

ROLE OF CIVIL SOCIETY IN THE BUDGETING PROCESS
FOCUSING ON THE NEITI MOVEMENT
AS AN ASPECT OF THE BUDGETARY PROCESS

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1. **INTRODUCTION**

THE MEANING OF CIVIL SOCIETY

The term ‘Civil Society’ refers to an *ensemble* of non – state organizations, associations and interest groups which, collectively, help to maintain a check on the power of the state and to promote public interest through their own efforts. The power of civil society, unlike that of the state, is derived from a moral force, rather than from law. It is the product of networking and organisation, rather than of constitutions and institutional structures. Civil Society organisations operate in the realm of public life, but they are not political association or institutions. They are free associations of individuals and groups which are however differentiated from the private sector by the important fact that they are not – for – profit (i.e. non – profit – making) organisations. And they are distinguished from political associations by the critical characteristic of being both non – partisan and independent of the state. They do not engage in struggles for state power; nor do they subject themselves to control by government and other apparatuses of the state.

Civil Society organizations are most effective when they are self-reliant, self-governing, autonomous, and free from the corrupting influence of state – power and of the commercial world.

The world of civil society is voluntary associational life outside the state and above commercial motives. Civil Society occupies a self-appropriated space, the space of un-coerced human association, characterised by self-governance but directed towards public service.

In the light of this definition of Civil Society, Civil Society organizations exclude the following groups: multinational and indigenous oil companies; commercial enterprises including associations of contractors, consultants, marketers; state bureaucracy; all levels and arms/branches of government; political parties. Civil Society organizations consist of not – for – profit, non governmental organizations, as well as independent trade unions. They also include any branch of the media that is non-partisan, not commercialised and free.

2. THE ROLE OF CIVIL SOCIETY IN PROMOTING TRANSPARENCY ND CURBING CORRUPTION

Given these basic characteristics, the role of Civil Society is critical in promoting transparency and accountability in governance and in curbing corruption as well. Four specific roles which civil society organizations can play in these respects are:

- (a) The Role of the Supportive Advocate and Sympathetic Partner of state agencies engaged in promoting transparency and combating

corruption. The strategy adopted by Civil Society organizations that play primarily this role is that of quiet collaboration with, and public defenders of the actions of, anti corruption state agencies. It is a useful and necessary role but it often leads to much dependence on the state agencies and carries the danger or a risk of making the Civil Society Organizations indistinguishable from the state agencies, and sharing in both their triumphs and their failures. As Novak puts it, “turning to the state is considered a morally inferior, although sometimes necessary, way of proceeding, a falling away from the project of self reliance and self-governance –

[<http://www.catholiceducation.org/articles/politics/pg00221.html>].

- (b) The Role of Objective Monitor of the processes of promoting transparency and public accountability and combating corruption by State and Private-Sector Agencies. This role demands the possession of the skills of scientific research, monitoring and articulation. It carries the risk of tainting the image of Civil Society organizations that stress this role in the sense of making them appear partisan, political and destructive, rather than non-partisan, apolitical and constructive. Yet it is a useful and necessary role. Its effective performance depends critically on the existence of a free and independent press.

- (c) The Role of an Initiator and Innovator of Anti-corruption programmes and strategies as well as builder of national integrity systems. This is the highest and most productive role of Civil Society in the crusade for transparency and public accountability. It demands the highest degree of social commitment on the part of members of Civil Society organizations and requires such high level of expenditure that can

hardly be mustered by many Civil Society organisations especially non-governmental organizations. In Nigeria, it is the nationwide federation of trade unions that can mobilize most easily the financial and intellectual resources to play this role effectively. Ironically, this group has not been adequately incorporated in the Civil Society anti-corruption pro-transparency movement.

- (d) The fourth role is a combination of the second and third roles outlined above. The two roles are compatible and mutually reinforcing. Roles one and two or one and three are mutually exclusive and contradictory.

3. ROLE ENVISAGED FOR CIVIL SOCIETY ORGANIZATIONS IN THE NEITI BILL.

The role envisaged by the NSWG/Government for Civil Society, as reflected in the NEITI draft bill is that of supportive advocate and sympathetic partner. This is clearly demonstrated by the provision of section 6.2 of the Bill. It states that, in making appointment into the Directorate of the NEITI – the NSWG – the President shall, as much as possible, include not only extractive industry experts, but also “Civil Society and members of labour unions in the extractive industries”. The rationale for the acceptance of this role by some Civil Society organizations is the provision in the Draft Bill that NEITI shall be “an autonomous self-acting body”. Besides, Civil Society finds the objectives of NEITI laudable and worthy of support by all patriots. The NEITI is to ensure “due process and transparency in the payments made by extractive industry companies to the Federal Government and its agencies”. It is also to “ensure accountability in the revenue receipts of the Federal Government from extractive industry companies”. Further, the NEITI is to “eliminate all forms of corrupt

practices in the determination, payments, receipts and posting of revenue accruing to the Federal Government from extractive industry companies”.

The Chairperson and members of the NSWG are striving to make it operate as an autonomous entity. Nevertheless, by law, the governing board of NEITI is an arm of the Presidency. Its members are appointed by the President, and will continue to be so appointed. The NSWG is answerable to the President, to whom it reports. The funds for sustaining the process come from and will continue to be provided by the Federal Government and its international cooperating partners. So NIETI is, clearly, a government driven and controlled initiative. The role of civil society is supportive and subordinate.

However, given certain conditions, the role of Civil Society in the process can be enhanced. First, Civil Society organisations need to procure for themselves a comprehensive package of extensive capacity building in the form of training, facilities, equipment and independent source of funding. This should include also building their own data and information base and enhancing their knowledge about all aspects of the extractive industry. Such data bank can only be established through well-organised extensive research. There is therefore need to establish formal links with Universities in Nigeria and other countries on this matter.

Second Civil Society is required, of necessity, to build up an independent fund of its own to enable it formulate and implement an agenda of research-based advocacy, public enlightenment and protests or agitations, directed at the industry (indigenous and multinational) as well as government at all levels and in all aims. This will require a massive fund-raising effort and perhaps the

establishment of a special Trust Fund on Extractive Industry Transparency Initiative.

Third, Civil Society Organizations have no option but to widen and deepen their memberships, extending them to grassroots in order to be creditable and to acquire legitimacy among members of the wider Nigerian Society. This requires that Civil Society organizations themselves, should cultivate the culture of public accountability not only in the financial sense, but also in the social or political sense.

Fourth, to be effective, Civil Society Organisations need to devise new effective tools for fighting corruption and promoting transparency and public accountability. It needs to skilfully employ, for instance, the tools of integrity pact, memorandum of understanding and school age democracy, aimed at building consensus and promoting sensitisation on the culture of transparency and public accountability beyond what the statute books provide. Fifth, Civil Society needs to build alliances beyond the confines of non-governmental organisations specifically engaged in monitoring and observing the oil and gas sector to acquire the requisite clout that could force out from public office any officer or company official found to have engaged in corrupt practices in any part of the extractive industry.

4 **THE BUDGETARY PROCESS AND THE NEITI MOVEMENT**

Budgetary Process refers to the determination of the revenues available and specification or distribution according to the different expenditure heads and priorities.

- (a) NEITI Movement deals with the revenue aspect of the budgetary process. It helps CSOs to know how much revenue is available to government, which forms the basis of budgeting.
- (b) The NEITI process enables Civil Society to have the data for evaluating the political will of government in providing social services and physical facilities for the people.
- (c) The NEITI process provides a basis for mobilizing the people (CSO) against irresponsible and unaccountable governments.
- (d) The NEITI process enables CSOs to acquire credibility in questioning governments concerning the annual statement of accounts published by some state governments.
- (e) It enables CSOs to effectively question the priorities set out by governments as reflected in the distribution of the available national, state, local government income to different social, economic and political/administrative sectors.

CSOs play and can play different roles in the budgetary process

- (a) Budget monitoring in making of the budget (revenue and allocation to expenditure heads) and budget implementation
- (b) Budget advocacy: Proposing either increased allocation to budget heads and /or reduction/removal of others.
- (c) Making alternative budget proposals
- (d) Insisting that annual budgets be in line with medium term or long term development plans.

Specific Roles to be played by Civil Society in the NEITI Process

- (a) Spreading simplified knowledge to the Nigerian public about the structure and operations/functioning of extracting industries and the workings of relevant government agencies.
- (b) Communicating of the simplified version of the audit reports by the independent firms of auditors to the generality of Nigerians.
- (c) Employing the knowledge and reports to challenge government at all levels about their provision or non-provision of public services.
- (d) Helping to enforce the legal sanctions against companies and officers exposed for collaboration in denying Nigerians the benefit of the proceeds of extractive industry.

ISSUES ON WHICH CSOs SHOULD TAKE A POSITION AND WHAT POSITION THEY MAY TAKE

1. The legitimacy of the Independent Firm of Auditors appointed by the NSWG – NEITI – Specifically the issue is whether some aspects of the powers of the NEITI/NSWG as embodied in the NEITI Bill do not contravene certain provisions of the constitution, for instance, its power to appoint an independent firm of auditors. The difficulty is that the 1999 Constitution confers on the Auditor-General for the Federation the responsibility of appointing such auditors. A related issue is the question of to whom the audit reports should be submitted. Is it to the NSWG and the president or the Auditor-General for the Federation and the National Assembly?
2. This is a legal issue. The CSO can and should put together a panel of lawyers to address the issue and find a solution to it.

- (a) A possible solution is to have the Auditor-General formerly appointed as a member of NSWG/NEITI and have the letter appointing the auditor signed by him. The other (second) step will be to have him forward the report to the NA under the hand of the Auditor-General and simultaneously make it available to the general public.
- (b) The Role of the Legislature (national and state) in the NEITI process. How can Civil Society Organisations facilitate the over-sight functions of the national and state legislatures over the executive arm with respect to Oil revenue and expenditure transparency – collecting, collating and publicising data on Oil revenue/income and oil expenditure.

The question posed by the National Assembly during the public hearing should be rephrased. The issue is how to consolidate the institutional link between the NSWG and the legislature to promote transparency in the Nigerian extractive industries. The NEITI process can be managed in such a manner as to strengthen the oversight functions of the legislature over the Nigerian extractive industry. How can this be done; what role should civil society organizations play in that regard?

The NSWG/NEITI should not be viewed simply as an arm of the executive; nor even simply as an arm of the state. It is best perceived as an experiment in institution building, straddling state and society. It should therefore be answerable, not only to the Presidency, but also the National Assembly. More important, it should be answerable to the Nigerian public through a regular machinery – a machinery of the legislature.

The NSWG/NEITI should submit the audit reports to the Presidency, the National Assembly and the Nigerian public and take steps, through its civil society arm, to generate public debate on the report. The representatives of the Nigerian Legislative shall simultaneously initiate public hearing on the audit reports with a view to strengthening the law on extractive industry.

The role of CSOs is crucial in making the audit reports intelligible and bringing all facets of the Nigerian Society into the debate.

3. Putting pressure on Oil companies and Government to supply the information/data required by the firm of independent auditors to enable it complete its work. Except AGIP, Chevron, Mobil and Shell, all other Oil companies have not supplied the auditors the data required for auditing of the physical flows. These data are crucial - production volumes data, and “network schematises for oil and gas”. Even Shell had, as at the end of October, not provided its production volume data.

As for government entities (NNPC, PPMC and the Refineries) they too had, by the end of October 2005, provided no information that would enable the auditors do their work in respect of physical flows. The government had not, as at the end of October 2005, provided certain reports needed by the auditors especially the Abisoye report on the upstream activities and the Menas Associates report on oil theft and bunkering.

CSOs can play crucial role in this respect by: publicizing the failure of oil companies and government agencies (naming the companies and agencies) to provide the required data, information or reports; demanding that they be provided and where possible presenting to the auditors – publicly – unofficial copies of the reports obtained through the efforts of the CSOs themselves.

Also CSOs need to conduct some research into the methods and level of record - keeping in oil companies and government agencies; revenue receipts and payments in the extractive industry; and then on the basis of the research, organize training workshops, in collaboration with international agencies on the issue of record keeping in the modern age.

Problems and Challenges Facing Civil Society.

- a. The structure of the Nigerian Society.
 - Ethnicity/Sub-ethnicity
 - Unemployment/Illiteracy and poverty.
 - Patron-Client ties fed by other problems.
 - The undue politicization of these factors

- b. Organizational weakness of NGOs and their poverty in membership and funds

- c. The Ruthlessness of public offers, especially at the State and Local Government levels.

- d. Depreciation of social capital – i.e.
 - Weakness of social norms supportive of a transparency and accountability at grassroots level (including primary and secondary schools and universities)
 - Weakness/destruction of mutual trust among social groups and between them and the state institutions, leading to weakness of loyalty to the state.
 - Political distance between leaders and constituents leading to alienation of the people from the political leadership.

Tools Required to Perform the Role Expected of Civil Society.

- a. Creation of ICT-based NEITI information centers in at least the six geographical zones: These are to be known as NEITI information centers.
- b. Creation of list serve for civil society- NSWG interaction, specifically on NEITI issues.
- c. Establishment of community radios at local government headquarters to discuss issues of people's welfare, wealth, education, roads, etc... as they relate to the budgetary processes and income revenues from oil accruing to all levels of government and their utilization.
- d. Passage of certain enabling bills to enhance civil society participation in the movement for the transparency, public accountability and fight against corruption – FOI, WB, Bill to specify procedure for public declaration of assets.