Leaving a Legacy of Transparency in Nigeria

CALL TO ACTION On April 14 and 21, 2007, Nigerians will take part in national and statewide elections to elect a new president, the two chambers of the National Assembly, and 36 state governors and state houses of assembly. As Nigerian President Olusegun Obasanjo prepares to leave office in May 2007 after serving two terms, his government can bequeath a valuable legacy to voters and the next government by taking steps to ensure that the economic reforms it initiated will be continued and expanded by the next civilian administration.

In 2003, after winning a second term in office, Nigerian President Olusegun Obasanjo's government launched a raft of groundbreaking reforms intended to improve the governance of oil and gas revenues and help Nigeria escape its history of pervasive corruption entrenched by decades of military rule. According to Nigeria's Economic and Financial Crimes Commission—established by President Obasanjo in 2004—more than $380 billion in public funds was stolen by those in government between 1960 and 1999. [1]

The human cost of this corruption has been enormous. Despite earning more than $400 billion in oil and gas revenues since the early 1970s, the majority of Nigeria's 140 million citizens live without access to basic services such as clean water, electricity, and health care, leading Nigeria to place 159th out of 177 countries on the United Nations Development Program's 2006 Human Development Index.

Two of these reforms included its implementation of the Extractive Industries Transparency Initiative (EITI) and publication on a government website and in local newspapers of the amount of revenue transferred each month from the federal government to state and local governments. These reforms have burnished Nigeria's international reputation, helping the government secure $30 billion in debt relief from Paris Club creditors and the return of $458 million found in Swiss bank accounts linked with the former military ruler Sani Abacha. [2] More importantly, these reforms have brought critical information about oil and gas revenues at the federal, state, and local level into the public domain—information that non-state actors can

REVENUE WATCH INSTITUTE

continue to use to expose the mismanagement of Nigeria's oil and gas revenue and begin the process of holding public officials accountable.

Although the gains made in increasing the transparency of oil and gas revenues are a critical first step, the Obasanjo administration should enshrine these achievements in statutory law in order to ensure that these reforms are continued by future administrations. Moreover, the government should seize the opportunity to broaden these reforms to ensure that citizens have greater access to information about government spending. Such access is crucial to ensuring that information about revenues can be used to hold public officials accountable for the management of public funds.

This policy brief explains how the information disclosed through these two distinct but related revenue transparency mechanisms serves the public interest and how civil society actors are strategically using this information to promote accountability. The Revenue Watch Institute calls upon the outgoing government of President Obasanjo to institutionalize revenue transparency by signing into law a Nigerian Extractive Industries Transparency Initiative (NEITI) bill that adheres to the international EITI principles, especially the principle of active civil society engagement in EITI. In addition, the Revenue Watch Institute calls on the government to immediately take steps that will increase the ability of citizens to access information about government spending. The government should enact legislation that will enhance the transparency of government spending and give average Nigerians the right to demand and receive information about the activities of officials at all levels of government. Only by expanding the transparency agenda to include government spending will civil society groups be able to strategically use information about the amount of revenues to help ensure that they translate into an improved standard of living for average Nigerians.

A Solid Start Toward Transparency

Since 2003, the government has undertaken important steps in making its finances more transparent. At the beginning of his second term, Obasanjo appointed a reform-minded former World Bank official, Ngozi Okonjo-Iweala, as finance minister. Okonjo-Iweala spearheaded the adoption of reforms designed to make oil and gas revenues at the federal, state, and local levels of government more transparent. The two most important reforms were the government's implementation of EITI and the publication on a government website and in local newspapers of the amount of revenue transferred each month from the federal government to all state and local governments.

In order to increase the transparency of the federal government's oil and gas revenues, in February 2004 President Obasanjo launched NEITI, a Nigerian version of the international EITI. The EITI is an initiative established in 2002 to encourage oil and gas companies to publish the payments they make to the governments of countries in which they operate. It also encourages governments to publish the payments it receives from oil and gas companies so that these figures can be compared and discrepancies identified and investigated.

The government appointed Obiageli Ezekwesili, the current minister of education, as chair of NEITI and in 2005 established a committee to guide implementation—the National Stakeholders Working Group (NSWG)—made up of 28 representatives from civil society, industry, and the federal and state governments. Because the government invited only three members of civil society to serve on the NSWG, a diverse group of civil society actors protested, leading to the establishment in June 2005 of the Civil Society Steering Committee. This committee—comprised of 10 other civil society representatives—is intended to broaden civil society participation in NEITI by consulting with the NSWG on NEITI implementation. In 2005, the NSWG selected, through an international tender, a United Kingdom audit firm called the Hart Group, to conduct an audit of Nigeria's oil industry between 1999 and 2004.

Since 2003, the government has also taken steps to increase revenue transparency at the state and local levels of government. The monthly allocations from the federal to the state and local governments are published each month on the Ministry of Finance website, at www.fmf.gov.ng, and in local newspapers. In Nigeria, oil and gas revenues are placed in a Federation Account and then divided between the federal government, 36 state governments, and 774 local government councils, according to a formula developed by the Revenue Mobilization, Allocation, and Fiscal Commission (RMAFC), a federal executive body, and then adopted in statutory law. Currently, the federal government receives 48.5 percent of revenue, states receive 24 percent, and local governments 20 percent. The remaining 7.5 percent is set aside as special funds. In addition, the 1999 Constitution requires that no less than 13 percent of revenue accruing to the Federation Account be returned to the oil-producing states.

The NEITI and What it Revealed

In 2006, the NEITI culminated in the Hart Group's production of a series of reports on the findings from its financial, physical, and process audits of the oil industry between 1999 and 2004. The audit was the first of its kind in Nigeria and marks a break in the country's history of secrecy in the oil and gas sector. Although the 2006 NEITI reports brought useful information about revenues and governance deficiencies into the public domain, the audit process must be embedded in statutory law if it is to be continued by the next civilian government.

The NEITI reports identify revenue discrepancies between the companies and government. The Nigerian audit was also the first analysis among EITI implementing countries to present revenue information disaggregated by company. However, the reports are also significant because they went beyond the fundamental EITI criteria, as defined by the EITI Sourcebook. The NEITI—in an effort to adapt the EITI framework to the Nigerian context—diagnosed larger systemic weaknesses and recommended reforms to the government's regulatory practices that left the oil and gas sector vulnerable to corruption and diminished the state's capacity to capture revenues.

Revenue Discrepancies

The Hart Group's final report, issued in December 2006, found that oil and gas companies paid $7.9 million in taxes, royalties, and gas flare penalties that the Central Bank of Nigeria (CBN) did not record as received payments. This amount represents .01 percent of total transactions over the six year period. [3]

The final revenue discrepancy identified by the Hart Group was significantly lower than its initial estimate of $232 million in the April 2006 draft version of its report. When the draft report was presented, President Obasanjo urged the Hart Group to conduct further investigation into the discrepancy which they completed in December 2006.

The final revenue discrepancy identified in the report suggests important details about the nature of revenue mismanagement in Nigeria. The relatively small percentage of unaccounted for revenue (.01 percent) to total transactions suggests that, in general, revenues are not disappearing because companies make official payments to the central bank that are then diverted by public officials at the federal level.

Government Agency Weaknesses

Although the Hart Group report identified a negligible revenue discrepancy, it also analyzed systemic governance weaknesses that result in the more significant leakages of oil and gas revenues. The most significant problems were found in the Department of Petroleum Resources (DPR), the Federal Inland Revenue Service (FIRS), and the Nigerian National Petroleum Corporation (NNPC).

The reports identified several failures in the DPR that left the sector vulnerable to corruption and diminished the state's capacity to capture maximum revenues from the oil and gas sector.

The financial audit report criticized the failure of the DPR to regulate the calculation and payment of royalties by companies operating in the sector, which diminished the state's ability to capture revenues. Although the DPR is "statutorily empowered" to supervise the activities of upstream companies, including the assessment and payment of royalties, the report found that the DPR calculated royalty liabilities but that "these assessments were never filed on the upstream companies for payment." According to the report, the DPR could not perform this function because it lacked systems for verifying and recording production (on which royalties are assessed) and independently auditing company royalty calculations. The report warned that these failures "could be an abdication of statutory duties on the part of DPR." [4]

In addition to the regulatory problems identified in the financial audit report, the physical audit report also criticized the DPR for failing to establish systems to measure the total amount of oil produced at wellheads, which is called the hydrocarbon volume mass balance. As a result, the agency relies on calculations of volumes from companies, which are based on how much oil reaches export terminals. The problem is that this method makes it impossible to address the issue of what the report called "unaccounted oil." [5]

"Unaccounted oil" refers to the large volumes of oil that are lost through the practice of "illegal bunkering"—the use of siphoning to steal and then transport large volumes of fuel in the Niger Delta. Although precise figures are unknown, and are impossible to calculate given the DPR's methodology, industry estimates range from 70,000 to 300,000 barrels per day. [6] Illegal bunkering not only costs the state sizeable revenues but is also a primary source of funds for the antigovernment militant groups that are increasingly visible in the region.

To address these regulatory deficiencies, the report recommended several reforms to the DPR. First, it recommended that the DPR "take responsibility" for the assessment and filing of royalty payments on upstream companies. [7] Second, it recommended that the DPR spearhead arrangements for monitoring and producing the entire hydrocarbon and liquid balance for the sector, from wellhead to terminal. [8]

In addition to the criticisms of the DPR, the report also criticized the Federal Inland Revenue Service (FIRS) for regulatory gaps which made the oil and gas sector vulnerable to corruption and diminished the state's ability to capture maximum revenues from the oil and gas sector.

Although the FIRS is statutorily empowered to assess company taxes, the report concluded that FIRS "was not proactive" in assessing and collecting the tax liabilities of companies. According to the report, this amounted to "unregulated self-assessment (of company taxes) which is not appropriate considering the significant financial flows involved." The agency's failure to perform its duties is largely a result of what the report claimed were "inadequate" record keeping systems. [9] The report recommended that FIRS improve its capacity so it can be more proactive in independently assessing the tax liabilities of companies.

Aside from addressing issues in upstream production, the Hart report also addressed governance problems within the Nigerian National Petroleum Corporation (NNPC) that made corruption more likely in the downstream sector and potentially diminished the state's revenues.

The report claimed that the NNPC "could not explain" how refineries in 1999 and 2000 received more crude oil than was sent from oil terminals. The report concluded that the NNPC maintained insufficient records to establish how much crude oil is leaving terminals and how much is arriving at refineries. This increases the likelihood of corruption since, without adequate records, crude oil that is supposed to be shipped to refineries is easily diverted and sold illegally. The report recommended that a much better system of controls and record keeping is needed in both the NNPC and its subsidiary, the PPMC, in order to prevent the diversion of crude between terminals and refineries. [10]

Institutionalizing the NEITI

Although the NEITI audit marked a break with the culture of secrecy that has surrounded Nigeria's oil and gas sector and brought useful information into the public domain, the NEITI must be embedded in statutory law if it is to be continued by future administrations.

In 2004, an NEITI bill was introduced to the National Assembly, which would legally establish and codify the functions of NEITI. The House of Representatives passed the bill in January 2006 and the Senate passed its version on March 13, 2007. The bill must now go through a harmonization process to reconcile differences between the two versions.

The Nigerian chapter of the Publish What You Pay Coalition (PWYP)—a network of civil society organizations campaigning for transparent and accountable management of natural resource revenues—is concerned that clauses of the draft bill undermine the EITI's fifth criterion, which requires that: "civil society is actively engaged as a participant in the design, monitoring, and evaluation of this process..." Specifically, PWYP Nigeria is concerned that Section 6 of both the House and Senate bills, which calls for presidential appointment of members of the multistakeholder NEITI implementation committee, threatens the independence of civil society engagement with EITI. According to David Ugolor, the national coordinator of the coalition: "Presidential appointment of civil society representatives to the multistakeholder committee is likely to undermine the independence of civil society participation in EITI. This threatens the spirit of the EITI process." [11] Because such a bill would violate the EITI's fundamental criteria, if enacted it could endanger Nigeria's status as an EITI implementing country.

Revenue Transparency: The Human Rights Watch Example

The government's decision to publish revenue transfers among the federal and state and local governments was a landmark step in opening oil and gas revenues up to public scrutiny. In January 2007, Human Rights Watch released *Chop Fine: The Human Rights Impact of Local Government Corruption and Mismanagement in Rivers State, Nigeria,* [12] a report demonstrating how civil society groups can strategically use government revenue information to expose corruption and mismanagement and demand that public officials be held accountable. The Human Rights Watch report also revealed that although revenue transparency is necessary, it is not the only tool required for civil society groups to hold public officials accountable. Revenue transparency must be accompanied by parallel efforts to make federal, state, and local government budgets more transparent if civil society groups are to have any chance of ensuring that public officials use state revenues to advance development objectives.

The Human Rights Watch Report examines the gap between the revenues that accrued to the 23 local government councils in the oil-rich state of Rivers in the Niger Delta and the delivery of public health and education services. Under Nigeria's decentralized state system, the local government councils are tasked with delivering and funding primary education and health care services across the country.

Based on information about revenue transfers to state and local governments provided on the Ministry of Finance website, Human Rights Watch calculated that Rivers State's 23 local government councils have received more than $636 million since 1999, and that their average monthly allocations increased more than fourfold over that same period. These trends reflected the improved financial situation of local government councils throughout Nigeria due to increased federal government revenues. [13]

Using the information about Rivers State's local government council revenues, Human Rights Watch conducted field research that investigated the relationship between revenues, local government budgets, and health and education service delivery in five local governments—Etche, Khana, Tai, Akuku/Toru, and Obio/Akpor in Rivers State. The report concluded that:

> *In five local governments researched by Human Rights Watch in Rivers, local administrations have failed to make more than nominal investments into health care and education. Much of the money that could have gone into these services has been squandered or outright stolen...According to state and federal government officials, civil society activists and other sources, these problems mirror the situation in most of Rivers' local governments.* [14]

Human Rights Watch visited more than a dozen primary health care centers in five different local government areas and found that all but a few lacked even a basic supply of medicines and other equipment and did not have access to a reliable water supply or any toilet facilities or electricity. [15] Human Rights Watch also visited eleven primary schools in Rivers State and found that some had completely collapsed and others were on the verge on collapse. Most of the schools visited did not have blackboards or textbooks, and only one had desks. None of the schools had outhouses, running water or electricity. State and local officials confirmed that these conditions prevailed across most of the primary schools in the state. [16]

According to the report, this pattern of corruption and mismanagement of government funds is one of the "most important reasons" why many local governments have failed to meet their obligation to provide basic education and primary health care. The report identified several patterns of corruption and mismanagement prevailing in Rivers State, such as the budgeting of sizeable portions of revenue to build immense new government headquarters and other infrastructure projects, many of which are abandoned and never completed [17]; the tendency of local government officials to completely ignore the plans laid out in budgets [18]; the use of a "notoriously murky" form of discretionary spending called the "security vote," which consumes a "substantial portion" of many local government revenues and is frequently "stolen outright" or channeled into "improper forms of patronage" [19]; and, finally, the requirement that relatively junior government employees "make returns" to their superiors and colleagues, a practice where political godfathers arrange for protégés to be placed in office through their political connections but then lay claim to local government revenues for their personal enrichment. [20]

The Necessity of Spending Transparency

The Human Rights Watch report is a concrete example of how civil society groups can use information about government revenues to expose the specific dynamics of government corruption and mismanagement and demand accountability. However, the report also demonstrates that revenue transparency must be accompanied by greater access to information about government spending if civil society actors are to have a realistic chance of helping to ensure that state revenues translate into improved public services which can improve the lives of ordinary Nigerians.

One of the primary challenges in "following the money" in Rivers State was that it was nearly impossible for Human Rights Watch—and local civil society groups—to discover how the state and local governments claim that they are spending the money they receive. Even at the federal level, Nigeria's budget is notoriously opaque. According to the International Budget Project's Open Budget Index—the only index to rate countries on how open their budget books are to the public—the federal government provides "scant or no information" to citizens about its budget. Although the executive releases its budget proposal, this document does not "present the public with a comprehensive picture of the government's financial activity." Moreover, the government does not produce mid-year reviews and year-end reports on federal government spending. [21] At the state and local government level, the situation is even worse, as budgets are generally not published or made available to the public. According to Human Rights Watch, although the Rivers State government claims to publish its budget each year, in practice both state and local government budgets are treated as "closely guarded secrets." [22]

Two bills currently before the government—one on freedom of information; the other on fiscal responsibility—would improve the access of Nigerians to information about government spending. The Fiscal Responsibility bill, introduced by former finance minister Okonjo-Iweala, would introduce new measures to ensure the integrity, transparency, and uniformity of budget-making and government expenditures at all levels of government. Although the Senate passed the bill on February 21, 2007, the bill remains before the House of Representatives. [23]

In 2004, the House of Representatives passed a Freedom of Information bill that was approved by the Senate in November 2006 and harmonized by the legislature in February 2007. This bill gives Nigerians the right to request and receive information from public bodies about the conduct of public business and would also provide protection for whistleblowers in the public service. President Obasanjo, however, has yet to sign the bill into law.

Next Steps: Making Transparency Permanent

The Hart Group's audit reports and the recent Human Rights Watch report demonstrate that efforts to increase revenue transparency—either through EITI or the publication of intergovernmental revenue transfers—can be used to illuminate the federal government's regulatory deficiencies (the Hart Group) or patterns of local government mismanagement and corruption (Human Rights Watch). Neither of these reports could have been completed without the federal government's commitment to increase revenue transparency.

Yet as President Obasanjo prepares to leave office there is a great risk that these important gains will become transitory rather than enduring features of the political and economic landscape. Bequeathing a legacy of improved economic governance requires institutionalizing revenue transparency and expanding the transparency agenda to include public spending. As the experience of Human Rights Watch suggests, citizens must have greater access to information about government spending if they are to translate revenue transparency into real public accountability.

Specifically, the Revenue Watch Institute recommends that President Obasanjo's government take the following steps prior to leaving office in May:

- ***Sign into law an NEITI bill that meets international EITI criteria***
  Embedding NEITI in statutory law will increase the likelihood of continued government implementation of EITI. Revenue Watch Institute calls upon the National Assembly's Harmonization Committee to work with the Nigerian PWYP coalition to finalize an NEITI bill that adheres to all fundamental EITI criteria, especially the fifth criterion, which requires that civil society be actively engaged in the design, monitoring, and evaluation of all stages of EITI. Specifically, Revenue Watch Institute calls on the legislature to finalize a bill that ensures the independence of civil society participation in EITI.

- ***Pass the Fiscal Responsibility bill***
  Only with greater access to information about government budgets can citizens effectively use revenue transparency to achieve public accountability. The Revenue Watch Institute calls upon the government to immediately spearhead the passage of the Fiscal Responsibility bill, which would introduce new measures to ensure the integrity, transparency, and uniformity of budget-making and government expenditures at all levels of government. Passage of the bill, even in the final hours of Obasanjo's administration, would leave behind a legislative context that will improve the ability of citizens to access information about public spending.

- ***Sign the Freedom of Information Bill into law***
  The Freedom of Information bill would give Nigerians the right to request and receive information from public bodies about the conduct of public business and hence would help in opening public spending up to greater scrutiny. The Revenue Watch Institute calls on President Obasanjo to sign this bill—which has already been passed by both houses of the legislature—into law before leaving office.

By entrenching revenue transparency in law—and signing into law bills that expand the transparency agenda to include public spending—President Obasanjo can help ensure that the reform agenda he initiated will be sustained and amplified by future administrations and nonstate actors. The failure to embed these reforms into law increases the likelihood that the government's achievements will become a transitory feature of Nigeria's economic landscape. The Revenue Watch Institute encourages

President Obasanjo to leave his legacy in law and set the stage for future administrations—together with civil society—to take up the challenge of ensuring that these necessary changes in law translate into substantive human freedoms and economic gains for average Nigerians.

Notes

1. "Nigeria's Leaders Stole $380 Billion," BBC News Online, October 20, 2006.
2. "Nigeria To Settle Paris Club Debt," BBC News Online, April 20, 2006.
3. Hart Group, *NEITI Final Report: Combined Executive Summary* (December 2006), section 3.6.
4. Hart Group, *NEITI Financial Audi: Issues in Government Financial Systems* (April 10, 2006), section 5.2.
5. Hart Group, *NEITI Final Report: Combined Executive Summary*, section 5.
6. See International Crisis Group, *Fueling the Niger Delta Crisis,* Africa Report No. 118, September 28, 2006, p. 8.
7. Hart Group, *NEITI Financial Audit, Issues in Government Financial Systems*, section 5.2.
8. Hart Group, NEITI Final Report: Combined Executive Summary, section 5 & 6.
9. Hart Group, *NEITI Financial Audit, Issues in Government Financial Systems*, section 6.1; *NEITI Final Report: Combined Executive Summary*, section 4.5.
10. Hart Group, *NEITI Final Report: Combined Executive Summary*, section 2.7.
11. Revenue Watch Institute interview, March 15, 2007.
12. Human Rights Watch, *The Human Rights Impact of Local Government Corruption and Mismanagement in Rivers State, Nigeria*, Volume 19, No. 2A, January 2007.
13. Human Rights Watch, *The Human Rights Impact of Local Government Corruption and Mismanagement in Rivers State, Nigeria* p. 25.
14. Ibid, pp. 2-3.
15. Ibid, p. 44
16. Ibid., pp. 49-52.
17. Ibid., pp. 28-31.
18. Ibid., pp. 31-32.
19. Ibid., p. 32.
20. Ibid., pp. 33-34.
21. See www.openbudgetindex.org.
22. Human Rights Watch, p. 91.
23. Abimbola Akosile, "Groups Task Nass on Passage of Pending Bills," *This Day*, February 27, 2007.

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