

An Uphill Struggle

Oil Wealth and the Push for Transparency in the Niger Delta

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Summary

Formed in 1996, Bayelsa State is one of the youngest and smallest states of Nigeria. One of nine states in the Niger Delta, Bayelsa is a poor, underdeveloped region rife with social, political and geographical challenges, which has made growth an ongoing struggle.

Bayelsa was the site of Nigeria's first oil discovery in 1956, and today the state contributes over 30% of the country's oil. Nigeria's constitution requires that all states receive a share of the nation's oil revenues and, as a result, Bayelsa has brought in over 414 billion naira, or \$2.6 billion dollars, since 1999. With careful, accountable and transparent management of its share, the state has a real opportunity to grow and spur development across the Niger Delta.

Since 2008, the Revenue Watch Institute (RWI) has been engaged in Nigeria, mostly focusing on increasing transparency and accountability of Bayelsa oil revenues and spending. RWI supported the Bayelsa Expenditure and Income Transparency Initiative (BEITI), a multi-stakeholder initiative that brings together representatives of government, civil society organizations and the private sector to track revenue and expenditure at the state and local government levels. The project also supported civil society organizations to push for increased budget transparency and advocate for better management of oil and gas revenues.

The project has not been an easy one, and its impact remains to be seen. While civil society's understanding of public financial management systems and ability to analyze and critique government planning and budgeting processes has increased, this awareness has not yet translated into improved transparency and accountability of resource revenues or increased government capacity and performance. Nevertheless, the attempt to develop and institutionalize the initiative has produced lessons critical to replication efforts elsewhere in the country as well as abroad.

The Background on Bayelsa

Formed in 1996, Bayelsa State is one of the youngest and smallest states of Nigeria. Situated in the south and with a population of just under two million, Bayelsa is one of nine states in the Niger Delta, a culturally, politically and physically complex region. Due to its largely riverine and estuarine setting, development in Bayelsa has been a challenge. The predominant population, the Ijaw ethnic group, sustain on fishing and farming. President Goodluck Jonathan, and his strategic advisor and respected activist Oronto Douglas, are Ijaw from Bayelsa. His election marks the second time in Nigeria's post-independence history that a member of a minority ethnic group has become president.

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Oil was first discovered in Nigeria in 1956 in Oloibiri, now a town within Bayelsa. A major producer of oil and gas with both on- and offshore reserves, the state contributes over 30% of Nigeria's oil. Between June 1999 and May 2007, the Bayelsa State government had received over 414 billion Nigeria naira, or \$2.6 billion dollars, as its share of oil and gas revenues from the National Federation Account.

With such a major oil development in a comparatively underdeveloped area with a history of untreated oil spills, it is no coincidence that Bayelsa is one of the three most restive states in the Niger Delta. Since 2003, militancy has increased throughout the Delta, beginning with the Niger Delta People's Volunteer Force and the Niger Delta Vigilante. These militia groups, consisting mostly of the Ijaw, are all vying for control of the region's natural resources, which are currently managed by international oil companies in partnership with the federal government. In 2006, the Movement for the Emancipation of the Niger Delta (MEND) began attacking oil installations and facilities and kidnapping foreign oil workers. MEND attacks led to wellhead closings and significantly dented production volumes.

To manage the complex, shifting patterns of uprising and militancy in the Niger Delta, the federal government established a number of institutional frameworks and initiatives. In 2009, in a bid to quell the militancy, the government set up an amnesty program, which involved deporting ex-militants for overseas training courses, but its results are debatable.

Nigeria's constitution requires all states receive a share of the nation's oil revenues. The share is determined by a formula that includes an extra allowance for oil-producing states, calculated based on production volume. Largely mono-ethnic, relatively new and small in size, Bayelsa has the highest per capita revenue allocations in the country. With careful management of its share of oil revenues, the state would be in an excellent position to rapidly develop. These additional funds could help Bayelsa create critical infrastructure, increase the state savings fund and develop the non-oil economy. With an accountable and transparent governance framework and genuine political will, Bayelsa would have the potential to attract foreign investment and become a catalyst for development across the Niger Delta.



Oloibiri, where oil was first discovered in Nigeria.



Figure 1
The Niger Delta States

In February 2008 in Dakar, Senegal, RWI organized a conference titled, “How Can Africa Get a Better Deal for its Natural Resources?” The recently elected governor of Bayelsa, Timipre Sylva, attended this workshop. During the workshop, Governor Sylva and RWI discussed establishing a subnational program that would create a mechanism for transparency and accountability, the Bayelsa Expenditure and Income Transparency Initiative (BEITI). It was clear the Governor had reformist goals for his state, and he followed up on them in March when he invited RWI to a strategy workshop on sustainable development in Bayelsa’s capital, Yenagoa. Two months later, Sylva was re-elected by an overwhelming majority. With a firm mandate for reform in place, the scene was set for RWI to partner with the Bayelsa government to assist in the creation of BEITI and to support civil society organizations to push for transparency and accountability.

What is BEITI?

The Bayelsa Expenditure and Income Transparency Initiative, commonly referred to as BEITI, is modelled after the Extractive Industries Transparency Initiative (EITI), a global campaign to facilitate better governance of resource revenues. In participating countries, oil, gas and mining companies are required to publish what they pay to governments and governments are required to publish what they receive from companies. These figures are then reconciled by an independent body, so the public can stay informed and hold their governments accountable. A multi-stakeholder group that includes representatives from the government, industry and civil society oversees the EITI process in each country.

BEITI goes one step further by focusing on expenditures as well as revenues. Bayelsa’s income, expenditure and government contributions are all tracked, based on templates approved by a multi-stakeholder group. The templates are supposed to capture the federal government and oil companies’ allocations and payments, which are then reconciled with reporting from state and local governments and receipts on expenditure. The reconciliation process is expected to capture

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information on four kinds of transfers: revenues, allocations, expenditures and resource flows, all of which are illustrated in the below diagram. In the end, the initiative’s aim is to reduce revenue losses and leakages, improve effective investment and avoid the problems of abandoned or duplicated projects, which have plagued the state for years.

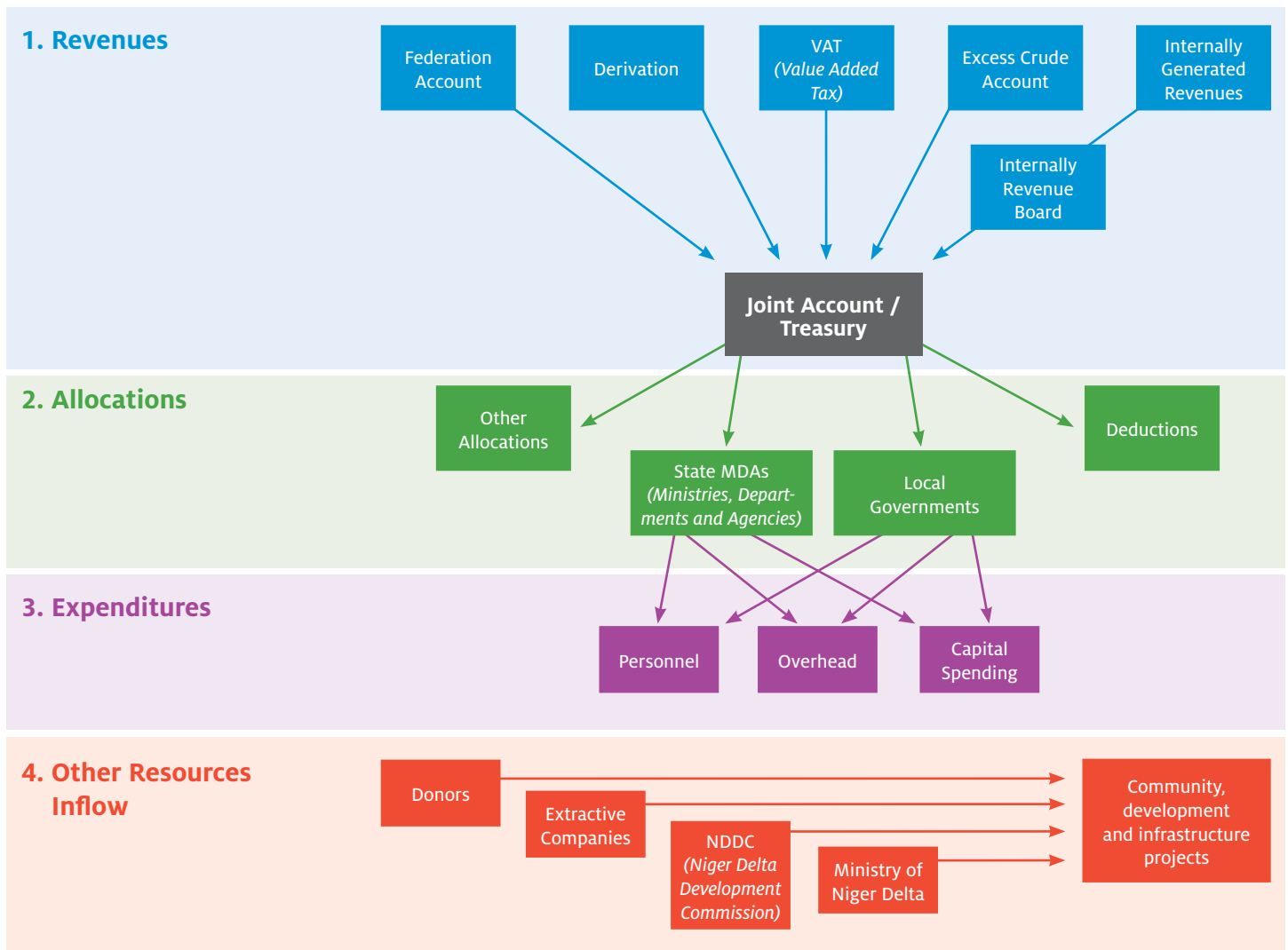


Figure 2
Revenue flows in Bayelsa State

BEITI – The process and its challenges

First steps

The first step in setting up BEITI was to form the multi-stakeholder group, the BEITI Stakeholder Working Group (BSWG). The state governor selected government representatives, while representatives from companies and civil society were also nominated. A secretariat who would support the BSWG was established in the state’s Office of Due Process and e-Government.

The group then developed a three-year work plan that spanned from January 2009 to March 2012. The plan’s two key objectives were to enact a BEITI law and to produce the first reconciliation report. To complete the first report, the group had to first agree on its scope—what data from which entities would be collected—and then develop templates to collect this data. To help

with this process, RWI funded a series of stakeholder workshops and the development of an implementation strategy, which included draft templates.

To strengthen civil society's role in the process, RWI supported two local organizations, the Bayelsa NGO Forum (BANGOF) and the Niger Delta Citizens and Budget Platform (NDCBP). BANGOF is a platform of over 40 Bayelsa NGOs with a representative in the multi-stakeholder group. With RWI's support, BANGOF set up and trained community watch groups in budget and project monitoring in two pilot local government areas and plans to extend its scope across the state. NDCBP is a coalition of civil society organizations that coordinates action across four states in the Niger Delta, including Bayelsa. RWI trained the NGO on budget and project monitoring and funded key budget monitoring activity at the community level as well as reports of findings. RWI's support to BANGOF focused on empowering accountability actors in Bayelsa in the BEITI process, while its work with NDCBP had a more general focus of increasing accountability mechanisms throughout the Niger Delta.

The first reconciliation report

In 2010, BEITI appointed its first external auditor, S.S. Afemikhe and Co., which was given three months to gather data and complete the 2008 report pretty much on its own. Though armed with a directive from Governor Sylva to comply with the information requests, Afemikhe faced suspicions that the report was motivated by political reasons. The directive failed to counterbalance fears that the submitted information would contravene official secrecy legislation and perhaps expose poor practices.

In preparing the implementation strategy for the BEITI, the consultants, SEB Strategy, noted: "During our work we found that even officially public documents were in reality either (i) not readily available; or (ii) only made available on request of the Bureau of Due Process and E- Government. In short—public documents were not actually public."

At the time this case study was written, Afemikhe and Co. had been on the project for 11 months with no firm date for completion. The delay is due to non-cooperation from government agencies and companies unwilling to provide information. For instance, at an initial meeting, the state's finance officers informed Afemikhe that it would need authorization from the Commissioner for Local Government to proceed; the authorization was never granted. The initiative's coordinator suggested shifting the focus of the project to the BEITI law because, once legislation was in place, the first report would be easy to complete. In the interim, Afemikhe delivered a one-page diagram of financial flows and an updated set of templates initially prepared by a team of consultants.¹

The BEITI bill

The Ministry of Justice first drafted the BEITI bill with technical assistance from RWI and then sent it to the multi-stakeholder group for review. Attorney General A. George Ikoli and other key members of Governor Sylva's executive committee were part of the multi-stakeholder group. Their presence should have helped shepherd the bill into law, yet the BEITI secretariat had to plead and cajole to retrieve the draft bill from the Ministry of Justice and ensure it was formally presented to the House of Assembly.

What follows is a brief analysis of key aspects of this draft legislation.

- The "Preamble" states that BEITI was conceived "to form and deploy a Government that is Accountable and Transparent and in tone with the Rule of Law" and "therefore aims at bringing transparency through monitoring of public expenditure at the State and Local Government levels."

¹ E-mail from Sam Afemikhe, June 21, 2011.

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- Part I sets three objectives: to ensure due process and transparency in fiscal transfers from the federal government to the state; accountability in extractive companies' contributions to the state; and transparency and accountability in the 'application of resources.' In other words, expenditure transparency. Part I also lists the 12 core functions of BEITI.
- Part II defines the multi-stakeholder group in terms of membership, functions, powers and tenures.
- Part III covers sub-committees and the appointment of consultants. Part IV outlines BEITI staffing requirements.
- Part V (currently considered part of Part IV) addresses financing arrangements

There are three main flaws in the current version. In Part I, where the functions are mentioned, the 'interest of the State' is so broadly defined that they could be used to block information requests and lead to a diluted report. Nowhere in the rest of the bill is the 'interest of the State' precisely defined.² In effect, any enquiry from the appointed auditors may be defined by government entities as a political probe and used as an explanation for non-compliance. Any BEITI report, which could damage the reputation of the Bayelsa government, may be framed as an attack on the "interest of the State" and used to block subsequent audits.

Secondly, there is no clear, explicit process for appointing the key stakeholders, specifically the 'BEITI champion,' or chair of the multi-stakeholder group, and the five civil society representatives. The bill never provides selection criteria or details of the process. It fails to clarify the BEITI champion's role beyond chairing the meetings. It also fails to mention if the Executive Secretary sits on the multi-stakeholder group and acts as its secretary, or is not permitted to attend the meetings. If subsequent drafts do not address these issues, there is potential for a power conflict between the chair and the Executive Secretary.

Finally, and most significantly, the multi-stakeholder group is heavily biased in favor of the government, with ten members from ministries, departments, agencies and the House of Assembly. The government also has a majority stake on the BEITI board, which means any resistance to collectively held government positions would be futile. It is also curious that three key actors in Bayelsa State financial management, the accountant general and two auditor generals, are not listed as stakeholders. If the BEITI bill passes as is, it would create a parastatal controlled by the governor and his executive committee that could easily stamp out dissenting voices and opinions.

In May 2010, Governor Sylva's executive committee of commissioners finally ratified the draft bill; however, it was not until a year later that it was the bill was formally passed to the incoming State House of Assembly. As of late July 2011, the bill had its first reading in Bayelsa's House of Assembly. A public hearing is due after the second reading. In a meeting on July 14, 2011, the multi-stakeholder group agreed to submit a memorandum to the House Committee identifying concerns with the current draft of the bill. The impact of this feedback is yet to be seen.

While BEITI appears to have been dormant since June 2010, the next few months could see the signing of the BEITI Act into law and delivery of the first report. A constructive seventh BSWG meeting took place in July of 2011. Stakeholders seemed to leave that meeting with their faith restored. "BEITI is a laudable initiative," said one stakeholder. "The results may not be immediate,

² The pertinent sections are as listed below:
 "(4) obtain as it may deem necessary from the State, the Local Governments, the NDDC and the extraction industries or companies a timely and accurate record of public expenditures and socio-economic development projects embarked upon in the State; provide that such information shall not be used for **any other purpose which is against the interest of the State**; and (7) obtain from the State and Local Governments a timely and accurate account of all sources of income; provided that such information shall not be used for **any other purpose which is against the interest of the State**." Note that the bold underlined passages are in the original draft bill. However, it should be noted that the final function of the BEITI is "(12) [to] report to the State Anti-Corruption Commission any MDA or Local Government Area that refuses to provide it with relevant information for investigation and prosecution."

but we will definitely get there. The consciousness is a seed that is growing and one day will be a full-grown tree bearing fruit.”

Institutional placement and development

BEITI was initially housed within the Bureau of Due Process and e-Government which is where it resides at present. The trouble is that the bureau only became a fully-fledged agency of government in June 2010, so for the first 18 months of its existence, BEITI was housed in an agency lacking its own legal framework. This could be one of the reasons the BEITI Act has yet to pass, and it also raises the key question of where a subnational program would fit best: in the ‘belly of the beast’ or on the sidelines. While being included in a core public finance management agency may seem optimal, the reality is that it may not be possible to get sufficient buy-in. On the other hand, while it may be easier to get buy-in in a non-core agency, this may mean that the program is not ultimately taken seriously.

The BEITI Secretariat has five full-time members whose salaries are paid by the Bayelsa government. The initiative has dedicated office space in the Due Process and e-Government Bureau, yet currently has only one computer, no internet access and no official car for field visits. The special assistant to the governor on new media offers the secretariat some communications support; however, apart from the initial plan outlined in the implementation strategy, the initiative has no communications strategy at present. A website (<http://bayelsa.gov.ng/beiti/>) has been created, although it is rarely updated. In fact, information on 2011 is non-existent.

Community in Bayelsa State

The geography and culture of Bayelsa State presented its own set of challenges in the implementation of the BEITI. Bayelsa resembles a small and mono-ethnic State, but in reality, there are a number of differences in history, tradition, culture and, most importantly, language across the state. For one, Ijaw people from different parts of the state cannot understand each other because the dialectal differences are so strong. Pidgin English is the lingua franca of the state, not Ijaw. Due to this internal complexity, any analysis of community engagement in participative budgeting had to be mindful of local differences across the Niger Delta. BANGOF’s RWI-supported community engagement in Ogbia and Sagbama made sure to take these local complexities into account in project implementation by initially mapping the community and ensuring representation of different groups.

Trust and local champions

One of the enduring legacies of British colonial policy in Nigeria is that traditional structures of authority were broken and supplanted by colonial artifice—native authorities in the north and warrant-chiefs and compliant kings in the south. British colonialism in Nigeria created a deep-seated rift between leadership structures grounded across time in communities and those imposed for the convenience of implementing colonial policy. This ‘dual mandate’ division was at the behest of an appropriation of resources.³

The gap between civil society and government exists to this day. When Timipre Sylva invited Dimieari Von Kemedi, a civil society activist, to head the Due Process and e-Government, it was a bold, innovative decision seen by civil society as a radical and welcome step. Yet, simply placing individual activists within key government positions does little to challenge the historical structural conditions within which state-based authority is grounded. In the context of the resource curse and the appropriation of oil and gas revenues by an unstable and perpetually reforming petro-state elite, the gap between the haves and the have-nots is both sharply defined and inherently volatile. Individuals crossing boundaries do little to change the political economy of Bayelsa, the petro-state in microcosm.

³ Michael Peel’s 2009 book, *A Swamp Full of Dollars*, is an excellent account of the first oil wars in Nigeria.

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Bayelsa was the first state in the Niger Delta and possibly in all of Nigeria to start publishing its budget and revenue allocation—and on the web nonetheless. But what began as a big bang of activity has cooled down over time.

Compounding this complex historical backdrop are the competing, at times overlapping and at times mutually contradictory agendas of international donor agencies. There is always pressure to find local champions with the right credentials. In a sense, this echoes the colonial project's requirement for compliant local leaders, even if the context is sharply divergent and not based on appropriation. The risk of identifying local champions is that an undue burden of expectation is placed upon those selected and, in time, the complexities and contradictions in the choices and demands they face is bound to lead to disappointment for some.

Political will

A lack of genuine political will may have been a factor in the delays to implementing BEITI. A number of civil society activists have suggested that Governor Sylva paid lip service to the initiative, but little else. The assumption is that Governor Sylva wanted the reputation and prestige that the initiative afforded without any of the consequences of such reform. This strategy involved enthusiastic support for the initiative in the early days of his tenure, followed by a lack of active commitment once the institution was operational. If the BEITI bill does become law, it could still be seen as a sign of a lack of genuine commitment because the membership of the stakeholder group is heavily biased in favor of government. BEITI would be a Bayelsa State institution fashioned in the government's image. At this stage, a stronger sign of political will would be if the draft legislation is modified between first and final readings to iron out its weaknesses. However, these changes would like only be made with pressure from civil society.

It is still a little too early to conclude on the question of political will. An alternative explanation to delays is that there was insufficient alignment of reform objectives among the executive council. The desire for genuine public finance management reform may have been a priority for Governor Sylva, but not for all of his commissioners.

Impact and lessons learned

Bayelsa was the first state in Niger Delta and possibly in all of Nigeria to start publishing its budget and revenue allocation and on the web nonetheless. But what began as a big bang of activity has cooled down over time. Driving around Bayelsa's capital, it is all too clear that the state's oil and gas revenues have not been used for development. Civil society stakeholders cite many abandoned projects, such as Yenagoa's general hospital, which has yet to be completed years after the project was started. There is an obvious lack of basic infrastructure across the state, reflected in poor quality roads, health care and education facilities.

Bayelsa clearly has a problem with the management of its share of Nigeria's oil and gas revenues. It has been well over two years since BEITI implementation began, and there is little, if any, impact on the quality of the public financial management. This is principally because at the time this case study was written, there was neither a BEITI Act nor a first BEITI report. Stakeholders have lost faith, saying "BEITI is a graveyard of broken bones." Their optimism has turned into pessimism: "All this BEITI business is grammar. Nothing has changed."

However, not all hope has been lost. Progress has been made in terms of raising civil society awareness, which will hopefully lead to higher-level impact in due course. RWI's support of BANGOF and NDCBP enhanced their capacity to demand for transparency and accountability on resource revenues. The organizations informed and educated citizens' on BEITI through the media and their own reports and websites, formed watch groups in two pilot areas to monitor budget implementation, and mobilized the community to participate in the budget process. Evaluation conducted by independent consultants reveals that Bayelsa has increased its community awareness on budget process, policy advocacy and engagement for good governance. As Willie Mac-Eteli, the chair of one of BANGOF's community watch groups, attests, "Thanks to the

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initiative, we have become more aware of our rights and the power we have to participate in and question the budgetary process. We now understand how budgets are tracked.”

While the organizations have been effective in articulating strategy for demand and engagement for good governance, this has yet to translate into improved transparency and accountability within the government and its policies. Many stakeholders, including government representatives, report the same phenomenon: the initiative raised awareness of good governance and made people realize that public financial management can and should be a participative process, but then hit a wall. Before the initiative can positively influence the quality of public financial management in the state, it needs a sound legal framework and the hard data of a first BEITI report.

The lessons learned in Bayelsa are intended to help similar subnational projects in Nigeria and other resource-rich countries. Transforming public financial management through multi-stakeholder initiatives is not an easy task. It is inevitable that there will be setbacks in the first few years of the process. Neither the slow pace of implementation nor interim obstacles to progress should be seen as reasons to end intervention. These are not problems that can be fixed overnight; a long-term perspective will always be required.

Ensure political will and support

The state governor or top elected politician must show demonstrable and continual commitment to the initiative. Engagement should include both regular public speeches supporting the initiative as well as direct or delegated involvement in the process itself. Senior government officials in the multi-stakeholder group must attend and participate in the meetings, rather than send an alternate. Donors may wish to consider program implementations, which have staged-benchmarks built in. Should conditions, such as discernible political support, not be met, further donor support would be suspended.

Sell reform first

The initiative represented an opportunity for major reform in Bayelsa, but introducing both the proposal and the plans for implementation at the same time may have been too much, too soon. In hindsight, an incremental approach may have fared better. Time is required for top political figures and their executive team to buy into an idea, and it is also necessary to ensure an integrated approach to reform policies is put into place. Ideally, a subnational project should be embedded within the state government’s development strategy and viewed as a key aspect of public financial management reform. In terms of institutional location, subnational initiatives are better placed within one of the core finance agencies, ministries or departments before they try to acquire their own legal framework and measures of independence from the government. Only then can a more transparent and accountable approach to governance work its way through the government via an effective communications strategy.

Communicate effectively

The twin goals of establishing a subnational law and delivering an independent reconciliation report should have the support of a communications strategy that ensures key audiences are kept abreast of all significant developments. The multi-stakeholder group should develop the communications strategy ideally before advocating for the subnational law and first report. The strategy should offer guidance on how to best communicate the benefits of government reform to the private/extractive sector, civil society, the media and the public. It should include an analysis of local media consumption, a program of public consultation on key stakeholder deliverables, such as the findings of the first report, and a plan for how the subnational initiative will adopt the findings of this analysis. It is also imperative that the implementation of the communication strategy is adequately resourced.

Create a legal framework

It takes time to transition from an organizational culture of secrecy like Nigeria's to one of transparency and accountability. For effective independent monitoring and evaluation of public financial management to become possible, policies advocating more open government must be backed by legal measures. Because lawmaking is a slow and bureaucratic process, EITI recommends that all three parties of the multi-stakeholder group draw up and sign a Memorandum of Understanding (MOU). This MOU should define the initiative's objectives; membership and selection criteria of the stakeholders; roles and terms of members; voting and quorum requirements; rules for alternates with delegated authority and meeting observers; and reporting obligations, etc. The MOU would effectively function as draft legislation and significantly support the development of transparency of subnational resource revenues.

Choose an even mix of stakeholders

The multi-stakeholder group should have an equal mix of members from civil society, the extractive sector and the government (including commissioners, heads of departments, ministries and agencies, and members of the judiciary). It is critical that, in each case, representatives are decision-makers of the organization they represent and that they have some understanding of transparency and accountability's role in development.

Stakeholders can also include one or two respected figures from the media as well as members from subnational areas. This addition may be critical in areas with different ethnic groups or religions. The group should discuss and agree on selection criteria for these representatives.

Build capacity and trust

Both government and civil society stakeholders will likely represent institutions and organizations that lack the capacity to implement and support a more open, transparent and accountable governance framework. Government institutions may not have the in-house skills and competence to complete the auditing templates and will require training. Civil society organizations at the subnational level are likely to be stretched thin and may not have the knowledge to analyze, monitor and assess government progress or effectively advocate on behalf of their community. The initiative's secretariat will require office space, computer equipment and trained staff to provide adequate support to the stakeholders.

The multi-stakeholder meetings may be the first time government, civil society and extractive companies come together in a formal setting, so there needs to be a focus on trust-building. In-country strategy retreats are a possible option to build trust as they provide the time and space to help address the question of "What are we trying to create and how?"

Plan on a long-term approach

Subnational governance improvements can often take years to achieve. Achieving structural change in governance arrangements and building capacity in government institutions and civil society organizations should involve a three- to five-year program. A one- or two-year commitment may leave organizations with partially developed programs.

Don't sleep at the wheel

Ensuring that civil society members are placed at the hub of a subnational program is necessary but hardly sufficient for improved governance. Bayelsa's residual post-colonial distrust has drawn a seemingly permanent line between the state and civil society. Civil society actors risk being perceived as traitors, isolated from their former colleagues due to their involvement with the government.

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Organizations should be mindful that their representatives are at risk of being swayed by government interests. However, rather than view them with distrust, a representational process should be agreed upon in advance. Such processes can be built into the MOU or subnational law as required aspects of the stakeholders' roles, but organizations must be vigilant in ensuring their representatives—and their interests—are supported.

Civil society actors should also advocate that the multi-stakeholder group regularly meets, regardless of whether an anticipated deliverable is produced on time. Both the MOU and the subnational law should mandate a minimum number of meetings per year.



The Revenue Watch Institute promotes the effective, transparent and accountable management of oil, gas and mineral resources for the public good. Through capacity building, technical assistance, research, funding and advocacy, we help countries to realize the development benefits of their natural resource wealth.

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