.3 below. The technical aspects, including a look at the all-important audit reports, are explored in section 3.1 below.

1.3.1 NEITI technical and procedural context

The National Stakeholder Working Group (NSWG) is the governing body of NEITI and formulates policies, programmes and strategies for implementing NEITI's mandate. It brings together stakeholders from different sectors – notably oil, the federal and state governments, and civil society including the media. It reports to the presidency and the National Assembly. NEITI was formed in 2004 with only three civil society members, and was bolstered in June 2005 by a Civil Society Steering Committee which was designed to bring in additional civil society members and to address some of the NSWG's shortcomings. Goldwyn International Strategies LLC (GIS) of Washington, DC has served as lead adviser to the NSWG for the tender for the 1999–2004 audits that lie at the heart of NEITI, and the tender was won by the Hart Group, which worked in partnership with SS Afemikhe and Co. and SS Afemikhe Consulting Ltd of Nigeria. A 2006 report on EITI[17] said that there was no mechanism for the civil society representatives on

13 See http://www.fmf.gov.ng/ for the latest, and http://www.fmf.gov.ng/downloads/FAAC/CurrentFaacDetail/State_government_detail.pdf for the December 2008 data.

14 The website Funnel the Money has a section for Nigeria, http://www.funnelthemoney.org/en/node/44, which enables the user to compare and contrast factors such as allocations per province against social indicators.

15 For more detail on this, see Human Rights Watch, *Chop Fine.*

16 See World Bank, 'Nigeria at a Glance', 2007 data, http://devdata.worldbank.org/AAG/nga_aag.pdf .

17 Revenue Watch Institute, *Eye on EITI*, October 2006, http://www.revenuewatch.org/news/publications/EyeonEITIReport.pdf.

the NSWG to report back to larger civil society and insufficient civil society consultation in the design of the work plan and the reporting formats. The passing of the NEITI Act in May 2007 saw the NSWG cut back to 15 members appointed by the president, but importantly enshrined the body in law.

David Goldwyn, president of GIS, said that in a subsequent EITI Guide[18] for the Revenue Watch Institute in which every EITI country was surveyed, it was found that the Nigerian audits were the most complete, and the practices and documents were the most transparent, of any country surveyed:

> *Nigeria was the only one that made all its papers and practices available on the web. That is why we ended up putting so much [of] it in the Guide. Stakeholder groups need to publish more of what they do.*

In a separate report, Goldwyn added:

> *The NEITI audits have set the gold standard for audits under EITI principles ... The audits looked deeper into the conduct of government and industry practices in Nigeria than any country has ever attempted.*[19]

Though Goldwyn is not independent because of his links with NEITI and his own funding related to NEITI, this author found no interviewee who dissented. However, Arvind Ganesan of Human Rights Watch noted that Azerbaijan is also an EITI 'showcase', so Nigeria is not the only special case.

Penetrating audits of the 1999–2004 accounts and industry were conducted and then published in April 2006 – and to this day, these audits remain NEITI's crowning achievement. One published analysis put it like this: *'The audit report remains the single most useful and credible publicly-available document on Nigeria's oil sector (although, it should be said, the competition is not so stiff).'*[20]

There were three main parts to the audits:

- A *Financial Audit* mapped financial flows and their chain of custody to understand the role and performance of specific players.
- A *Physical Audit* mapped the sector's oil and gas and refined product flows. Its main tool was a 'mass balance', requested from companies, detailing the volumes of all liquids entering their gathering systems and going to off-take points or export terminals. This was matched against data compiled by the various players.
- A *Process Audit* examined how key agencies and departments managed five main areas of business, as well as the processes in place for upstream licensing, crude oil marketing, refining and product imports, and for budgeting, capital and operating expenditures.

The audits also made a series of recommendations for 'remediation' (fixing the problems identified). However, implementation of these (discussed in more detail in section 3.2.5 below) has been patchy.

According to Christina Katsouris, who wrote the 'popular version' of the 1999–2004 audits (which were published in March 2009 to allow these highly technical documents to be more widely understood):

> *As an oil journalist I have struggled for years to understand what is going on in the Nigerian oil industry. For the first few years, there was no information on how things were supposed to work on taxation, measuring oil and gas production, and crude pricing and marketing. The audit put the processes and data out there for the first time, and highlighted gaps needing urgent attention. From that perspective, it was like gold.*

18 Revenue Watch Institute, *Drilling Down: The Civil Society Guide to Extractive Industry Revenues and the EITI*, 26 May 2008, http://revenuewatch.org/news/publications/drilling-down.php.

19 See www.goldwyn.org/April%2024%202006%20press%20release.pdf.

20 Alexandra Gillies, 'Time to Get Serious about Transparency', *Nigeria Energy Intelligence*, 29 September 2008.

> *However, in that format, it was like a forest, and had limited value to ordinary Nigerian citizens. You needed total dedication and a lot of time to make sense of it all, and to make it comprehensible to the intelligent layperson.*

Despite the progress, NEITI lost momentum during 2006 amid a more general slowing of the reformist climate, as this report describes in more detail below. Today, NEITI is still held up by some as an EITI showcase whereas in reality the process is becalmed. This was confirmed by a participant at an EITI West Africa conference in Abuja on 10–12 September 2008: 'At the EITI conference in September Nigeria was still being treated as a star implementer of EITI. But there has been nothing much since 2006.'

The 2005 audit has not been published, though it has been ready for some time. Subsequent audits are still waiting to be conducted: a tender for the 2006 audit was launched in April/May 2006 and terms of reference issued in July – but then the NSWG was deconstituted under the new EITI law. GIS were going to do a full physical and financial audit each year – including using the budget and undertaking a cost audit even more intrusive than the existing published reports. This would have involved:

1. Value-for-money (VFM/cost) audit: e.g. cost of helicopter.
2. Local comparison: e.g. does Chevron's helicopter cost the same as Shell's?
3. International comparison: e.g. helicopter cost in Nigeria compared with, say, Kazakhstan.

The 2006 audit and the VFM audit were not finished, however: the NSWG was dormant for some time and money was not available. Now the NSWG is up and running again, albeit not with the same strong political backing it had during NEITI's earlier period of activism, and there has been talk of re-tendering the 2006 audit and the VFM audit. In addition, the 2007 and 2008 audits are due but it is not clear when these processes are likely to be initiated.

1.3.2 NEITI political history and context

While technical issues are important, this report will focus most strongly on the political aspects: it explores why EITI/NEITI came to be accepted in the first place and looks at the extent of its success.

NEITI can only be understood inside this broader political context. The ruling People's Democratic Party (PDP) which carried Obasanjo to victory in May 1999 was formed while he was in prison, so established interests were deeply embedded in the party before he took over, making it harder for him to control; early on he struggled, for example, over government appointments, and he was embroiled in a high-profile tussle with his Vice-President, Atiku Abubakar (who was later weakened by corruption allegations). So Obasanjo's first term in office (1999–2003) was marked by political weakness relative to his second (May 2003–May 2007), since it took him some time to win a stronger measure of control over the party apparatus that underpinned his power. It was during his second term that the reform process started convincingly, and this history of party politics appears to have been a significant factor in terms of the timing of NEITI and other reforms.

The period of broad reforms can be roughly described as having lasted from late 2003 to mid-2006, starting to falter thereafter. This period was undoubtedly NEITI's heyday. NEITI appears to have gone rather quiet since then. Until the 2005 audits were released, the most up-to-date element of news on NEITI's website in August 2009[21] was the release of the 'popular audits' of the 1999–2004 accounts, published in March 2009 with almost nothing published in the six months before that.

The reformist climate has shrunk very considerably though it would be unfair to say it is totally dead; some echo of it remains, not least current efforts under President Yar'Adua to reform the oil sector. All this is discussed in more detail in chapters 2 and 3 below.

21 http://www.neiti.org.ng/2005%20Audit%20Reports.html.

1.4 EITI's and NEITI's goals

NEITI has had some influence in Nigeria. But has it had the right influence in the right place and at the right time? It helps first to examine EITI's and NEITI's goals and mandate.

EITI's goals, as they appear on its website, appear to be a little diffuse, but a section from the 'EITI Summary' may be taken to be central:

> *The Extractive Industries Transparency Initiative (EITI) aims to strengthen governance by improving transparency and accountability in the extractives sector.*[22]

In its introductory video on its home page, an EITI participant is quoted as saying that EITI is a 'fundamental and necessary first step' in holding governments to account. Another section entitled 'EITI benefits' notes three benefits of transparency:

1. *Benefits for implementing countries:* a signal of improved investment climate, stronger accountability and good governance, and greater political and economic stability.
2. *Benefits to companies and investors*: mitigating political and reputational risks, curbing political instability caused by opaque governance; transparent payments to a government can help demonstrate the contribution of their investment.
3. *Benefits to civil society* from increasing the amount of information in the public domain about those revenues that governments manage on behalf of citizens, thereby making governments more accountable.

EITI on its summary page also asserts:

> *With good governance the exploitation of these resources can generate large revenues to foster growth and reduce poverty.*

NEITI's mandate appears to be arguably a little narrower than global EITI's. According to its website:

> *The Nigeria Extractive Industries Transparency Initiative Act 2007 mandates NEITI to promote due process and transparency in extractive revenues paid to and received by government as well ensure transparency and accountability in the application of extractive revenues.*[23]

So EITI's and NEITI's goals and benefits involve three *primary* elements: improved transparency, improved governance (including due process) and improved accountability. On top of this there are the *secondary* elements: fostering growth and reducing poverty, as well as curbing political instability, enhancing reputations of companies, improving the investment climate – generally, improving developmental outcomes – and these are taken to flow from the primary elements. However, David Goldwyn of GIS, who was hired by the Nigerian government to work on EITI, describes a rather narrower set of goals that the Nigerian reform team wanted from the outset – restoring trust and transparency in the system:

> *The purpose of NEITI as I saw it from Obasanjo, Bright [Okogu] and so on, at the time: they saw that there was incredible distrust in the system. They wanted to use the audits to restore trust and create transparency in the sector. What we wanted to do was produce something that created a step change in people's confidence in the integrity of the system. From the wellhead to the Central Bank – you had to look at everything.*

22 http://www.eitransparency.org/eiti/summary.
23 About NEITI, http://www.neiti.org.ng/about.htm.

1.5 Rulers, oil companies, citizens – and NEITI

Many people have taken it for granted that the various goals identified by EITI are all bundled together, and particularly that a) better transparency will lead to better governance and accountability, and b) these in turn will foster growth and reduce poverty.

There is ample empirical research worldwide suggesting the validity of the second link – better governance and accountability lead to better development outcomes – and this will not be significantly questioned by this report. However, the first link – that better transparency leads to improved governance and accountability – is widely *assumed to be true* but has not been very well researched in the context of mineral-dependent states such as Nigeria. It should be noted at this point that it is one thing to *enlighten* citizens; it is another thing to *empower* them.

Putting this another way, the problem that EITI and NEITI have initially sought to address is about political power relationships, and it involves a triangular relationship involving

a) mineral companies and related business elites;
b) 'citizens' (including civil society groups, supposedly as the citizens' agents);
c) 'rulers' (government, politicians and so on).

Notwithstanding the narrower relationship identified by David Goldwyn in Nigeria's case, it is the citizen–ruler relationship in this triangle ('giving citizens the information to use to call governments to account') that is generally taken as *the core relationship* underlying the entire EITI (and PWYP) edifice. EITI could also be seen as seeking to fix the 'principal–agent problem'[24] which is regarded as core to the challenges of natural resource management: that the rulers are agents for the people (the principals) but are not performing this role adequately.

24 The principal–agent problem: the people are considered to be the principal (for whom benefits of natural resources should flow) while their rulers are supposed to be their 'agents'. But the rulers get their resources from the companies, not the people, disempowering the people. As George Soros put it in the foreword to *Escaping the Resource Curse* (Columbia, 2007): 'This is the key agency problem and the primary source of the revenue curse.'

2 Reforms, Drivers of Reforms and the Reform Team

2.1 Overview

Any list of key reforms during the most active phase (2003–06) is subjective, but should contain the following (overlapping) elements, not all of which relate directly to EITI:

- **Transparency and anti-corruption:**
  - Adoption and implementation of EITI;
  - Moving beyond EITI and the petroleum sector to publish revenues from all sources at all tiers of government;
  - Commitment to a G8 anti-corruption and transparency initiative;
  - Reviews of the public procurement processes and institution of a due process mechanism in public contracts, aiming to promote an open tender process with competitive bidding for government contracts;
  - Creation of an Economic and Financial Crimes Commission, and its aggressive use to root out certain corrupt political figures.
- **Public-sector and public expenditure reforms:**
  - Development of several governmental offices to better monitor official revenues and expenditures;
  - Pensions reform, shifting from a pay-as-you go, defined-benefit British-style system towards a 'Chilean' model based on individual savings accounts, privately managed by pension fund administrators.
- **Macro-economic stability:**
  - Adoption from 2004 of an oil-price-based fiscal rule, constraining spending and leading to surpluses being saved (this led to the November 2007 Fiscal Responsibility Bill signed by President Yar'Adua in November 2007).
- **Governance and institutional strengthening:**
  - Implementation of the National Economic Empowerment and Development Strategy (NEEDS), an all-embracing home-grown economic programme (based substantially on a report Charles Soludo had written earlier) targeted at poverty reduction, employment generation and wealth creation.
- **Accelerated privatization and liberalization:**
  - Consolidation of the banking sector.

These were integrated into Nigeria's *Policy Support Instrument (PSI)* with the IMF, agreed on 17 October 2005. PSIs were a newly created IMF instrument designed for low-income countries that may not need, or want, IMF financial assistance (IMF programmes have long been highly controversial in Nigeria, especially following the period of extreme austerity in the 1980s in an era of low world oil prices which many Nigerians associate, rightly or wrongly, with IMF strictures at the time). The PSI was custom-made for Nigeria – the instrument was formally set up on 14 October, just three days before Nigeria's PSI agreement – though other countries have subsequently used it. The PSI approach was a way for Nigeria's leaders to be able to say that they were implementing a 'home-grown' reform programme anchored in a 'National Economic Empowerment and Development Strategy', while also receiving the seal of IMF endorsement, which is a helpful signal for foreign investors and for Nigeria's efforts to secure a Paris Club debt reduction deal (see section 2.3.4 below).

Interestingly, it was not the IMF's idea to include NEITI in the PSI format. The Nigerian side specifically requested this, as one interviewee said: 'They requested that EITI be part of the PSI, to make it harder to dislodge.'

The package of reforms in itself certainly marked a break from the past, at least in terms of design. The reforms helped substantially to restore Nigeria's credit rating; they led to significantly improved relations with international financial institutions and investors, and arguably to greater investment. Former Finance Minister Ngozi Okonjo-Iweala said:

> *The oil-price-based fiscal rule and the adoption of the EITI both underscored Nigeria's determination to make a clean break with the past by fighting corruption and improving governance. In a revolutionary move, Nigeria went beyond the petroleum sector by publishing revenues from all sources at all tiers of government. The credibility boost facilitated Nigeria's debt cancellation by the Paris Club and lifted its profile in the eyes of investors. Standard & Poor's and Fitch Ratings assigned Nigeria a sovereign credit rating of BB– for 2007, affirming earlier results. Nigeria's rating peers at the time included Indonesia, Turkey, Ukraine, Venezuela, and Vietnam. The improved rating led to sizable increases in foreign direct investment in both the oil sector (about $6 billion a year) and non-oil sectors (about $3 billion a year).*[25]

The 2004 budget was based on a $25 a barrel oil price (when the prices were over $40). Any surplus above that was saved in the Excess Crude Account (ECA) – and this was announced. External reserves grew by an annual average rate of about 230%, from US$7.68 billion in 2004 to US$43 billion at the end of 2006.[26]

The results of the reforms appear to compare favourably in purely macroeconomic terms with the evolution of the macro position during the previous, 1970s, oil boom: an IMF analysis comparing the two showed very significantly better outcomes on the fiscal position, the savings position, the evolution of external debt, inflation and non-oil economic growth (though 'non-oil' is a bit of a misnomer since several elements of value added measured such as banking and construction are highly dependent on the performance of the oil sector).[27] Human development indicators, however, are inconclusive: some (such as educational enrolment rates and relative poverty rates) have improved, while others (such as infant mortality) have worsened.[28]

Not everyone agrees, however, that the fiscal rule, or even the reputational boost that came with it and the broader reform programme, brought great benefits.[29] One interviewee, a European-based consultant familiar with Nigerian politics and the economy, made a comment more directly pertinent for Nigeria's case. He said that the reform programme signalled to international markets that Nigeria was safer to invest in than it really was, and that the reform programme came at a time of rising markets, oil prices and optimism − ultimately misplaced in the light of the dramatic subsequent crash in the Nigerian stock market,[30] which exposed massive over-lending in the market:

> *When Nigeria signed that debt deal, it opened the country up to new borrowing, though structurally there was no real change in the capacity of the economy to cope with the volatility of oil markets, and its capacity to absorb loans was equally fragile. Luckily it was a brief window, 2006–2008, but*

25 Ngozi Okonjo-Iweala, 'Point of View: Nigeria's Shot at Redemption', *IMF Finance and Development Quarterly*, Vol. 45, No. 4, December 2008.

26 Progress Report on the National Economic Empowerment and Development Strategy (NEEDS), SEEDS [State Economic Empowerment and Development Strategy] benchmarking exercise (2006) and Millennium Development Goals (MDGs 2006), http://www.imf.org/external/pubs/ft/scr/2007/cr07270.pdf.

27 *Nigeria: Fourth Review Under the Policy Support Instrument*, October 2007, p. 6.

28 Ibid., p. 31.

29 One of the problems with oil funds is that oil producer fiscal surpluses have contributed powerfully to global macroeconomic imbalances, helping trigger the current global economic crisis.

30 Bloomberg reported on 1 April that Nigeria's stock market had posted the worst losses of all 89 markets surveyed in the first quarter of 2009, falling 37% in three months: http://www.bloomberg.com/apps/news?pid=20601116&sid=aKtn_Z8LUqZk&refer=africa.

it was the same problem as what happened in the [oil boom of the] 1970s, repeating the mistakes of the past. In the past, it had mostly been public debt, and now it was more private debt, but there was the same kind of hubris on the part of all, including the bankers.

The debt deal sent all the wrong signals to the market – that Nigeria was somehow doing something different, when it wasn't. People were looking at instability in other [frontier] markets and said ridiculous things like 'why not put your money somewhere safe instead – like Nigeria?'

This is not an issue limited to Nigeria. As a recent report from the Revenue Watch Institute noted:

Early observations indicate that excessive savings of the oil revenues have jeopardized the banking sector in some countries. Buoyed by the favorable sovereign ratings due to growing oil fund assets, banks in some countries borrowed heavily from the international creditmarket [sic] *to support the construction and real estate sectors.* [31]

The reform team (see section 2.3.3 below) operated in a limited terrain: essentially in areas where the IMF (and World Bank) tended to focus most strongly, notably fiscal and monetary policy, and anti-corruption. But several other important areas of policy were not included in these reform areas, notably infrastructure and electricity, where people would say there has been not only no progress, but arguably deterioration. The same could be said for the violent political and economic situation in the Niger Delta. Some of these 'neglected' areas have been the most tangible areas for most Nigerians, and this bred cynicism about the reality of reforms.[32] One civil society interviewee argued:

There was never really a period of reforms – the quality of life of the people has not improved, and when [these actions] don't translate into bettering the lives of ordinary people, I don't see how they can be seen as a success.

NEITI now has a very low profile in Nigeria, relative to the resources and time that have been devoted to it, and this background about the overall reform programme has been an important factor. It is hard to demonstrate NEITI's low profile decisively, but there is anecdotal evidence: two major international research reports on Nigeria produced this year, by the International Crisis Group[33] and by Coventry Cathedral,[34] contained only one rather trivial mention of EITI in more than 300 pages of text; and at a Chatham House meeting in February 2009 involving a long address by a top official from an oil major operating company in Nigeria about fixing the problems in the Niger Delta, neither EITI nor even the concept of transparency was brought up, until the author pressed on the subject. When an IMF staff team visited Nigeria briefly in November 2008, they failed to visit NEITI even though they had been expected to do so – an illustration of NEITI's relative lack of profile.

The National Stakeholder Working Group (NSWG) of EITI was the first board to be constituted when Yar'Adua came to power in 2007, and some have taken this as a sign that the president remains very supportive of it. However, he is in poor health and politically weak, and it is hard to discern strong political support behind NEITI today.

31 Antoine Heuty, *Five Recommendations for Managing Natural Resource Revenue in Times of Crisis*, Revenue Watch Institute, February, 2009.

32 See Human Rights Watch, *Chop Fine*, which discusses some of the tangible impacts of Nigeria's oil, showing how little things had changed in the Delta since EITI and other reforms were implemented.

33 *Nigeria: Seizing the Moment in the Niger Delta*, Crisis Group Africa Briefing No. 60, 30 April 2009.

34 *The Potential for Peace and Reconciliation in the Niger Delta*, Coventry Cathedral, February 2009.

2.2 General drivers of reforms: external or internal?

As already mentioned, the heyday of reforms lasted from about the end of 2003 to around the middle of 2006, and began to falter thereafter (see section 2.4 below.) At this stage several points are worth noting about the general reform climate, and about the climate with respect to EITI in particular. All pointers suggest that reforms were driven internally, not externally.

2.2.1 NEITI did not drive reforms

Whereas some outsiders have expressed a view, or assumed, that EITI helped drive oil-sector reforms in Nigeria, this is putting the cart before the horse. It was the 'reformist' climate from 2003 to 2006 that created the conditions that allowed NEITI to prosper. However, it is also fair to say that the international EITI process, and the international attention focused on it, did help focus − and perhaps reinforce and sustain − some of the reforms that were already happening. Bright Okogu, director-general of the budget office, confirmed this in an interview with the author:

> *Under the atmosphere of reforms that we were doing – it could have happened anyway: anyone familiar with the reforms we were introducing at that time – we had a very strong team. … We did a lot on our own. … We had this zeal to implement – it was not international initiatives [that drove this].*

Another interviewee said, however, that it may be more useful to see this not in terms of internal versus external drivers, but instead in terms of NEITI's strength deriving from its nature as a coalition between Nigerian technocrats and foreign donors, which ultimately made it hard for the reform team to build a wider internal coalition.

2.2.2 NEITI exceeded EITI requirements

Confirmation that these reforms were driven internally is found in the fact that Nigeria went far beyond the basic requirements of the global EITI process, conducting financial, physical and process audits of the petroleum sector for the period 1999–2004 (and even further for the year 2005, whose audit was unpublished at the time of the main research for and writing of this report). NEITI also, unusually, examined information about the current administration's tenure – a break from so many past anti-corruption investigations which have been happy only to probe previous administrations. It also published disaggregated data to reconcile between payments and receipts – something that many other EITI countries have failed to do. In May 2006 David Goldwyn summarized what the audits did:

> *The goals of NEITI far exceed the criteria mandated by EITI. … NEITI set goals far beyond the basic EITI principles of revenue disclosure. Nigerians had little confidence in the integrity of any of the actors in the oil and gas value chain. It was essential to the NSWG to examine and audit the quantity of oil and gas lifted from well head to fiscalization, to track the money paid for the oil and gas from first sales to recordation in the Central Bank, to verify that all taxes and royalties and payments of any kind had been paid in full and deposited in the Central Bank, and to examine every major process from licensing to refining. The audits looked deep into the conduct and practices of the Central Bank of Nigeria (CBN), the Department of Petroleum Resources (DPR), the Nigerian National Petroleum Corporation (NNPC), the Federal Inland Revenue Service (FIRS) and many other government agencies.*[35]

In an interview for this report Goldwyn said that the Nigerian side, from the beginning, wanted six things:

- A value-for-money (cost) audit;
- Support in drafting an EITI law;

35 http://pwypdev.gn.apc.org/sites/pwypdev.gn.apc.org/files/goldwyntestimonyNigeria051706.pdf.

- An information technology strategy to monitor flows across the government, to support the finance ministry;
- A communications strategy to help disseminate the information;
- A best practice paper on change management, ways to reform, looking at the way the sector is governed, how acreage is allotted and sold, and so on;
- A best practice paper on designing a strategy for local content.

He said that his group had not asked for certain things which the Nigerians eventually adopted, and that NEITI was creating something genuinely new, with a Nigerian character:

> *The nature of the audits was not shaped externally, by NGOS or other governments, at all. It was internally driven ... We did not recommend a value-for-money (VFM) audit. We thought that if the goal is to create transparency and trust it was necessary to understand the sector and its systems first and then do a cost audit in subsequent years. … GIS [Goldwyn International Strategies] proposed an audit covering two years; the Nigerian side wanted five years. And Oby [Ezekwesili] insisted on disaggregation. She single-handedly drove that change over a lot of opposition.*

It is a measure of the political effort that went into this that ExxonMobil, which has formally taken an international position against disaggregating data, accepted this as an exception in Nigeria. Shell published disaggregated data before disaggregation had even been agreed by the NSWG. Goldwyn added that the companies may have had good reasons for embracing transparency:

> *The companies welcomed the intrusive audits – they welcomed a reputable and professional inquiry that could show that they were not stealing the money. … Chevron and Shell sent their country managers, who run these billion dollar operations, from Lagos to Abuja for the NSWG meetings and they participated actively. They were deferential to the government. We never had a problem with access to the company sites.*

And yet not all company interventions were so benign. According to another interviewee, who did not name specific companies but said they included oil majors objecting to disaggregation issues:

> *The companies went to see the President. And he could feel the force of the companies in the National Assembly – legislators suddenly changing their minds, and so on. Perhaps money changed hands. He called the oil companies in and said 'this is what we are doing'. It is a good illustration that EITI can only go as far as a country will push it.*

Another source remarked, regarding NEITI going beyond the core global EITI standards:

> *Obasanjo was not doing this to please the IMF. There was a bizarre benchmarks meeting before the PSI where Ngozi and [Minister Nasir] El-Rufai were saying to the IMF 'we need tougher benchmarks – we want to force the president to do things. And this allows us to say Washington twisted our arms.' … Obasanjo probably thought they were overstepping the mark but Nigeria's image was improving so the benefits were felt.*

2.2.3 Other Nigerian transparency initiatives

Bolstering the case that transparency was driven internally, it is worth noting that NEITI was not the only transparency initiative happening inside Nigeria. Other processes were under way too, notably an effort to deliver greater transparency of revenue at all tiers of government (national, state-level and local) – another powerful initiative that was outside the EITI process. In Nigeria, certain expenditures (such as schools and rural roads) are the responsibility of state, not federal governments, and in January 2004 Finance Minister Ngozi Okonjo-Iweala asked, and was granted permission, to publish the allocations to state and local governments. In 2006 she described this as 'the simplest and most powerful thing we have done', adding that it generated so much discussion that they decided to publish all these details in a book outlining these flows from 2000 to 2006. They were initially published, with donor funding, in national newspapers (generating considerable public interest) and although this practice was eventually dropped, the allocations are still published in a timely manner on the finance ministry website.[36]

2.2.4 NEITI did help shape reform

While not driving reforms, NEITI has helped provide tools and international supporters to assist the reformist team, already armed with the political will to push forward, to properly understand and get serious access to the oil sector.

A series of far-reaching reform attempts produced by the Oil and Gas Implementation Committee (OGIC) has been attempted. OGIC was inaugurated in April 2000, long before EITI appeared, but it lay rather dormant during President Obasanjo's tenure until President Yar'Adua appointed Dr Rilwanu Lukman on 7 September 2007 to chair a reconstituted OGIC. Though this initiative did not emerge from NEITI in any way, it is fair to say that NEITI's findings helped inform the reconstituted committee.

Lukman's appointment as Minister of Petroleum in January 2009 appears to have helped revive momentum for the resulting *Petroleum Industry Reform Bill*, in the teeth of fierce resistance. By 3 August 2009, the *Financial Times* was reporting that the bill was facing heavy resistance, especially from powerful governors of the oil-producing states, adding that: *'The legislators are in recess until the end of September and unlikely to agree a final version before the run-up to the 2011 elections.'*[37]

Nigerian media were reporting that the bill had gone through a first reading in the Senate but seemed to be meeting strong resistance in the House of Representatives and from the industry. A source in EITI indicated that the main focus of resistance was NNPC and, unusually, the Shell Petroleum Development Company (SPDC) of Nigeria. Opinions on its chances of success are divided; given the scale of the vested interests that are starting to emerge to oppose it openly, the chances of success are considered slim.

The OGIC reforms, which are separate from and not driven by NEITI, would in fact be more far-reaching than what is recommended by EITI since they would involve a wholesale reordering of the oil sector, whereas NEITI is primarily a transparency and stakeholder initiative. In summary, under the OGIC reforms, NNPC would be broken up into a few autonomous units including a profit-driven national oil company which would initially be 100% owned by the government, with Nigerians possibly offered a stake in future; the independent national oil company could raise funds by investing in capital markets instead of relying on government revenues. Potentially, contracts would require renegotiation clauses – a matter of possible future concern for investors. Oil companies would be encouraged to refine at least half of their oil output in Nigeria. A new National Petroleum Directorate would replace the Ministry of Petroleum; a new National Petroleum Inspectorate would take the place of the Department of Petroleum Resources.[38] This is a more revolutionary reform than EITI ever proposed.

2.3 Specific drivers of reforms

What were the specific drivers of this overall package of reforms? It is essential to understand these in order to see the context in which NEITI is and was embedded. Several can be identified.

36 www.fmf.gov.ng (at the time of writing, in August 2009, the June 200x9 allocations at federal, state and local levels were already published at http://www.fmf.gov.ng/FMF_Revenue_Alloc.aspx).

37 'Governors resist Nigeria oil reform', *Financial Times*, 3 August 2009.

38 Reuters, FACTBOX: *Nigeria oil reform bill faces long legislative delay*, 9 March 2009, and Oil and Gas Sector Reforms Implementation Committee, *Final Report*, July 2008.

2.3.1 Lessons from disasters of the last oil boom

Underlying the overall reforms was a general recognition, amid rising oil prices, of lessons from the 1970s oil boom, underpinned by elements of emerging 'resource curse' analyses internationally. As Ngozi Okonjo-Iweala put it:

> *[Nigeria] must learn from its past mistakes … the most important lesson that emerged from the 1970s is that mismanaging even a relatively brief oil price windfall can hurt not just current, but also future, generations.*[39]

The oil-based fiscal rule has been the most obviously powerful and direct tool to address the challenges posed by oil revenue windfalls, and many other countries have taken this to heart too. Transparency is, of course, another key component.

2.3.2 Obasanjo's personal motives

One of the most important (and curious) drivers for reform, it seems, was President Obasanjo himself. Opinions vary about his personal motivations. Ngozi Okonjo-Iweala, in an interview in May 2006, a month before she was replaced as Finance Minister (in what appears to be a marker for the downgrading of reforms), gave her opinion:

> *Without his political will none of this could have been done because, as you can see, some of the reforms were very difficult. He has a vision of Nigeria becoming the true economic powerhouse of Africa – 1 in 5 Africans is Nigerian – but we can't go around describing ourselves as the giant of Africa unless we perform. And he cares very much about the MDGs [Millennium Development Goals]. So I knew I had a president who has a vision for the country, of moving away from the past mismanagement, towards a path of true economic development, growth and job creation – and who is willing for us to do tough things and give us backing.*

This gives a flavour of the public perception that was being offered as a reason for these reforms. And several interviewees said they believed that perceptions – especially in the international community – were important to Obasanjo. One interviewee said Obasanjo saw himself as seeking to be portrayed as an heir to Mandela – a big man on the African scene, in favour with the development superstars: the Irish rocker Bono, the economist Jeffrey Sachs, then British Prime Minister Tony Blair, and so on. Another interviewee, a Nigerian politician, said: '*Once, Obasanjo had gone to Davos and had no friends; he was invited to no meetings. He wanted to go to Davos and not feel like a pariah.*'

Okonjo-Iweala continued, in the same interview:

> *Even before I was sworn in, in July 2003, the President was due to see Tony Blair and he wanted to put something together to give the British Prime Minister some idea of his plans because the President wanted him to know we were turning over a new leaf and we would need their backing somewhere down the line to back us for debt relief. I put together, with my team – Mrs Oby Ezekwesili, on anti-corruption, and Mr [El Rufai] on public sector reform issues – a 17-page paper that became the basis for many of the reforms. And Tony Blair was very open to listen to this new Nigeria. We developed a very good relationship.*

Another interviewee added an extra layer to this story: '*The fact that Obasanjo did care about his reputation gave the international community more leverage. That meant something.*'

Obasanjo only started pushing the reforms in earnest in his second term in office (2003–07), once he had successfully consolidated his control over the ruling People's Democratic Party, after which he felt he was in a better position to enact reforms.

39 Okonjo-Iweala, 'Point of View: Nigeria's Shot at Redemption'.

However, while Obasanjo certainly drove these reforms forwards, nearly all interviewees stressed varying degrees of anger towards Obasanjo, who appears to have been playing something of a double game: on the one hand carving out a political space for his reformist team to do their jobs, while on the other hand playing games of political patronage, involving all manner of questionable financial flows. As it was put in *Poisoned Wells;*

> *This vicious circle of oil money and politics creates Alice-in-Wonderland dilemmas for Nigeria's leaders. To pursue an anticorruption agenda it may be necessary to direct corrupt flows of oil money to political godfathers to buy the political support needed to push the anticorruption program through. President Obasanjo's enemies see him as the mastermind behind Nigeria's modern mayhem, though others say that he is just too weak to tame the whirlwind of oil money that has entered the political spaces that multiparty politics opened up.* [40]

An interviewee from the donor community, in this context, went further into Obasanjo's personal motivations:

> *Obasanjo saw no contradiction between doing good things around the big-picture policy reforms, and continuing to feed the big nebulous political beast, fed by hydrocarbon revenues. He saw no contradiction between this 'feed the beast' approach and pushing open space for reform.*

This may help explain why NEITI was allowed to succeed to a fair degree, while the more far-reaching OGIC reforms faltered (see section 2.2.5) during his tenure. One interviewee suggested that: '*He stayed away from OGIC because he needed the slush money available from NNPC and lots of his cronies wanted oil blocks.*'

NEITI did not directly threaten the sector in the same way. Whatever was happening in this respect, there is no doubt that a perception of successful reforms – with Nuhu Ribadu's anti-corruption crusade against 'untouchable' corrupt public officials being welcomed strongly by Nigerians at least in the early period, and EITI and other reforms pleasing the international community – also created extra political capital for Obasanjo and the economic team, in something of a self-reinforcing dynamic. This eventually dissipated (see section 2.4).

2.3.3 The reform team itself

Another key element driving reform was the endurance of a *reformist team* – a tight team of just a few key individuals who protected each other from constant attempts by political predators to derail their efforts, and which also enabled effective coordination of reform strategies, an essential element of any reforms. Their power was augmented by their relationship with powerful international actors, including in the IMF and World Bank and other donors, as well as top-level protection from Obasanjo. Ngozi Okonjo-Iweala described setting up the team in this way:

> *I had this idea from Amaury Bier, the former deputy finance minister of Brazil before the Lula government. They also did sweeping reforms. And they did it by forming a very tight team that supported each other. So we formed a team, with some really excellent people in it.*

Some of the key reformists were (in alphabetical order):

- *Nasir Ahmad El-Rufai*, Minister of the Federal Capital Territory, Abuja from July 2004 to May 2007 (previously Director-General of the Bureau of Public Enterprises);
- *Oby Ezekwesili*, working on anti-corruption issues, special assistant to the president on budget monitoring, 2000–06, and former chair of NEITI;
- *Mansur Muhtar*, Director-General of the Debt Management Office;

40 Nicholas Shaxson, *Poisoned Wells: The Dirty Politics of African Oil*, Palgrave Macmillan, 2007.

- *Bright Okogu*, special adviser to the Finance Minister from 2004 to 2007 (now Director-General, Budget Office);
- *Ngozi Okonjo-Iweala*, Nigerian Finance Minister from July 2003 to June 2006;
- *Nuhu Ribadu*, executive chair of the Economic and Financial Crimes Commission (EFCC);
- *Charles Soludo*, Central Bank Governor.

The idea was to have a team which was politically stronger than the sum of its parts by virtue of its members being able to protect each other. The strategy seems to have been quite effective – some members were even able to push Obasanjo further than he would have otherwise gone. There were some notable high-profile changes, perhaps most spectacularly the pursuit by Nuhu Ribadu's EFCC of a number of state governors and other high-ranking officials for corruption, and the recovery of large quantities of stolen funds, domestically and overseas. This generated considerable media coverage inside and outside Nigeria (though, as explained below, Ribadu was eventually forced out and subsequently harassed). Despite the praise for many of these officials from several quarters, however, most of them are still controversial.

These reformers pushed forward determinedly in the face of strong resistance. Vested interests were sometimes forced into reluctant compliance, as the same insider noted:

> *Some of the government agency heads would not show up – like the head of NNPC – and Oby [Ezekwesili] would get on the cell phone and say 'where are you?' and they would get there. Without government leadership, these stakeholder groups will not get anywhere.*

The Hart Group, which conducted the audits, had to send people into the Central Bank to fill in forms; it reconciled the government side of the ledger by going to JP Morgan to retrieve the transfer payment records.

Of the reform team, Ezekwesili, the NEITI chair, was an especially strong supporter of the initiative, as confirmed by an interviewee in NEITI:

> *She had a very good relationship with the president, and got things done for NEITI through sheer political will and executive decree – and saying 'it should be so'. When we started the audits and the oil companies were not cooperating, they were summoned to the 'presidential' villa and ordered to cooperate. Politically you have to have the strong support of the president to do this.*

Her minister-level status gave her particular clout – and civil society activists note today that the current lack of any minister-level advocate for NEITI is a major factor in its weakness.

Humphrey Asobie, NEITI chair, describing an interesting reformist nucleus that had coalesced around a Nigerian structure of the non-governmental organization Transparency International, remarked: '*Myself, Oby* [Ezekwesili] *and Obasanjo were the key drivers of NEITI and we all were founding members and board members of TI Nigeria.*'

Although reform momentum had already been flagging for some time, the end of Obasanjo's term marked a further deterioration, as one NEITI insider observed:

> *When the clock ran out at the end of the Obasanjo second term, the NSWG was getting to the remediation stage. This ended when they left – everyone affiliated with Obasanjo was cashiered – there was reportedly active opposition from the presidential [Yar'Adua's] staff itself. Now the secretariat is weak; the chair is weak.*

2.3.4 The debt rescheduling

In October 2005 Nigeria negotiated a deal whereby it would reduce, and pay off, $30 billion in debts to the Paris Club of official creditors, which had accounted for more than 85% of its external debt. As part of the agreement, Nigeria immediately paid $6 billion in arrears, with the remaining $24 billion restructured on Naples Terms – the Paris Club's concessionary terms for restructuring poor countries' external debt – resulting in an $18 billion write-off. By April 2006, Nigeria had paid the last instalment on this debt.

Essentially, the international community had offered Nigeria a grand bargain: push forward reforms, and in exchange we will write off a large part of your debts. There can be no doubt that this was one of the most powerful incentives driving reform. In 2006, Okonjo-Iweala described the Paris Club debt agreement as 'our biggest achievement' – and some (but not all) interviewees believed that this was the strongest of all the drivers of reform. But very soon after the conclusion of the deal the momentum for reform started seriously to flag. This is discussed further in section 2.4 below.

2.3.5 Divisions and different elements of reforms

Some reforms were pushed through more effectively than others. One reason flows from a divide-and-rule approach to the exercise of power, which is common in mineral-rich (and other) countries; it can allow the president to exercise more authority by not allowing any single person to become strong enough to challenge him. So different entities were doing their own thing, with no incentive to work together.

This divided political system meant some reform elements went faster than others. Some of the reforms, interviewees explained, encroached on big, powerful people and could not be pushed through successfully; others were easier to achieve because the interests under threat were not so powerful. NEITI was one of the winners in this. An interviewee who worked in the Nigerian system said:

> *You can reform pensions – people lose out, but they are not such powerful people: this is mid-ranking theft going on, not a major source of revenue for the big men in the centre. In terms of the political economy of pensions: there was stiff resistance but you could deal with it. Not really encroaching on big guys. We had real political cover to see this through.*
>
> *Then a series of other reforms were 'meant' to take place as part of a grand bargain with the West along with the debt relief/Paris Club/PSI stuff. These included customs reforms. Customs in Nigeria are a source of big money for the PDP [ruling party]. Another example was waivers and exemptions from tax and duties – for example, some of Obasanjo's biggest backers were huge beneficiaries of this. Almost everything else, in terms of the grand bargain, was around oil and gas. You had a series of reforms that were meant to be around oil and gas transparency. You had reforms of NNPC and control over licence auctions and petrol subsidies – a very opaque form of subsidy – they net it out against the budget. The big shining reform was EITI. It was seen as the peg in the middle, with all the others hanging off that. You would have EITI as a trailblazer, with others following behind.*

One reason for the divisions is that according to Nigeria's constitution the budget office and the finance ministry have separate political lines of accountability. As an interviewee familiar with the finance ministry put it:

> *The budget office is a US-style budget office – in the United States, the executive office of the budget is less senior than the treasury secretary, and it answers to the president. Similarly in Nigeria. Obasanjo took that model – which allows divide and rule – so as not to allow Okonjo-Iweala to have full access to the purse strings. Bode Augusto, an accountant (and D-G in the budget office), answered directly to Obasanjo.*

Bode Agusto reported to Ngozi Okonjo-Iweala while in the finance ministry building, but as Special Adviser to Obasanjo, had equal rank with her at the presidency.

2.3.6 'Busting' the IOCs

One interviewee asked after this author's visit to Nigeria:

> *Did you get the impression that early NEITI progress was partially driven by a sense within government and civil society that the oil companies were ripping off Nigeria, and that the audit would 'bust' them? I heard a couple times that this motive died off after the audit failed to do this.*

Although the author did not canvas many interviewees on this specific question, the questioner's thesis – that a desire to 'bust' the IOCs was an important driver – is plausible. Part of the problem may be that expectations were not managed very well, since it turns out that the reconciliation exercise (see section 3.2.1 below) produced only tiny discrepancies, and that in no meaningful sense were the oil companies 'busted' (although the author was informed during interviews that the 2005 reports indicate, among many other things, that the indigenous oil companies have not been paying tax at all).

Another person said discussions with civil society groups from the Niger Delta in particular underscored a disenchantment with NEITI for failing to give an accurate idea of what the government and its citizens ought to receive, and of the oil and gas industry's impact on communities. Bright Okogu, Director-General of the Budget Office, added:

> *The introduction by itself of a system that examines the accounts of the sector is itself an achievement. Before we introduced that I was Executive Secretary and founding member [of NEITI]. Before that the attitude was that people saw the sector as non-transparent, and that led to suspicion, and bad feeling among the population – my belief is that some hostility towards the sector is attributed to that perception. NEITI, when it was established, was meant to try and clean up these areas.*
>
> *Among the oil companies, there was a sense of arrogance – they thought they didn't need to account to people, whether in civil society or to whoever in government was looking at this – and NEITI broke that mould and gave a sense to the public – some of the suspicion that the industry was cheating the government – it showed perhaps that it wasn't as much as they perhaps thought – the results of the audits somehow helped and people started to understand a bit more.*

2.3.7 Civil society

As already mentioned, NEITI is supposed to empower civil society to help it support, accompany and even drive reform. But to what extent has civil society achieved this? It is hard to judge this by objective criteria, but impressions gathered on the ground are not encouraging. According to a draft paper, a Nigeria case study prepared by Dauda Garuba for the World Bank:

> *In view of the task before it, there is every tendency to conclude that, so far, local people are yet to start any serious frontal engagement of the NEITI. This is due to the fact that much is still required to create the needed awareness.*

According to a senior government official with intimate knowledge of NEITI,

> *Civil society was a factor [in fostering and sustaining NEITI] – but not a big deal. You do need a well-informed civil society with a level of understanding – [you have] to go into civil society capacity-building. They need to be better informed so that they can ask the right questions – just to go into rabble-rousing isn't the way.*[41]

41 'Stocktaking of social accountability initiatives in Africa: a case of Extractive Industries Transparency Initiative/Publish What You Pay in Nigeria', draft paper by Dauda Garuba forwarded to author.

Many things written about civil society in Nigeria, and about the civil society component of PWYP, have focused on civil society *processes and procedures*: the initiatives themselves rather than their outcomes, and these are then judged against often rather self-referential criteria (e.g., to paraphrase one such report, 'the structure of the NSWG in the NEITI Secretariat is wonderfully innovative in terms of its strategies and methodologies'.) But they should instead be judged against other criteria, and specifically: have the initiatives caused the authorities to feel real heat from domestic civil society? One might, for example, use periodic nationwide fuel price strikes such as erupted in 2000 and 2004, or pro-democracy mobilization under Sani Abacha, as examples of authentic civil society moments which have caused the authorities to feel properly under pressure. NEITI has never generated anything like this level of mobilization. To give another example of NEITI weakness in this area, David Goldwyn expressed frustration with one especially important component:

> *Regarding the media, and a lack of attention to EITI, I was flabbergasted by the lack of reporting on NEITI by this robust press and civil society. [Coliseum Adeniyi of* ThisDay*] wrote columns based on the meetings, but there was little else. We did a comprehensive Internet search of press reports on NEITI for the EITI Communications Guide – other than his reports, there was nothing. You can't find anything.*

> *In terms of the hard task of empowerment of civil society – which is supposed to underly NEITI's and EITI's work, most if not all interviewees agreed that this had been rather a failure. The general message has been: providing information to civil society – and the NEITI audits have made enormous resources available to civil society in this respect – has not empowered it in any very significant way. This is not to blame civil society – it is to acknowledge the difficulties, and to suggest that EITI's ambitions in this respect may be unrealistic. This is, potentially, a catastrophic failure for EITI.*

The factors underlying civil society's relative weakness is explored in section 2.4.5 below.

2.3.8 The international community and specific EITI approaches

The analysis in this report clearly suggests that the international community was not a primary direct driver of reforms. But it influenced events. Important influences did emerge from the United States, notably the technical and other input from Goldwyn International Strategies and support from some US companies for the NEITI process, but the main thrust came from Europe, and particularly Britain. As NEITI's chairman, Humphrey Asobie, observed:

> *EITI: It is a European project. It was Tony Blair that launched it and it was then supported by DfID [the UK Department for International Development]. The staff of the secretariat in Oslo are predominantly European. This is not a criticism but a fact.* [42]

The particular philosophy and approach taken may also have had a positive impact on the willingness of Nigerians to accept it. David Goldwyn of GIS stresses the importance of confidence-building, to reassure those in positions of power that they need not feel threatened by transparency.

> *EITI is voluntary and largely consensus-based. The political step – creating the platform – is the vehicle by which you might get deeper. The more you build EITI up as this big thing, the less likely it is that a country will implement it.*
> *My suggestion is that you start with EITI basic – you show that when you implement EITI, the walls don't fall down and you don't get 'regime change'. Let it evolve over time. Tailor it to a country's needs. Build trust among stakeholders over a couple of years, reduce the paranoia, get consensus, and then look deeper. You need to give it time.*

42 As reported to the author by a Chatham House official who attended a conference in Madrid on 12 March 2009 at which Asobie spoke.

However, in Nigeria's case this issue was not specifically noted by other participants; if the approach was a factor it was a minor one, and in any case reforms in Nigeria happened relatively quickly under Obasanjo's leadership; perhaps rather faster than this softly-softly approach would suggest.

Something else may be missing from the global EITI template that might have the potential to create more attention and engagement locally: the brazen publication of what might be called '*the political number*' – a single published number of the percentage of fiscal revenue from each barrel of oil that accrues to the government. This would probably annoy the oil companies, which would argue that such a number ignores all the complexities of field costs, contract risks, contractual details and so on. Nevertheless explicit publication of this number as a headline EITI output might at least generate a new arena for debate, potentially articulating greater engagement by citizens as they start to think about the contentious issue of whether their country is being exploited or not, and providing a forum for discussion with them of such arcane topics as costs and contracts.

2.4 Why reforms faltered

As already indicated, almost all the interviewees felt that the reform momentum is now a shadow of what it was in 2004–06, even if some aspects remain alive.

It should be noted at this point that reforms did not come to an end after mid-2006: several – notably NEITI – remained or remain on track, or partly on track. On 28 May 2007 – the day before Obasanjo stepped down as president – the NEITI Act was passed into law, making Nigeria the first EITI-implementing country in the world with a statutory backing for implementation. This was followed by the enactment in November 2007 under President Yar'Adua of the Fiscal Responsibility Bill, enshrining in law the oil-based fiscal rule (which is seen as having had the greatest macroeconomic impact of all the reforms). A minority of interviewees pointed to the active Oil and Gas Implementation Committee and associated Petroleum Industry Reform Bill (see section 2.2.4 above). Interviewees also pointed to a legacy that has endured: anti-corruption units have proliferated at state level (though they are very often used either as a weapon to pursue political enemies, or just for display, to burnish a governor's credentials).

Yet signs of slippage are very evident today. Ribadu's demotion in December 2007, and his subsequent harassment in 2008 and 2009, have been taken by the international community, rightly or wrongly, as strong signals of the flagging of the reform momentum. Most of the reformers identified above have been sidelined; Bright Okogu (one of the few interviewees to consent to being quoted for this report) remains important as Director-General of the Budget Office, but a former senior employee of his described him now as being 'isolated'. Details of monthly transfers to the state and local governments from the federation account are no longer published in the newspapers, though as noted above it is still possible to find them easily on the finance ministry website (but this was not a NEITI project).

As mentioned above, a subsequent audit report for the 2005 data was completed in 2007, but was only published in August 2009.[43] An improved procedure for oil block allocation introduced in a round in 2005 has not been sustained; subsequent rounds in 2006 and 2007 were far more opaque. Other changes appear to be shells without much substance. One interviewee said, in this context:

> *The vibes you get are that if there were any changes after the first audit, they are not completely lost but there has been no further progress. There is a NEITI Act now – but it is not being implemented. There is a fiscal Responsibility Act – not being implemented. (And so on.)*

A number of factors lie behind the weakening of NEITI, and of reforms more generally.

43 http://www.neiti.org.ng/2005%20Audit%20Reports.html.

2.4.1 The end of the Paris Club process

Interviewees differed in their views on exactly when reforms began to come unstuck, but one of the most notable changes was around the time of the demotion of Ngozi Okonjo-Iweala as finance minister in June 2006 and her replacement by Nenadi Usman. Some interviewees noted how soon this happened after the successful conclusion of the Paris Club deal the preceding April. As one former insider put it, speaking in November 2008:

> *The Paris Club deal – that was signed off at the end of '05, with a final big payment in April '06 – and by June Ngozi was on her way out. They had set up a system where they gave Nigeria $18.4 billion – then they expected Nigeria to continue with reforms … I thought: you are insane. Give debt relief at the end of the process, not in the middle.*
>
> *Nigeria was still a hot topic for development people in end '06 and '07 – but on the ground it was all falling apart. Only in the last six months the rest of the world has been waking up, things getting worse. EITI for Nigeria …was still being pushed hard, there was the EITI conference in Abuja, and one in Norway. But we understood it was different.*

2.4.2 Spoiling tactics

The same former insider continued:

> *Later on, particularly late '06, and early '07, we saw spoiling tactics. Obi [Ezekwesili] was moved between ministries, and ended in education. Bright Okogo was left stranded, Ngozi [Okonjo-Iweala] was out in June '06. Bright left and was constantly undermined … I also got a sense that people were moved into EITI as a spoiler. For example, at an emergency meeting in August '07 – regarding the 2008 [NEITI] budget – paying salaries, it was called very very late – and I got a sense that [someone in NEITI] didn't want it to work.*

One or two other interviewees close to NEITI also said they had seen what looked like deliberate spoiling tactics by individuals inside the process, but they could not be sure what their ultimate motivations were or whether they were being directed or manipulated by others. One said:

> *NEITI is still struggling to institutionalize itself, because of internal historical factors, and external political factors. There is a tension between the [NEITI] board and the Secretariat. It has incapacitated the Secretariat. I think people are deliberately trying to incapacitate it, it feels as if they may have been put there to stop NEITI doing anything. It is hard to put your finger on it, but there is definitely something there.*

Okonjo-Iweala was appointed foreign minister, but resigned soon afterwards, in August 2006. One interpretation was that part of the reason for the slowing down of reforms was the removal of Okonjo-Iweala herself, after she started getting too much attention as a result of the debt relief deal.

2.4.3 NEITI seen as too 'Western'; lack of embeddedness

One or two interviewees indicated that the fact that NEITI was so closely linked to the Policy Support Instrument developed with the IMF, a highly unpopular institution in Nigeria, sapped its credibility domestically and raised questions about NEITI's ultimate sustainability. The fact that a substantial part of it has had to be funded by donors is taken by some as a sign of this failure. One European member of the donor community said:

> *Why could the Nigerian government not pay salaries? Why did donors have to pay them? Where is the ownership? How deep were these reforms at the beginning? – people ought to have wondered.*

It is notable in this respect that the first audit itself was paid for via the Department for International Development in London, until the government stepped in with a refund. To date, a special pay scale status for the Secretariat staff has not been approved. NEITI has requested that its staff be put on the NNPC pay scale.

A related factor that may have contributed to the unravelling of reforms was a perception that – aside from the Paris Club debt rescheduling – Western promises of the benefits that would follow came to be seen as rather empty. As one Nigerian source said:

> *The Chinese company ZTE came in and said 'we don't do tenders'. They say that the World Bank via its tenders and conditions is effectively keeping Chinese companies out. They say there is a different way to reform – look at Mittal, Korean railways, etc. There is a lot of sympathy for this attitude. With all the World Bank consultants – has a single American company come in and done anything as a result? The Chinese don't come with consultants and lawyers. They sign an MOU and the next day there are several hundred Chinese in here, working. This is where there was a bit of friction with the economic team. That window – official debt relief and sovereign ratings – there would be lots of meetings, investors would come in and look around – but no hard investment. The British – nothing. The Canadians – same thing. After a while the President would think – the only benefit of these surface-level reforms is that these stupid people are nicer to us. But they're just as cynical as we are.*

However, the interviewee noted that the Chinese have also had big failures. And it should be noted that while this perception was current in some circles during the main period of reforms, little of the Asian investment that seemed to be promised at that time has come to pass since then, as a report published by Chatham House in August 2009 notes.[44]

An interviewee from the donor community, commenting on a draft of this report, said that this overly 'Western' flavour and a lack of 'embeddedness' was compounded by other related factors:

> *Given Nigeria's track record in complying with IMF programs and general findings regarding the effectiveness of IMF conditionality, the inclusion of EITI in the PSI appears quite illusory and short-sighted.*
>
> *The model developed by the small group of reformers was a short-term breakthrough for Nigeria; but their approach was highly technocratic and paid little attention to the need for institutionalizing and embedding the process in national politics rather than in donor circles. In other words, the success of the reformers in setting up the initiative and publishing the first audit needs to be balanced against their failure to build a reform coalition beyond the technocratic elite and the international donor community.*
>
> *It is unclear whether (1) they genuinely assumed that improving the 'government–companies' nexus would automatically lead to changes in government–citizens relationships, or (2) they understood the limitations of their approach but had no time or power to strengthen the government–citizens nexus given the political environment in Nigeria at the time.*
>
> *The politics of the NEITI highlights the limits of technocratic approaches to governance reform.*

44 Alex Vines, Lillian Wong, Markus Weimer and Indira Campos, *Thirst for African Oil: Asian National Oil Companies in Nigeria and Angola*, Chatham House Report, August 2009, http://www.chathamhouse.org.uk/files/14524_r0809_africanoil.pdf.

It was considered that Western influence may have had an effect in a perceived failure to build a coalition to support and sustain the reform process, and a failure to institutionalize the gains, beyond a limited number of initiatives such as the NEITI Act and the Fiscal Responsibility Act. The absence of any real domestic political constituency was a result of these processes being embedded in much bigger political power games. A legislator argued: '*I blame NEITI for not being aggressive enough. It has no visibility. I don't see NEITI anywhere. NEITI is bigger* [outside Nigeria] *than it is here.*' On a more positive note, however, he added:

> *NEITI did make plays* [sic] *in the industry. Regulators and others are more wary, more careful, to comply with due process etc. This [is the result of] NEITI, but combined with other factors. For example, with a mini-bid round [for oil licences] in 2007, it was still 'preferential' but not as blatant as in the past.*

2.4.4 The third-term agenda

Other interviewees, while agreeing that the completion of the debt reduction deal was a key factor in diminishing the strength of the reformist drive, saw other major factors, including President Obasanjo's decision in 2006 to push forward a project to find a way to serve a third term as president, against the prevailing constitution. This *third-term agenda* created entirely new political dynamics, with a double effect: first, Obasanjo's remaining overall credibility was undermined, making it harder to push reforms through; and, second, he had to make unhealthy political concessions to the anti-reform vested interests in his (unsuccessful) bid to get re-elected.

One source said: '*The third-term agenda thing needed a lot of money – this was real dirty Nigerian politics.*' Another interviewee closer to NEITI said:

> *In early to mid-2006 I got the sense that Obasanjo was being convinced by certain people that only he could perpetuate the reforms. These people started whispering in his ear – [the interviewee named several officials]: that's when things started to go wrong. …The more he wanted the third term, though, the more he had to depend on those elites. If in '06 he'd not sat with [them] and instead had sat with Ngozi [Okonjo-Iweala], with 18 months left he could have burned all his political capital doing good things and then trusted to God for the rest. Once he started talking about the third term, this became impossible.*

This interviewee said EITI did not rock the boat:

> *The conditions under which it would have rocked the boat are the conditions under which Obasanjo would have decided to go out in a ball of fire, rather than try for the third term. [NEITI] could have had some real bite. Another precondition for 'bite' would be a strong president free of the elites feeding off the oil and gas and not personally obsessed with wealth. Yar'Adua could have been, but wasn't.*

2.4.5 Weak civil society

Why has civil society in Nigeria been so weak and unable to influence Nigeria's rulers? A number of answers were given. The weakness is technical and political; civil society is also heavily divided, and the civil society that is most visible to donors tends to be the part that is most dependent on donors – which weakens its legitimacy and its sense of purpose. Abuja-based NGOs tend to have staff that are technically more capable, but have less legitimacy than field-based NGOs in, say, the Niger Delta. NEITI and its partners have attempted to help build capacity in civil society, but even in this task, according to interviewees, it cannot be said to have achieved a very great deal.

One particular problem stems from the Publish What You Pay coalition in Nigeria, which is supposed to have been an especially strong bulwark for NEITI. According to several interviewees, personality politics was core to the problem, and criticisms were directed especially at one particular individual, who, they claimed, focused more on process than on substance, while many were also critical of a rather divided NGO scene more generally. An interviewee with intimate knowledge of NEITI said:

There was an MOU with civil society. They got a briefing before every NSWG meeting. But a lot of them were single person self-promoters. Ngozi [Okonjo-Iweala] called them non-governmental individuals. . . I don't blame EITI or NEITI for failure of the audits to drive reform – I blame the NGOs who were supposed to focus on this issue for totally dropping the ball.

One major problem many interviewees cited, in terms of getting people engaged, was also the complexity and apparent remoteness of issues themselves: it is easier to 'see' the effects of human rights abuses than it is to see the effects of a lack of revenue transparency. As an EITI stakeholder report[45] on the mining sector globally put it: *'International and national NGOs [focused on mining] are interested in the environmental and social impacts that a mine has on a particular region, not revenue transparency.'*

One additional reason for this, Goldwyn suggests, is that civil society became swamped by the third-term story during important parts of the process: *'The third-term movement swept up all the energy that might have come up after the release of the audits … no other issue could have competed with that firestorm.'*

Another reason for a lack of attention more recently, according to a civil society reviewer of a draft of this report, may be that civil society operators (CSOs), especially in the Niger Delta, are particulary exercised about what are known as Global Memoranda of Understanding (GMoUs) – a series of agreements between oil companies and local communities that has become a focus for NGO action. This may have drawn some attention away:

Most of the local CSOs are now far more focused on supporting monitoring efforts of these GMoUs, and this has likely taken support/effort away from engagement with NEITI. It could be that this change in strategy is as a result of the failed reforms and weakening of the NEITI after 2006.

Also, this author's research in West Africa over more than a decade has found that an inability to empower civil society is a generic feature of mineral-rich countries – minerals provide rulers with the tools to neutralize all forms of opposition, including civil society, through co-option, divide-and-rule tactics, clientelist politics, and outright repression, and it is hard to see how better transparency automatically overturns these brutally one-sided power relationships.

So this failure is not necessarily the fault of those running NEITI, but it does raise questions about the mandate of EITI itself, concerning the generic problems of power, legitimacy, and the political problems inherent in donor interventions. That NEITI is heavily dependent on donor funding, and donor staff to a significant degree, was also taken by some participants as a signal about the government's attitude towards NEITI and a source of concern about the sustainability of the initiative. (The PWYP initiative is wholly donor-funded.)

Still, there appears to be a view within civil society in Nigeria that there have been some successes. Section 3.2.6 below looks at some specific NEITI successes in terms of influencing the formulation of the NEITI Act. Patrick Naagbanton, a journalist and civil society activist, commented:

There has been evolution of civil society work in Nigeria. It was human rights-based: Nigerians have been agitating for democracy, human rights, but the understanding of extractive industries has been very weak. There was an environmental movement: oil and pollution, and this was the only meeting point between civil society and industry. The feeling was 'they are only doing their things, and if we ask them about it, they won't tell us.' Then EITI was born – and it has raised up a whole new set of civil society.

This, then, may be a small success – groups have gathered a little confidence and support to engage in an area they might not have touched. But there may be something rather generic about this evolution which, according to one reviewer, seems to be a classic evolution from political to environmental, economic and

45 *EITI and the Mining Sector: Stakeholder Research Report*, http://eitransparency.org/UserFiles/File/miningsectorreportmelbourne.pdf.

social rights organizations – a response to the absence of political accountability in Nigeria. The same activist said that civil society engagement on these issues was

> *weak but enthusiastic … lots of sensationalism and very little understanding. It became clear that civil society groups were unable to sit around the table with Shell etc. – NEITI has tried to break that with awareness campaigns and training – much has happened but it is not enough.*

In short, interviewees diverged into two broad camps. Put crudely, *one camp* believes that the NEITI model is basically sound but that 'more effort' and more capacity-building are needed to get it back into place. One interviewee from inside NEITI said:

> *In terms of calling government to account, NEITI has not done a great job – we need to translate, hold meetings around the country – I think it should be on the school curriculum.*

And there is no doubt that capacity-building has been lacking. It was pointed out that NEITI does not have a technical director or a communications director and is going through a weak phase now; this certainly has not helped disseminate NEITI's findings. Christina Katsouris' comments about the audits (section 1.3.1 above) are also worth repeating here:

> *In that format, [the collection of audit reports] was like a forest, and had limited value to ordinary Nigerian citizens. You needed total dedication and a lot of time to make sense of it all, and to make it comprehensible to the intelligent layperson.*

It is far outside the scope of this report to present a detailed mapping of civil society in Nigeria and how well NEITI has engaged with it. Indeed, interviewees asserted that good-quality in-depth research on this was lacking; one source familiar with NEITI said: '*We want a better mapping of civil society so that we can engage.*'

However, *the other camp* believes that the failures to date highlight something deeper that will not come close to being solved by simply putting more effort into capacity-building and the like. The interviewee in NEITI said:

> *I am a bit cynical about their role in influencing. Abuja is a bit like Washington – lots of people drifting around; NGOs and civil society – a mix of people genuinely motivated by good causes and others who are not. There [also] seem to be two main groups of people: first, a cluster in the Niger Delta and especially Port Harcourt – activists who are actively engaged, often heroic – and second, Abuja people, who spend their time whispering sweet nothings into donors' ears. There are one or two people somewhere in between.*

He noted the difficulties in finding other appropriate levels to engage at:

> *One question with civil society is the question of representation – who is representing whom – when do you hit bedrock? – 'Is this someone who really represents a community or group, or is it just a one-man band, profiteering [from donors]?' You have elders who represent communities but there are several thousand of them – [NEITI] can't talk to all of them. We have to work with civil society and state governments. And it is very difficult to engage at a state level.*

While conceding that the empowerment has not happened, several civil society actors and others have said that this is just a matter of time, and patience is required. Yet there appear to be no obvious processes that are leading clearly in this direction.

There have been some donor interventions and independent initiatives – such as DfID's Coalitions for Change project, the Niger Delta Budget Monitoring Group (NDEBUMOG,) the Civil Society Legislative

Advocacy Centre (CISLAC, educating legislators on NEITI) and others, which have garnered some (modest) media attention. While several interviewees spoke about these initiatives in positive terms, it is not obvious that any of these have driven any important changes in terms of eliciting popular interest at a level that would cause ruling elites to feel any 'heat' from civil society.

2.4.6 Aiming at the wrong audience?

Another interviewee, Alexandra Gillies of Cambridge University, raised a set of points that follow from the above analysis, relating to whether or not civil society actors were the most useful consumers of the NEITI audit information.

> *NGOs are largely weak technically and have shown a strong tendency towards arguing among themselves. They market themselves as being in touch with the grassroots – but I question whether people at the grassroots are the most strategic consumers of oil sector audits. Of course NGOs should play a role, and communities should be able to access oil sector information, but I personally don't see them as the most influential audiences for EITI findings.*

This brings back the question: what is the best target audience for NEITI reports? Gillies continued:

> *A few other groups, if targeted, might make more meaningful use of the reports. Within government, people have a limited idea how the oil sector works. Illicit activity thrives in all those grey areas. NNPC hoards an incredible amount of information, even from the Ministry and DPR. How is the EFCC supposed to prosecute oil sector corruption if they don't know how the sector works? I'd guess that the Accountant General and other top officials even learned things from reading the NEITI reports. If there is a common understanding, even within top executive offices, of how the oil sector works, this would represent progress.*
>
> *The National Assembly is hardly mentioned, but they're another key audience. They, at times, like to assert their authority over the executive, which can have important deterrent effects. The House of Representatives just conducted a probe into the bid rounds run by Obasanjo. In the public hearings, they used data from the NEITI audit to question the information submitted to them by DPR. It was awesome – the EITI report empowered an institution of horizontal accountability right before my eyes.*

Gillies said this pointed to a 'lack of strategic imagination' about dissemination of findings by NEITI. One possible way to increase the chances of sustaining political momentum, she said, was to aim for these kinds of insider groups because they have real clout; if powerful actors start to value the audit findings, NEITI will be less likely to fade away.

Goldwyn put a slightly different perspective on the consumption of the audits, dovetailing with Gillies' point:

> *As far as external actors are concerned, the primary consumers of the NEITI audits so far are industry consultants. I have not seen a single item of data from disaggregation used by an NGO or civil society group. But a lot of equity analysts have used it.*

However, several people who reviewed drafts of this report – all from a civil society perspective and thus potentially with their own vested interests in promoting EITI – disagreed with Gillies, some objecting very strongly to the notion that elites, rather than civil society, might be the most strategic consumer of audits. Arvind Ganesan of Human Rights Watch, for example, argued that since it is elite consumers who have made best use of the information, this points to a need to put more effort into educating the public about the numbers, and to provide ways for the public to assess and hold government accountable for what they are doing with public funds.

Yet this was not a majority view among those interviewed. Almost nobody would disagree that civil society ought to be a powerful change agent, *if this can be made to happen.* But how can this be achieved?

Several actors believed that the problem of engaging and mobilizing the public on transparency, and having them influence their rulers, is a particularly deep structural one resulting from the fact that oil gives the ruling classes so much untrammelled power. This is a problem that needs to be taken very seriously indeed.

The disagreements noted above cannot simply be dismissed. This question – whether or not civil society can become a serious agent of change with respect to transparency, in an economy so enormously dominated by oil – goes to the heart of this report. On a personal note, this author, on the basis of many years' research in the politics of oil-rich West and Central African countries, is somewhat pessimistic. The evidence is that what change has happened with respect to NEITI has been the result of initiatives driven from the elites, and to a lesser extent foreign donors, with relatively little input from civil society.

NEITI and civil society: success or failure? It depends on one's perspective, and the standards against which it is measured. To end this subsection on a more positive note, Gillies said:

> *Because EITI is embraced by so many actors, because it serves their reputational needs, people talk about it like it's this messiah of initiatives. This has resulted in unrealistic expectations for NEITI. Just because it won't reinvent state–society relations doesn't mean it's a failure.*

2.4.7 Reformers became too powerful?

Another factor that some interviewees believed had sapped the reform team was Obasanjo's perception that Ngozi Okonjo-Iweala and others had taken too much of the reformist limelight away from him. One said:

> *It is most interesting how [the reform team] took on a momentum of their own; perhaps it was inevitable that they'd be perceived as dangerous to [Obasanjo] and the Godfathers. I wonder in retrospect whether the Godfathers hatched this third-term project to stop the reform momentum, or whether that was purely [Obasanjo's] lust for power.*

There seemed to be no consensus among interviewees on the question posed in this comment.

2.4.8 Vested interests; Yar'Adua's relative weakness

Predictably, vested interests were constantly in play, some trying to derail NEITI or parts of it. A knowledgeable insider noted that while the foreign oil companies generally filled in the templates without resistance, the DPR and NNPC resisted, even when the Hart Group that was conducting the audits sat with them to help. Separately, a Nigerian legislator added that it was extremely difficult to reform the sector, and NNPC especially, because of the institutional inertia that has developed:

> *I don't want to describe NNPC as a cult [laughter], but when outsiders are brought in ... they find it hard to assimilate. If you started within the NNPC from the beginning and worked your way up over time, then you find it easier. There is an NNPC way of doing things.*

This was made worse by the fact that there was simply no tradition of good record-keeping. As one insider put it, '*The Central Government did not keep records on a computer. The tax authorities didn't audit taxes. The royalty authorities didn't audit royalties.*' There were major problems too at the Central Bank and the Accountant-General's office, both of which did not keep good records.

Now, it seems, there are also grave doubts about the ability of President Yar'Adua, who seems to be ill, to deliver in the face of such interests. According to a Nigerian businessman familiar with EITI and the broader politics of the economy:

> *In the past there was always clearly a decision-maker, sometimes Obasanjo, sometimes Atiku [Abubakar, the Vice-President who lost out in a power struggle with Obasanjo]. You knew you had to get sign-off – people only do things if authority is delegated to them to do it. … Now the schemers are growing in power; power has shifted away from [Yar'Adua] to [certain governors and others]. Nothing is happening at the federal level. Maybe he has too much integrity and doesn't have the stomach for all this politics. But this uncertainty threatens to undermine the rule of law.*

Of course, progress is still being made, and the OGIC-inspired oil sector reforms in particular are currently in play.

2.4.9 Too much money?

A source knowledgeable about the industry said:

> *The terms of reference were pretty well done. The major weakness is the capacity of NEITI to absorb and use this work. And there is so much money coming in that what doesn't come in isn't such a bother – it hasn't caught the public attention at all.*

This is a generic issue in mineral-rich states: where absorption capacity is lower than the revenues generated, incentives to manage resources carefully are weak.

3 Technical Issues

3.1 Brief overview

The centrepiece of the NEITI process is, without question, the audits, commissioned by the National Stakeholders Working Group (NSWG) and carried out by the Hart Group, and it is these reports, covering the period from 1999 to 2004, that have prompted EITI figures to hail the Nigeria EITI process as the global leader. Detailed discussion of these reports is outside the scope of this report.[46] While the preceding chapter focuses on political elements, politics also, of course, looms large in this 'technical' chapter.

The audits are separated into three parts:

1. The *Financial Audit*,[47] looked at financial flows, comparing whether what oil producers said they paid in taxes, royalties and other revenues matched what the Central Bank of Nigeria (CBN) said it had received. It also made comparisons with data from the tax-collection agency, from the Federal Inland Revenue Service (FIRS) and from the oil sector regulator, the Department of Petroleum Resources (DPR). It was the most newsworthy of the three audits. Nothing like this had ever been done before; while partial audits had been done in the past, the results had never been published in any useful form. Many people were surprised when total discrepancies in this audit added up to only about 0.02% of the total \$95.5bn revenue flows over six years. This is discussed further in section 3.2.1 below.

2. The *Physical Audit*[48] mapped physical flows of oil and gas and refined petroleum products, and checked whether or not these data were compatible with data used by the FIRS and the DPR for their tax and royalty calculations. It found that information was very unreliable with respect to the all-important 'mass balance' – which outlines the volumes of all physical petroleum flows entering the gathering systems and then leaving it (such as via export terminals).

3. The *Process Audit*[49] looked at the interactions between the various agencies and departments in Nigeria with some responsibility for the petroleum sector, and at the processes for upstream licensing, budgeting, tax-collecting, crude oil marketing, refining, refined products imports, and so on, as well as at relevant laws and regulations. It found numerous inadequacies and made a number of recommendations for improvement.

While the financial audit identified only negligible discrepancies (see section 3.2.1 below), the overall audit process did identify a number of systemic governance failures that resulted in significant leakages; the main problems were identified in (and between) the DPR, the FIRS and the NNPC. Particular criticism was also directed at the Accountant-General of the Federation (AGF) and the Central Bank of Nigeria (CBN).

46 See www.neiti.org.ng/files-pdf/ExecutiveSummaryFinal-31Dec06.pdf for the executive summary and www.neiti.org.ng/NEITI%Final%Audit%Reports.htm for the final audit reports.

47 http://www.neiti.org.ng/financial-audit-reports.htm.

48 http://www.neiti.org.ng/physical-audit-reports.htm

49 http://www.neiti.org.ng/process-audit-reports.html.

3.2 Successes and shortcomings

The 1999–2004 audits describe a multitude of points and descriptions of successes and shortcomings, though the shortcomings loom very large. These are far too many to list in this report: to see all the details it will be necessary to look at the reports themselves[50] or, for a clearer and simplified view, a 'popular version' of the audits produced by Christina Katsouris which were published in March 2009.[51]

3.2.1 Tiny discrepancies

A good starting point for understanding NEITI's shortcomings is the spectacularly small percentage rate of discrepancies (0.02%) identified in the financial audit (in fact two sets of results were produced, as explained below). This has led many people to conclude, unsurprisingly given the massive corruption in the sector, that the audit was not credible. So what happened?

The core mission of global EITI is, as the front page of its website puts it:

> *The EITI sets a global standard for companies to publish what they pay and for governments to disclose what they receive.*

Underneath that statement[52] is a graphic entitled 'How EITI works' which shows, on the left, 'Companies disclose payments' and on the right 'Governments disclose receipt of payments' – each with arrows pointing to the third element in the middle: 'Independent verification of tax and royalty payments'. This is describing, in simplified form, a reconciliation exercise: flows on one side are reconciled with flows on the other.

In fact two sets of discrepancies were published. First, the financial audit states that in April 2006 the Hart Group identified $232m in discrepancies between the amount the central bank said it had received between 1999 and 2004 and the higher amount oil companies said they had paid. According to Goldwyn, this was because the NSWG had insisted on publishing results before they were ready to comply with the PSI; Oby Ezekwesili insisted on a public interim report before the accountants had reconciled the discrepancies, and this created 'a huge amount of confusion'. Following that interim (premature) report they were then requested by President Obasanjo to keep working on it, and after a series of meetings and further reconciliation work this was narrowed down to just $16m, or 0.02% of the total $95.5bn cash flows over the six-year period.[53]

Nobody had expected such a small discrepancy. But Bright Okogu, director of the budget office, gave this explanation:

> *When you buy oil from NNPC you don't pay it to NNPC – it goes to an account in the name of NNPC in New York, with JP Morgan. Irrespective of how things in NNPC may be happening, they didn't control the account – and that may be a good explanation [of why there wasn't a big discrepancy]. You buy the oil from NNPC, the NNPC takes the details and so on – within a month or however long it takes to pay, you make the payment – and NNPC only sees a piece of paper. The NY bank shows evidence of payment – once the evidence is there, then NNPC can file it – but it can't spend from it. This is the way it was set up. So [this small discrepancy] is less of a surprise. There were areas where we couldn't trace the invoices – some dated back to 1999 – so some discrepancy is possible in the record-keeping.*
>
> *As regards reconciliation – if the contract says pay x dollars or sell for this price, you may doubt whether the contract negotiation was done in good faith – but once done, any governance issue is at a different level – there may be issues perhaps in the process of negotiating the granting of certain concessions – but not at the level of that payment.*

50 http://www.neiti.org.ng/NEITI%Final%20Audit%20Reports.htm.

51 Nigeria Extractive Industries Transparency Initiative: Audit of the Period 1999–2004 (Popular Version), http://www.neiti.org.ng/files-pdf/PopularVersionof1stAudit.pdf.

52 Accessed on 26 February 2009.

53 An earlier version of the report puts the figure at $7.9m, but the current version says $16m.

A knowledgeable interviewee said, '*It may be that* **what** *we're looking at explains why there was perhaps not that much of a discrepancy.*'

If this is true, which seems reasonable, it could be taken as a severe indictment of EITI – essentially saying that it is looking at the wrong problem. But another interviewee took a different view:

> *The auditing – it didn't work. I think there was collusion between oil companies and government agencies, just so that EITI can look at beautiful figures.*
>
> *If Obasanjo had been laying down the law more, with EFCC, it would have been harder to have such a small difference. In Nigeria you get these scams – with collusion all the way along the chain. The collusion stretches from, say, the private sector, to their government counterparty, to the regulator, to the auditor, to the finance ministry. There are never any discrepancies. The guy at the CBN pays the fake duty rebate claim. There is no way an external intervention will break into the chain: they use the same set of books.*

It has not been possible to ascertain whether or not, or to what extent, this last comment accurately describes what happened. Either way, however, many observers have been led to conclude that EITI in this crucial case appears to have failed to put its finger on where the problem is.

Yet Goldwyn took a different view, saying that it was unfair to take this as a mark of failure, or as a sign that NEITI was looking at the wrong things.

> *A doctor looks in your ears and listens to your heart every check-up. Most times he finds nothing, but one day he may find a heart murmur. That's how you deter corruption and detect discrepancies – you check all these things every year.*

3.2.2 Accounting issues

This is one of the most important technical issues of all, and for some it highlights a major generic problem with the overall EITI approach.

Two (related) problems stand out.

1. When a barrel of oil is sold, the money basically divides three ways. One part flows to the Nigerian government, in tax, royalties and so on. A second part is retained by the oil companies (Shell etc.), contributing to their net profits. And a third part goes into 'costs' which involve a number of contractors, sub-contractors and others providing elements such as helicopters, drillships, pipes, catering, offices and so on.[54] The author was told that the 2005 audit reports indicate that indigenous Nigerian oil companies have not paid tax in the past. This has largely been achieved, it seems, by inflating costs (artificially, in most cases, it seems) to ensure that no taxable profit exists.

   The essential problem is this: EITI generally looks at the financial flows between the government and the oil companies – and takes as a given (one could say ignores) the cost factors. Unfortunately it is inside the black box of 'costs' that much of the mischief lies. So *EITI, in accounting terms, tends to ignore the most important part of the problem*. NEITI – by going further than EITI in many respects – has the potential to address this central deficiency. But it has not ventured very far in this direction yet (the end of section 1.3.1 considers this point briefly).

2. There are two key kinds of accounting: *cash accounting* and *accruals accounting*. EITI globally is carried out on a cash basis: it asks what companies paid, it asks what government received, and then checks to see if anything went missing in between. This is how the $232m/$16m figures described above were obtained.

54 A complicating factor is that the 'cost' money generally flows to the contractors via the oil companies, but that can be ignored for this general purpose.

But companies generally use accruals accounting. Among other things, this checks instead whether the cash paid was the right amount in the first place, according to the contracts. Yet the EITI source book[55] states:

> *Accounting system: As host governments are not usually in a position to estimate accruals for expected receipts from companies for any particular period it is recommended that accounting be completed by all entities on a cash basis.*

This is potentially a major technical flaw. If companies were due to pay a certain amount according to their contracts, but paid a different amount instead, cash-basis accounting would not be able to identify this. Bright Okogu's description of his discovery of a $1.25bn discrepancy between 2004 and 2006 (outside NEITI's remit, however, as described in section 3.2.4 below) shows that such discrepancies certainly existed.

However, it should also be noted, in NEITI's favour, that in terms of cash accounting the NEITI process still produced a much more complete set of results than many other EITI projects at the time. For example, Gabon's first EITI report, for its 2004 accounts, was not only a simple aggregated reconciliation exercise, but failed to include 'profit oil' in the exercise – a major component of the revenue flows – and three oil companies failed to submit the requested information on time.[56]

Sources said that some accruals accounting has been carried out in the 2005 audit, on a sample basis, but this has not been completely verified. The 1999–2004 audit report has no information as to the possible extent of what might have been missed. However, the Hart group's executive summary of its audit did identify these, among other shortcomings:

> *The flow of information currently consigns the Accountant General of the Federation (AGF) to a purely reactive role, where he is unable to exercise any effective control or authority.*
>
> *DPR did not assert any authority to assess and collect royalty liabilities during the review period.*
>
> *FIRS was not proactive in assessing and collecting the PPT [Petroleum Profit Tax] liabilities of the companies. The regime in the period under review amounted to unregulated self-assessment. This is not appropriate considering the significant financial flows involved.*

These shortcomings, leading to a conclusion that what was going on amounted to 'unregulated self-assessment' suggest there is very wide leeway indeed for companies to abuse the system because of the lack of accruals-based accounting. To NEITI's credit, the audits have identified where the problems are. But addressing these problems boils down to a question of political will – which NEITI is not able to supply.

One might argue that a lack of accruals accounting and some other technical lacunae identified elsewhere (such as in section 3.5 below) cannot really be called shortcomings. As Alexandra Gillies of Cambridge University put it:

> *The first audit was great – I don't think it's fair to criticize it for not including all these things. Without it, we wouldn't know what was missing. Rather, these are recommendations for what should go in the next audits, so that each year NEITI produces a more complete, more useful audit of the sector – that should be the goal we're pushing for.*

55 http://eitransparency.org/files/document/sourcebookmarch05.pdf.

56 Nicholas Shaxson, *Gabon Quarterly Report*, EIU, February 2006. The Gabon finance ministry link to the report's contents appears to have moved and could not be located.

Box 1: Cost manipulation, transfer mispricing

Apart from royalties, companies are taxed on the profits they make. The higher their costs (all other things being equal), the smaller their reported profits, the less money they have to pay to the government and the more they retain for themselves. There can be, therefore, a great incentive for oil companies and contractors (often in collusion with each other) to inflate their costs artificially – above the real cost, so as to reduce the profits that they report to the government, to reduce their payments to the government.

Costs can be inflated in several ways. One way is simply to report the cost of a piece of equipment as being more expensive than it really is: so that, say, a section of pipe imported from Scotland that really costs $10,000 is priced at $30,000 in the accounts – and this will artificially reduce the gross profits by $20,000. This involves a practice known as transfer mispricing (if it is traded across borders inside a multinational) or trade mispricing (if it happens between two unrelated, but colluding, trading partners).

Alternatively, a company subsidiary, perhaps based in a tax haven where there is a zero per cent tax rate on income, may lend to another part of the company, based in Nigeria, and charge a very high rate of interest. The Nigerian subsidiary adds these high interest payments to its cost base, thus reducing its taxable profits and Nigerian taxes – and the tax haven subsidiary pays no tax on the interest income because the tax rate there is zero per cent. These practices happen all the time, not just in the oil industry – and it is very hard for revenue authorities to challenge them Under current accounting standards, parent company accounts, which are consolidated (aggregated) on a global or regional basis, cannot be unpicked for each country, to check whether the profits and costs of each subsidiary really do match what is reported to the tax authorities of individual countries such as Nigeria. This kind of manoeuvring is without doubt one of the greatest sources of oil industry profits worldwide – causing a massive ongoing transfer of wealth from Nigeria and other oil-producing countries to owners of capital in the West. NEITI hardly looks into these kinds of issue.

Value-for-money audits are carried out in the oil industry worldwide, with the intention of curbing such practices, but opportunities to bamboozle the auditors, or for collusion between companies and auditors, are manifold. It seems oil companies have sought to deflect attention away from this issue: one interviewee paraphrased an oil company official as telling him, regarding the possibility of NEITI carrying out value-for-money audits, *'It will take you years to look at all the oilfield infrastructure – why are you wasting your time with this?'*

A possible solution, as originally advocated by Richard Murphy of Tax Research UK and now supported by a number of NGOs, is to change international accounting rules to set up country-by-country (CbC) reporting – which would, if properly implemented, allow national tax authorities to check whether they were receiving the correct amounts. CbC reporting is not formally supported by EITI – but it should be if it were going to create real change in the world. NGOs have made some progress in terms of getting traction on CbC reporting in the US and in Europe – especially with respect to the extractive industries.[a]

a See http://action.openthebooks.org/t/2217/content.jsp?content_KEY=351 (US) and http://www.taxresearch.org.uk/Blog/2008/09/26/country-by-country-reporting-gets-eu-parliament-backing/.

3.2.3 The physical flow of oil

This is another crucial issue, especially given that very large volumes of oil are being diverted before they reach the export terminals, thereby financing violence in the Niger Delta and flowing into general covert financing for well-connected political interests, which in turn provide cover for the bunkerers (those stealing the physical oil) Estimates of losses in this 'bunkering' industry range between 100,000 and 500,000 barrels per day,[57] a staggering amount worth $5–25m daily at current market prices.

Much oil gets stolen before it reaches the export terminals. Large amounts of oil also disappear in the downstream (retail and refining) sectors: and before NEITI nobody had sought to measure accurately and systematically how much crude was going into the refining system and how much came out.

Essentially, oil is going missing at various different parts of the oil infrastructure. From out of the ground at the *wellhead*, the oil mixture (oil and dissolved gas, plus water) flows in a pipe, or *flow line*, to a *flow station* (and up to 20 wells will typically flow into a flow station). Here, the components of the mixture are roughly separated and the flow rate in flow lines is also sampled, on a rotating basis, in a *test separator*. From the flow station the oil flows through larger *trunk lines* (via *manifolds* which collect several trunk lines together) to the *export terminal*, where more separation, especially of water, takes place.

Bunkerers or oil thieves can intervene at any of these levels, so it would be useful to know what is flowing through at each stage. Although each original well is not metered, a test separator measures the flows from sample wells so there is a broad idea of what is flowing at each part of the chain. It is not possible to be entirely accurate about flows at each part of the chain, but knowledgeable sources said the variations would normally be little more than 'a small percentage' [of the total production] adding that '*when there is oil theft there is a big difference*'.

However, politics begins seriously to intrude into this technical schema. Politicians and criminals can force the oil companies into a position where they find it extremely hard to put an end to 'bunkering' even when they know about it. It is not a straightforward matter simply to call the police: the bunkerers often have protection at high levels of government and in the police and armed forces. Sometimes, bunkerers have been able to penetrate the oil companies themselves, and militant attacks against oil companies have also played a part in curbing forceful action against bunkerers.

Monitoring bunkered oil at the ground level – upstream from, or near, the flow stations – may sometimes reveal lower-level operatives without such strong political cover. But one interviewee highlighted an interesting possible area of discrepancy: the discrepancy between what flows into an export terminal at the intake, and what flows out the other end (minus the water and other elements that are separated out) that would involve extremely high-level political cover – suggesting that oil is being stolen from inside the terminal. There are no clear indications that this has been happening, but it was raised as a possibility.

To its credit, NEITI, through its physical audit, has attempted to look into these kinds of discrepancies. The oil companies' record in providing the data has been patchy: while all companies provided the auditors with data on 'net oil balances' – effectively, what they exported – they provided little information about what happens between well and export terminal. Some did not even provide the 'gross oil balances' (which would show flows in the various parts of the stream from wellhead to export point). A copy of the full 2005 audit report was not available to this author at the time of research, but sections of it were. One section reads as follows:

> *… we had asked for production data derived from* in-situ *field records. Many companies provided field data back-calculated from terminal data. To force the issue we had attempted to acquire data on flow rates at the flow stations. Whilst we still believe this raw data exists, most companies only provided us with volumetric data. And in most cases we suspect this has been derived by netting back from dry crude data.*

57 For a more detailed examination of the illicit oil trade, see, for example, *The Swamps of Insurgency: Nigeria's Delta Unrest*, International Crisis Group, Africa Report No. 115, 3 August 2006, http://www.crisisgroup.org/home/index.cfm?id=4310.

So it has not been possible, despite the auditors' efforts, to get a good picture of the overall flows of oil and gas. Merely back-calculating from the export data essentially misses the point. An interviewee from a civil society group that has sought to engage with the oil companies directly on the issue of why oil companies have not provided these data, even when they would generally keep them for their own records, said: '*The oil companies will give you an elaborate story about water at the wellhead – don't trouble your little heads about this, they say.*'

A couple of interviewees also recounted meetings with the former country director of one oil major in Nigeria, who was dismissive (one used the word 'patronizing') when asked to discuss this question. '*He drew us a diagram that showed us why it wasn't possible … the best thing was for us all to agree to look at the metering at the output of the export terminal.*'

The failure of the NEITI audit to properly get to grips with these data shows once again how the initiative, for all its good intentions, so often finds obstacles put in its way once it starts to touch on an issue of real significance. This reinforces the overall thrust of this report: NEITI cannot easily force change; it can only fit into the political environment that already exists.

3.2.4 Special case: checking the MOUs

A number of observers of NEITI have hailed, as one of its biggest practical successes, a claim that NEITI has 'saved' Nigeria more than a billion dollars as a result of its tighter monitoring. This has been repeated on several occasions.[58] Two points should be noted about this. First, some questioned whether this saving of money would in fact lead to more and better spending on social priorities; as one interviewee put it: '*Even if we plug all the leaks – that just means more money for the thieves* [in government].'

But Bright Okogu, Director-General of the Budget Office, made another point, related to the accruals accounting issue mentioned in section 3.2.2 above:

> *The most visible achievement that [some people] cite was the money that I discovered through research. I had set up the Oil and Gas Office [in early 2004] with former Finance Minister Ngozi – we merged it with NEITI. In that same year 2004, by September or October we had done ground-breaking original work which asked the question: how much money would the government earn from all those sources if people behaved by the book? We found a discrepancy of $326m in 2004 – the oil price was starting to rise – it took us a while – and [we were telling] the industry that they needed to pay up. The reason: the MoU that set it up said that when the oil price is above $30 per barrel, the government will 'advise' on how much the government can keep. But $30/b came and went – and nobody asked – the oil companies kept quiet – I did this in October, November; by the end of January we went to the president with the result, I carried a letter from the president to the oil companies saying 'pay up'.*
>
> *Add the equivalent sum in 2005 and 2006 – and the total comes to $1.25bn, with the price going up – because of that work with four of my staff (I had to teach them to use spreadsheets) – as of today … they say that NEITI discovered this discrepancy – they attribute it [to NEITI] – but the work would have been done anyway. NEITI existed parallel to this – though I belonged to both. I did it under the auspices of the Oil and Gas Accounting Office. It was not part of the [NEITI] audit.*

58 See, for example, World Bank Petroleum Sector Briefing Note, July 2007, *Country Experience with EITI – Part 1*, http://siteresources.worldbank.org/INTOGMC/Resources/cambodia_oil_gas_newsletter_EITI.pdf or Vanguard, 2 January 2007, *Extractive Industries Transparency Initiative saves $1 billion.*

This reinforces the point made in chapter 2 above, that NEITI complemented, but did not lead, the reforms.

A senior official from an oil major disputed Okogu's version of events, saying that while there had indeed been an issue here, the problem was one of timing – the payments were made but just recorded at the wrong times: '*There was no missing money.*' This appears to be a disingenuous answer, suggesting almost that the oil companies 'forgot' to include this in their accounts but then remembered, only too late. Whatever the truth, the point is that NEITI was probably not behind this important success story, as it and others have claimed.

3.2.5 Remediation

The NEITI reports produced a series of conclusions and recommendations for improvement and change – remediation. The recommendations are numerous – see the main audit reports, brief summaries[59] and a 'popular audit' in March 2009[60] for more details. NEITI outlines five key areas:

a) developing a revenue-flow interface among government agencies;
b) improving Nigeria's oil and gas metering infrastructure;
c) developing a uniform approach to cost determination;
d) building human and physical capacities of critical government agencies; and
e) improving overall governance of the oil and gas sector.

The recommendations are seen as cogent and useful – but the problem seems to be in their implementation. One interviewee, a businessman who has watched NEITI closely, said:

> *NEITI had some profound standards but there has been little implementation and remediation. It seems to be just a game – nothing happened – I'm just starting to realize it. The only thing I can identify is that we know a bit more about what has been going on in the oil industry – this transparency is good – we get a sense of how some people make their money; it throws up some issues, but it has created a sense of how difficult real reform will be.*

A civil society actor took a somewhat more positive view:

> *In terms of implementation it hasn't taken us very far from where we are towards the goal of sustainable development. But it is positive. A whole lot has been spoiled over the last fifty years and it won't be fixed overnight. Fixing requires information and knowledge, and knowledge-driven advocacy.*

Goldwyn, too, was able to point to some other successes:

> *The fact of introducing scrutiny to the financial sector and the commitment to continuing scrutiny had a dramatic impact on record keeping in government.*

Not everyone agreed that improvements had been 'dramatic' but it seems fair to say that important improvements did happen. A key finding was, unsurprisingly, that coordination between agencies was very poor which meant that a lot of money 'fell through the cracks'. There have been, it seems, some half-hearted attempts to address this, but there was a fair bit of cynicism about how much change has really been achieved.

This fragmentation in the political system is common in mineral-rich states, where lines of power and accountability tend to be vertical (underlings give political support upwards, in exchange for a flow of resources downwards) and this creates few incentives for 'horizontal' collaboration between different

59 See, for example, *Leaving a Legacy of Transparency in Nigeria*, Revenue Watch Institute Policy Brief, April 2007, pp. 3–4.

60 Nigeria Extractive Industries Transparency Initiative: Audit of the Period 1999–2004 (Popular Version), http://www.neiti.org.ng/files-pdf/PopularVersionof1stAudit.pdf.

groups, factions, agencies and so on – instead, they are all competing against one another for a share of the oil-financed 'cake'. This is exacerbated by and drives divide-and-rule politics, which makes leaders of factions reluctant to see horizontal collaboration that might lead to the formation of potentially threatening coalitions. It is not clear that transparency, on the one hand, and these recommendations for remediation (repairing the fractures in the polity), on the other, have necessarily been able to overcome the problem of fragmentation, which has political roots and is inherent in patronage politics.

3.2.6 The NEITI Act

The NEITI Act of May 2007 is in itself seen as a key NEITI achievement and has given NEITI a statutory backing. It is the outcome of a lobbying process, in which oil company interests, as well as civil society groups, appear to have successfully influenced its wording. Several clauses are worth highlighting.

The phrase highlighted below is taken to mean 'expenditure' and budget monitoring, which would involve a massive expansion of EITI's original scope. This was singled out by several interviewees as important, while potentially highly problematic.

> *2d:*
> *[A primary objective of NEITI is to] ensure transparency and accountability by government in the* ***application of resources*** *from payments received from extractive industry companies*

It should be noted that NEITI is only able to monitor at the federal level, not at the state and local levels, according to the Nigerian constitution.[61]

The phrases highlighted below were also described by interviewees as general 'get-out clauses' for oil sector participants, and are believed to be the result of oil company lobbying.

> *3b:*
> *[NEITI shall] evaluate* ***without prejudice to any relevant contractual obligations and sovereign obligations*** *the practices of all extractive industry companies and government respectively regarding acquisition of acreages, budgeting, contracting, materials procurement and production cost profile in order to ensure due process, transparency and accountability.*
>
> *3d:*
> *[NEITI shall] obtain, as may be deemed necessary, from any extractive industry company an accurate record of the cost of production and volume of sale of oil, gas or other minerals extracted by the company at any period,* ***provided that such information shall not be used in any manner prejudicial to the contractual obligation or proprietary interests of the extractive industry company.***
>
> *3e:*
> *[NEITI shall] request from any company in the extractive industry or from any relevant organ of the Federal, State or Local Government, an accurate account of money paid by and received from the company at any period, as revenue accruing to the Federal Government from such company for that period;* ***provided that such information shall not be used in any manner prejudicial to the contractual obligation or proprietary interests of the extractive industry company or sovereign obligations of government.***

Yet not everything went the oil companies' way. Clause 3i) was described as an 'omnibus clause' which dramatically expands NEITI's possible role, with potentially rather vague implications:

61 There is a state-based initiative in Bayelsa state called BEITI (Bayelsa Income and Expenditure Transparency Initiative): http://www.revenuewatch.org/images/Bayelsa_Gov_BEITI_Pres_Statement.pdf. It is not organically linked to NEITI, though it is a real, home-grown initiative. There has been some interest in linking BEITI with NEITI, but state actors are suspicious of potential federal control over state-level processes.

> *[NEITI shall] promote or undertake* ***any other activity*** *related to its functions and which, in its opinion, is calculated to help achieve its overall objectives.*

Case 3j) was described as giving NEITI the scope to audit all kinds of bodies:

> *[NEITI shall] ensure that all fiscal allocations and statutory disbursements due from the Federal Government* ***to statutory recipients*** *are duly made.*

These 'statutory recipients' are taken to include the controversial Niger Delta Development Commission (NDDC), which receives approximately 5% of receipts in the Federation Account. NEITI should be able to audit the NDDC – now, according to one interviewee in NEITI, there is legislation for this and, in theory at least, the NDDC could do nothing to prevent this.

Clause 16, in several parts, appears to be a victory for civil society activists, in which the president, on the NWSG's recommendation, may '*suspend or revoke the operational licence of any* [extractive industry] *company that fails to perform its obligations under the Act*'; it adds:

> *if any extractive industry company commits an offence against this Act, every Director or other persons concerned in the management of the company commits the offence and is liable on conviction to not less than 2 years imprisonment or a fine not less than N5 million (unless the person can prove it was exercised without his consent or connivance and all due diligence was performed).*

This looks very strong, at least on the face of it, though there is nothing in the NEITI Act explaining how to apply these punishments if the companies refuse to cooperate: NEITI has no powers to prosecute.

3.2.7 Monitoring expenditures?

As noted in section 3.2.6 above, the NEITI Act appears to enshrine the possibility of the initiative expanding to cover monitoring of expenditures. This is a real issue; section 3.2.1 above, noting the tiny discrepancies found in the reconciliation exercise in the audits, highlights what is widely known: it is likely to be on the expenditure side, more than the revenue side, that the biggest problems may be found. A background paper on the NEITI website does admit the expenditure problem:

> *Revenue transparency is only the starting point, albeit a very important one, for a broader campaign to improve governance. Once revenues collected are accurately known and reported, focus can shift to a debate on how well they have been used.*[62]

In April 2008 the World Bank announced its support for an expansion of the scope of the initiative, in what some have called EITI++, to enable countries to use EITI not only to monitor resource revenues but to provide a slate of different options – including examining decisions on expenditures, as well as on resource extraction, managing price volatility, and other aspects of natural resource management that do not fall within the scope of 'traditional' EITI.[63] This is a loose framework, not a set of benchmarks, which would go beyond the EITI minimum standards.

This possibility creates a dilemma: should NEITI branch out to studying expenditures, which are enormously important? Or should it stick to its core areas? By and large, interviewees – especially those with most knowledge of government – felt that while the problem was very real, NEITI was simply not equipped to delve into this hugely complex and contentious area, where it would have to confront some of Nigeria's most powerful vested interests and learn an entire array of new skills. According to Bright Okogu,

62 Background Paper on the Nigeria Extractive Industry Transparency Initiative: Measures to Enhance Petroleum Revenue Transparency for Public Information and Policy Making, http://www.neiti.org.ng/files-pdf/BACKGROUND%20PAPER%20ON%20THE%20NEITI.pdf.

63 See 'World Bank Group and Partners Launch EITI++', 12 April 2008, http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:21727772~pagePK:34370~piPK:34424~theSitePK:4607,00.html.

> *There is a tendency to think that EITI can do more than it is equipped to do. They should, for example, not go into looking at how the money is spent. It dilutes it, and they are not equipped for it – the skills you need to check public finance – few people understand the macro and fiscal aspects.*

3.2.8 International flows of oil and money – and donor hypocrisy?

At the NEITI conference in Abuja in September 2008, President Yar'Adua issued a challenge to the EITI to explore the possibility of finding ways of monitoring flows of oil stolen from conflict areas and laundered in the international market. Referring to the 'Blood Diamonds' campaign, he said: *'The Nigerian experience shows that there is a sense in which we can talk of Blood Oil.'*

Without getting into details, this raises an interesting question. Here is a highly pertinent question relating to oil and, in a sense, transparency. Importantly, this has been directly requested by the Nigerian president. Should NEITI engage with this? It seems fair to say that some international initiative should. This is not a question that has been answered in any meaningful way, and some interviewees felt it should be addressed head on, though not all were canvassed on this point.

Some interviewees were cynical about Britain's apparently hypocritical role in all of this: chiding Nigerians for corruption and encouraging the EITI process, on the one hand, then refusing to cooperate on tracking cross-border financial flows in order to protect the secrecy space and the dirty money that it harbours in the City of London and its satellites in the Crown Dependencies (e.g. Jersey) and overseas territories (e.g. the Caymans) in particular. Britain – almost certainly the largest recipient of stolen Nigerian assets – was singled out as being remarkably uncooperative, as this published interview with former Finance Minister Ngozi Okonjo-Iweala illustrates:

> *Q: How are things progressing with the repatriation of money filched by former officials and stored in Western banks? I hear the Swiss authorities have become very helpful, unlike the British.*
> *A: The Swiss have now returned $500 million of stolen resources. Switzerland has set the example.*
>
> *Q: What about the British?*
> *She gives a long throaty chuckle.*
> *A: Now heaven help me. It's very hard to condemn the British. On debt relief the UK has set the example. …*
>
> *Q: So why are the British dragging their feet on the repatriation of stolen resources?*
> *A: It's been more difficult with the British. Our president has raised it many times with Prime Minister Blair. Eventually he returned $3m. We understand there are other monies.*[64]

London is now being recognized by increasing numbers of people as being arguably the world's pre-eminent tax haven.[65] Okonjo-Iweala's words here are reminiscent of those of Eva Joly, the Norwegian-born investigating magistrate in Paris who singled out London as being particularly obstructive in terms of judicial cooperation on tracking dirty money: *'the City of London, that state within a state which has never transmitted even the smallest piece of usable evidence to a foreign magistrate'*.

64 Transcript of interview with Mrs Ngozi Okonjo-Iweala, Nigerian Finance Minister, *The Independent* (UK), 16 May 2006.

65 This analysis has been most actively explored by the Tax Justice Network, a non-governmental organization with headquarters in London, for which this author provides regular ongoing work on a consultancy basis. For a brief overview of London's tax haven characteristics, see http://www.taxjustice.net/cms/upload/pdf/Red_Pepper_-_The_Tax_Avoiders_Chancellor_-_AUG-2006.pdf.

3.2.9 Global EITI vs NEITI

Problems have also been identified at the level of global EITI; all the interviewees in Nigeria who were asked about this point felt the EITI Secretariat was going in the wrong direction, in terms of its general decision on whether to make EITI broader (more countries) or deeper (fewer countries, but deeper involvement). Most who expressed an opinion said they felt too much broadening was happening, at the expense of deepening. One interviewee articulated it as follows:

> *Global EITI is a bit like a new standards organization – it is about marketing, getting your EITI stamp, and the main focus of the International Secretariat seems to be expanding the number of countries and companies.*

An interviewee from NEITI added: '*The EITI Secretariat] don't really help us much – I'd like them to do much more – like a newsletter, case studies, specific support when we need it.*' Another civil society actor involved in (but separate from) the EITI process said, reflecting a common view:

> *Why are they [the EITI Secretariat] not at the centre point of research – so that when we sit with Basil Omiyi [former Director-General of Shell in Nigeria] we know what we're talking about? It seems like it's all about board meetings, agenda-setting … like afternoon tea with the vicar. There is nothing critical.*

> *We feel that the EITI Secretariat should be helping EITI consolidate instead of expanding to countries like Iraq – you are just going to end up with a lot of empty shells. We need to focus on deepening, not broadening, the initiative.*

Others said, however, that this may be a little unfair to the EITI Secretariat, which not only faces its own capacity constraints but is also focusing much of its attention on 'validation' processes – which is a form of deepening. This is supported by a conclusion from an EITI mining report:

> *Most interviewees noted that the EITI Secretariat has overextended itself and does not have the ability to support in-country implementation in the detailed and close manner which observers believe is necessary if the EITI initiative is to be successful. The combination of a large number of countries targeted and the small and lean staff of the Secretariat has meant that: host governments perceive a lack of support and attention from the EITI Secretariat; civil society representatives perceive the Secretariat does not watch to ensure adequate implementation by the government; inter-institutional and bilateral coordination could be improved; and engagement of non-IAG [International Advisory Group] members has been weak.*[66]

In any case, even though Nigeria has received an unusual amount of attention from the Secretariat on account of its 'flagship' status and notable successes, Nigerian actors certainly seemed to feel that there was still too much distance, or even neglect, from the EITI Secretariat.

Making a different point, an interviewee close to NEITI noted how EITI was setting itself up for a big problem by putting so much focus on Nigeria as a showcase for the global initiative:

> *Global NEITI is held hostage by Nigeria – how can you criticize Nigeria when it is your flagship project? The Revenue Watch guide for civil society on how to do EITI, written by Goldwyn and Chris Nurse, was overflowing with Nigeria EITI stuff. Peter Eigen said the investment climate in Nigeria has improved dramatically, but the problem is that it is not that golden now.*

66 *EITI and the Mining Sector: Stakeholder Research Report*, http://eitransparency.org/UserFiles/File/miningsectorreportmelbourne.pdf.

> *EITI should try not to mention Nigeria so much … It's like they are telling other countries 'you should try and be as transparent as Nigeria'. Is that really such a good idea?*

It should be noted that there is clearly a vested interest among many parties in billing EITI as a success. As Arvind Ganesan of Human Rights Watch put it:

> *Tony Blair's government and other governments have put millions into it, the industry wants it in part because it puts the burden on governments, and not them; IFIs, especially the World Bank, like it, civil society wants it to be successful. Every group wants it to succeed, but some also have an institutional interest in downplaying its shortcomings or overstating its impact.*

Ganesan added another, crucial, point:

> *EITI isn't a vehicle for human rights or anti-corruption changes. But this is an indictment of the international community, mainly governments, World Bank, and industry, who have made EITI basically the sole focus of the transparency/governance/rights agenda. It has given them a way to avoid tougher issues related to the resource curse.*

4 Conclusions

NEITI does have some significant successes to its name, but these do not match up to its or EITI's core mandates and goals, and it is hard to argue that it has delivered sustained better governance or better lives for ordinary Nigerians.

The most important purely macroeconomic benefits that compare favourably with the last oil boom can be said to stem most substantially (and directly) from the oil-based fiscal rule, rather than from EITI. The IMF said in 2007:

> *The most notable achievements include robust economic growth, especially in the non-oil sector, significantly strengthened fiscal and external positions, improved confidence and reduced inflation. Prudent policies were pivotal to securing these gains: the political accord for the oil price fiscal rule was the key factor.*[67]

Revenues were still being saved in the excess crude account after the main reform period; at the time of the author's visit at the end of 2008 official foreign exchange reserves stood at approximately US$63 billion. However, there has been some tension between state governments and the centre, with the former reluctant to save the money and keen to spend it; cautious negotiations since early 2007 have seen the states agreeing to save a minor portion and being allowed to spend the rest.

Nevertheless, it is probably fair to say that NEITI, and specifically the intrusive NEITI audit process, has provided a useful entry point into the difficult area of oil sector governance. Yet this has been a consequence, rather than a driver, of a reform process that was happening anyway. By providing many policy-makers for the first time with an overview of the system, or at least of a part of the system, NEITI helps inform policy. But it has not provided to any significant degree the political will for reformers to go further.

Success or failure? As one interviewee put it:

> *NEITI … it's a successful institution, regardless of the extent to which it catalyses wider change. If there was a really great newspaper operating in a country with terrible governance, that newspaper would be valued and praised, not criticized for its inability to change the country. NEITI should try to be like that newspaper.*

Yet this, too, could be criticized for being a revisionist approach. The original goals of EITI were to improve accountability and governance; over time, in the face of embedded realities, these objectives appear to have been rather whittled down, and those operating within NEITI are setting themselves more modest goals. The above comment may be a fair one, but that does not absolve NEITI from the charge of a broader failure to be able to drive major and sustained advances in transparency, to empower citizens and to tackle corruption and poverty – all of which have been goals from the outset.

A few key conclusions can be drawn. The list below expands on the main conclusions in the Executive Summary.

67 *Nigeria: Fourth Review Under the Policy Support Instrument*, October 2007, p. 15.

1. *EITI and NEITI did not drive reform in Nigeria.* Instead, the initiative flourished for a time in a reformist climate, and helped influence the form that it took. But it has flagged since this reformist space all but closed down in 2006.

2. *The publication of the 1999–2004 audits is EITI's crowning achievement.* They were unprecedented in scope and detail, not only in Nigeria but among all EITI candidate countries. One of the most important aspects of the audits' success was their holistic approach: seeking to view all aspects of Nigeria's oil industry through a financial audit, a process audit, and a physical audit, and then joining the dots.

3. *NEITI has **informed**, but has not meaningfully **empowered (or significantly energized)**, civil society.* An essential premise of EITI has been that transparency would help citizens to 'call their rulers to account', leading to better accountability and governance. It is hard to see how NEITI has caused this to happen in any meaningful way. Civil society has not been influential in calling Nigeria's rulers to account, even with access to significantly improved data and analysis from NEITI.

4. *It is also hard to demonstrate that better transparency has led to better developmental outcomes.* (This would be hard to demonstrate in any case.)

5. *It is not certain that more capacity-building and work will overcome the fundamental problems faced by civil society.* Some say that patience is required and the outcome will be good – but on the basis of the interviews there appears to be little clear evidence that processes are even heading usefully in this direction. This appears to be the result of structural factors linked substantially to Nigeria's dependence on mineral revenues, which enables rulers to 'ignore' their citizens to a large degree.

6. *The most strategic consumers of NEITI information may have been elite groups of technocrats and policy-makers*, who have gained tools from NEITI to understand the Nigerian oil and gas sector better. This may prove useful in current efforts to get a petroleum industry reform bill through parliament. There are also signs that record-keeping in some relevant departments is now – up to a point – better than before the audits and the recommendations were published.

7. The tiny discrepancies discovered by the NEITI audits show that *the reconciliation exercise*, which is taken to be one of the most fundamental parts of the EITI exercises, *did not appear to home in on the core of the problem* (though valuable in itself). Instead the main benefits from the audits consisted in providing a picture showing for the first time how important parts of the industry worked and how they interacted with each other and with the various parts of government.

8. Extrapolating from the Nigerian experience could lead to a conclusion that the global EITI process should focus on countries where the political dynamics for good governance or reform already exist, and seek to provide depth of information and intrusive, comprehensive audits. This has implications for a debate inside and outside global EITI as to whether EITI should be *broader* – encompassing a wider range of countries, or *deeper* – that is, more comprehensive or inclusive.

9. The global EITI concept of transparency, hitched to a multi-stakeholder approach, did penetrate into Nigerian policy-making. One important reason for EITI's (limited) success was that as a global initiative *it represented a diffuse, undirected source of influence* or pressure – rather than (as would be the case with, for example, IMF conditionality) direct, specific pressure, which is often explicitly rejected. The author's experience with other mineral-rich countries, notably Angola,[68] bolsters this view.

68 See *Angola: Drivers of Change*, Chatham House, April 2005, http://www.gsdrc.org/go/topic-guides/drivers-of-change#ang and a follow-up published in January 2008, at http://mirror.undp.org/angola/LinkRtf/Drivers-of-Change-Angola.doc.

Some interviewees felt that *there can be a tendency to see EITI as a box-ticking exercise*: if a country is implementing EITI, then 'reform' is being done. Governments, industry players and civil society actors, sometimes driven by vested interests in keeping the EITI process going, have all but made EITI the sole focus of the transparency/governance/rights agenda. *This may have given them a way to avoid tougher issues related to the resource curse*. This report, noting that NEITI is probably the most important flagship for global EITI but weak in terms of delivering and pushing real reforms, suggests that other approaches need to be tried too.

Other mainstream prescriptions in the 'resource curse' toolkit, notably oil funds and diversifying the economy partly by building infrastructure, *do nothing directly to counter* what are arguably the two central features that generate the poor governance outcomes of *the 'resource curse'*: first, that rulers tax mineral/oil companies, not citizens, disempowering the latter; and, second, that mineral revenues foster the politics of patronage, involving fragmentation of society and the political system.[69] It had been hoped that transparency would be different: that it would directly counteract both tendencies. The evidence from this report suggests, however, that transparency fails to do this convincingly. The only other solution that theoretically could address these two features directly is to distribute revenues directly to citizens of countries concerned, then tax them back. This has been dismissed out of hand by many analysts, though without any serious research to back their arguments.

EITI does not overtly publish a 'political number' – that is, a single number that describes starkly how much of the share of each barrel sold accrues to government as budget revenue each year. Some felt that doing this could open a new arena for engagement between rulers, companies and citizens.

Reforms were temporary, and have since faltered. All the meaningful reforms happened before the audits were published; the publication itself was arguably the key reform of NEITI, and reforms and the NEITI process faltered badly soon after the audits were published. If the OGIC-inspired Petroleum Reform Bill makes it through the current legislative process, that would constitute grounds for more optimism about the current reformist climate. Publication of the 2005 audit report does give rise to a little fresh optimism.

69 For further discussion of these issues, see Nicholas Shaxson, 'Oil, Corruption and the Resource Curse', *International Affairs*, Vol. 83, No. 6, November 2007.

Annex 1: NEITI Chronology

29 May 1999	Obasanjo becomes Nigerian President, winning 62.6% mandate.
24 April 2000	First incarnation of the Oil and Gas Implementation Committee (OGIC) is launched.
September 2002	Tony Blair announces the EITI at the World Summit for Sustainable Development in Johannesburg.
May 2003	Nuhu Ribadu appointed chairman of Economic and Financial Crimes Commission (EFCC).
17 June 2003	First EITI plenary conference[70] at Lancaster House in London launches global EITI.
15 July 2003	Ngozi Okonjo-Iweala sworn in as Nigerian Finance Minister.
November 2003	President Olusegun Obasanjo commits to EITI.
January 2004	Ngozi Okonjo-Iweala gets permission to publish all allocations to state and local governments.
February 2004	NEITI inaugurated by Obasanjo.
14 February 2004	Obasanjo appoints Ezekwesili, one of the founders of Transparency International, as coordinator of NEITI National Stakeholders Working Group (NSWG).
29 May 2004	Charles Soludo appointed Governor of Central Bank.
June 2004	US endorses EITI for the first time.
June 2004	EFCC establishment Act.
16 July 2004	Nasir El-Rufai, former director-general of the Bureau of Public Enterprises (the privatization agency), appointed minister of the Federal Capital Territory.
December 2004	Bill – draft NEITI Act – introduced to the National Assembly to give legal backing to the work of NEITI.
February 2005-June 2006	Hart Group carries out its audit work.
June 2005	Civil Society Steering Committee, composed of 10 additional civil society representatives, set up to consult with the NSWG, to counter its shortcomings.
29 June 2005	Paris Club agrees in principle to phased clearing and buyback of debts and debt arrears.
17 October 2005	IMF Executive Board approves a two-year Policy Support Instrument for Nigeria.
October 2005	Nigeria negotiates the Paris Club debt deal.
April 2006	Nigeria pays the last instalment on the $30 billion it owed the Paris Club of official creditors.[71]
26 April 2006	Hart Group releases its first financial, physical and process audits of the oil and gas sector for the period 1999–2004. Identifies $232m discrepancies and is told to go back and do further reconciliation work.
June 2006	Ngozi Okonjo-Iweala steps down as Finance Minister; replaced by her deputy, Nenadi Usman. Oby Ezekwesili demoted, becomes Minister of Education.
June 2006	Last International Advisory Group meeting establishes an EITI Board and selects Oslo as the location of the International Secretariat.
June 2006	Ngozi Okonjo-Iweala becomes Foreign Minister (but remains head of the economic team).
2 August 2006	Ngozi Okonjo-Iweala is removed as head of the economic team, while in London.
3 August 2006	Ngozi Okonjo-Iweala resigns as Foreign Minister.
December 2006	Final audit report for the 1999–2004 accounts presented by Hart Group to the NEITI NSWG. Following the release of the audits, an Inter-Ministerial Task Team is asked to put together a comprehensive remediation action plan, subsequently approved for implementation by the Nigerian government.
24 March 2007	World Bank appoints Obi Ezekwesili to head its Africa department.
28 May 2007	NEITI Act becomes law. Nigeria becomes first EITI-implementing country with a statutory backing for implementing EITI. NSWG is cut back to just 15 members.
29 May 2007	Obasanjo steps down as President. El-Rufai steps down.
August 2007	Revised edition of reconciliation exercise published; discrepancies narrowed down to just $8.5m.
September 2007	EITI International Secretariat opens in Oslo.

70 http://www2.dfid.gov.uk/news/files/eitireportconference17june03.asp.

71 See http://www.imf.org/external/pubs/ft/fandd/2008/12/okonjo.htm.

7 September 2007	Oil and Gas Implementation Committee (OGIC) reconstituted.
27 September 2007	Nigeria accepted as EITI candidate country for validation.
November 2007	Yar'Adua enacts the Fiscal Responsibility Bill, enshrining an oil-based fiscal rule into law.[72]
December 2007	Nigeria's Inspector-General of Police removes and demotes Nuhu Ribadu as head of the Economic and Financial Crimes Commission.
29 January 2008	Yar'Adua appoints National Stakeholders Working Group.
February 2008	Validation methodology agreed by EITI board at meeting in Accra, Ghana.
3 August 2008	Committee chaired by Rilwanu Lukman submits the OGIC report, a proposal for far-reaching reforms of the oil sector.
11–12 September 2008	Regional conference aimed at sharing experiences among EITI implementing countries in West Africa held in Abuja. Yar'Adua urges crackdown on 'blood oil'.
26 January 2009	Bright Okogu appointed Director-General, Budget Office of the Federation.
February 2009	Azerbaijan becomes the first EITI-compliant country.
March 2009	Publication of the 'popular audits' produced by Christina Katsouris.
August 2009	2005 audits published.
March 2010	Nigeria due to complete the validation process.

72 http://www.imf.org/external/pubs/ft/fandd/2008/12/okonjo.htm.

Annex 2: Oil Industry Sectors, Ministries, Agencies and Departments

Broadly, the Nigerian oil and gas industry is made up of five key areas, two upstream and three downstream:

Upstream:

- Exploration and field development
- Production and marketing of crude oil

Downstream:

- Refining
- Marketing and distribution of refined petroleum products
- Retailing

The **Nigerian National Petroleum Corporation (NNPC)** plays a central role in the industry. It has a number of subsidiaries, including:

- National Petroleum Investment Management Services,[73] the upstream arm of NNPC that oversees state investments in the Joint Venture Companies, Production Sharing Companies and Service Contract Companies.
- Nigerian Petroleum Development Company,[74] the exploration and production arm of NNPC.
- The Nigerian Gas Company.[75]
- The Products and Pipelines Marketing Company.[76]
- Integrated Data Services Limited.[77]
- Nigeria LNG Limited.[78]
- National Engineering and Technical Company Limited (NETCO)
- Hydrocarbon Services Nigeria Limited.[79] In affiliation with Calson (BERMUDA) Ltd, Hyson is a joint venture between NNPC and Vitol S.A., Swiss International Crude Oil and Products Trading Company. Hyson/Calson markets Nigeria's excess petroleum products
- Warri Refinery and Petrochemical Co. Limited (WRPC)
- Kaduna Refinery and Petrochemical Co. Limited (KRPC)
- Port Harcourt Refining Co. Limited (PHRC)
- Eleme Petrochemicals Co. Limited (EPCL)

Key departments of NNPC include the Crude Oil Marketing Department (COMD) which manages sales of government equity crude.

The sector is regulated, supervised and monitored by the **Department of Petroleum Resources**[80] within the Ministry of Petroleum Resources. The DPR ensures compliance with industry regulations; processes applications for licences, leases and permits, establishes and enforces environmental regulations. The DPR and NAPIMS play a crucial role in the day-to-day activities throughout the industry.

The **Energy Ministry**'s main role is to formulate and monitor policies, regulations, standards and codes.

Other key agencies and bodies involved in the industry include:

- The **Federal Inland Revenue Service (FIRS)**, and especially its Petroleum and International Tax Department (**PITD**), assesses and collects taxes from the oil sector.
- The **Central Bank of Nigeria** (CBN) is the central bank, which receives taxes and royalties, and provides tax collection information for reconciliation with FIRS data.
- The **Accountant General of the Federation** (AGF) is the owner, manager and accountant of federal government accounts with the central bank.

73 www.napims.com.
74 www.npdc-ng.com.
75 www.nnpcgroup.com/nnpc-group/ngc.
76 www.nnpcgroup.com/nnpc-group/ppmc.
77 www.nnpcgroup.com/nnpc-group/idsl.
78 www.nlng.com.
79 www.nnpcgroup.com/nnpc-group/hyson.
80 www.dprnigeria.com.

- The **Revenue Mobilization, Allocation and Fiscal Commission** (RMAFC) monitors revenues and allocates them to federal, state and local governments. Under Nigeria's constitution petroleum revenues are allocated to the different tiers of government. NEITI, when it has authority to intervene, may generally only do so at the federal level. It has been unable, for constitutional reasons, to exert any control or influence at (or extract any transparency from) the state and local levels.
- **Excess Crude Account**: The constitution provides for the federal and state and local governments (SLGs) to divide oil receipts about equally. Since it was set up in 2003, the practice has been to save oil receipts above the budget oil price in the excess crude account at the central bank in the names of the various SLGs and the federal government.
- The **Crude Oil Reconciliation Committee** of the Finance Ministry should reconcile crude revenues with central bank accounts.
- The **Petroleum Products Sales Reconciliation Committee** mainly reconciles revenues from petroleum products sales, and from domestic crude allocations, with CBN data.
- The **Niger Delta Development Commission (NDDC)** is the regional development agency for the oil-producing areas. The oil companies pay it 3% of their annual operating budget to invest in development projects; it also receives about 5% of receipts in the Federation Account.
- The **Ministry of the Niger Delta** was created in 2008 partly in exasperation at the NDDC's shortcomings, to help improve matters in the Delta. There is considerable scepticism as to how well it is likely to perform.

There is a very small solid minerals sector, accounting for less than 1% of GDP. NEITI does not cover the minerals sector, though some are pushing for this to happen.

There is a very profound set of oil sector reforms under consideration under the aegis of the **Oil and Gas Sector Implementation Committee** (OGIC). The set of proposals emerged (but was put on the shelf) during Obasanjo's tenure, and now appears to have been revitalized under the Nigerian oil industry veteran (and former OPEC Secretary-General) Rilwanu Lukman (see Annex 1). This would effectively repeal 40 years of oil sector legislation, get rid of the NNPC and replace it with another national oil company that does not have internal conflicts of interest, and potentially clean up the sector.

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