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## *Review*

# **The Political Economy of Enforcing Neiti Act 2007 in Oil and Gas Sector: A Critical Appraisal of Nigeria Extractive Industries Transparency Initiative (Neiti), 2003-2010**

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**Nigeria is abundantly endowed with mineral resources, and of all these mineral resources oil and gas with the proven 600 trillion cubic feet reserve of gas and estimated 40 billion barrels of crude oil reserve is the most strategic and fundamental to the Nigerian economy such that Nigeria is reputed to be the seventh largest oil producing country in the whole world. Yet Nigerians have been wallowing in abject poverty with inadequate infrastructural and social amenities, poor standard of living, low per capita income, and all other forms of poor human development index; often attributed to corruption, unaccountability and lack of transparency leading to cases of under-paid revenues and unaccounted oil produce in the Nigerian oil and gas sector as a result of structural fiscal/financial leakages with the collaboration of oil multinationals and high level officials in Nigerian petroleum sector. Even with the establishment of NEITI in 2004 and the enactment of NEITI Act 2007, the culture of impunity and corruption continued unabated resulting to little or no effect on the quality of living of Nigerian citizens. The thrusts of this paper are that, one, NEITI lacks institutional capacity to ensure that oil and gas multinationals comply with the international best practices in declaring their accounts and payments to Nigerian government, and two, NEITI Act of 2007 inadequately empowers NEITI to compel oil and gas multinationals to carry out remediation of their account.**

**Keywords:** Political Economy, Oil and Gas Sector, Neiti Act, Industries.

## **INTRODUCTION**

Nigeria is a resource rich country yet has not been able to realize its full potentials and take its rightful position among the comity of nations. Its citizens are yet to enjoy the basic amenities and/or afford the basic necessities of

live like food, water, cloth, shelter, basis education, etc. Nigerian economy is in shambles and among the poorest in the whole world with a very low human development index like low literacy rate, high mortality rate, low life expectancy, etc. All these are attributed to monumental corruption, lack of public accountability and transparency, and poor governance. Perhaps, no sector in Nigeria is this corruption and lack of accountability and transparency more evident than in the oil and gas sector

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industry. Given the strategic importance of oil and gas industry to Nigerian economy one can only imagine the enormity of the impact of these to the lives of ordinary Nigerians and Nigerian economy as a whole. Regrettably, the Nigeria Extractive Industries Transparency Initiative (NEITI) established in 2004 and the subsequent enactment of NEITI Act in 2007 has not been able to ensure annual audit and publication of oil receipts and expenditures account of oil multinationals; nor has NEITI been able to insist on complying by international best practices in the audit and publication of oil revenues. The NEITI Act of 2007 has only been able to transform NEITI into a barking dog or a toothless bulldog that cannot bite. Not surprisingly, NEITI has only been able to audit and publish oil receipts and expenditures account from 1999 to 2004, and 2005 while projecting to audit and publish the oil and gas sector for periods beginning from 2006 to 2008 by 2011. One would even wonder why starting from 1999 or why not before 1999 and why is it taken so much time. Thus, the culture of impunity and corruption continued unabated resulting to insignificant improvement in Nigeria's corruption perception index, and little or no effects on the quality of living of Nigeria citizens. Wither then the democracy dividend. The thrusts of this study are that, one, NEITI lacks institutional capacity to ensure that oil and gas multinationals comply with the international best practices in declaring their accounts and payments to Nigerian government, and two, NEITI Act of 2007 inadequately empowers NEITI to compel oil and gas multinationals to carry out remediation of their account.

### **Theoretical Perspective**

This study is anchored on resource-curse theory which suggests that abundance of mineral resources is more often a curse than a blessing, particularly in developing countries like Nigeria. Malomo (2008) in Ezirim (2008) notes that the idea that natural resources might be more an economic curse than a blessing began to emerge in 1980s. Actually the "resource curse thesis" was first used by Richard Auty in 1993 to describe how countries rich in natural resources were unable to use that wealth to boost their economies and how these countries had lower economic growth than countries without abundance of natural resources. Other studies by Jeffrey Sachs and Andrew Warner have shown link between natural resource abundance and poor economic growth. The disconnection between natural resource wealth and economic growth can be seen by looking at examples from the oil producing countries like Nigeria. The resource curse, or the paradox of plenty or Dutch disease so-called, refers to the paradox that countries and regions with an abundance of natural resources tend to have less economic growth and worse development outcomes than the countries with fewer natural resources. The reason for this paradox of plenty or Dutch

disease is attributed to government mismanagement of resources, or weak, ineffectual, unstable or corrupt institutions possibly due to the easily diverted actual or anticipated revenue stream from extractive industries, appreciation of the real exchange rate leading to deindustrialization, volatility of revenues from natural resource sector due to exposure to global commodity market swings. According to Juan Pablo Perez Alfonzo, a Venezuelan politician and one of the founders of OPEC, "ten years from now, twenty years from now, you will see; oil will bring us ruin... Oil is Devil's excrement" (Karl, 1997; Ross, 1999). Auty (1993) and Sachs & Warner (2001), by building upon basic refers to the bionomic growth and other economic problems like Dutch disease effects and poor performance of agricultural and manufacturing sectors accompanied by an insufficient degree of diversification and extreme vulnerability towards external shocks. Also, Stiglitz (2005) and Karl (2005) argue that extraction of resources lowers the wealth of a country unless the funds generated are invested in other forms. This is the case of Nigeria that is overwhelmingly dependent on oil revenues generally measured by the extent to which oil revenues dominate total exports or by ratio of oil export to GDP. The nature of corruption in Nigerian oil and gas sector characterized by under-payment of taxes, royalties, and bribery by the oil and gas companies to NNPC and CBN resulting in the discrepancies in quoted figures, have significantly contributed to oil resource curse in Nigeria.

### **Background to the Establishment of NEITI**

In a world held in the grip of economic downfall - with increasing scarcity of energy supplies, plummeting oil prices, rising intra-state energy transit, protectionist natural resources policies, and growing environmental concerns - time and cost are not to be underestimated factors in the choice of a suiting dispute resolution method. Crude oil was discovered in commercial quantity in 1957 at Oloibiri now in Bayelsa State, Nigeria, and since then oil multinationals have been engaged in exploration and production of oil and gas in Nigeria yet most if not all indices of development and economic growth and wellbeing have continued to elude Nigeria where majority of its citizens wallow in abject poverty and lack. In spite the fact that Nigeria is reputed to be the seventh largest oil producing country in the whole world at over two million barrels of crude oil per day with a proven 600 trillion cubic feet reserve of gas and estimated 40 billion barrels of reserve of crude oil, there is unavailability and inadequacy of the basic infrastructures and social amenities where majority of Nigerians cannot afford basic requirements of life like food, water, cloth, shelter, etc. Consequently, Nigeria is ranked among the thirteen poorest countries in the whole world (Aniche, 2010; Idemudia and Ite, 2006). This state

**Table 1.** Value of Items in CBN Report but not Reported in Company Templates (in Hundreds of Thousands of US Dollars)

Company	1999	2000	2001	2002	2003	2004
Shell	0	0	0	0	0	1,354
Mobil	31,019	167,062	0	0	0	0
Chevron Nig Ltd	4,221	65,290	0	0	0	0
Chevron Oil Co. Nigeria	0	0	0	2,022	44,85	0
Texaco Overseas	0	0	0	0	0	0
Elf petroleum	8,469	21,876	376	0	0	0
Nigerian Agip Oil Co.	0	83	40,366	0	0	13,118
Pan Ocean	0	0	0	0	0	0
Addax petroleum	0	0	0	0	0	0
Conoil	0	0	95	50	155	110
Continental	0	0	0	0	0	0
Express petroleum	14	274	99	792	0	25,490
NPDC	0	0	0	0	4,839	0
Philips Oil company	0	200	13,857	100	10,178	29,856
Total	43,723	254,785	54,793	2,964	64,378	69,928
Difference	97,891	11,816	88990	141,048	-30,013	-56,300

Source: <http://www.neiti.org.ng>, retrieved on 16/07/2011.

of affairs have been attributed to corruption and lack of transparency and accountability in the extractive industries particularly oil and gas sector in Nigeria where the oil and gas multinationals connive with the political leadership and some of the government agencies to underpay the Nigerian government. As a result, NEITI was inaugurated in February 2004 by former President, Olusegun Obasanjo when he set up the National Stakeholders Working Group (NSWG) under the leadership of Mrs. Obiageli Ezekwesili. To give a legal backing to the work of NEITI, a bill was introduced to the National Assembly on December 2004. The NEITI bill was eventually passed and harmonized by the two chambers of the National Assembly and subsequently signed into law by the former President, Olusegun Obasanjo on May 28, 2007 making Nigeria the first EITI implementing or compliant country with a statutory backing for its operations. Prior to the enactment of NEITI Act of 2007, NEITI had to rely on persuasion, dialogue and consensus building to attain its objectives and perform its function (<http://www.neiti.org.ng>, retrieved on 16/07/2011). But with the enactment of NEITI Act of 2007, the NEITI is mandated by law to promote transparency and accountability in the management of Nigerian oil and gas and mining revenues. The NEITI Act of 2007 is a major component of the ongoing anti-corruption reform in Nigeria whereas NEITI itself is a national version of the EITI, a global movement or initiative aimed at ensuring that exploitation of extractive resources aid or facilitate sustainable development through open and transparent reporting or publication or auditing of what extractive industries pay the government under the slogan "publish what you pay".

The enactment of NEITI Act of 2007 has changed the implementation of the EITI principles from voluntary to obligatory or mandatory. The EITI was set up in September 2002 at the World Summit on Sustainable Development held in Johannesburg, South Africa as a global initiative to help improve the management of oil, gas and mining revenues in resource-rich countries. The objective is to ensure that huge revenues accruing to government from payments made by extractive companies are managed transparently to promote or facilitate development, reduce poverty, conflict, ignorance, deprivation and disease. The EITI operates on two basic principles, one, is for companies to disclose publicly, payments made to government and for government to disclose publicly revenues received from companies, and two, is for an independent audit to be conducted to verify and reconcile these figures under the management of a multi-stakeholder committee (<http://www.neiti.org.ng>, retrieved on 16/07/11).

### Organizational Structure of the NEITI

The National Stakeholders Working Group (NSWG) is the governing body of NEITI which is made up of representatives of government, extractive companies, labour union, geopolitical zones, experts in extractive industry and civil society. The NSWG oversees the activities of NEITI and is responsible for the formulation of policies, programmes and strategies for effective implementation of NEITI's mandate, objectives, and discharges of the function of the NEITI. The NEITI is constituted by the President and consists of 15 members,

**Table 2.** Nigeria Extractive Industries Transparency Initiative Financial Audit 1999-2004 being Report on Financial Flows Paid by Companies (in Million US Dollars)

Company	1999	2000	2001	2002	2003	2004
Shell	150	873	933	489	983	2,130
Mobil	297	1,034	937	489	1,068	1,633
Chevron Nig Ltd	155	795	738	313	550	781
Chevron Oil Co. Nigeria	0	17	24	14	54	29
Texaco Overseas	0	6	35	12	9	26
Elf petroleum	10	293	388	131	203	969
Nigerian Agip Oil Co.	32	150	360	178	237	527
Pan Ocean	0	0	1	2	5	8
Addax petroleum	0	0	0	3	52	44
Conoil	0	0	0	0	0	0
Continental	0	0	0	1	8	2
Express petroleum	0	1	1	7	1	26
NPDC	0	0	0	5	0	0
Philips Oil company	15	116	125	54	117	202
Total	659	3,286	3,549	1,698	3,287	6,557
Difference	99	-55	66	131	-62	-282

Source: <http://www.neiti.org.ng>, retrieved on 16/07/2011.

which include the Chairman, the Executive Secretary and other 13 members. The Chairman presides at every meeting of the NSWG and has a casting vote in the event of an equality of votes. The chairman and other members of NSWG other than the Executive Secretary serve on part-time basis. The Executive Secretary of the NEITI is responsible for the day-to-day administration of NEITI, and serves as the secretary to NSWG for five years and no more while other members of the NSWG are appointed to hold office for four years and no more. The NSWG is currently constituted into eight executive committees for effective administration of NEITI secretariat which include Finance and General Purpose Committee; Oil and Gas Committee; Solid Mineral Committee; Civil Society Committee; Communications Committee; Procurement Committee; Ethics Committee and Staff Appointment, Promotion and Disciplinary Committee (NEITI Act, 2007). The NSWG is empowered by law to from time to time co-opt any person to act as an adviser at any of its meeting so long as the person is precluded from voting at meeting of NSWG, constitutes special committees, creates departments and engages the services of staff and consultants. The NSWG can also engage an (independent) auditor or auditing firm for not more than two years consecutively, and can as well recommend to the President for appointment of qualified valuator. The NSWG meets quarterly for the dispatch of its responsibilities at such times and places as it may determine, but not less than four times in a year. The quorum of the NSWG at any meeting is eight members and decisions are reached by simple majority of members present and voting and in event of tie, the person presiding has a casting vote or can cast a

deciding vote (NEITI Act 2007). The NEITI is funded primarily by the federal government, and also can receive grants, donations and gifts provided the sources are properly disclosed and not in conflict with the provisions of NEITI Act, 2007. In addition, the NEITI is empowered to raise fund through borrowing money from banks with the approval of NSWG. This means that NEITI lacks financial autonomy, and therefore, may encounter difficulty in the discharge of its duty.

### **The Objectives, Functions, Criteria and Implementation Plan of NEITI**

NEITI is described by Section (2a) of NEITI Act, 2007 as an autonomous self-accounting body which reports directly to the President and the National Assembly. This means that NEITI is not under any ministerial or governmental agencies or departments. For objectives of NEITI see Section 3 of NEITI ACT, 2007). The NEITI criteria include the following:

(a) Regular publication of all material oil, gas and mining payments by companies to governments and all material revenues by governments from oil, gas and mining companies to a wide audience in a publicly accessible, comprehensive and comprehensible manner.

(b) Where such audits do not already, exist payments and revenues are the subject of a credible independent auditor, applying international auditing standard.

(c) Payments and revenue are reconciled by a

Table 3. NEITI 2005 Financial Audit Showing Royalty

Royalty IOC Owned Companies	Reported by Companies	Reported by CBN	Difference
	US\$ 000	US\$ 000	US\$ 000
Chevron Nigeria Limited	542, 614	547, 509	(4895)
ConocoPhillips	129, 897	132, 330	(2433)
ELF Petroleum Nigeria Limited	735, 900	997, 455	(261555)
ELF Petroleum Limited Nigeria (gas)	2, 807	2, 773	34
Mobil Producing Nigeria Limited	964, 573	964, 573	-
Nigerian Agip Oil Co. Ltd	327, 598	334, 801	(7203)
Pan Ocean Oil Corporation	36, 225	40, 077	(3852)
Shell Petroleum Development Co. Ltd	1, 178, 735	1,179, 834	(99)
Total	3, 919, 349	4,199, 352	(280003)
	-	-	-
Royalty Other Companies	Reported by companies	Reported by CBN	Difference
	US\$ 000	US\$ 000	US\$ 000
Amni International Petroleum Ltd	3, 654	3, 779	(125)
Atlas Petroleum international	608	608	
Cavendish petroleum Nigeria Ltd			
Conoil producing Ltd	9, 611	201, 826	(192215)
Continental Oil & Gas	170, 600	96, 482	74118
Dubri Oil & Gas	1, 492	1, 352	140
Express Petroleum & Gas Co. Ltd			
Moni Pulo Ltd	49, 843	63, 882	-14, 039
Nigeria Petroleum Development Company	202, 334	112, 187	90147
Brass exploration Unlimited			
Total	38, 142	480, 116	(41974)
Analysis			
IOC Owned Companies	3, 919, 349	4, 199,352	(280003)
Other companies	438, 142	480, 116	(41974)

Source: <http://www.neiti.org.ng>, retrieved on 16/07/2011

credible, independent administrator, applying international auditing standards and with publication of the administrator's opinion regarding that reconciliation including discrepancies, should any be identified.

(d) This approach is extended to all extractive industry companies including state-owned enterprises.

(e) Civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.

(f) A public financially sustainable work plan for these as developed by Nigerian government with assistance from the international financial institutions where required including measurable targets, a timetable for implementation, and an assessment of potential capacity constraints (<http://www.neiti.org.ng>, retrieved on 16/07/11).

The implementation plan of NEITI includes the following tasks:

(a) A comprehensive audit, that is, financial, physical and process audits of the Nigerian extractive industries beginning with oil and gas sector.

(b) Build capacity within government agencies relevant to oil and gas revenue management

and also improve capacity of civil society to be fully engaged in the extractive industry transparency process.

(c) A communication strategy to make the audit figure and recommendations accessible to the public (<http://www.neti.org.ng>, retrieved on 16/07/20110).

### The Mandate and Activities of NEITI

The NEITI Act 2007 mandates NEITI to promote due process and transparency in extractive revenues paid to and received by government as well to ensure openness and accountability in the application of extractive revenues. Since 2004, NEITI has engaged in various activities in pursuit of its mandate, which include:

(a) Communicating of the financial physical and process audits of Nigeria's oil and gas industry for the period 1999 to 2004 being the first comprehensive audit of this strategic industry since Nigeria struck oil in 1957.

(b) Communicating the findings of the audit in a comprehensible and comprehensive manner to various stakeholders.

(c) Working with government agencies and other

**Table 4.** Aggregated Oil Related Financial Flows to the Federation Account in 2005

	Reported by Companies	Reported by CBN	Difference
	US\$ 000	US\$ 000	US\$ 000
Petroleum Profits Tax	10, 638, 047	10,396,176	241, 871
Reserves Additional Bonus	-	65, 292	65, 292
Royalty	4, 357, 491	4,679, 468	321, 977
Gas Flare Penalty	18, 605	28, 909	10, 304
Sub-Total	15, 014, 143	15,169,845	155, 702
Signature Bonus	90, 025	-	90, 025
Company Income Tax	55, 595		
Total	15, 159, 763	15,169,845	65,677
Analysis			
IOC owned companies	14, 526, 960	14,519,150	7, 810
Other Companies	577, 208	585, 403	8, 195

Source: <http://www.neiti.org.ng>, retrieved on 16/07/2011.

stakeholders to remedy the lapses identified by the audit.

(d) Building the capacity of civil society organizations, government officials parliamentarians and the media to understand and monitor extractive revenue transparency in Nigeria.

(e) Forging a national consensus on need for extractive revenue transparency in Nigeria through outreach and advocacy activities such as road-shows, consultative fora and town hall meetings.

(f) In addition, NEITI has succeeded in communicating comprehensive financial, physical and process audits of Nigeria's oil and gas industry for the year 2005, and 2006-2008 financial, physical and process audits by January 15, 2011 (<http://www.neiti.org.ng>, retrieved on 16/07/2007).

### Institutional Constraints and Challenges

NEITI is confronted with various institutional constraints and challenges in discharging its functions and mandates which include:

(a) NEITI has to rely on information supplied by other governmental agencies in the auditing of the extractive industry companies such governmental agencies include FIRS, DPR, CBN, AGF, NNPC, Crude Oil Marketing Division (COMD), NAPIMS, PPMC, RMARF, PTDF, NNDC, ETF, Crude Oil Reconciliation Commission (CORC) and Petroleum Products Sales Reconciliation Committee (PPSRC). In some cases, some of these governmental agencies are reluctant to cooperate and assist NEITI in the process of auditing given their poor record keeping.

(b) NEITI is also constrained to rely on the oil and gas industries like Chevron Nigeria limited, EIF Petroleum Nigeria Limited, Mobil Producing Nigeria Unlimited, Nigerian Agip Oil Company (NAOC); Pan Ocean Oil Corporation, Shell Petroleum Development Company, AMNI Atlas, Cavendish, Conoil, Continental

Oil and Gas, Dubri Oil, Express Petroleum, Moni Pulo, Nigeria LNG, Ocean Energy, Petrobras, Philips Oil, Statoil, Addax, etc, to supply them information needed for auditing, sometimes, some of these oil and gas companies do not comply with the auditors' requests for information on formats suitable for comparison, while others delay in returning requested data.

(c) Most of the oil and gas companies operate different accounting or reporting system to opaque business environment, and in some cases, some do not supply accurate information on production volumes to the NEITI's auditors.

(d) NEITI does not have its own auditor, and therefore has no way of cross checking the audits of the independent auditor for error of for poor auditing.

The point being made is that NEITI is institutionally constrained or incapacitated to ensure that oil and gas multinationals comply with international best practices in declaring their accounts and payments to Nigeria government. Moreover, the NEITI Act 2007 did not define or state what constitutes international accounting best practices or minimum standards of accounting, and oil and gas multinationals are exploiting this loophole. The governmental agencies involved in oil and gas are not helping matters either as they are not cooperating with NEITI to form a synergy for ensuring transparency, openness and accountability in oil and gas sector. Therefore, we concur that NEITI lacks institutional capacity to ensure that oil and gas multinationals comply with international best practices in declaring their accounts and payments to Nigerian government. The Table 1 below indicates some of the defects in accounting processes in the oil and gas multinationals.

### The NEITI Act of 2007 and NEITI

Although, the NEITI was inaugurated in February 2004 by former President, Olusegun Obasanjo, it was not until

May 28, 2007, more than three years later that the NEITI was signed into law by the former President, Olusegun Obasanjo in order to give it a legal backing. The NEITI bill took nearly three years after its introduction in December 2004 in the National Assembly to become law making Nigeria the first EITI implementing and compliant country with a statutory backing for its operations. The NEITI which was introduced to the National Assembly in December 2004, was eventually passed and harmonized by the two chambers of the National Assembly and subsequently signed into law on May 28, 2007 by the former President, Olusegun Obasanjo, a day before handing over power (<http://www.neiti.org.ng>, retrieved on 16/17/2011).

Prior to enactment of NEITI Act in December 2007, NEITI has relied on persuasion, dialogue and consensus building to attain or achieve its objectives and perform its functions, but with this enactment, the implementation of NEITI principles has moved from voluntary to obligator. The NEITI Act of 2007 gives the NEITI the necessary legal backing and the mandate to promote due process and transparency in extractive revenues paid to and received by government as well as ensure transparency and accountability in the application of extractive revenues. In other words, the NEITI is mandated by law to promote transparency and accountability in the management of Nigeria's oil and gas and mining revenues being a major component of the on-going anti-corruption reform in Nigeria. NEITI, therefore, is the national version or chapter of the EITI, itself a global movement aimed at ensuring that extractive resources aid or facilitate sustainable development (<http://www.neiti.org.ng>, retrieved on 16/17/2011).

However, since the enactment of the NEITI bill into law in 2007, not a few have identified the defects and the shortcomings of the enabling Act. For example, Igwe (2011) points out that the objectives of the NEITI Act may be too ambitious and open-ended like in Section 2(c), the Act empowers NEITI 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". This particular clause gives a very broad or wide range of responsibilities to NEITI, but NEITI is designed as a lean bureaucracy and so will be unable to carry out these functions. Moreover, most of these functions are already being performed or carried out by statutory government agencies such as the Federal Inland Revenue Service (FIRS), the Central Bank of Nigeria (CBN), the Office of the Accountant General of the Federation (AGF) among others. This clause does not give NEITI a clear coordinating role, and therefore, duplicates the roles and puts the NEITI in collusion cause with these other governmental agencies in the cause of performing its statutory duties or functions.

Igwe (2011) also notes that the fourth objective of NEITI in Section 2(d) to "ensure transparency and

accountability by government in the application of resources from payment received from extractive industry companies" raised a number of complex issues. For instance, the unbundling or the interpretation of the word government will mean the federal, state and local governments, but the 1999 Constitution does not allow Federal Government agencies, and NEITI is not an exception, to operate beyond the federal level. It is therefore almost impossible for NEITI to implement its fourth objective as it is crafted by the Act. Thus, there have been renewed calls for state governments to voluntarily queue into the EITI model in the area of expenditure transparency as has already been adopted Bayelsa State which will provide entry points for NEITI to work with such states.

According to Igwe (2011) another defective clause in the NEITI Act is Section 3(c) which prescribes a function for NEITI to "ensure transparency and accountability in the management of the investment of the Federal Government in all extractive industry companies". This function partly falls within the scope of the functions currently or presently carried out by the National Petroleum Investment Management Service (NAPIMS) in the oil and gas industry. Under the current arrangement, NAPIMS is a unit/department of the Nigerian National Petroleum Corporation (NNPC) and it is believed that the functions of NAPIM will be taken up by another regulatory agency that will be established after the passage of the Petroleum Industry Bill (PIB). This Section, therefore, conflicts with the role of NAPIMS or any other agency so designed in the future. This is because the Section fails to specify the role of NEITI to that of ensuring compliance in terms of corporate governance and ensuring that business models are competitive.

Igwe (2011) further observes that Sections 3(d) and 3(e) of the NEITI Act is crafted to accommodate the issue of confidentiality clauses or provisos like "... provided such information shall not be used in any manner prejudicial to the contractual obligation or proprietary interests of the extractive industry company", which is now outdated or anachronism in the oil and gas industry, especially since the passage of Dodd Frank Act. Many of the extractive industry companies operating in developing countries insist on this provision of incomplete or minimum disclosures, and argue that complete or maximum disclosures may harm proprietary interests. However, such confidentiality clauses are no longer in line with international or global best practices in the ensuring transparency and accountability in extractive industries. The retention of these clauses in the NEITI Act makes NEITI a toothless bull dog as some of these oil and gas companies would hide under the protection or umbrella of these clauses to fail to comply in declaring or disclosing their activities in the exploration and production of oil and gas including production volumes, payments to the government, etc.

Moreover, the NEITI Act of 2007 fails to define what

constitutes the global or international industry best practices or minimum standard in the oil receipts and expenditures accounting processes. This has given the extractive industry companies, specifically oil and gas multinationals a legal back exit door to escape the penalties of non-compliance to the transparency and accountability provisions of the NEITI Act rendering enforcement and implementation of the Act difficult if not almost impossible for the NEITI.

Not surprisingly, no other person than the Chairman NSWG of NEITI itself demanded that NEITI needs constitutional powers to enforce its sanctions against defaulting operators in Nigerian extractive industries if the principles of transparency and accountability are to be realized in Nigeria. Apparently frustrated at the rate which its authority and mandate are being undermined by operators particularly in the oil and gas sector, the NEITI Chairman says that the sanctions and penalties specified in the enabling Act was crucial if the government and the companies are to be held accountable or responsible for the imprudent management of the revenue accruing from the extractive industries. If the powers to enforce sanctions are granted and judiciously applied in Nigeria it would compel the relevant government agencies and operators in the extractive industries to embrace accountability in the management of revenue accruing from their operations on behalf of the government (Udo, 2011).

According to Assisi Asobie in Udo (2011) several legal issues have been identified which require the interventions of judiciary to interpret the inherent conflict in NEITI's mandate and those of other agencies. These conflicts include those between the functions of NEITI and some other federal government agencies as well as among some other agencies working in collaboration with the NEITI, and the challenge of enforcing aspects of the NEITI Act dealing with offences, convictions penalties and sanctions as well as issues of relations or contractions between international contracts entered into by the Federal Government with extractive industry companies and the NEITI Act. For example, some aspects of the NEITI Act dealing with offences, convictions, penalties and sanctions, as provided in Section 2(c) of the Act, are in conflict with what anti-corruption agencies like Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and other related offences Commission (ICPC) are statutory expected to do. Similarly, the Section 3(j) of NEITI Act, that mandates or empowers NEITI to "ensure that all fiscal allocations and statutory disbursements due from the Federal Government to statutory recipients are duly made" appears to be also in conflict with the functions of the Revenue Mobilization, Allocation and Fiscal Commission (RMAFC), Federal Inland Revenue Service (FIRS), and the Department of Petroleum Resources (DRR). On the offences, sanctions and enforcement, although the NEITI

Act stipulates certain sanctions for offences relating to violations of the EITI principles, the law is silent on the procedure to apprehend, prosecute and punish the culprits or violators (Udo, 2011:3).

### **The NEITI Act of 2007 and the Cases of Non-Remediation of Account**

The NEITI Act of 2007 provides in the Section 1 that "there is established a body to be known as the Nigeria Extractive Industries Transparency Initiative (...referred to as 'the NEITI). The NEITI (a) shall be an autonomous self-accounting body, which shall report to the President and the National Assembly..." The NEITI Act stipulates the objectives, functions and modes of operations of NEITI in Sections 2, 3 and 4. For example, the Act provides in Section 14 that the NEITI shall cause the account of total revenue accruing to the Federal Government from all extractive industry companies, its receipts, payments, assets and liabilities to be audited not later than six months after the end of each year by independent auditors appointed by NSWG of NEITI. The independent auditor shall submit the report with comments of the audited entity to the NEITI which shall cause same to be published the information for the benefit of the public. This Section unfortunately contained the anachronistic clause of confidentiality or the provision that the contents of the report shall not be published in a manner prejudicial to the contractual obligations or proprietary interests of the audited entity, that is, the extractive industry company.

The Section 14 of the NEITI Act, 2007 thus empowers or authorizes NEITI to publish the report of its independent auditors. Towards performing or carrying out the provisions of this Section, NEITI therefore appoints the Hart Group in association with Chris Morgan Associates and SS Afemike and Co to carry out financial physical and process audits of oil and gas multinationals operating in Nigerian oil and gas sector. The financial audit examines the financial flows and outlines the chain of custody of finances so that specific agencies could be held accountable. It reconciles company payments with receipts by the government's banker, the Central Bank of Nigeria (CBN), and with the records of the Federal Inland Revenue Service (FIRS), the department responsible for petroleum profit tax (PPT) assessments, and the Department of Petroleum Resources (DPR). It also samples some companies' tax returns and royalty statements to verify the calculations and the assessments of FIRS and DPR (<http://www.neiti.org.ng>, retrieved on 16/07/2011).

The physical audit process maps the sector's oil and gas and refined product flows. It checks that the extracted volumes are accurately reported, and that each company's reported production tallies with the numbers the government used for tax and royalty calculations.



This took the audit into some highly technical areas that features metering, temperature and pressure measurements as well as the more controversial areas of oil theft. The process audit examines how key agencies run the business. It explores how the regulator auctioned land sold oil blocks, and scrutinizes DPR'S conduct of upstream licensing. It assesses whether NNPC's Crude Oil Marketing Department (COMD) priced the government's share of equity crude accurately, and how and why other companies were contracted to export this crude. The audit also examines NNPC's upstream division, NAPIM among other processes related integrity issues (<http://www.neiti.org.ng>, retrieved on 16/7/2011).

Subsequently, NEITI conducted the first ever comprehensive audit in oil and gas sector retroactively to cover a period of six years starting from 1999 to 2004 and placed immensely rich data and information in the public domain thereby strongly empowering civil society groups to hold government to account. The profound success of that landmark exercise and its findings promoted public demands for regular audit of the extractive sector. For details of 1999-2004 audit report see Table 2 below.

Another audit covering 2005 was conducted and published by NEITI. The key features of the audit include individual shareholders equity stake in the hydrocarbon streams; oil and gas produced and used for calculating petroleum profit tax (PPT) and royalty payments; and companies records with those by DPR records representing an overview of the data collected from companies (field operators, terminal operators, lifers), NNPC and DPR (<http://www.neiti.org.ng>, retrieved on 16/7/2011).

The 2005 audit of the oil and gas industry reveals the following findings; a total of 917 million barrels of crude oil were produced during the period under review, the central Bank of Nigeria (CBN) received from the oil and gas sector, a net revenue of US\$ 28 billion, that is, 790 billion Naira; amount owned by NNPC to the Federation Account like domestic crude and other income was 654.8 billion Naira and dividend payments from NLNG were \$.2 billion; under payments for recovery in 2005 amounted to \$.8 billion and a value of 1.5 billion Naira; more revenue would have accrued to the Federation but for the losses occasioned by the significant process weaknesses identified in the system (<http://www.neiti.org.ng>, retrieved on 16/7/2011). For details of 2005 NEITI audit reports see Table 3 below.

The amount received in 2005 by the Federation on the specified companies, and in respect of the identified classes of financial flows was as follows.

Note that the company income tax receipt could not be confirmed by CBN due to the way in which the system of tax collection operates, without distinguishing oil and gas payments from other payments. Accordingly, we do not identify any 'difference' against CIT. Non-oil flows are the

figures reported by companies. The audit process did not include the confirmation of these flows from the transaction counterpart.

The specific and interesting findings of the physical audit include the following; the quantity of oil produced during the period under review was not reliably known; no data estimated, measured or inferred on possible product losses between the production point and the terminal; complex agreements impact on determination of company oil entitlements; unclear ownership of terminal stocks; no system for measuring production, other than through monitoring terminal receipts.

The NEITI Act of 2007 in Section 16 provides sanctions or penalties to defaulters or violators of this Act, but so far no oil and gas multinationals have been reported to be sanctioned or penalized despite gross violations or breaches of the NEITI Act, 2007 as shows by the differences in accounts between the records of oil and gas companies audited and CBN records; and other forms of underpayment and product losses (or put more appropriately product theft). Some of the oil and gas multinationals are yet to remediate their accounts, yet NEITI has not been able to sanction or penalize them, nor has it been able to sanction the non-collaborating government agencies or officials of erring government agencies who are accomplice in underpayment or non-payments of revenue accruable to the Federal Government or statutory recipients like state and local governments.

Therefore, there are, on several occasions, contradictions between the government's interest and various sections of NEITI Act, and as well as contradictions between the interests of the oil and gas multinationals (sometimes defines as proprietary interests on the grounds of confidentiality clause) and the very principles of NEITI (or EITI) or the international best practices in transparency and accountability in extractive industries. Thus, we concur that the NEITI Act of 2007 inadequately empowers NEITI to compel oil and gas multinationals to perform or carry out remediation of their accounts let alone sanction or punish defaulters or violators of the Act in oil and gas industry.

## CONCLUSIONS AND RECOMMENDATIONS

The corruption in Nigerian oil and gas sector characterized by under-payment of taxes, royalties, and bribery by the oil and gas companies to NNPC and CBN resulting in the discrepancies in quoted figures, have significantly contributed to oil resource curse in Nigeria. Nigeria is thus a typical example of paradox of plenty. The conclusions at which we arrived in the course of this study, therefore, are that, one, NEITI lacks institutional capacity to ensure that oil and gas multinationals comply with the international best practices in declaring their accounts and payments to Nigerian government, and

two, NEITI Act of 2007 inadequately empowers NEITI to compel oil and gas multinationals to carry out remediation of their account.

On the basis of the above conclusions, we recommend that, one and more fundamental, diversify Nigeria's economy and revenue base away from oil, two, strengthen the organizational structure of NEITI to make it proactive and technically well equipped to conduct its own audit to crosscheck the audit reports of the independent auditors, and three, reform the conflicting sections and strengthen the weak sections of the NEITI Act of 2007 required to adequately empower NEITI to sanction or penalize defaulters or violators of the NEITI Act as well as harmonizing or reconciling the conflicting sections with other laws establishing other federal government agencies in Nigeria.

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