

**THE NIGERIAN PERSPECTIVE ON EURO-AFRICAN COOPERATION  
ON ENERGY SECURITY, DEMOCRACY AND DEVELOPMENT: FOCUS ON  
EITI IMPLEMENTATION IN NIGERIA**

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**1. PREAMBLE: SOME REFLECTIONS ON THE PROBLEM**

Edward Zwick, Director of “Blood Diamonds” was right, in a sense, when he argued that “Africa’s greatest problem is also its greatest hope”. That hope, he identified as its natural resources, which today constitute the source of conflict, but can be transformed into sustainable development for its future. In reality, Africa’s natural resource is not the fundamental source of its apparent ‘curse’ nor the strongest source of hope for its future blessing. Africa’s human resource or human capital is. However, whether the source of Africa’s current problem and future hope is its natural resource or human capital or both, as was stated, in a memorandum to the G8 by Heinrich Boell Foundation, the poor management of Africa’s resource is not simply a producers’ problem or that of the consumer; it is every one’s problem. As it is now commonly acknowledged, we are all in this together, we all are in the same boat. The problem persists because we all choose to resort to the language of blame, rather than take direct personal responsibility for finding common solution to the problem. This attitude has locked us all up in vicious circle, founded on misperceptions and biased interpretations.

**1.1. Background to the Problem: The Political Economy of Nigeria.**

Nigeria is often depicted simply as a resource rich, or more specifically, as an oil-rich country, whose political leaders have mismanaged its patrimony. This picture is correct, but only partially so. The reality is a little more complex. Let us first explore the prevailing orthodoxy

**1.2 Conceptual Issues: Corruption and Rent-Seeking as the Key Problems**

There are two main ways in which the paradox of the existence, in Nigeria, side by side, of resource wealth and poverty is explained. One view is that oil dominates the Nigerian economy and generates enormous revenue, indeed the bulk of government revenue, which is not translated into national development and high standard of living for the people due to either poor governance or deliberate mischief. As one author put it, the key problem is corruption; and corruption persists in Nigeria because political leaders and “public institutions” that govern the oil sector permit, encourage, collaborate in, and connive at corrupt practices. The second view is that corruption is structurally built into the Nigerian political economy, and corruption breeds poverty. This argument is woven around the concept of the ‘rentier state’. The contention is that states, like Nigeria, which depend heavily and predominantly on rent from their natural resources, rather than tax from their citizens, corporate and individual, tend to be corrupt and poor. This is so for

three main reasons. First resource rent is much more easily appropriable than revenue from taxation because its source is concentrated (oil is a “point resource”), not dispersed. Second, it is easier for political leaders to ignore public demand for accountability in a rentier state because, since they do not depend on taxes from citizens for the national income, they can acquire, retain and use state power without bothering about legitimacy. Third, rent seeking has a magnetic effect; it tends to suck all and sundry into its seductive loop, including entrepreneurs who could have invested in manufacturing and agriculture. Consequently, diversification of the economy is difficult to achieve in a rentier state; and a mono-commodity economy, with volatile quantum of revenue, tends to be underdeveloped, its people poor, and its polity unstable.

Concerning the two popular theoretical positions sketched above explaining the persistence of poverty in resource rich countries, the Nigerian experience would suggest that there are very crucial factors missed out in the two lines of argument. What is missing, the decisive factor in explaining the gap between resource wealth and national development, can be summarized as the low level of human capital, or the low quality of human resource, coupled with lack of passion for, and commitment to, national development. The low level of human resource in Nigeria manifests mainly as incompetence and abandonment of professional ethics among professionals; laziness and idleness among bureaucrats; illiteracy and innumeracy among graduates of Nigerian universities employed as middle level public servants; and crass irresponsibility among the political leaders at all levels of the political system. These deficiencies are coupled by a lack of ability on the part of the Nigerian ruling class to think and act in the interest of the whole or the integer. For me, this is the real source of lack of integrity in the Nigerian public service: extremely low level of commitment to the whole nation. The issue then is not that efforts at development have failed; it is rather that, as Claude Ake, once argued, development has never been truly and unequivocally on the national agenda.[Ake,1996] Nor has eradication of poverty.

## **2. SOME BASIC FACTS ABOUT NIGERIA**

The facts about Nigeria are, however, a little more complex than is presented in these orthodoxies. First, Nigeria is not really, a mono-commodity economy. While it is true that oil and gas constitute between 80 and 95 percent of export revenue, the dominance of oil in the entire economy is not as pronounced. By 2007 estimates, the Gross Domestic Product of Nigeria, in purchasing power parity, was \$359.4 billion. Its composition, by sector, was as follows: Agriculture-26.8%; industry -48.8% (including extractive industries and manufacturing); and Services -24.4%. Thus, the non-oil sector constitutes well over 50 per cent of the gross domestic product. The problem is that much of it is not exported, as it is either consumed locally, wasted or lost in informal sector export transactions. It is to be noted for instance, that while Nigeria is the largest producer of cassava in the world, it records no official export of cassava. If and when more of Nigeria’s oil is refined and consumed domestically, it will account for a lower proportion of Nigeria’s export revenue.

Apart from oil, Nigeria exports other commodities, such as cocoa and rubber, which in 2005 accounted for 60 per cent of Nigeria’s non-oil exports. The leading destination of

Nigeria's exports, in 2004, was US (47.4%); Brazil (10.7%); and Spain (7.1%). And the main sources of Nigeria's imports were China (9.4%); US (8.4%); UK (7.8%); the Netherlands (5.9%); France (5.4%); Germany (4.8%); and Italy (4.0%). Clearly, European member states are very important trading partners for Nigeria; although their importance is declining in favour of the US and China.

As a matter of fact, China's profile in Africa, including Nigeria, is rising fast, especially in the energy sector. Africa's export of crude oil to China constitutes significant portions of their total export and is of great importance to China as well. In December 2007, Angola's oil export to China constituted 90% of Angola's total exports, and 15% of China's oil imports. Other African countries from which China imports significant amounts of crude oil are Sudan, Congo Brazzaville, Libya and Nigeria. Chinese companies trade with, or extract oil from, about 20 countries in Africa. China is planning to increase the proportion of its imports of crude oil from Africa, rising to 40% in five years, from the current one-third of its total imports of oil.

In Nigeria, China is perceived as a very important development partner. The Federal Government of Nigeria (FGN) wants to establish a long-term, mutually beneficial relationship with China, especially involving partnership in extractive industry and development infrastructure. China is planning to build a refinery in Nigeria which will produce badly needed refined petroleum products for the Nigerian market; these are currently mostly imported. This relationship will be of strategic importance to Nigeria as it undertakes the implementation of its radical oil and gas reform programme.

Trade is of utmost importance to Nigeria. From it accrues more income per annum to Nigeria than is derived from aid and even foreign investment. In 2005, Nigeria's exports amounted to \$52 billion; and it secured about US\$26 billion in trade surplus. It also achieved a positive current account balance of US\$9 billion. The relatively little emphasis that is placed on aid in Nigeria arises primarily from its experience of how external financial assistance, especially when it comes in the form of external loans, can constitute a heavy national burden and a drag on the rate of growth. It is the significant amount of revenue that accrues from the oil and gas sector that forms the foundation of that attitude and policy.

### **3. RECURRENT ISSUES IN RELATIONS BETWEEN AFRICA AND EUROPE**

Broadly, there are certain key recurring issues in Euro-African cooperation. They are, in one dimension, issues of trade, aid and investment. On another dimension, they are issues of development, governance, security and access to, or ownership of, Africa's natural resources. Concern for forms of governance and asymmetry in development between Europe and Africa are often secondary to the overriding issue of access to, and ownership of, Africa's natural resource wealth. Similarly, investment and aid follow trade in Euro-Africa relations. While Europe is generally concerned with ensuring free and secure access to Africa's natural wealth, Africa is preoccupied with the type of ownership and control framework that will maximize its take from its natural resources. These divergent

concerns structure the architecture of the relationship between Europe and Africa. They shape the framework of cooperation between Europe and Africa on energy security.

Put differently, fundamentally, the perspectives of Europe and Africa on Euro-African cooperation diverge on virtually every issue. On trade, for instance, while Europe pushes for free trade in Africa, Africa demands fair trade. On aid, while Europe uses aid to facilitate access to strategic raw materials, and gain entry generally into Africa's policy process, Africa demands aid either as concrete evidence of sincere Euro-African partnership or as restitution or even reparation for past wrongs and current exploitation. On investment, while for Europe, investment, not only follows trade, but is essentially profit-driven, for Africa, aid and investment constitute key components of corporate and sovereign social responsibility which international development partners owe to Africa. Looking at the dimension of development, governance and security, the perspectives of Europe and Africa also diverge. Europe sees development as first and foremost increase in rate of growth; Africa sees it in terms of rise in human development index, and number and quality of physical and social infrastructure. Governance for Africa is more effective service delivery; for Europe, governance translates as accountability and transparency. Security for Africa means state security; for Europe it translates as security of investments and returns on them.

The challenge is how to build ramparts of cooperation between two sets of states and peoples, European(s) and African(s), with such diverse interests and divergent concerns. This central challenge is compounded by the different approaches to these issues deriving from their distinct historical backgrounds and experiences. Europe's preference for the logic of the market as the mechanism for growth, development and international cooperation contrasts with Africa's attachment to the logic of the state as the route to development and the basis of international cooperation. For Europe, the market liberates; liberalizes and stimulates; for Africa, the state protects, provides, secures and stabilizes. For Europe, African development is not really on the agenda, as a priority; what is of utmost and immediate importance is growth. For the common people, the ordinary citizens of Africa, development is a matter of urgent necessity; the route to it through growth is long and winding. The 'growth' stage in the development process can or, at any rate, should be bypassed. Paradoxically, for some members of the African ruling class, in some African countries, development is not also on the agenda, in all sincerity. The rhetoric of development is largely a strategy for political legitimization. It is in this sense, that there is a coincidence of interests between European and African dominant classes.

The solution that has been proffered to meet these fundamental contradictions is, at bottom, a European solution. It is "Governance". And, as indicated earlier, for Europe, governance is spelt basically as transparency and accountability. This solution has been reluctantly and superficially accepted in Africa; but its African interpretation is coloured by the African experience, concerns and interests. Every project in Euro-African partnership that has governance embedded in it is therefore subject to the rules of interpretations and susceptible to eventuation in vicious circles. It is knowing, or discovering and obeying the rules regarding how to break the vicious circles that constitutes the key to purposeful partnership between Europe and Africa in general, and

Europe and Nigeria in particular on matters of energy security, democracy and development.

### **3.1 .Emerging Issues in Nigeria-Europe Cooperation**

The main projects and policies that provide a basis for analyzing and understanding the framework for cooperation between Nigeria and the European Union and/or its member states and corporate bodies on energy, democracy and development, which we will like to discuss here, are two. They are: the Extractive Industries Transparency Initiative (EITI) and the Oil and Gas (Reform) Implementation Committee's Report (OGIC), The first project – EITI - is driven by international organizations, with Nigerian participation or cooperation; and the second is an initiative of the Federal Government of Nigeria (FGN)

## **4.0 EITI IMPLEMENTATION IN NIGERIA AND NIGERIA'S RELATIONS WITH THE EUROPEAN UNION**

The Extractive Industries Transparency Initiative (EITI) is a major plank for improving governance in the oil and gas sector in Nigeria. Nigeria was one of the first few countries to embrace the initiative because the Federal Government of Nigeria was convinced that it would strengthen the structure and process of governance of this crucial natural resource in the country. Nigeria has, therefore, not surprisingly, surpassed any other candidate or even compliant EITI country in the depth and breadth of the application of EITI as an instrument of transparency and accountability in the oil and gas sector. Consequently, the impact on the Nigerian economy and the Nigerian society has been significant, but not transformative.

### **4.1 The Principle, Law and Practice of EITI in Nigeria**

It is interesting to compare the application of EITI principles in Nigeria with the basic tenets of global EITI. Essentially, at the global level, EITI is a Publish What You Pay and Publish What You Earn mechanism. Companies, private and public, foreign and local, operating in the extractive sector of the economy are expected to publish what they pay to the host government; and the government is, on its part, supposed to publish what it receives from the companies. The task of a Multi-Stakeholder Group that drives the process locally is then to hire an administrative or financial expert to reconcile the two records, and publish the outcome for public access, information and use. The rest of the process, or the 'downstream' dimension of the EITI process, is the holding of government to account on the basis of the report. That aspect is left to civil society organizations to undertake on their own and with their own resources; it is not a main line function of the MSG. Also, the MSG is not expected to inquire into other matters like the volume of the extractive industries commodities produced, and how the rights to explore for or produce them are acquired. Neither is it expected to raise issues pertaining to the nature of the contracts signed between extractive industries companies and sovereign states nor to look into the enforcement of such contracts. **Put very starkly, EITI is an extractive transparency movement, not a public accountability enforcement machinery; it is also not directly an anti-corruption movement.**

Above all, EITI at the global level, functions on the basic principle of voluntarism; the MSG arrives at decisions mostly by consensus. No penalties are imposed, or supposed to be imposed, on governments, companies or civil society organizations that either violate or fall short of EITI principles and criteria. In short, EITI at the global level has a sharp narrow focus; and the EITI international Board guards this specific and pointed focus rather jealously. It performs, with a high sense of duty, the function of boundary maintenance between the clearly defined remit of EITI and the objectives and principles of other movements and organizations engaged in the task of combating corruption and promoting due diligence , transparency and accountability.

Nigeria's practice of EITI goes beyond all of that. At first, the implementation of EITI in Nigeria was voluntary; today, it is mandatory. It is backed by law which has provisions for sanctions and penalties for those that fail to cooperate with the NSWG. The law, NEITI Act 2007, requires NEITI to ensure **due process and transparency** in the payments made by all extractive industries companies to the Federal Government and other statutory recipients. It also enjoins NEITI to monitor and ensure **accountability** in the revenue receipts of the Federal Government from extractive industries companies.

Thus, for Nigeria, the principle at stake, or the principal concern, is not just transparency, or disclosure and openness. It is much more than that. It is also about timeliness and adequacy of payments by companies in accordance with the national laws and the clauses of the business contracts, and subjection of government's management of the revenue to monitoring and questioning by the public; the latter is in the realm of public accountability.

The NEITI mandate is even deeper than all that. It also embraces the duty to ensure **transparency and accountability** by government in the **application of resources** from payments received from extractive industries companies. Furthermore, the task of NEITI encompasses **eliminating all forms of corrupt practices in the determination, payments, receipts and posting of revenue** accruing to the Federal Government from extractive industry companies. This explicit anti-corruption mandate is, from the perspective of a purist EITI protagonist, somewhat alien to the global EITI movement.

In order to fulfill its rather broad and difficult mandate, NEITI, the Nigerian subset of global EITI, is expected to perform certain functions. Key among these is a system-enhancement function. NEITI is to develop a framework for transparency and accountability in the reporting and disclosure, by all extractive industry companies, of the revenue due to be paid to the Federal Government. Besides, it is the function of NEITI to evaluate the practices of all extractive industries 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**.

Furthermore, NEITI is required by law to appoint an independent firm of auditors to **undertake physical, process and financial audit** on such terms and conditions as may be approved by the National Stakeholders Working Group. More specifically, in each financial year, NEITI is required to direct the auditors to audit, in particular, the total revenue which accrued to the Federal Government for that year from extractive industry companies in order **to determine the accuracy of payments and receipts**. Perhaps, most significant of all, in terms of its superseding of the global EITI standard, NEITI is **to identify lapses and undertake measures that shall enhance the capacity of any relevant organ of the Federal, State or Local Government having statutory responsibility to monitor revenue payments by all extractive industry companies to the Federal Government**.

These far-reaching objectives and functions pose enormous challenges to NEITI. In practice, NEITI has focused on ensuring physical, process, and financial transparency in the oil gas sector. For this purpose, it has utilized principally the instrument of auditing conducted by a firm of independent auditors. Reporting templates are designed and administered by the auditors to what, in NEITI lingo, are known as “covered entities”. These are extractive industry companies that have oil blocks allocated to them for exploitation, and the regulatory agencies of the Federal Government, as well. The NEITI reports, that is the physical, process and financial audit reports produced for NEITI, by an independent firm of auditors, are then used as a basis to deliberately and consciously generate public debate on the oil and gas sector in Nigeria.

The reports are not just published or merely put on the web site of NEITI. They are presented at public fora specifically convened by NEITI to subject the reports to public debate. In the past, two types of public forum had been used for that purpose. One was the NEITI Report Round Table consisting of experts in the oil industry, experts in fiancé, representatives of civil society and the media, the Academia, representatives of oil and gas companies and Federal Government agencies that regulate the sector, members of the National Assembly (Nigeria’s federal bi-cameral legislature) and representatives of the international development community.

The second public forum used was the “Road Shows”. These were the public awareness and public enlightenment events held periodically in different parts of the country to stimulate public interest in, and support for the work of NEITI, and to subject the governing structure, process, and activities of NEITI to public scrutiny. Held, at intervals of about two or three months in the six geopolitical zones of Nigeria, the “road shows” involved a much wider audience or set of participants than the Round Tables. They were dominated by Nigerian civil society organizations, including the Nigerian chapter of the Publish What You Pay coalition. The participants also included the Governors of the States in the zone in which the road show was being staged, as well as the Speakers of the Houses of State Assembly (i.e state legislatures), representatives of traditional rulers, representatives of trade unions, representatives of universities, representatives of professional associations (lawyers,

accountants, engineers, geo-scientists etc), representatives of oil and gas companies, and representatives of the agencies of the Federal Government of Nigeria that regulate the oil and gas sector.

In future, and as part of the process of implementation of the NEITI Act 2007, the activities of NEITI built around the audit will include, but shall not be limited to, the following. There shall be a formal submission and presentation of the audit report to the President of the Federal Republic of Nigeria; the National Assembly, and the Auditor-General of the Federation. In fact, the language of the law is that, upon completion of the audit, it would be submitted with comments, by the auditors, to NEITI “which shall cause same to be disseminated to the National Assembly and the Auditor-General of the Federation and also ensure their publication”. The key words are, **NEITI shall ensure the dissemination and publication**, not only of the reports but also the comments of the extractive industry companies. This action in itself will generate a lot of public debate on the structure, processes, functioning and performance of extractive industries in Nigeria. For, apart from the fact that part of the tradition of the legislature in Nigeria is to hold public hearing on such reports, the NEITI Act 2007, specifically provides that “The Auditor-General of the Federation shall, not later than 3 months after the submission of the Report to the National Assembly, publish any comments made or action taken by the Government on the reports”[Section 4.7]

The Act also provides that NEITI, on receiving the report, shall cause the report and the comments on it by the auditors to be published for the information of the public, “provided that the contents of such report shall not be published in a manner prejudicial to the contractual obligations or proprietary interests of the audited entity”. [Section 14.1] This is both an emphasis on the provisions of an earlier clause of the Act, as well as a clarification or qualification of it. It is NEITI that is mandated to publish the report; and as a Multi-Stakeholder Group, it would, or should know how to do it in a manner that protects the interests of all

Furthermore, section 4.4 of the Act provides that NEITI shall submit bi-annual reports of its activities to the President and the National Assembly. This is expatiated upon in Section 14.3 which provides that “The NEITI shall prepare and submit to the President and the National Assembly, not later than the 30<sup>th</sup> September in each year, a report of its activities during the immediate preceding year, and shall include in such report, the audited accounts of the NEITI for that year and the auditor’s report thereon”. Presumably, the first report in the year will be a general report, and shall not include a financial report. But the second report must include a financial report. The submission of such reports not only to the President, but also to the National Assembly will have the effect of subjecting NEITI, its activities and performance to public scrutiny and criticism. NEITI has therefore to be very careful and meticulous in performing its functions.

To be frank and honest, NEITI has not yet begun to deal effectively with the other functions assigned to it, except that of remediation. It needs to, and is in the process

of working out a comprehensive strategic plan, to deal with its system maintenance function, its anti-corruption responsibility, and most important of all, its public accountability mandate. For the remediation function, it needs the cooperation of the regulatory agencies and the support, financial and technical, of all international development partners, including those from European Union member states. For its anti-corruption mandate, it needs to work very closely with the several anti-corruption agencies in Nigeria especially that dealing with economic and financial crimes. And for the public accountability function, the cooperation of civil society at both the national and international levels is critical. Some member states of the European Union, especially Germany, have some foundations that have a policy and a tradition of working with civil society in Africa. Their cooperation with NEITI will be very useful. European Union itself needs to show more practical and direct interest in the implementation of robust EITI mandates at the national level.

#### **4.2. The Role of EU in Promoting EITI and Assisting NEITI**

It was the head of government of an EU member state, UK, which gave public prominence, through a declaration, in an international summit, to EITI. So, in a sense, EITI is an European product. More substantially, the UK government initially housed the EITI coordinating body and funded the movement as well. Today, the Secretariat of EITI is in an European state capital; and its coordinators are predominantly of European origin or nationality. More important, some member states of the European Union are categorized as “Supporting Countries” and, in that capacity, participate actively in promoting the movement. These countries are Belgium, Germany, France, Italy, the Netherlands, the United Kingdom, Norway, Spain and Sweden. Of these nine states, only Norway has applied to become an implementing country; and has been accorded the status of “Candidate Country”. The non-European countries that are also among the Supporting Countries are: Australia, Canada and the United States of America. The Supporting Countries are represented in the global EITI Board; they make financial contributions to the World Bank managed Multi-Donor Trust Fund (MDTF). They provide occasional financial support to the implementing countries, especially, civil society organizations involved in implementing EITI. In Nigeria, for instance, direct financial support was provided to NEITI by the Department for International Development (DFID) of the United Kingdom: since inception, they have paid the salaries of the staff of the secretariat; and they funded the first EITI audit. Norway has also provided direct financial support, helping to fund the first West Africa EITI conference held in Nigeria. Other development partners from Europe stand in readiness to assist NEITI directly..

The Nigerian experience suggests that there is need for the European Union to do more collectively and as individual states. The home governments of the oil companies involved in EITI ought to be able to put pressure on them to cooperate fully in implementing EITI in those countries where they operate. When the international oil companies either delay or completely refuse to complete and return the audit templates distributed to them by NEITI’s independent auditors, the task of persuading, coaxing, or sometimes coercing the oil companies to comply is often left to the host government and the multi-stakeholder group. This does not reflect full

commitment to the EITI movement, on the part of the home governments, especially those that are classified as supporting countries.

The European Union also should initiate complementary legislation in their separate states, and have a similar law passed by the European parliament, to reinforce the work of OECD and the G8 in the area of transparency, accountability and due process. Some of the areas of relevance have been outlined in the Boell Foundation memo to the G8 mentioned earlier. For example, the EU should put its weight behind the emergence of more development-friendly International Investment Agreements in the extractive industry sector; introduce measures to penalize companies that create negative environmental and social impacts in the countries where they operate; enforce transparency in European banks in a manner that facilitates the repatriation of wealth stolen from Africa; and push for the application of the principles of fair trade to the bilateral and multilateral agreements between developed countries and the third world states.

Other policies that promote transparency and accountability in the extractive industries sector suffer the same inadequate attention and material support for such programmes. This can not be explained by the unwillingness of the oil companies to interfere in the affairs of the state. After all, the line between participation in designing and implementation of, not just macro-economic models, but also the governance packages to go with them is becoming blurred. Non-intervention by the EU in matters of accountability and transparency in Nigeria is not really a matter of principle; it is the product of the calculus of costs and benefits, gains and losses, indulged in routinely by the European Union member states. There are clear areas where the EU can fruitfully intervene. Assisting Nigerian anti-corruption agencies to coordinate their activities more regularly and effectively, to apply newly developed techniques to combat corruption and to exchange information between appropriate European institutions and the anti-corruption public bodies in Nigeria is one such area. The other is building the capacity of Nigerians and institutions that regulate the oil and gas industry to operate at the same level of professional expertise and competence with their counterparts in Europe and America. .

In Nigeria, European Union's interest in, and support for, the struggle by Nigerians to combat corruption are far stronger and more consistent than their interest in and support for democratization generally. Although Europe, both the union and its member states, do support programmes and projects that promote a deeper consolidation of the democratic process, in reality, they are more concerned about growth through trade and investment than about either democracy or development. Indeed, some of them argue that democracy is not necessarily the best form of government where rapid growth is the aim.

## **5. IMPACT OF THE WORK OF NEITI ON ENERGY SECURITY, DEMOCRACY AND DEVELOPMENT**

Disclosure, coupled with a culture of transparency, confers some benefits in respect of democracy and development. Release by the multi-stakeholder group and possession by the general public of reliable data and information about the oil and gas sector in Nigeria has the potential of empowering the people to hold government to account; of rebuilding confidence in the people concerning their capacity to bring about change by peaceful means, and of restoring public trust in governance. Armed with facts and figures on, for instance, revenue flows in the oil and gas sector, the Nigerian people are now in a stronger position to follow the money, to make demands and put pressure on public authorities for greater effectiveness, if not efficiency, in public service delivery.

However, the people can not effectively perform the function of holding government to account until and unless they are practically assisted to acquire and put to use the right as well as the capacity to organize for collective action. They have to organize themselves, or be assisted to organize themselves, in order to develop an effective collective voice in both the polity and the economy. It is the crucial role of civil society to facilitate the securing of the people's right to organize and the acquisition of the technical skills and emotional intelligence to transform the right into a potent force for change.

A vast array of facts and figures on highly sensitive matters was placed in the public domain following the release, dissemination and publication of the first audit report by the National Stakeholders Working Group of NEITI. Let us illustrate this point by citing facts and figures from the financial audit report, covering the period 1999-2004.

The financial flow figures reported by the Central Bank of Nigeria as revenue received by the Federal Government was less, by US\$16 million, than the figures reported as paid by the oil and gas companies. While CBN reported having received, on behalf of the FGN, US\$95,539 million, the oil and gas companies reported that they paid US\$95,555 million. It was explained that out of the total revenue flow of about US\$95.5billion received by the Nigerian government in the period 1999-2004, government flows to the joint ventures by way of cash calls and other items amounted to US\$18.2 billion, leaving a balance of US\$77.2billion to be paid into the federation account. Thus, the revenue available to the three tiers of government, in each of the six years under review, was about US\$12.867billion.

The frank disclosure of an un-reconciled difference between what the CBN recorded as received and what the oil and gas companies recorded as paid gave a lot of credibility to the audit report released by NEITI. The total revenue disclosed as available to government during the period also became a reference point in discussions about government's performance during the period under review. The data in NEITI's audit reports were compared with the amounts published by the Federal Ministry of Finance as what was distributed to the three levels of government month by month, starting from 2003.

There were similar frank disclosures in other areas. For instance, it was freely disclosed that the bulk of revenue accruing to Nigeria from the oil and gas sector derived not from royalties, taxes and penalties paid by the oil and gas companies. Rather, it emanated simply from the sale of equity crude and gas, which accounted for 65.74% (US\$62,804 million) of the revenue accruing from the sector. Royalty accounted for 11.09% (US\$10,392 million), while Petroleum Profit Tax constituted 19.8% (US\$18,927 million). Taken together, royalty and petroleum profit tax constituted a highly significant, but not predominant, proportion of the oil and gas revenue in Nigeria during the period. They accounted for US\$29, 319 million or 30.68% of total revenue. It was also disclosed that, despite significant differences, the tax and royalty receipts recorded by the CBN were largely reconciled, that is, not entirely reconciled with the payments on those items recorded by the oil and gas companies, but the gap was not significant. The difference of US\$16 million was estimated by NEITI as constituting 0.02% of the total revenue flow.

An equally important disclosure had to do with systemic handicaps of the public agencies that regulate the oil and gas industry in Nigeria. First handicap was the inability of the agency designated by the Nigerian constitution, as the owner and manager of government accounts, which is the Office of the Accountant General of the Federation (UAGF), to exercise control over information pertaining to revenue flows and to anticipate problems or shortfalls. Second, the Federal Inland Revenue Service responsible for assessing and enforcing taxes paid by the companies was found to be inefficient and incompetent. Its record keeping was found to be incomplete in the sense that it failed to record all company data on taxes sent to the CBN. And it did not use double-entry book-keeping or maintain a cash book or ledger. Moreover, the FIRS was unable to develop and enforce a PPT regime on the companies. Consequently, the PPT regime for the period covered “amounted to ‘unregulated self-assessment’ by the companies” themselves. The inefficiency and incompetence of the FIRS created room for potential loss of petroleum tax revenue by Nigeria. One evidence of this loss was that the operating costs reported by the joint venture companies for PPT differed significantly from the costs stated in their audited financial statements.

Third, even greater deficiency was discovered in the operations of the Department of Petroleum Resources (DPR). The DPR has overall responsibility for regulating the oil industry.. It monitors and collects royalties; it compiles production data used in calculating royalty and petroleum profit tax. Also the DPR approves exploration licenses, drilling programmes, development and production activity and capital equipment imports.

. The auditors reported serious anomalies in the royalty regime. It was found, for instance, that some oil companies, notably Shell, based their royalties on export figures rather than production figures as required by law, while others based theirs on production. It was reported, too, that the assessment, by the DPR, of royalties to be paid differed significantly from those of oil companies that produced the oil. The differences arose from the manner in which each agency or company factored quality,

production and price into their calculations. To illustrate, in terms of quality, the international companies used an average API (American Petroleum Institute degree) gravity for all the crude oil feeding into export terminal to calculate the price component of royalties. By contrast, the DPR factored in the different gravities produced from each oil field. And with respect to production, while some companies calculated production for royalty purposes on export volumes, the DPR took total production estimates from the joint ventures and then divided that number by each company's equity stake to work out royalties. At any rate, the estimates made by the DPR were of no operational utility, since the DPR never transmitted its royalty calculations to the companies or acted on them. Rather, the companies calculated their own assessments and paid unilaterally. Indeed, the auditors described the royalty regime as "unregulated self-assessment" To compound the problem, it was found that during the period, the accounting and documentation systems of the DPR were inadequate to accurately record the financial flows; the DPR lacked even cash book or ledgers to record royalty payments.

When these anomalies were disclosed and published, the Nigerian authorities were prompted to review the payments made by some of the oil companies. And the companies were asked to pay an additional sum of US\$500 million. I am not sure whether this amount has now been paid or not. The report by NEITI's auditors also triggered off some other kinds of action from the Federal Government. The President of the Federal Republic of Nigeria constituted an Inter-Ministerial Task Team (IMTT) headed by the Chairman of NEITI to formulate a Remediation Strategic Plan to rectify the deficiencies found in the public agencies that regulate the oil industry. During the period when the governing board of NEITI was being reconstituted, the Government set up a high level committee to investigate the loss of revenue arising from the kind of non-compliance of the terms of contract and the law by some oil companies that featured in the audit report of NEITI.

As the audit report revealed, some of the problems arise from unclear legislation. Tax laws are ambiguous in some respects, and the law on royalty calculation and payments is vague. The companies interpret the laws opportunistically to maximize their take from the Nigerian petroleum industry. They use, among other things, the incentives granted under MOU and on gas for PPT. For example, in Nigeria some incentive is granted in respect of associated gas; but international companies claim allowances for both associated gas and non-associated gas under the PPT. The NEITI audit revealed that the companies may have made claims of over US\$900 million in excess of what is due to them. Their claim is based on an interpretation of the PPT Act; while the auditors argue that the more appropriate law is the Company Income Tax Allowance (CITA) legislation which stipulates that gas profits should be taxed.

The most critical problem, however, is that as the audit report stated, the government regulatory agencies are too weak and too poorly resourced to challenge the companies effectively. In contrast, the international companies have access to world class tax accountants. Besides, the overall authority structure for overseeing the financial flows is not functioning effectively. The OAGF does not receive adequate and timely

information from the Central Bank and is therefore not able to act as the overall manager in charge of the financial flows. The Revenue Mobilization, Allocation and Fiscal Commission (RMAFC) has the constitutional responsibility for monitoring all revenue flows, but it lacks the capacity and the authority, having never had access to the Nigeria National Petroleum Company.

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## **6. COMPREHENSIVE OIL AND GAS REFORM AFOOT IN NIGERIA**

The work of NEITI has had even wider implication in the sense of influencing the direction of a comprehensive reform of the oil and gas sector now underway in Nigeria. It is rewarding to examine how European States and European oil and gas companies have fared in terms of their cooperation with Nigeria in implementing this initiative. A brief examination of their performance in terms of several variables, reveals that their commitment to EITI as it has developed in Nigeria is not really whole-hearted. In terms of financial and material support for the initiative at the national level, it has been minimal, partly because government and civil society are reluctant to accept financial assistance from them. But they could organize their own activities. In terms of their cooperation in providing data and information about their activities in Nigeria; generally they have cooperated, but sometimes, state pressure had to be used to persuade them to cooperate. Concerning their cooperation in reconciling the data collected by NEITI's independent firm of auditors, they have been of some help, but have not cooperated fully. In respect of their cooperation in paying what they owe to Nigeria as a result of their non-compliance with the laws, regulations and contracts pertaining to their operations in Nigeria, here they have been very uncooperative. This way of looking at the matter provides a focused insight into the nature of the cooperation between Europe and Nigeria on energy security, democracy and development.

### **6.1 Oil and Gas Companies in Nigeria and Disclosure within EITI framework**

Initially (2004-2007), the oil and gas industry in Nigeria was represented in the Governing Board of the Nigeria Extractive Industries Transparency Initiative (NEITI) by four oil and gas companies: Dubri (indigenous), Shell Petroleum Development Company (European international oil company-IOC); Chevron Texaco (American IOC), alternating with Exxon-Mobil (American IOC) and Nigeria Liquefied Natural Gas Company (NLNG), joint venture between Nigeria and an IOC.

The energy sector in Nigeria is undergoing a radical transformation. The oil and gas reform bill currently being processed for passage into law at the Nigerian national legislature embodies far reaching changes that are likely provide a completely new playing ground for exploration, exploitation and production of oil and gas and refined petroleum products. The major oil companies operating in Nigeria, including those from Europe obviously detest the bill and are likely to fight to kill it. But the Nigerian government is determined to push it through. This is another area of potential conflict between Nigeria and the European Union, which has a tradition of supporting the corporate bodies from Europe operating in Nigeria.

The Petroleum Industry Bill (PIB) constitutes a key element of Nigeria's emerging energy policy. The other component is the power sector. The oil and gas reform programme reflects an analysis of the fundamental problems of the industry. The difficulty the Nigerian government has had over the years is to provide enough resources to put into the industry in order to grow oil and gas reserves and acquire indigenous capacity to exploit the reserves and produce an increasing amount of oil, gas and refined petroleum products. This was a major factor that motivated the reform. The NEITI audit reports revealed that the Nigerian government's flows to the joint ventures between the Nigerian National Oil Company (NNPC) and the IOCs, in the form of cash calls and other items, amounted to roughly US\$18.2 billion, out of an aggregate revenue of US\$95.54 billion in six years, leaving a balance of US\$77.32 billion. Thus, about 19 per cent of the Nigerian revenue from the sector is ploughed back to finance production at the same level. It was realized that Nigeria's policy of increasing production from 2mbd (two million barrels a day) to the projected 4mbd require investment of much money than the government could muster, without jeopardizing both social welfare and other capital development projects. The continued production of oil at the same level was already under threat because of the inability of government to meet its financial obligation to the joint ventures.

The rationale for the PIB was, therefore, in part, to free industry from high dependency on the government. To provide enough resources to fund and grow the industry, there was need to create the enabling environment for the private sector to participate more actively in the industry. A complimentary motivation for introducing the PIB was to create opportunities for Nigerian nationals to develop the expertise and competence to become deeply involved in the oil and gas industry and to participate fully in oil and gas production in Nigeria, starting from exploration, through refining, and the distribution of the petroleum products.

The overall, and fundamental objective of the reform was to infuse the principles of transparency and accountability, as well as an orientation of professionalism in the governance of the petroleum industry. There was a feeling in government circles that the industry had been poorly managed by incompetent, corrupt and irresponsible officials. Besides the industry was perceived as debilitated by a maze of complex, overlapping, yet contradictory laws and regulations. Furthermore, some of the laws regulating the industry had become obsolete. The legal framework within which the industry functioned had in fact become inadequate in the face of the challenges facing it. The PBI sought to establish a comprehensive legal and regulatory framework, clarifying jurisdictional boundaries between institutions or regulatory authorities and creating new ones for the industry. .

The underlying essence of the reform is captured in the preamble of the Bill where its fundamental objectives were set out. The Bill reaffirms the Nigerian state's sovereign ownership of petroleum resources, as a thrust for the Nigerian people. It affirms that the management and allocation of petroleum resources and their derivatives shall be conducted "strictly in accordance with the principles of good governance, transparency and good governance in Nigeria". Indeed, specific reference is made in

the PBI to NEITI. “In achieving their functions and objectives under this Act”, the Bill states, “the Institutions and the National Oil Company shall be guided by principles of the Nigerian Extractive Industries Transparency Initiative”.

Perhaps the main areas of concern to the oil and gas companies, including the IOCs, have to do with provisions about Nigerian content and the enormous powers given to the new institutions, authorities and agencies, especially the Nigerian Petroleum Inspectorate, the technical regulatory institution, to enforce the provisions of the Bill. Among the processes that have been made mandatory in the Bill are: involvement of indigenous companies and manpower as well as the use of locally produced goods and services in the industry; preferential treatment, or indeed restriction of access, to Nigerian companies and organizations, with requisite capacity and competence, in the award of contracts for work or service provisions; and the provision that all companies involved in any area of the upstream or down stream petroleum shall, as a condition of their license, lease, contract or permit, comply with the terms and conditions of any law relating to the Nigerian local content law in force at the time. Failure to comply with the terms of any local content law as determined by the NPI shall be a ground for revocation of license, lease, contract or permit that may have been previously granted to the company that failed to comply with the main terms.

The NPI is endowed with immense powers by the Bill. As the sole technical regulatory authority, the NPI, it is to administer all licenses and permits held by any person; has the power to seal up any premises or facility or plant where there has been a contravention of the Act or any other related law. The NPI, in pursuit of its mandate can halt the transportation, processing, manufacturing, storing, dispensing, storing, distribution or sale of oil, gas, petroleum products or its derivatives, where there is a contravention of the Act.

The relation between Nigeria and European Union and its member states is likely to witness conflict if the potentials of both the NEITI Act 2007 and the Petroleum Industry Bill are fully or significantly realized. The EU and its member states play very crucial role in the Nigerian energy sector; and Nigeria is hugely relevant and important in the energy security calculations of the European states that make up the European Union. Therefore, any strains in their bilateral relations are likely to hurt both countries seriously.

Several companies based in the member-states of the European Union have substantial investments in Nigeria’s oil and gas industry. Shell (UK), Total and Agip (Italy), and Elf (France) along with companies based in the United States, namely Exxon Mobil and Chevron, dominate Nigeria’s oil and gas sector. The NEITI audit report shows that Shell provided the following production (net terminal receipts) figures for the period between 1999 and 2004, from Bonny –in million barrels: 145.0; 157.1; 153.8; 142.8; 185.7; 167.9 respectively. This came to 952.3million barrels in six years. The next major producer is Chevron, which produced from Escravos the following: 137.9; 140.5; 146.6; 122.7; 113.4;and 106.9. The total for Chevron was

768.0 million barrels. Between them, they produced 1,720 million barrels out of a total national production of 4,955 million barrels, or 37.4%.

Much of Nigeria's oil is produced by the Joint Ventures between Nigeria and the oil majors; and these ventures are mostly with the American and European companies: Chevron Nigeria Limited (US); Elf Petroleum Nigeria Limited (France); Mobil Nigeria Unlimited (US); Nigeria Oil Company (Italy); Panocean Oil Corporation (?); Shell Petroleum Development Company (UK); and Texaco Overseas (Nigeria) Petroleum Company (US). The Joint Venture arrangement is likely to be phased out with the commercialization of the NNPC, and the clear preference of the Nigerian government for Production Sharing Contracts which relieve it of the responsibility of providing equity capital to grow the industry.

The production of oil and gas in Nigeria is carried out amidst social and armed conflict arising from the way in which the Nigerian state, with its heavy dependence on oil, is constituted. The abundance of crude oil as the main source of revenue has transformed the Nigerian state into a 'rentier' state characterized by autocracy, corruption, and conflict. The Nigerian state does not depend on taxes extracted from a majority of Nigerians, for security, development and welfare. Therefore Nigerian politicians have no compelling reason to genuinely struggle to secure the mandate of the people; democratic legitimacy is not on their agenda. On the contrary, they use the revenue accruing from oil to, among other things, placate the leaders of various groups or to purchase coercive instruments to beat them into line. A far more important point is that the social class structure in Nigeria, characterized by a very weak, fractionalized and unpatriotic middle class, does not permit the mounting and sustenance of an effective and enduring opposition which is necessary to compel government and the bureaucracy to be accountable. The absence of easily accessible and dependable channels of redress for social injustice leaves the oppressed with little option than resort to anomie. This is the basic explanation for the pervasiveness of conflict in the Nigerian political system.

The response of the state has been principally the use of force to suppress peaceful opposition and armed rebellion. The development partners of Nigeria, including the European Union and its member- states, by and large, support this strategy of coercion. But they also provide support for Nigeria's economic and political development programmes. The European Union's member states are among the most significant suppliers of arms and ammunition to Nigeria. They supply Nigeria with fire arms, ground vehicles, and military aircraft. In 2004, such supplies were of the value of EUR82 million, and rose to EUR86 million in 2006. The UK extends military technical assistance in the form of training, and training facilities, but also provides funds. Germany also provides military technical advice through its Technical Advisory Group stationed in Nigeria. France too provides similar assistance. The EU itself has created an African Peace Facility Fund, to support African-driven or – managed peace-keeping operations. In providing such support, the European Union and its member-states are motivated by a number of considerations: guaranteeing a steady supply of oil and gas from Nigeria; encouraging African states, led by Nigeria,

to drive and manage the peacekeeping operations on the continent; and shoring up the Nigerian government against domestic dissidents and foreign terrorists.

The financial and material support given by the European Union and its member states to Nigeria in the areas of democracy and development is more substantial in quantum. All these had been documented within the framework of FRIDE studies and seminars, and we need not reproduce them here. What is important to stress is that the African peoples do not perceive Europe as genuinely interested in the development of their economies and the improvement in their standards of living. Their interpretation of some of the statistics emanating from Europe and America is that Europe is more interested in maintaining its very high standard of living at the expense of Africans. Two of such statistics are presented below, just for illustration.

**. What comes second for Europe, America and the world? »**

<b>Global Priority</b>	<b>\$U.S. Billions</b>
Cosmetics in the United States	8
Ice cream in Europe	11
Perfumes in Europe and the United States	12
Pet foods in Europe and the United States	17
Business entertainment in Japan	35
Cigarettes in Europe	50
Alcoholic drinks in Europe	105
Narcotics drugs in the world	400
Military spending in the world	780

<b>Global Priority</b>	<b>\$U.S. Billions</b>
Basic education for all	6
Water and sanitation for all	9
Reproductive health for all women	12
Basic health and nutrition	13

**7. CONCLUSION**

To a limited extent, the emerging governance strategy embodied in the EITI movement has produced a positive impact in Nigeria. Taken together with some macro-economic and anti-corruption reform programmes, it has led to greater participation by citizens in opening up a hitherto opaque oil and gas sector to public

scrutiny. It has provided ammunition to the citizens to hold government to account in more concrete ways. Together with the economic reforms, it has opened the economy to greater amount of foreign investment and given a boost to the domestic product per capita. However, these reform programmes, including EITI, have had little or no impact on the level of poverty and the well being of the people. Not surprisingly, serious violent conflicts persist in Nigeria's Niger Delta, making it difficult to implement, in a meaningful and sustained manner, development projects in some parts of that region. Nor have programmes and projects on energy security, democracy and development changed the fundamentals of Nigerian politics which remain patently undemocratic. In the efforts to improve the situation, European Union and its member-states have played an important role and can still play much more effective part in ensuring energy security, democracy and development, not just for Europe, but for Nigeria and Nigerians as well.

## IMPACT OF THE REFORMS ON NIGERIAN ECONOMY-1

- **FDI INFLOW TO NIGERIA, 2000-2007**
- YEAR                      INFLOW(US\$ billion)
- 2000                      1.47
- 2002                      2                      Source: *Intelligence*
- 2003                      2.17                      *Weekly* Vol1 No 2
- 2004                      2.12                      **Growth in 2007 was driven**
- 2005                      3.4                      **by the oil & gas, telecom,**
- 2006                      5.4                      **and financial sectors**
- 2007                      7.6

## IMPACT OF THE REFORMS ON NIGERIAN ECONOMY-2

- GDP PER CAPITA (PPP \$ ), 2003-2007
- YEAR                      GDP PER CAPITA
- 2003                      875
- 2004                      900      Source: Same as
- 2005                      1000    above
- 2006                      1400
- 2007                      1500

## REFERENCES

1. Nigeria Extractive Industries Transparency Initiative, Audit of the period 1999-2004 (Popular Version)
2. Fundación Para Las Relaciones Internacionales Y El Dialogo Exterior (FRIDE), Energy; A Reinforced Obstacle, by Richard Youngs, 2007
3. JosBoonstra, Edward Burke and Richard Youngs, The Politics of Energy: Comparing Azerbaijan, Nigeria and Saudi Arabia (FRIDE., 2007
4. Anna Khakee, Energy and Development: Lessons from Nigeria. (FRIDE)