

# NEITI

BRINGING TRANSPARENCY & DUE PROCESS TO NIGERIA'S EXTRACTIVE INDUSTRY

# HANDBOOK

ON

**TRANSPARENCY AND REFORM IN THE  
OIL, GAS AND SOLID MINERALS SECTORS**

PREPARED BY

**THE NEITI SECRETARIAT  
THE PRESIDENCY  
ABUJA**

***In their own words.....***

*"I personally have no doubt that Africa's era to be clean, open, transparent and accountable is now. I rejoice greatly that Nigeria is and will continue to be at the helm of the continent's new transparent dawn."*

***President Olusegun Obasanjo, Nigeria***

*"NEITI is the revenue side of the Obasanjo Administration's Due Process Mechanism."*

***Obiageli Ezekwesili, Cabinet Minister and Chairperson, NEITI***

*"The NEITI forum is a landmark, for the nation and certainly for me. It is the first time that I have been asked to talk to the general public about the oil industry, even though for more than four decades Nigeria has been dependent on its revenues. This trend, which started at international levels, will happily become a national trend with the most important stakeholders-the people- knowing about and participating in decision making in respect of this vital resource."*

***Yinka Omorogbe, Professor and Head, Faculty of Law, University of Ibadan, Nigeria***

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# Introduction

The NEITI Handbook is an attempt to throw light at the policies and practices of the Nigerian Extractive Industry (EI).

For over 40 years international extractive resource companies had operated in an opaque manner protected by confidentiality clauses with the Nigerian government that prevented them from disclosing fundamental details of their operations to Nigerians. This led to distrust and a poor perception by Nigerians of their EI.

The NEITI handbook will de-mystify the EI and enable Nigerians have the basic knowledge of the activities and terminologies prevalent in their EI. Such basic knowledge will form the building blocks of deeper understanding that will hopefully lead to the right questions being asked about the management of their resources.

The NEITI Handbook will also communicate the progress being made by the Obasanjo Administration to bring transparency to and engender due process in the Nigerian EI

I hope you take as much pleasure in reading this brochure as I had in writing it.

## **Obiageli Ezekwesili**

Minister of Solid Minerals Development and  
Chairperson, Nigeria Extractive Industry Transparency Initiative (NEITI)

September 2005

## **CHAPTER 1 NEITI**

### **1.1 What is NEITI?**

The acronym NEITI stands for the Nigeria Extractive Industry Transparency Initiative.

The NEITI is the Nigerian subset of the global Extractive Industry Transparency Initiative (EITI) aimed at following due process and achieving transparency in payments by Extractive Industry (EI) companies to governments and government linked entities; and in the revenues received and reported by those governments and entities.

## 1.2 NEITI Background and Measures to Enhance Extractive Revenue Transparency for Public Information and Policy Making

Policy makers in Nigeria need good information on public finances to devise the right policies, and the public needs good information to trust the policy makers in handling the country's wealth. Knowledge about the significant revenue flows from the oil and gas sector is currently inadequate and marred by inconsistencies and deficiencies. This gives rise to concerns about governance both within Nigeria and internationally. The Federal Government of Nigeria (FGN) has recognized that improvements in the transparency of petroleum revenue data are needed for the effective management of public resources and to improve the image of Nigeria at home and abroad.

### 1.2.1 Why Transparency Matters

A number of persuasive arguments can be made in favour of greater revenue transparency in the Extractive Industry (EI):

- **Democratic Debate:** Transparency is needed to allow democratic debate on fiscal policy and spending priorities. Accurate information on revenues received is the starting point for such debate. An argument sometimes advanced against transparency in EI operations is that pressure to increase spending will build up once the availability of fiscal resources from that sector is made known. However, it would seem better to inform the public and foster constructive debate. The existence of oil resources cannot be kept secret, and lack of information on the resulting revenues can be a source of debilitating social and political tensions. When information is hidden, people can build up unrealistic expectations about the oil riches which are bound to be frustrated.
- **Accountability.** Revenue transparency will act to increase accountability in both the executive and legislative branches of government at all levels (Federal, state and local), reducing opportunities for corruption and the potential for waste of public funds.

- **Economic Management and Forward Planning.** For economic management, budget decisions and forward planning, government needs to be able to both accurately monitor its current financial position and make adequately robust projections of future revenues.
- **Access to Finance and Investment.** Enhancements in transparency are increasingly demanded not only by citizens within the country, but also by international financial institutions, investors and banks, donor organizations and international civil society. Lack of transparency is seen as a major obstacle to the creation of a favourable investment climate, better management of public resources and poverty reduction. Progress on the transparency front can be expected to attract increased finance and investment.
- **Why the focus on Petroleum?** Petroleum is often singled out because of the very substantial economic rents and revenues oil and gas are capable of generating. Certainly an emphasis on petroleum is justified in Nigeria, where it accounts for over 70 percent of revenues at all levels of government, 40 percent of GDP, and more than 85 percent of foreign exchange earnings. Also, the high-risk, high cost and uncertain nature of exploration, coupled with a long gestation before profits are realised and the finite nature of resources, makes financial management of the sector difficult.
- **Collection of Revenue vs. Use of Revenue.** 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.

### 1.2.2 Components of Petroleum Revenues in Nigeria

To begin to tackle EI revenue transparency issues, a basic understanding of the several components of EI revenues is essential. As a result of varying applicable legal, fiscal and contractual arrangements, a variety of revenue sources and their beneficiaries can be identified:

- **Bonuses.** These are lump sum cash payments to the FGN on one or more of the following: a) signature of contracts to explore and produce; b) declaration of commercial discovery, and c) attainment of certain production levels. Bonuses have typically been treated as confidential, at least at the individual contract level.

- **Royalties.** Royalties are levied as a percentage of production and vary depending on, among other things, location (onshore or offshore, deep water or shallow), the nature of the contract (tax and royalty, or production sharing) and on whether production is oil or gas. Rates are public, but actual obligations are less transparent when precise information on volumes and prices is lacking. Rates for oil range as high as 20 percent; rates on gas vary from zero to 7 percent.
- **Profits Taxes.** The Petroleum Profits Tax (PPT) is levied on income, at rates which, in the case of oil, depend on the type of contract involved. The rate on tax and royalty contracts (which account for almost all current production) is 85 percent; on production sharing contracts (which have replaced tax and royalty for all new contracts), 50 percent. Income from natural gas is taxed at the Corporate Income Tax (CIT) rate of 30 percent.
- **Production Shares.** Investors operating under Production Sharing Contracts (PSC's) are obliged to pay the Government, through Nigerian National Petroleum Corporation (NNPC), a share of their production after recovery of cost. The share is negotiated contract by contract, and increases as function of either daily or cumulative production.
- **Government Sales of Crude Oil.** The FGN holds an average 57 percent equity interest in tax and royalty contracts. This interest is managed by the National Petroleum Investment Management Service (NAPIMS), which is part of NNPC. NNPC transfers all revenues attributable to sales of the FGN's share of crude oil production directly to the Government, net of the Government's cash obligations to its contractual partners (the so-called "cash calls"). The revenues so transferred are made up of two implicit, but conceptually different flows – tax and royalty payments on the sales involved, and dividends earned by the FGN as a return on its investment of public funds. No distinction is made between the two flows until NNPC's annual accounts are prepared, at which time NNPC's auditors retroactively calculate and identify tax and royalty obligations and the residual dividend.
- **Domestic Market Allocation.** The FGN had for some years allocated a significant part of its share of crude oil production to NNPC at a discount off market price to use in meeting the demand for petroleum products on the domestic market, either through refining it directly or through swapping the crude for products on the international market. However, the FGN now sells crude to the NNPC at the International market price

- **Other Taxes and Charges.** Several other taxes and charges apply to petroleum operations and contribute to revenues from the sector. The most notable of these are the Education Tax payable to the FGN (2% of pre-tax income) and a charge levied as a percentage (3%) of the annual operating budget of oil producers and payable to the Niger Delta Development Commission (NDDC).

These several different components of petroleum revenues are packaged differently according to the type of contractual arrangement that applies. For example, the tax and royalty contracts (also known as Joint Venture contracts or MOU contracts), as their name implies, call for payment of PPT and royalties, while the PSCs combine bonuses, royalties, PPT and production share payments. Both contractual arrangements are subject to Education Tax and NDDC levies.

### 1.2.3 **Role of different players**

- DPR. The Department of Petroleum Resources (DPR) in the Ministry of Petroleum is responsible for the monitoring and collection of royalties, and for the production data used in the calculation of PPT.
- NNPC (COMD/NAPIMS). Within NNPC, the Crude Oil Marketing Department (COMD) is responsible for verifying production and sales data, and for establishing a representative price for tax purposes for different crude oils based on market realizations. The National Petroleum Investment Management Service (NAPIMS) is charged with approving capital expenditures and purchase contracts and monitoring operating and financial results from the Joint Ventures (JVs) and PSCs. NAPIMS receives management reports and audited accounts from the upstream companies, which positions it for review and audit of PPT filings.
- FIRS. The Petroleum and International Tax Department (PITD) of the Federal Inland Revenue Service (FIRS) is responsible for assessing and collecting PPT and other direct taxes from the JVs and PSCs.
- CBN. The Central Bank of Nigeria (CBN) is the depository for royalties, PPT and other direct taxes, and provides collection information for reconciliation with the tax assessments of the FIRS.
- Crude Oil Reconciliation Committee. The Crude Oil and Other Revenue Reconciliation Committee is supposed to perform the actual reconciliation of the above listed revenue streams with the CBN accounts. The Committee works under the direction of the Ministry of Finance and is composed of high level representatives from the NNPC, FIRS, DPR and CBN.

- Petroleum Products Sales Reconciliation Committee. This Committee is mainly concerned with the reconciliation of revenues received in relation to petroleum products sales, which is not the direct concern of this note. It also, however, reconciles revenues received in relation to FGN's allocation of crude oil to NNPC for purposes of meeting domestic petroleum product market demand and in this capacity is a relevant agency. It is similarly constituted to the Crude Oil Reconciliation Committee.
- Office of the Accountant general of the Federation (OAGF): Accountant to the Federal Government and 'owner'/ Manager of the Federal Government Accounts with the CBN

**(Flow of funds Chart)**

**1.2.4 Current Petroleum Payment and Revenue Reporting Sources**

A variety of sources for information on petroleum revenues now exist, of varying degrees of confidentiality and accuracy:

- Company Accounts and Audits. All oil companies operating in Nigeria are required to prepare annual financial accounts, and to have these audited by third parties. The accounts contain detailed information on all payments made to the Government, but are not typically public. NAPIMS annual accounts are an exception.
- Tax/Payment Returns. All companies are likewise required to file annual tax returns with the FIRS detailing payments due. These are confidential. Nominally, they are subject to audit by the FIRS and by NAPIMS.

- **Current FGN reporting practices and NDDC obligations**

(To be completed by the Oil & Gas Accounting Unit)

**1.3 Public perception and the need for NEITI**

Nigerians generally have a very poor perception of the management of their Oil & Gas Industry. It is public knowledge in Nigeria that the state of information asymmetry, opaqueness, corruption and revenue embezzlement that has characterized the Nigerian extractive industry could not have happened if multinational companies and previous governments had been required to disclose publicly their disaggregated basic payments and receipts for extractive resources.

The NEITI is therefore needed to bring transparency in the EI to help change the public perception of the EI and build ownership amongst all stakeholders by also holding government accountable for what has been verified as revenue received.

A transparent EI will bring about an improved investment climate by providing a clear signal to investors and the international financial institutions that the Nigerian Government is committed to greater transparency. NEITI will also assist in strengthening accountability and good governance, as well as promoting greater economic and political stability. This, in turn, will contribute to the prevention of conflict based around the oil, mining and gas sectors.

In implementing the NEITI extractive resource companies and investors can gain from the mitigation of political and reputational risks. Political instability caused by opaque governance is a clear threat to investments. In extractive industries, where investments are capital intensive and dependent on long-term stability to generate returns, reducing such instability is beneficial. Transparency of payments made to a government can also help to demonstrate the contribution that their investment makes to a country.

The benefits to civil society come 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.

#### **1.4 Linkages with the global EITI**

The World Bank (WB) through the EITI Trust Fund and the international Secretariat of the EITI based in London provide support to all countries like Nigeria implementing the EITI. Nigeria's representative on the International Advisory Group of the EITI is Obiageli Ezekwesili, Minister for Solid Minerals and Chair of the NEITI. The NEITI draws some of its content on Best Practices from the global EITI and in turn feeds back empirical knowledge and challenges in implementing the NEITI that help the International Secretariat in advising other implementing Countries.

Nigeria was the first to sign up to the Global initiative and the NEITI is a recognized leader in implementation of EITI objectives.

#### **1.5 The role of the National Stakeholders Working Group (NSWG)**

President Olusegun Obasanjo GCFR, at a Workshop on the 19-20 February 2004, launched the NEITI, which builds on existing government transparency efforts. The National Stakeholders Working Group (NSWG) made up of 28 individuals from; Civil Society (2); Media (1); Government (14); Indigenous and Multi-National companies (3); the Organised Private Sector (4); National Assembly (2)

and State's (Regional) Houses of Assembly (2), is the platform through which the Federal Government of Nigeria is implementing the global initiative.

### **Government**

**Obiageli Ezekwesilli** **Chairperson**  
Minister of Solid Minerals Development

**Dr. Edmund Daukoru**  
Minister of State for Petroleum Resources

**Dr. Bright Okogu**  
Ag. Executive Secretary, NEITI Secretariat &  
Special Adviser to the Minister of Finance

**Mrs. A. Lawan-Ali**  
Permanent Secretary  
Federal Ministry of Petroleum Resources

**Dr. Aboki Zhawa**  
Permanent Secretary  
Federal Ministry of Solid Minerals

**Engr. Funsho Kupolokun**  
Group Managing Director  
Nigerian National Petroleum Corporation

**Ms. Ifueko Omoigui**  
Chairman, Federal Inland Revenue Service (FIRS)

**Engr. George Osahon**  
Group General Manager  
National Petroleum Investment Management Services

**The Director Revenue**  
Ministry of Finance

**Chris Haynes**  
Managing Director  
Nigeria Liquefied Natural Gas (NLNG)

**Ambassador Sam Edem**  
Chairman, Niger Delta Development Commission (NDDC)

**Mr. B.O.N. Okafor,**  
Desk Officer, Oil Accounts Research Department,  
Central Bank of Nigeria (CBN)

**Dr. Obiorah**  
Director, Nigeria -Sao Tome and Principe Joint  
Development Authority (JDA)

**Mr. Joseph Ajiboye**  
Auditor-General of the Federation.

### **National Assembly**

**Senator Maeba Lee**  
Chairman, Petroleum Committee, Senate

**Hon. Dr. Cairo Ojougboh**  
Chairman, Petroleum Committee, House of Representatives

### **States Legislature**

**Rt. Hon. Chibike Rotimi Amaechi**  
Speaker, Rivers State House of Assembly

**Hon. Kawu Peto Dukku**  
Speaker, Gombe State House of Assembly

### **Oil & Gas industry**

**Mr. J.R. Pryor**  
Managing Director, Chevron-Texaco

**Mr. Basil Omiyi**  
Managing Director, Shell Petroleum Development Company (SPDC)

**Dr. Imo Itsueli**  
Chairman, Dubri Oil Co. Ltd.

### **Civil Society**

**Dr. H. Assisi Asobie**  
President, Transparency in Nigeria (TIN)

**Comrade Uche Okoro**

President, Petroleum & Natural Gas Workers Senior Staff Association of Nigeria (PENGASSAN)

### **Media**

**Mr. Olusegun Adeniyi**

Editor, ThisDay Newspapers

### **Organised Private Sector**

**Mr. Mohammed Hayatu-Deen**

Member, Nigeria Economic Summit Group (NESG)

**Mr. Gbite Adeniji**

AELEX Legal Consultants

**Mr. Trevor Akindele**

Group Chief Executive, SAK Resources

**Engr. (Mrs) J. Maduka**

LECCOM Associates (Gas Sector Experts)

### **Secretariat**

**Mr. Stan Rerri**

Special Assistant to the Minister of Solid Minerals Development

## **1.6 Vision**

The NEITI's vision is to develop an extractive industry that will be a model among leading countries in the world in transparency and investor friendliness, with policies and regulations that maximise value to government and its people on a sustainable basis

## **1.7 Mission**

Its mission is to promote transparency and engender due process in the Nigerian Extractive Industry

## **1.8 Aims and Objectives**

The NSWG on average meets once on a regular monthly basis and set out to achieve the following objectives:

⇒ An independent Audit of Nigeria's Extractive Industry (EI)

- ⇒ Codification of NEITI principles and objectives to ensure their existence in subsequent years beyond the present Administration.
- ⇒ To build Capacity in the EI; particularly government Agencies relevant to EI revenue management and Civil Society
- ⇒ Develop and implement a Communications Strategy to fully engage the different publics; particularly the Nigerian Civil Society Organisations and Community Groups to ensure that Nigerians know that the EI resources belong to them.
- ⇒ To develop and implement a Revenue Disclosure, investigation/ study/ oversight and Publication Mechanism to ensure that Nigerians get all the information on their Extractive Industry revenue and public expenditure enabling them hold their various governments to account.

## **1.9 Role and Structure of the Secretariat**

The work of the NSWG, which is coordinated by the NEITI Secretariat, is thus far structured along five lines:

### **A Technical Evaluation Team**

The Technical Team was formed to evaluate all tenders for NEITI assignments and report their findings to the NSWG. The work of the Technical Team led to the selection of the NSWG Advisor, Goldwyn International Strategies (GIS)

### **B Legislative team**

With a mandate to set the agenda and strategy for the legislative backbone of the NEITI, the LEGISLATIVE TEAM developed the NEITI Bill which was presented to His Excellency, President Olusegun Obasanjo GCFR in December 2004 and is currently awaiting passage at the National Assembly.

### **C Focal team**

The FOCAL TEAM was set up for the design and oversight of a Technical Assistance (TA) Program that combines a variety of coordinated training programs, inward secondments of expertise and infrastructure support for selected government agencies.

### **D Civil Society Team**

The CIVIL SOCIETY TEAM directly engages the wider Trade Union, Professional Bodies, NGO and CBO Constituency

## **E MEDIA TEAM**

The MEDIA TEAM, anchored by Olusegun Adeniyi of ThisDay Newspapers and Orji Ogbonnaya Orji, formerly of Radio Nigeria, has the task of ensuring that the work of the NSWG drills down or percolates broadly across the sector. The work of the Media Team contributed immensely to the development of the NEITI Communications Strategy.

## **CHAPTER 2 OVERVIEW OF THE NIGERIAN EI**

### **2.1 Oil & Gas Structure**

The Nigerian Oil & Gas industry, like elsewhere, is capital and technology intensive, dynamic and has continued to experience structural changes since its inception.

Oil production started in earnest in Nigeria in 1957 when Shell-BP put the Oloibiri field on stream with production of about 5,000 barrels per day (bpd). At independence in 1960 production had risen to over 17,000 bpd and peaked at 2.4 Million bpd in 1979.

Nigeria is a Member of the Organization of Petroleum Exporting Countries (OPEC). An OPEC production restriction on Member Countries currently limits Nigeria's production to about 2.1 Million bpd with the aim to control the volume of oil in the world market and secure a satisfactory price.

With new deep and ultra deep water proven reserves, Nigeria intends to increase its oil production to 4 Million bpd by 2010. Production increments will be considered as falling outside OPEC constraints because of their "frontier" status.

The first export of oil from Nigeria occurred in 1958 and its production and sale was dominated by International Oil Companies (IOC). The IOC's had 100% equity in their operations with no government participation.

The need for government to build local capacity and have some control in the management of its resources led to the formation of the Nigerian National Oil Corporation (NNOC), the forerunner of the Nigerian National Petroleum Corporation (NNPC), in 1971 and its acquisition of participation interest in the operations of the IOC's in 1973.

On April 1<sup>st</sup> 1977, by virtue of Decree 33, the NNPC came into being through a merger of the existing Ministry of Petroleum Resources and the NNOC.

The objective of creating NNPC was in line with other OPEC Member Countries, to transform Governments purely regulatory and tax collection role to direct participation in all phases of the petroleum industry through equity holdings in the IOC operations and technology acquisition by indigenes. NNPC was therefore set up to explore, produce, transport, refine, process and market crude oil, petroleum products and natural gas as well as conduct research relevant to the petroleum industry. To that end, NNPC set up its subsidiary companies namely; the Pipelines and Products marketing Company (PPMC); Integrated Data Service Ltd; the Kaduna Refining and Petrochemical Company; Warri Refining and Petrochemical Company; Port Harcourt Refining Company; Nigeria Liquefied Natural Gas (NLNG); the Nigerian Petroleum Development Company (NPDC); Nigerian Engineering & Technical Company (NETCO); Hyson; Nigerian Gas Company (NGC); Eleme Petrochemicals Company; and the National Petroleum Investments Management Services (NAPIMS)

NAPIMS manages the Nigerian Governments equity in the operations of the IOC's through a Memorandum of Understanding, Joint Venture and Joint Operating Agreements. Today, Government equity in the IOC's operations is about 55%.

To that end, Government contributes about 55% of the operating costs of the IOC's, which has led to pressure on government revenues. This has lately led to the call for alternative funding arrangements

## **2.2 Oil & Gas Operations**

The Department of Petroleum Resources (DPR) is the Government Agency responsible for regulating the operations and activities of the Petroleum Industry.

It started as the hydrocarbon section of the Ministry of Lagos Affairs in 1947, was upgraded to the Petroleum Division, then the Department of Petroleum Resources within the then Ministry of Mines and Power and later became the Petroleum Inspectorate of NNPC until it was excised and placed under the Ministry of Petroleum Resources in 1988.

DPR regulates the Petroleum Industry in Nigeria through the following activities:

- ⇒ Supervision and monitoring of all activities in the Nigerian petroleum industry

- ⇒ Enforcement of all laws and regulations relating to the industry
- ⇒ Implementation of government policies relating to the petroleum industry
- ⇒ Licensing of all petroleum operations and activities including issuance of permits
- ⇒ Setting standards and guidelines for safe, efficient and effective control of such operations and activities in an optimum and cost effective manner.
- ⇒ Maintenance of data bank of industry operations.
- ⇒ Enforcement of environmental and safety regulations in accordance with national and international standards.
- ⇒ Collections of royalty, rents and other regulated fees on behalf of government
- ⇒ Ensuring timely and adequate payments of all rents and royalties as at when due.
- ⇒ Monitors government indigenization policy to ensure that local content philosophy is achievable
- ⇒ Supervision of all petroleum industry operations in line with applicable laws and regulations.
- ⇒ Advises government and relevant agencies on technical matters and policies relating to the petroleum sector
- ⇒ Processing of all applications for licences so as to ensure compliance with laid-down guidelines before making recommendations to the Minister of Petroleum for approval

The legislations empowering DPR to perform its functions are the Petroleum act of 1969 (including all the amendments) and the Petroleum (drilling and production) regulations of 1969 (including all the amendments)

DPR regulates 254 producing fields located on land, swamp and shallow waters. Crude oil/gas produced is treated in 201 flow stations and platforms. Crude oil and gas exports are carried out in: 4 onshore terminals and 10 offshore

terminals; 3 gas (LPG and LNG) terminals; and 6 additional deep offshore terminals coming on stream between 2005 and 2009

DPR monitors 47 Operating and 17 Producing Companies from 1183 discovered fields with production of Oil at 2.02 Million bpd and Gas at 5.25 Billion Standard Cubic Feet per Day (bscfd).

Nigeria's Oil reserves are currently 29.4 Billion barrels (bbbls), Gas 187.05 Trillion Standard Cubic Feet (tscf) and Condensate 5.10 bbbls.

DPR assesses, determines and collects Royalties, Rents, Gas flare fees, Signature bonuses, Bunkering Permit, Industry Service Companies and Marketing Permits for; Kerosene; Petroleum Depots; Product Imports; Coastal Vessels; Drilling; Oil Pipelines; Rigs; Petrol Stations; LPG; Blending Plants; Peddling; Aviation Depots; and Petroleum Storage facilities.

### **2.3 Fiscal Regime and fund flows**

Fiscal regime and terms are critically important to extractive resource management as they delimit and define the amounts of profit and economic rent that will accrue to both government and extractive resource companies. Fiscal terms are particularly important in Nigeria due to the level of dependence on the extractive industry for the bulk of its foreign exchange earnings.

Fiscal terms usually mirror the needs and policies of government. Unfortunately, the Nigeria Fiscal Policy had been geared toward solely the maximization of oil revenues rather than a longer term diversification strategy like the acquisition of increased technological skills, local content and increasing control over the extractive industry.

As the maximization of oil revenues is dependent on there being oil in the first place, a corollary government policy had been the stimulation of exploration at all times leading to a weak bargaining position in negotiating oil production contracts. These contracts usually had soft fiscal terms with upfront payments and a high portion of economic rent being retained by international extractive resource companies.

Fortunately the nation's focus has changed. The NEITI Bill, the comprehensive Audits of Nigeria's extractive industry and the proposed National Policy on Oil and Gas which was developed by the Oil and Gas Sector Reform Implementation Committee, will inform an improved government Fiscal policy.

The fiscal provisions in operation in Nigeria consist of two broad categories; pre-production and post-production. Pre-production payments serve the purpose of

allowing the government to earn some revenue right from the inception and even before any discovery of Oil have been made.

Fiscal terms are regulated by legislation and the contracts entered into between the government/NNPC and the companies. The main law is the Petroleum Profits Tax Act and its amendments.

### **The Memorandum of Understanding**

The Memorandum of Understanding is a contract between the Nigerian government/ NNPC and the joint venture companies, which first came into force in 1986. It is an arrangement under which the Nigerian government guarantees a certain level of profits to the oil companies irrespective of fluctuating market prices, in return for continuing exploration and work by the companies. The first MOU was entered into in 1986. It was reviewed and a new one came into force in 1991.

The MOU is a very important part of the Nigerian fiscal regime. Sadly, as the rules stand today and until the NEITI bill is passed, the MOU remains a secret document.

There is debate about the necessity of the MOU in the first place as it is a contract containing terms that affect or even amend existing fiscal terms contained in legislation. Secondly contracts are private instruments and belong in the public domain only if the parties so desire or unless there is a law compelling disclosure of contractual terms, as does a new law in Sao Tome and Principe and the NEITI Bill.

With the on going reform of this present Administration, the Nigerian fiscal regime will be open to the public, published and made available to all interested parties as the MOU's current existence is not in line with the present trend towards good governance, transparency and accountability.

**Fig:** gives an overview of fund flows in the Nigerian Oil and Gas industry.

### **2.4 Solid Minerals Development and Strategies**

Prior to the emergence of the petroleum industry 40 years ago, solid minerals and agriculture were key sectors of Nigeria's economy. Until the 1960s, coal and tin were mined and exported on a large scale. Poor management, changing economics and country circumstances, and poor management by state-owned enterprises led to a decline in existing operations and a situation in which little new investment in mineral exploration and development, neither foreign nor domestic, could be attracted. Currently, there are no medium- or large-scale

mining operations in Nigeria. Most active mining in the country today is being undertaken by small entrepreneurs and artisans, working deposits of precious, semi-precious, construction and industrial minerals that are not licensed or are operating outside of the parameters of the license they hold. The Government of Nigeria estimates that as many as 500,000 households (potentially 2-4 million people) depend directly or indirectly on informal mining for their sustenance. These mining operations adhere minimally or not at all to safety and environmental standards, and are carried out in an ad hoc manner with little or no supporting infrastructure (physical or institutional). For the vast majority, mining is undertaken as part-time activity in parallel with subsistence agriculture. Mining represents the only cash-generating activity in these rural areas and as such represents the most immediate means of poverty alleviation for the rural communities involved. Overall, artisanal mining is an integral part of rural societies and economies and operates within traditional village structures.

The President of the Federal Republic of Nigeria on July 26, 2002 constituted a Committee on the development of Solid Minerals under the auspices of the Ministry of Solid Minerals Development (MSMD). The Committee was mandated to draft a strategy for correcting the poor performance of the solid minerals sector and to improve its capacity to stimulate additional economic growth within the nation, and has recently published a seven-year strategic action plan to set the framework for sector renewal and growth. The Government has recognized that it must re-build capacity within government agencies to provide the necessary geo-scientific support and the improved and transparent administrative oversight that will be necessary to foster the development of a modern, market driven solid minerals sector.

The Government of Nigeria has set its own agenda for the development of the solid minerals sector, which is fully outlined in the National Economic Empowerment and Development Strategy (NEEDS) document.

Government's strategy for the sector is based on the recognition that the development of solid minerals in a sustainable manner can not be achieved without a deep involvement of the affected communities. In concrete terms, this strategy calls for the definition of effective ways and means to empower and engage mining communities in the development process and to promote responsible behavior and social investment on the part of mining companies and entrepreneurs in those areas where mines are developed and operated. This means that both artisanal miners and mining communities will be enabled over time to deal directly with the problems they face and propose solutions to which public policy and private investments should accordingly respond.

The mining sector continues to face governance issues in at least two areas: (a) integration of small-scale and artisanal mining into the formal economy; and (b) distribution of benefits (and rents).

The Department for International Development (DFID), the World Bank (WB) and the NEITI supports the development of other non-oil sector activities in Nigeria to promote sustainable development and economic growth.

On April 25, 2005, the Government of the Federal Republic of Nigeria made effective the World Bank Sustainable Management of Mineral Resources Project (SMMRP). The Project's objectives are to:

(i) Increase the Government's long-term institutional and technical capacity to manage Nigeria's mineral resources in a sustainable way;

(ii) Establish a basis for poverty reduction and rural economic renewal in selected areas of the country via the development of non-farm income generating opportunities through small-scale and artisanal mining and to diversify away from oil sources of income.

The SMMRP will work with NEITI on the issues of governance in small- and artisanal mining areas, and on sustainable development of the sector in Nigeria. In addition, the Federal Government of Nigeria, with the assistance of SMMRP, will develop a transparent international-standard legislative system in the mining sector to improve Nigeria's competitiveness to attract private investment in mining, and the administration of mining rights and activities.

## **CHAPTER 3 THE NEITI AUDITS**

### **3.1 The need for an Independent Audit**

The Obasanjo Administration in year 2000 commissioned a study on the Oil & Gas Sector which revealed lapses in four broad segments namely Crude output and Disposal; Funds inflows; Funds outflow; and Institutional Effectiveness. The report by the World Bank catalogued a series of inconsistencies in the financial data and information from Nigeria's Oil & Gas Industry.

It was therefore incumbent on a reform minded Administration to take the necessary steps to address the issues raised by the comprehensive report.

On signing on to the EITI, which requires participating Countries to conduct annual independent audits, this Administration found a fit with the global

initiative as it builds on existing government effort to sanitize the extractive industry.

Also, the Multi Stakeholder composition of the NSWG consisting of the three main interest groups namely Government, Civil Society and EI companies puts the NEITI in good stead to conduct these comprehensive independent annual audits.

### **3.2 The Auditor Selection Process**

The NEITI commenced its Audit program with a strategic two-stage approach in line with International Best Practice namely:

1. An International Invitation for Expression of Interest (EOI) in the selection of an Auditor.
2. A Request for Proposals (RFP) from short-listed firms to carry out the following:
  - **Physical Audit**; a reconciled figure and a coherent map that will give a complete picture of the amount of oil/gas that has been produced/ lifted/ lost/ refined/ exported in the given period of review
  - **Financial Audit**; a reconciled picture that shows who has paid money, how much and to whom?
  - **Process Audit**; a critical examination of crucial extractive industry processes like levels and justification of Capital Expenditure proposals; checks and balances in importation of products; comparative analysis, benchmarking and recommendations for improvement.

The NEITI called for Expressions of Interest (EOI) from interested Auditors in the International and local Press on the 17<sup>th</sup> Of December 2004 and received over 100 EOI's from prospective Auditors.

The NEITI Secretariat then sent out Request for Proposals (RFP) solicitation documents to the short-listed firms on the 31st of January 2005 and received eleven RFP's on the 14<sup>th</sup> February 2005.

The NSWG then selected the Hart Group to carry on the Financial, Process and Physical Audits of Nigeria's Oil & Gas Industry on the 15th of March 2005.

The Hart Group commenced work immediately, backed by an Executive Order by His Excellency, President Olusegun Obasanjo GCFR. Obiageli Ezekwesili, Minister of Solid Mineral Development and Chairperson, NEITI invited the Chief Executives of all the Oil Producing Companies in Nigeria to the State House, Presidential Villa the 30th of March 2005, where she reiterated Mr. President's Directive wherein he emphasized that the NEITI Audit is a priority transparency program of this Administration for which the visible collaboration and cooperation of all participants in the Extractive Industry must be demonstrated.

Information on the progress being made with respect to the comprehensive NEITI Audits are available on the NEITI website at [www.neiti.org](http://www.neiti.org)

## **CHAPTER 4 DISCLOSURE AND PUBLICATION**

### **The importance of disclosure and Publication**

The huge financial improprieties that trail the Nigerian EI is evidence that business elites have a vested interest in avoiding disclosure and publication, showcased by their continued insistence on confidentiality clauses on dated exploration and production contracts.

The NEITI Bill would void gagging clauses in license agreements enabling disclosure of key financial data as is required by law in every developed country.

Disclosure and Publication would help Nigerians hold their governments to account over the management of revenues; ensure a level playing field amongst production companies; generate questions about government management of wasting resources; and ensure that the questions are transparently answered.

Disclosure and Publication will bring about improved corporate governance and energy security as opaque governance leads to social divisiveness and instability, which in turn leads to disruptions of production activities as evident in the Niger Delta. Long-term reputational damage from dealings in an opaque climate accentuates the poor perception of the industry, and leads to ethnic unrest and resentment against oil companies.

Oil Companies usually argue that disaggregated disclosure and publication, by company, would make them un-competitive. In fact Foreign Direct Investment Analysts require such disaggregated information on company payments to; calculate the in-country costs of doing business; to work out the profitability of investments; and to identify company subsidiaries in particular countries that are performing well. The higher the level of disclosure and publication, the better

investors will be able to make informed and accurate investment decisions to the advantage of the Nigerian Oil & Gas industry.

Sadly, it is the intransigence of the corrupt few and their cronies that deny ordinary Nigerians (the real owners of those resources) basic information to call their governments (and partners) to account over the management of resource revenues.

In line with the transparency and due process policy of this Administration, the NEITI shall publish all the information resulting from the comprehensive Financial, Physical and Process Audits of the Nigeria Extractive Industry.

## **CHAPTER 5 BUILDING BACK CAPACITY**

One of the findings of the World Bank Report related to lapses in institutional effectiveness within Government Agencies relevant to extractive revenue management.

The NSWG therefore set up the Focal Team for the design and oversight of a Technical Assistance (TA) Program that combines a variety of coordinated training programs, inward secondments of expertise and infrastructure support for selected government agencies and Civil Society.

The Focal Team held its inaugural meeting on the 6<sup>th</sup> of July 2004 and adopted a Capacity Needs Strategy Agenda with a three-pronged approach namely short, medium and long term. The short term involves organising bi-annual Networking Seminars, Conferences and Workshops for staff and stakeholders drawn from Civil Society groups, the Oil & Gas Unit- MOF, DPR, NNPC, FIRS, Budget Office-MOF, National Assembly, Political Party leadership, Civil Society including Labour, Revenue Mobilization Allocation & Fiscal Commission, Civil Service, Office of the Secretary to the Government of the Federation and Office of the Head Of the Civil Service. The NEITI Conference that held on the 14<sup>th</sup> to 17<sup>th</sup> of February 2005 was the start of the generic Capacity Building Plan. The second Conference is planned for November 2005 in Abuja.

The Medium Term Strategy includes Cross Posting of Agency Staff, Secondments/ Attachments/ Recruitment, Continuous and Sustained Training to mitigate attrition proportion and setting up of Technical Advisory Teams made up of upright retired staff of the relevant government Agencies-A Volunteer Force.

The long-term strategy is focused on finding sustainable funding sources for incessant year-to-year capacity and manpower development. The Petroleum and

Minerals Technology Development Fund (PMTDF) has been identified as a funding window.

## **CHAPTER 6 CODIFYING THE REFORM**

### **“The NEITI is a process, not an Event”**

**Obiageli Ezekwesili, Cabinet Minister and Chairperson, NEITI**

The NEITI Bill is a vital component of the current extractive industry reform program for a myriad of reasons particularly to codify the reform program of this present Administration.

The NEITI Bill would void gagging clauses in license agreements enabling disclosure of key disaggregated financial data as is required by law in every developed country. The NEITI bill will also:

- ensure due process & transparency in the payments made by extractive industry (EI) companies
- ensure accountability in the revenue receipts of the Federal Government from EI companies
- eliminate all forms of corrupt practices in the determination, payments, receipts and posting of revenue accruing to the FG from EI companies

The NEITI bill currently awaiting passage at the National Assembly will achieve the above by mandating the NEITI to:

- Develop a framework for transparency in the reporting & disclosure by EI companies of revenue due to or paid to the FG
- Request from EI companies, “...an accurate record of the cost of production & volume of sale of oil, gas, or other minerals extracted by the company...”
- Ensure that all payments to the FG from EI companies, including taxes, royalties, dividend, bonuses, penalties, levies and such like, are duly made.

## **CHAPTER 7 THE NEITI COMMUNICATION STRATEGY**

### **Engaging the Nigerian public**

The engagement with Civil Society (CS) commenced through a meeting facilitated by the Department for International Development (DFID) with the Publish What You Pay (PWYP) Nigerian coalition of over 90 civil society organizations, drawn from the six geo-political regions and representing a wide-

range of socio-economic and cultural interests. The coalition is part of an international network of organizations calling for the mandatory disclosure of the payments made by oil, gas and mining companies to governments, and for governments to publicly reveal its revenues from these sectors so that citizens can hold them accountable for their management.

The NSWG/ CS Session that held on the 30<sup>th</sup> of November 2004 constituted a CS Action Plan Team with a mandate to produce a Strategic Plan for Civil Society engagement in the NEITI. Members were:

- |                         |                        |
|-------------------------|------------------------|
| 1. Dr. H. Assisi Asobie | CHAIRMAN/ TIN          |
| 2. Mrs Joanna Maduka    | Citizens Organisations |
| 3. Mr Emma Ezeazu       | Centre for the Dev. CS |
| 4. Hajia Binta Ahmed    | N.C. Women's Societies |
| 5. Stan Rerri           | NEITI Secretariat      |
| 6. David Ugolor         | PYWP Secretariat       |

The CS Action Plan Team held its inaugural meeting on the 25<sup>th</sup> of April 2005. The Team produced a comprehensive NEITI Communications Strategy that was ratified by the Joint NSWG/ CS Interactive Session that held on the 16<sup>th</sup> of May 2005.

The Session then elected a Steering Committee with members drawn from the six geopolitical zones to implement the adopted communications strategy. The members are:

- |                    |                        |
|--------------------|------------------------|
| Adamu Song         | NUPENG (NORTH-WEST)    |
| Mrs Okolieaboh     | NCWS (NORTH-CENTRAL)   |
| Mr Ojeyemi         | PENGASSAN (SOUTH-WEST) |
| Mr Onohwohwo       | NUPENG (SOUTH-SOUTH)   |
| Miss Nanklin Dazel | NANS (NORTH-EAST)      |
| Mr Ofoegbu         | NBA (SOUTH-EAST)       |
| Mrs Shija          | NSE (NORTH CENTRAL)    |
| Dr Assisi          | NSWG/TIN               |
| Mrs Maduka         | NSWG/                  |
| Trevor Akindede    | NSWG/SAKS RESOURCES    |
| Mr Adeniyi         | NSWG/THISDAY           |
| Mr Uche Okoro      | NSWG/PENGASSAN         |
| Dr. Ogbeifun       | NSWG                   |
| Stan Rerri         | NEITI Secretariat      |

The Communications Strategy has three main thrusts:

1. To develop an administrative framework for an improved working relationship/ partnership with the NSWG
2. To build capacity within Civil Society Organisations (CSO's) to:
  - ⇒ Help CSO's understand the workings of the Extractive Industry enabling them to ask the right questions
  - ⇒ Help CSO's educate their constituency and the general public as to the workings of the Extractive Industry, building ownership and an understanding that the resources actually belong to the people
  - ⇒ Help CSO's better understand the data and information expected from the work of the Auditors enabling robust information dissemination
3. To fashion ways to deepen Extractive Industry transparency and develop effective feedback mechanisms

As part of the implementation of the Communications Strategy, the Steering Committee fixed 27<sup>th</sup> & 28<sup>th</sup> of July 2005 in Port Harcourt as the start of the Nationwide NEITI Road Show. The Road Show will take the NEITI message to the grassroots in the six geopolitical zones in Nigeria and most importantly, receive feedback.

The Steering Committee also drafted a comprehensive Civil Society training program and the NEITI is currently advertising in the local and international press for consultancies to implement the training program

Fig 5 shows the timeline for the training programs

## **CHAPTER 8**

### **SUGGESTED STRATEGIES FOR DEEPENING THE NEITI REFORM AND THE ROLE OF CIVIL SOCIETY BY UCHE IGWE, Director, Community Level Environmental Advocacy Network (CLEAN NIGERIA)**

One of the most distinctive features of the constitution of the NSWG of the Nigerian Extractive Industries Transparency Initiative is the inclusion of three representatives of Civil Society (CS) as members. By this singular action Mr.

President envisioned the strategic role of CS as interlocutors of government policy at the grassroots level.

The membership of Civil Society Organization (CSO) representatives in the NEITI therefore gives CS an opportunity to participate in day -to - day decision making rather than merely being consulted, or worst still, passive onlookers.

Diverse CSO's have been further mainstreamed through the newly constituted CSO Sub-committee that fully formulates all CSO driven programs.

With the birth of NEITI, one of the greatest challenges of CS is to positively transform the perception and attitudes of Nigerians to the EI industry from skepticism to confidence through intensive re-engineering.

To play this vital role CSO's must understand and internalize the operations and revenue flows of the EI to enable it teach the public. This requires training and re-training to build requisite capacity to understand these fairly technical operations.

Communicating the NEITI and deepening public understanding to generate debate around emerging issues, requires cutting edge capacity to provide insightful explanations and constructing persuasive arguments.

Organized and committed CS is the most effective vehicle to deliver the NEITI Communications strategy to the Nigerian people.

The quality of public participation and debate that will give Nigerians the opportunity to ask the right questions can only be delivered through intensive information communication and education using user friendly languages.

The enlightenment workshops (Road Shows) at the zonal level are commendable but not enough. It must go to the states and local governments if it must galvanize the sense of ownership needed to achieve desired results.

The ongoing NEITI reform will offer a huge challenge for CS advocacy. CSO representatives must take leadership and offer themselves as conduit to allow the right messages to percolate to the grassroots.

Decentralized CSO activities, focused group discussions and town hall meetings at community level will galvanize community ownership for the reform, which is capable of reducing community tension by offering answers to nagging community questions.

Furthermore understanding, analyzing and evaluating the figures of the Audit report when released will offer CSO a window to complement the work of NEITI.

CSO's can also serve as public spirited whistle blowers in helping the work of NEITI and the auditors by bringing valuable and verifiable information.

It is also incumbent on CS to evaluate the Audit report objectively and provoke debates on issues emerging there from. An active CS can put pressure through organized advocacy on host governments and companies as well as beneficiary State Governments for deeper disaggregated transparent disclosure of both payments and receipts.

The existence of a virile CS can serve as effective tool for lobbying and advocacy for the passage of the NEITI bill into law.

The NEITI is a new dawn in the extractive industry sector and a final bridge of the "us and them" dichotomy, to oil and extractive industry issues in Nigeria

Building an informed and effective CS society is the first step to getting the Nigerian public to restore the confidence and support these reforms that will move the nation forward.

Finally, this is a clarion call on women groups, professional associations, faith based groups non-governmental organizations, students and youth etc.

Throwing light into the dark alley of the oil industry in Nigeria calls for our collective attention and action. We must take advantage of this platform offered to demand and insist on transparency and accountability of revenues accruing from our God given resource.

Generations yet unborn will hold us accountable to what we did or didn't do, with this opportunity offered us, to make the expected difference.

**NIGERIAN CIVIL SOCIETY ARISE!**