

**NIGER DELTA BUDGET MONITORING GROUP**



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**THE OIL DRUMS OF BLOOD AND THE  
COMPLICATIONS OF NEITI'S 2005 AUDIT:  
UNEARTHING THE SHADOWS.**

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The Civil Society across the world must rise up to help Nigeria and its millions of poor citizens recover billions of dollars siphoned by IOCs in Nigeria through extractive indiscipline, recklessness and atrocities. The instruments that can be invoked internationally are: The USA Foreign Corrupt Practices Act, The USA Alien Tort Claims Act, The Council of Europe instrument on Civil Law Convention Against Corruption which entered into force in November 2003, The Council of Europe's Group of States Against Corruption created in 1998, the 1997 OECD Anti-Bribery Convention, The International Anti-Bribery and Fair Competition Act of 1998, Article 445 of the Spanish Penal Code, amongst others.

## **Acronyms and abbreviations**

|           |                                                                                                           |
|-----------|-----------------------------------------------------------------------------------------------------------|
| AFS:      | Audited Financial Statement                                                                               |
| APDC:     | Addax Petroleum Development Company                                                                       |
| APENL:    | Addax Petroleum Exploration Nigeria Limited                                                               |
| AENR:     | Agip Energy & Natural Resources Limited                                                                   |
| AHRC:     | African Human Rights Court                                                                                |
| COMD:     | Crude Oil Marketing Department of the NNPC                                                                |
| CIT:      | Company Income Tax                                                                                        |
| CBN:      | Central Bank of Nigeria                                                                                   |
| CEs:      | Covered Entities                                                                                          |
| CATEIFFN: | Coalition for Accountability and Transparency in Extractive Industries, Forestry and Fisheries in Nigeria |
| DPR:      | Department of Petroleum Resources                                                                         |
| ECs:      | Extractive Companies                                                                                      |
| FIRS:     | Federal Inland Revenue Service                                                                            |
| FPSO:     | Floating Production, Storage and Offloading (Vessel)                                                      |
| GT:       | Government Take                                                                                           |
| GNM:      | Guaranteed Notional Margin                                                                                |
| IDDC:     | Intangible Drilling and Development Cost                                                                  |
| ITA:      | Investment Tax Allowance                                                                                  |
| IDC:      | Intangible Drilling Cost                                                                                  |
| IMF:      | International Monetary Fund                                                                               |
| IOCs:     | International Oil Companies                                                                               |
| IFC:      | International Financial Corporation                                                                       |
| JDZ:      | Joint Development Zone                                                                                    |
| MPNU:     | Mobil Producing Nigeria Unlimited                                                                         |
| NSWG:     | National Stakeholders Working Group                                                                       |
| NAG:      | Non Associated Gas                                                                                        |
| NNOC:     | Nigerian National Oil Company                                                                             |
| NAG:      | Non Associated Gas                                                                                        |
| NEITI:    | Nigeria Extractive Industry Transparency Initiative                                                       |
| NAOC:     | Nigerian Agip Oil Company                                                                                 |
| NAE:      | Nigeria Agip Exploration                                                                                  |
| NNPC:     | Nigerian National Petroleum Corporation                                                                   |
| NSWG:     | National Stakeholders Working Group                                                                       |
| NDDC:     | Niger Delta Development Commission                                                                        |
| NPDC:     | Nigeria Petroleum Development Company                                                                     |
| OSP:      | Official Selling Price                                                                                    |
| OPEX:     | Operating Expenses                                                                                        |
| PSC:      | Production Sharing Contract                                                                               |
| PPT:      | Petroleum Profit Tax                                                                                      |
| POCNL:    | Philips Oil Company Nigeria Limited                                                                       |
| POOC:     | Pan Ocean Oil Corporation                                                                                 |
| PPMC:     | Pipelines and Products Marketing Company                                                                  |
| RAB:      | Reserve Additional Bonus                                                                                  |
| RP:       | Realizable Prices                                                                                         |
| SNEPCO:   | Shell Nigeria Exploration & Pet Co Ltd                                                                    |
| WTI:      | West Texas Intermediate                                                                                   |

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## **1. Executive Summary**

The Nigeria Extractive Industries Transparency Initiative (NEITI) released its second (2005) Audit Report of the (Nigerian) extractive industries in 2009. Our Regional Accountability Centre was to set-up an internal team to carry-out this Special (Independent) Report on the 2005 Audit, as this report is now available to our critical partners and other stakeholders beyond borders.

We commend NEITI's NSWG for releasing the report as originally factualized by the Hart Nurse & S.S. Afemikhe which conducted the audit as a Group. Regrettably though, NEITI's NSWG withheld and froze some (sensitive) elements of the report for reasons not known by the larger Civil Society partners of NEITI and against principles of the EITI global family at a time Nigeria is in dire need of EITI Validation.

From the Audit Report, the facts stink and raises doubts if any responsible State can allow a systemic misnomer ruin its nation in a way as is clear from indicators of the audit. Further, it is worrisome that operators of the State continue to sit and watch the destruction of Nigeria. Facts from the Audit are difficult to situate, measure, itemize nor marry to any lexicon of expressive words. Billions of dollars continue to look like pennies or cents. The amount involved if thoroughly and forensically recovered, can form an aggregate of Nigeria's Annual Budgets for more than two years.


Crude Oil are lifted, toyed, miscalculated, siphoned, fiscalized, defiscalized and unfiscalized in a way which even ordinary water cannot be toyed nor played with. These are in billions of barrels and associated to the reality of Oloibiri nightmare and discovery. Yet, the element causing such havoc to Nigeria and its citizens is a commodity that has sent thousands of Nigerian citizens to their untimely graves either through armed struggles, poverty, diseases, oppression and from the recklessness of some policy overseers. Unfortunately, any Nigerian citizen or a State agent who has responsibility to effectively deliver the Nigerian State but negates same due to corruptocracy is liable to partaking in the killings of innocent citizens as maybe cause(d) by poverty, desperation, disease and therefore cannot be exonerated from liability of the blood of the victims. That is the link between this Special Report titled: **The Oil Drums of Blood and the Complications of NEITI's 2005 Audit: Unearthing the Shadows.**

We recommend this for the reading of every Nigerian citizen passionate about the salvation of our beloved nation. Civil Society across the world can also explore opportunities of using international anti-corruption instruments and litigation, at recovering these huge levels of unaccounted Oil money taken- away from Africa's poor by IOCs in collaboration with State collaborators in Africa.

Recommendations captured in this Special Report are within the roadmap of Nigeria's Extractive Salvation. It is however surprising that at a time the Nigerian Oil and Gas Industry Content Development Bill, 2009 (HB.108) is being harmonised by Nigeria's National Assembly with enormous empowerment proposition to Nigerian ECs taking transitive ownership of the sector ironically is a time some Nigerian firms are also fingered in the extractive rascality, posing a devastating negation to Section 7, 10 (1) a, b, c and (2), 11, 12, 14, 28, 29, 33, 44 and 45 of the Nigerian Oil and Gas Industry Content Development Bill, 2009 (HB.108).

On behalf of every one of us at the Regional Accountability Centre, we are grateful to all those who have given encouragement to our work in the past. Our commitment in the process remains undiluted and solid as we move-ahead to rescue millions of Nigerians who are victims of corruption.

**George-Hill Anthony**, *FCBPA, Research Fellow-AIAE*



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## **2. Background**

The former UK Prime Minister launched the Extractive Industries Transparency Initiative (EITI) at the World Summit on Sustainable Development in Johannesburg in September 2002.

The EITI Lancaster Conference also agreed on the EITI principles which acknowledged that natural wealth of a country should benefit its citizens. Issues surrounding the protection of the World's oppressed as related to resource management and control are still in the front burner of global agencies, like recently when the United Nations General Assembly debated on the Responsibility to Protect. Governments demonstrated not only intense interest in the debate, but made a strong show of support for implementing their 2005 consensus commitment to prevent and halt genocide, war crimes, crimes against humanity and ethnic cleansing. A clear majority of Member States called on the General Assembly to continue its consideration of how best to protect the world's populations from the gravest crimes. This also includes extractive crimes and resource atrocities.

NEITI in Nigeria 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. The NSWG oversees the activities of NEITI and is made up of representatives of government, extractive companies and civil society. Among others, NEITI commissioned the first comprehensive audit of Nigeria's petroleum industry for the period 1999 to 2004. The 2005 audit is the second of NEITI's audit series since the inception of the body in Nigeria.

In a situational perspective, Nigeria is one of the countries affected by the Dutch Disease and Resource Poverty. Particularly, the Niger Delta area of the country is among few regions in the world suffering from figures of poverty. Such is much so, because either the government or individual citizens are isolated from International Conventions and Instruments which Nigeria is an endorsing party for the collective good of its citizenry.

An example is the International Covenants on Civil and Political Rights which entered into force on the 23rd of March 1976 in accordance with Article 49. Part one, Article one of this Covenant states thus.....'all peoples have the rights of self determination. By virtue of that right (can?) they freely determine their political status and freely pursue their economic, social and cultural development'. This international instrument can further broaden a debate of the resource salvation in Nigeria associated with the workability of NEITI and the meddlesomeness of the International Monetary Fund (IMF) on Community Resource Question (CRQ) surrounding the Petroleum Industry Bill (PIB) in Nigeria's National Assembly and seen as shadow-gambling for the interest of the International Oil Companies (IOCs) in Nigeria. This is exposing the conspiracy of the multilateral agencies in Africa, as the World Bank and the International Financial Corporation (IFC) conspired to undo Western Niger Delta Communities during compensation regarding Communities affected by the West African Gas Pipeline Guaranteed by the World Bank.

Moreover, there are compounding issues surrounding the Blood Oil and NEITI's wave slaving of the Nigerian State against the reality of disclosure. NDEDBUMOG shall further interline this against the projections of international politics and diplomacy. But the UN, the Government of Barrack Obama in the United States of America and Nigeria owes the World, Africans and the Niger Deltan's answers for (their) going against Part one, Article one (3) of the International Covenant on Civil and Political Rights on matters concerning the Gulf of Guinea. These are interesting matters at testing the Constitutive Act of the African Human Rights Court in Arusha-Tanzania. The Protocol establishing the ACHPR entered into force on 1<sup>st</sup> of January 2004. This Court was recently constituted after many years of delay.

More revealing is the fact even the Local Content Vehicle (LCVs) of the Nigerian National Petroleum Corporation (NNPC) negates the principles the International Convention on the Elimination of All Forms of Racial Discrimination which entered into force on the 4<sup>th</sup> of January 1969. Article one of the Convention would interest researchers, NEITI and the National Assembly, especially now that the National Assembly is considering the Petroleum Industry Bill. Therefore, a comprehensive audit is required to disaggregate obligated employment to indigenes of the Niger Delta, this is without prejudice to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their family adopted by the United Nations General Assembly Resolution 45/158 of 18 December 1990. Issue of Pipeline Integrity Audit and State of Environment Report which the Ministry of Niger Delta Affairs is

gambling with is also very crucial. We however acknowledged that some of these go beyond the ambit of the NEITI Act.

Now, straight to the realities of the NEITI's 2005 Audit, let's unearth the facts.

### **3. NEITI'S AUDIT PROCESS**

#### **3.1 Physical and Process Audit**

Section 2.3 of the Report (Refined products) estimates huge product losses in 2005. No nation on earth can afford to lose such. But Nigeria chooses to! The auditors claimed that the losses could be attributed either to- vandalism, leaks, measurement error, analysis error or theft. The same Section also quoted the auditors as saying PPMC didn't provide incidental analysis of the losses. Further, the auditors further concluded that... *"the quality of data available on products movement is insufficient to validate the reconciliation of product flows"*.

Such areas are:

- Standardized/ monitored measurement procedures at depots
- Capacity building of depot staff to provide reliable, repeatable measurement data
- Review of depot reporting procedures, and more frequent reconciliations, to minimize errors and provide timely indication of problems.
- Review of pipelines monitoring practices.
- Review of storage volumes and remediation to minimize unnecessary product transfers and demurrage cost.

From the foregoing, immediately after the release of NEITI's 2005 audit, NEITI was to commission a local firm on a metering contract as part of a remedying strategy for the salvaging of future audits. Sadly enough, the metering contract (process) embarked upon by NEITI cannot be said to have followed the three pillars which globally sustains the EITI; that is, government, private sector and the civil society. This was in view of NEITI's non-integration of these three entities on the processes of the metering award nor holding consultative briefing to intimate these stakeholders about the workability, effectiveness, procedures, process-routing which the metering can be acceptable and convincingly workable.

Section 2.4 of the NEITI's audit report which centered on Gas Production and Utilization is also another expository about the extractive woes which the IOCs are bedeviling on the extractive communities in the Niger Delta.

In an analytical perspective, SPDC is leading on Gas Production and Utilization in the region, followed by MPNU, CNL and EPNL. Just like SPDC is leading on Production, so is the company leading on flaring of Gas in the region, followed by Agip, Mobil and Chevron. The report however, failed to disaggregate exact locations of Gas utilization and flaring, which would have helped local organizations like NDEBUMOG measure the implication on the catchments areas. E.g., on Mobil Producing Nigeria Unlimited, it could have been interesting to measure such impact on Communities and areas like Mkpanak, Ibeno, Bonny, Osso, Edop etc; same on Elf for locations such as Rumuekpe, Obite, Ogbogu etc or Agip on a location like Ebocha, Obrikom etc.

Problematically, gas flaring statistics going by the audit report also shows that the IOCs determined and measure the quantity of gas they flared. The report is quoted as stating 'the standardized methodology for determining quantities of gas flared have not been established and regulation of gas generally requires strengthening'. No nation moving towards sustainable development can still be crawling with these statistic squander mania, hence NDEBUMOG's persistent critique about the bunkum of Nigeria's vision 2020.

The obscurantism of Nigeria's institutional quagmire is further highlighted on Section. 3 of the report, about the lackadaisical treatment of the auditors by the way the operators responded to data request. Quoting the auditors, 'the audit could only progress when the data was returned by the slowest provider'.

Worsening, the Department of Petroleum Resources (DPR) was reported to have refused to provide physical data on the new template, while the Companies provided net-back data rather than field source data. It is a critical misnomer for any company to refuse providing field source data. Net back data they provided is like a circle of contaminated maggot sucking round old

wound severally even when a EITI (doctor) is standing by with a remedy practice. These are among the reasons why Rilwanu Lukeman and his team are insisting on the Nigerian National Petroleum Corporation's faked version of the Petroleum Industry Bill (NNPC) that the DPR should be dismembered to make room for Upstream Regulator, Midstream Regulator and Downstream Regulator.

No doubt, DPR is among the agencies that has caused the generation of the infictive resource (spoliation) disease in Nigeria's Niger Delta. As we still remember the era of 'Right of First Refusal (RoFR)' and protectionist bidding which till date is enmeshing the National Assembly and DPR in controversies surrounding lost signature bonuses of 2005 and 2006 Bid Rounds.

NDEBUMOG agrees that this DPR needs serious internal strengthening and capacity building on best practices, especially, on the emerging metering and measuring tool as practiced in Norway and elsewhere. However, we disagreed with the NNPC that the (DPR) should be unbundled to create room for Up/Down/Midstream(s). These are corridors to wasteful public resources. All that is needed is a one-stop regulator for the sector which can also serve as referral centre to all extractive enquiries. NDEBUMOG took this position based on our factualized findings that Decree 33 of 1977 married the Nigerian National Oil Company (NNOC) and the Petroleum Inspectorate as one. This was to aggregate their handling technical and commercial regulations in the Extractive Industry. That Decree barred the inspectorate from involvement in commercial matters of the Corporations. Further, this was the reason which by 1988, the NNPC was unbundled, with the Inspectorate moved to Ministry of Petroleum Resources.

NNPC moving again to lump the entities can be interpreted as a cover-up and shadow strategy to shed up the Drums of Missing Blood Oil. Primarily this has to do with the Crude Marketing Division of NNPC (COMD). We would come to that!!! The NNPC cannot have both the Commercial and Technical Regulator in the sector under its feet. The National Assembly must not goof on this.

The NEITI's audit also has touched the tail about royalties payment and production field associated with same in the extractive sector. This also is interlining with the quest of the Niger Delta Communities to hold a reasonable stake in the royalties' template that the Petroleum Industry Bill (when passed) must address. NDEBUMOG presentation in the Senate and House of Representatives during the PIB Public Hearing supremely demand both equity and commercial participation of Host Communities in the new (PIB) regime. We thank the Coalition for Accountability, Transparency in Extractive Industries, Forestry and Fisheries of Nigeria (CATEIFFN) for lending us support to make the presentation at the PIB Public Hearing. But speaking on communal sustainability and for conflict reduction strategies; it is noteworthy to mention that, the National Assembly must pass the PIB in a way which gives Royalty's control directly to the Communities in a pro-active manner not to spark off rounds of conflicts in the region. This should be done by embodiment of Core Oil Producing Communities, Exhausted Well(s) Communities (e.g. Oloibiri, Egbelu-Akpor etc, etc, etc), Non-Oil Producing but Trans – pipelines Communities, Non-Oil Producing or Trans Pipelines Communities but Environmentally Impacted Communities.





**Picture 1: A typical Niger Delta community infected with oil poverty and resource disease**

Also, the issues of social dislocation, cultural corruption and psyche impact of oil exploration activities in the Niger Delta on the younger generation must also be addressed by the communities themselves. But the Petroleum Industry Bill (PIB) should structure a sustainable framework on how the communities engage each other without necessarily igniting further communal oil resource conflicts in the region.

Further in the audit report, (4.1) are matters concerning Upstream metering of hydrocarbon flows. Though very worrisome, is the fact that, the Inter-Ministerial Task Team has not been able to achieve any significant improvement from when the report of the first audit (1999-2004) was released until recently, with the release of 2005 report. We discovered that NEITI withheld information about which company has made proposals to the Department of Petroleum Resources (DPR) for changes to its metering guidelines at meeting international best practices. It is against the interest of Nigerians for NEITI not to put this information at the public domain. Such is to protect the interest of the IOCs in Nigeria which NEITI can readily cite Section.2 of the Act and glaringly which we demand the amendment of that section of NEITI's Act from the National Assembly. Information from the audit that, "DPR will not accept use (for example) digital thermometers and data from flow computers" are a major plank while abuses and corruption shall continue to walk tall in the sector. We need to see this evidence against the DPR if it was in writing.

Section 4.2 of the audit report further cast woes on the salvation of Nigerians as it involves measurement of petroleum products, especially, Petroleum Motor Spirit, Automotive Gas Oil and Kerosene.

Specifically, below are the pains of our suffering as Nigerians by multi-situational complications and reporting of quantities of petroleum products

- Lack of adequate operating and maintenance procedures
- Lack of fit for purpose measurement points at import/export from an installation
- Lack of knowledge of regulatory guidelines over a variety of activities relating to assessment and reporting quantities of products
- Inconsistency approach between locations operated by PPMC for the measurement of density and temperature of products in the storage tanks
- No culture of striving to follow international best practices
- Lack of training



### 3.2 The Process of Marketing Federation Equity Crude

The processes of Equity Crude allocation, politics of deciding Official Selling Price (OSF) and the “unnecessary uncertainties” about Crude Oil marketing with an implied cost to the Nigerian Federation is why we have decided to tag this Special Report with the above heading.

Before an illustration of this critical section, let us quote some of the findings in NEITI's 2005 audit report related to the NNPC's Crude Oil Marketing Division (COMD):

*“The NNPC should review whether to use other crude oil benchmarks beside Brent. Given the preponderance of sales into the US refining areas, the US crude oil benchmark West Texas Intermediate (WTI) may better value basis than European market benchmark Brent.”*

*“NNPC should review the use of Calson (Bermuda), its joint marketing company with Vitol. This marketing arrangement may present a conflict of interest between the Vitol and NNPC (on behalf of the Federation)...” Further the COMD has no means of checking whether the required performance has not indeed taken place, nor any defined procedure for eventuality that it appears it has not”.*

*“Volumetric measurement of gross and net loaded barrels should be reviewed in the light of observed round figures for Bills of Lading volumes. Out of the sample of 63 contract sales we reviewed, at least four were subject of uncertainty as to how the invoiced volume had been determined.”*

Surprisingly, the auditors or NEITI refused to furnish stakeholders with information regarding the transactions of offshore marketing companies. This is unacceptable and we urgently demand the release of this from NEITI NSWG and it formed the complications of the unaccounted Oil Drums of Blood in the Niger Delta.



**Picture 2: Niger Deltans struggling to make ends meet while regulators and marketers of Nigeria's crude Oil continue to toy with the fate of citizens like this...**

The (Financial) audit report was clear on the weakness of accounting system, which most often, are overlooked by the Nigerian National Petroleum Corporation (NNPC). The audit also summarizes the figures below, which we have tied to the Missing Oil Drums of Blood. The audit also exposes Crude Oil Marketing Division (COMD) of the NNPC as a unit stunningly sending thousands of Niger Deltans to untimely grave by causing extreme



poverty, as they (COMD) continue to toy with millions of barrels of oil belonging to the Nigerian State.

Look at examples of it;

- Omitted sales invoices for gas and NLNG feedstock in December 2004 (\$4.6 million)
- Omitted debtor invoice for Duke Oil in March 2004 (\$4.2 million)
- Lifting of NAE for trial marketing in December 2004 (\$25.3 million)
- Reconciliation differences between Duke Oil and Pan Ocean (\$16.6 million)
- Downward valuations of cargoes lifted by Cross (\$0.9 million), Vitol (\$0.1 million), Duke Oil (\$0.4 million)
- Over payment by Jetstream Marketing Ltd / Kyokuto (\$1.6 million)

Further, the auditors asserted that *".....the net amount of these balance reported in the NEITI 2004 audit as due to the Federation at 31<sup>st</sup> December by \$ 1.9 million USD". Quotably, the audit underlines the accounting control weaknesses that are permitted by the current system. Chronically, invoices numbers in the annual sequence were omitted from data provided to the auditors for verification. From information of the auditors, they claimed to have investigated the mystery of the invoice(s) drama and came out with a conclusion that "that invoices had not been used, at all".*

The auditors are still awaiting details of cargo lifted on 3<sup>rd</sup> December 2005 by NPDC for which there was a possible confusion of documentation. But Nigerians cannot continue to wait forever for old songs. We shall go into further expository as this special report moves into the segment of financial audit later.

*"Blood diamond fuels conflicts, civil wars and human rights abuses. They have been responsible for resource conflicts of the 90s in Africa resulting in deaths and displacement of millions of people", - Global Witness*

Curiously speaking, another era of Blood Oil is already emerging in Africa with its origin coming from Nigeria. This emergence has a far much global implication than Blood Diamond, that is, the Blood Oil of Nigeria.

## **4. THE 2005 AUDIT AND THE JDZ**

Severally, our organization has raised its voice against the extractive information blackout in the Joint Development Zone between Nigeria and Sao Tome Principe. The report of this audit has proven us right going by how officials of the JDZ refused to cooperate with the audit team. NEITI secretariat could not also facilitate any progress in the audit direction with the JDZ. Such was surprising to even the auditors who expressed worries going by how "both the government of Nigeria and Sao Tome had agreed in the course of the EITI conference in Oslo (October 2006) that EITI should be the vehicle for transparency in the JDZ". These circumstances were not considered when Nigeria's National Assembly hurriedly approved granting of a loan to the government of Sao Tome and Principe without considering that there were matters concerning \$170 million (USD) from the signature bonuses of the 2<sup>nd</sup> licensing round in the zone which the government of Nigeria has been looking into, yet they were willing to grant loans when millions of her citizens go to bed without food daily.





**Picture 3: Niger Delta Communities still use the river as a means of drinking water and for defecation.**

This shows even the government of Nigeria cannot be exonerated from the irresponsibility surrounding the Oil Drums of Blood in the country. What we refer to as the Oil Drums of Blood are **unaccounted (stolen) barrels of oil the proceeds of which cannot be traced to legitimate sources, and are used to compound the human rights of citizens and extractive communities.**

Sadly, the Petroleum Industry Bill (PIB) presently in the National Assembly did not affect Laws which govern the exploitation and production of Crude Oil and Natural Gas found within the area of overlapping maritime boundaries between Nigeria and Sao Tome and Principe. This Law, which is applicable and enforceable in Nigeria, provides guidelines for bidding for Oil Blocks in the Joint Development Zone, the exploitation and production right available to JDZ investors, including Regulations governing acreages development and petroleum industry tax within the Zone. It is the opinion of the Niger Delta Budget Monitoring Group that, this above on JDZ is the reason why the Joint Development Authority (JDA), has refused to cooperate with Auditors sent by the Nigerian Extractive Industries Transparency initiative (NEITI), during the EI Audit 2005 and therefore part of complications against transparency and accountability in the Joint Development Zone and must therefore be considered for urgent amendment by the National Assembly in Nigeria.

#### **4.1 Upstream Mass Balance**

Unfortunately, the Department of Petroleum Resources (DPR) refused to provide data using the 2005 Audit template to the Auditors. Where they (DPR) did, it was slow and constituted enormous hiccups and frustration in the Audit process. It could be why the framers of the Petroleum Industry Bill are advocating the DPR be broken into three with a room for Upstream Regulator, Midstream and Downstream. Though we disagreed on the proposition to split DPR, we want it to remain the one-stop-shop for regulation of the sector. We however would want to see this entity strengthened to perform its responsibilities squarely without falling to logistics whims of the IOCs. It is however sad to see that this entity which is still yet to overcome the stinks on the Rights to First Refusal (politically adopted) by them during the 2005 Oil Blocks Bidding process just to favor the Chinese can still hack our nation during the NEITI 2005 Audit process. We are watching how the new Director of the Agency, Mr. Billy Agha shall anchor this agency with a ventilation of transparency and accountability into its operations. We await his indicators on transparency, accountability and mandatory disclosures as enshrined in the EITI



template which Nigeria is a signatory. But isolating the Civil Society by NEITI in the new metering and measuring regime they are proposing is an ill-wind to campaign against corruption in Nigeria.

## 4.2 Issues for Reconciliation

See below, how Nigeria's lack of resource accountability is threatening our nascent democracy. Some highlights of the 2005 NEITI report in verbatim here would better situate any reader's mind.

*".....many companies provided data back-calculated from terminal data. To force the issues (quote Auditors), we had attempted to acquire data on flow rates at flow stations. Whilst we still believe this raw data exist, most companies only provided us with volumetric data. And in most cases, we suspect this has been derived by netting back from dry crude data.*

*".....companies interpreted the data requests in different ways and more efforts need to be put into the NEITI data definition (????????????). Unfortunately some companies use the same terms in different ways. For example, where we (Auditors) had defined "Gross Receipts" into Terminals as "the quantity of liquid arriving at the terminal (oil and water)", some companies interpreted this as "the quantity of oil arriving at the terminal, prior to terminal adjustments".*

*"There was an (understandable????????????????) confusion for those offshore terminals, where all the processing is done on the FPSO, as to what data was required on the Production Template versus what was required for the Terminal Balance.*

*".....terminal adjustments are made by Terminal operators to account for shrinkage (and sometimes spillage) that occurs at the terminal. Even normally dry crude that sits in a tank suffers shrinkage from evaporation and the release of dissolved gases. To simplify the templates we (Auditors) had aggregated water separation (at the terminal) and shrinkage into one line item. With hindsight, this was a simplification too far; since dewatering is a measurable quantity, but shrinkage is either calculated or estimated (SPDC applies a 0.1% terminal adjustment to all volumes).*

*"... when assessing the volume of production liable to Royalty, it is not clear whether this should be done before or after applying terminal adjustments". We (Niger Delta Budget Monitoring Group) are of the opinion that this volumes complication has an enormous implication to the implementation of Post PIB in Nigeria, as it has to do with the Royalties to our host communities in the Niger Delta. The coin must be thrown now and the interpretation clear.*

*"...reconciling cargoes on terminals was problematic. (Auditors say) "...this is because the lifting by cargo data is only available from F2.02.11 Export volumes for PPT) template and their schedules that COMD provided. Unfortunately the latter was not provided in the correct format, so whilst they identified crude blend for each cargo, they did not specify the terminal at which the lifting occurred, and an additional mapping step does not give a complete of lifting since it does not include lifting, for example, made by Service Contractors. The situation would have been much simpler had DPR provided the data initially requested".*

*"Oh DPR, when shall you set Nigeria's extractive accountability free?"*

Glaringly, issues about DPR's complicity against accountability are disturbing, especially to the facts that DPR witnessed and signed-off every lifting on behalf of the Nigerian State. DPR even failed to separate between Production entity and lifting entity in a manner that can be traced. *"The current process simply allocates production to each operator using a terminal- it does not allocate production to owners.....and particularly confusing where Unitization Agreements are in place, and has led to some double-counting". "Moreover, given the complexity of many of the arrangements (PSC, Carry Agreements, and Unitizations etc) it may not be practical to allocate production to individual equity owners on a monthly basis. However, it should be possible-and desirable ..."*

Woefully, "DPR does not distinguished between NNPC lifting for export and domestic export" and this is why NNPC keep on feeding Nigerians with complex, confusing, doctored, compromised, unreliable, tainted data about the data in Nigeria's equity or export crude.

### 4.3 Deceptive Audit Analogy on Upstream Gas

The dynamics and importance of oil globally has increased over the years. There are information that Nigeria has about 35 billion barrels of proven oil reserve and another of 5 billion in development. These figures can however not be relied upon since the Nigerian Extractive Industries Transparency Initiative (NEITI) has faulted the metering and situational reality about exact data associated with the extractive industries in Nigeria. At the moment, the oil sector accounts for about 95 percent of export revenues, 76 per cent of government revenues and about a third of the nation's Gross Domestic Products (GDP). Similarly, Nigeria has an estimated 180 billion cubic feet of proven natural gas making it the ninth largest concentration in the world. Unfortunately, Nigeria flares about 70 per cent of the gas it produces and re-injects only 12 per cent making it the country that flares the greatest amount of gas on earth. It has been estimated that of the 3.5 billion cubic feet (99 million square meters) of associated gas produced annually, 2.5 billion cubic (71 million square meters) or about 70 percent is wasted through gas flaring. This is equivalent to 40 per cent of entire African continent's gas consumption in 2001. It is documented that Nigeria releases 35 million tons of carbon dioxide and 12 million tonnes of methane into the atmosphere annually through gas flaring. Nigeria and Russia are key competitive countries on the ills of global gas flaring.

Sadly and deceptively, the NEITI 2005 Audit report captured the gas situation confusingly against the reality on Gas Utilization and tries to indirectly justify reasons for its flaring thus: *“Nigeria does not yet have a large gas infrastructure and local demand for gas remains limited, hence there were a few opportunities for the commercial exploitation of gas. Some of the gas is required as fuel to operate the Flow Station and, in some fields, gas may be re-injected into reservoirs to maintain pressure and improve oil recovery. If there is no alternative commercial proposition, the remaining gas is flared”*.

It is equally disheartening to see that the Audit didn't cover entities like the Nigerian Gas Company or assess agreements among producers as it relates to Company Income Tax liability. But let us quote an imperative statement from the Auditors as related to this:

*“.....as more IPP schemes come on stream and as companies seek to utilize more gas to comply with the FGN zero-flare target, it becomes ever more urgent to place these gas developments on a solid regulatory and operational footing. For example, it is not transparent how operations transfer gas between them for operational purposes and whether or not such transfers should constitute a “gas sale” and incur a CIT liability”*. The CBN should separate Oil Account and that of Gas, as lumping the two together has worsened the irresponsibility in the Gas sector, including how the IOCs measure penalties they pay on Gas flaring.

Are they telling Nigerians that *Associated Gas* which is converted to LPG isn't on demand, at a time when Nigerians find none to cook upon the skyrocketed prices? Should gas be continually flared in places like Obigbo North Flow Station, Nembe, Soku, Ekuloma, Park Agidigbi, Obite, e.t.c. when the communities and Nigerians in general have no electricity?

Information (of the NEITI Auditors) on Condensate and “sour crude” is dislocated and cannot be matched to tracking benchmarking. A situational perspective of its allocation either at Osso platform or Kaduna e.t.c. should be highlighted in subsequent Audits, especially, from that of 2006. The National Assembly should consider the repealing or amendments to the Associated Gas Re-injection Act of 1990, the Petroleum Profit Tax and the Company Income Tax. But it is necessary that the Civil Society is integrated in the reconciliation of all complications surrounding this audit, also on issues of “Carry Agreement” which the Auditors recommended between NEITI, FIRS and the NNPC.

### 4.4 The Siphoning of Oil Drums of Blood by Conspirators

Please take time to read how the oil (terminals) hub sucked Nigerian citizenry through aggregated confusion on the terminal audit:

*“Bonny Terminal is operated by SPDC on behalf of the SPDC JV (a Joint Venture between SPDC, NNPC, EPNL, and NAOC). The entitlement to production by that JV is shared between the JV agreements. In addition, the terminal handles products for NDPR (a small independent operator) and EPNL JV (joint venture between EPNL and NNPC). Furthermore, one field is subject to a Unitization Agreement with CNL JV (Joint Venture between CNL and NNPC)”*.

Implicatively, the Terminal Operator must keep track of production from different CIs, which at this instance, could be one company but under different subsidiary (names) running as aggregated entity for the sake of the Covering JVs and evading systemic checks.

*“Brass Terminal, operated by NAOJ on behalf of NAOJ JV (partners: NAOJ, NNPC, Philips) additionally receives product from AENR (another subsidiary of Agip the owner of NAOJ), Addax PSC and CNL JV. Also there are four fields operated by NAOJ JV that have unitization agreement with SPDC JV”.*

Illustrations above heightens how operators can swap crude lifting interest, assign their entitlement commercially or shadowing regulations at the detriments of the Community owners of the oil resource or for the Nigerian State who care not about the missing oil drums. Moreover, issues about Upstream Volumetric Reconciliation and Mass Balance Methodology which recognizes that measurement at the wellhead is largely impractical, therefore, any losses between the wellhead and the flow station cannot be detected. Field meters are not very accurate (+/-10%). There's debate about whether the inaccuracy is random-i.e. over large number of measurements the average reading would be correct. Or whether there are systemic inaccuracies- i.e. particular flow conditions may cause a meter consistently to over or under measure (?). NEITI's metering steps cannot convince us at this technological prediction, since the three pillars of EITI consolidation around the world is missing in Nigeria, i.e.: government, the private sector and civil society.

#### **4.5 Overview of Crude Production and Export crude lifting Reconciliations**

It is a laughable syndrome to see DPR, NNPC, Terminal Operators, Producers and (crude) Lifters all flashing differential figures down from Belema Unit, Brass, Bonny, Forcados, Escravos, Kula, Bonga, Agbara, Amenam, Middleston, Pennington, Funiwa, Robertkiri, Idama, Jokka, Obagi, Olo, Afia, Edikan, Ime, Ofon, Ubit, Edop, Asabo, Ekpe, Etim, Inim, Utue, Usari, Aghigho, Obodo, Okpoko, Upomami, Erema, Yoho, Odudu, Okono, Ima, Ukpokiti, Ebocha, Obite, Mkpanak, Ekuloma, Abo without barriers. There are even “over lifting”, swap, and “double counting, trial marketing, “under lifting (in 2004?) e.t.c. Cavendish, Camac, and SEPCOL refused to cooperate with the NEITI Auditors? Why has NEITI not invoked relevant Section of its law against this erring CI? Why did DPR fail to conduct reconciliation oversight on SNEPCO in 2005?

If SPDC, CNL, EPNL, and NPDR under a single JV are feeding their (fiscalised) production through the Bonny Export Terminal, why did DPR allow further complexity by products from Belema Unitisation also feeding the Bonny Terminal under an independent JV with the SPDC (?) with Chevron Nigeria Limited joining the marriage disclosure complexity? Where is the Crude Oil Marketing Division of the NNPC in all these? Can meterized and forensic audit not unearth the collusion between sister-agencies but one suffering from prodigal disease? How can a differential of 38,000 bbls from actual be spotted for Port Harcourt Refinery, yet, there is no petrol in Rivers State? And is Mobil Producing supposed to lump their unitization with Elf and create confusion on whose liability it is to pay PPT and Royalty on a disaggregated production portfolio? How can FIRS reconcile their tax templates, assessment, evaluation or Custom waivers in all these? No wonder bloated reserves to attract bonuses, consortia swapping, and well tagging reigns supreme in the sector. What then is the situation in the Joint Development Zone which has no extended regulation from State parties?





Picture 4: Alternative to river as drinking water for many Niger Delta communities

The following table summarizes the total allocation of crude to equity (?) owners across all their interests and comparably with total lifting. The data is aggregated from the terminal balances (after terminal adjustments), set out below:

Table 1: Allocation of dry crude production to owners in bbls as captured in NEITI's 2005 Audit Report

| COMPANY | PRODUCTION ALLOCATION | ACTUAL LIFTING | STOCK CHANGE |
|---------|-----------------------|----------------|--------------|
| ADDAX   | 13,690,709            | 12,938,259     | 752,450      |
| AENR    | 8,509,709             | 8,507,709      | 2,000        |
| AMNI    | 831,995               | 775,426        | 56,569       |
| ATLAS   | 163,546               | 193,369        | (29,823)     |
| CAMAC   | 40,987                | 14,431         | 26,556       |
| CAV     | 1,408,276             | 1,478,265      | (69,989)     |
| CNL     | 54,296,987            | 54,190,306     | 106,681      |
| CONOIL  | 725,088               | 760,000        | (34,912)     |
| CONT    | 13,242,750            | 14,291,101     | (1,048,351)  |
| DUBRI   | 152,705               | 160,000        | (7,295)      |



|                |                    |                    |                    |
|----------------|--------------------|--------------------|--------------------|
| <b>EPNL</b>    | <b>73,750,586</b>  | <b>73,501,169</b>  | <b>(650,203)</b>   |
| <b>EXPRESS</b> | 942,703            | 407,366            | 535,337            |
| <b>MONI</b>    | 5,794,198          | 5,982,132          | (187,934)          |
| <b>MPNU</b>    | <b>106,409,173</b> | <b>101,301,208</b> | <b>(63,837)</b>    |
| <b>NAE</b>     | 4,321,441          | 4,889,236          | (506,663)          |
| <b>NAOC</b>    | <b>30,629,140</b>  | <b>32,663,551</b>  | <b>(1,526,252)</b> |
| <b>NDPR</b>    | 141,014            | 50,000             | 91,014             |
| <b>NNPC</b>    | <b>454,978,919</b> | <b>456,422,853</b> | <b>1,866,691</b>   |
| <b>NPDC</b>    | 15,070,460         | 15,376,613         | (306,153)          |
| <b>PAN</b>     | 3,452,686          | 3,211,052          | 241,634            |
| <b>PHILIPS</b> | 12,367,430         | 12,647,481         | (280,051)          |
| <b>SEPCOL</b>  | 655,794            | 1,311,662          | (655,868)          |
| <b>SNEPCO</b>  | 5,760,557          | 4,375,860          | 1,384,697          |
| <b>SPDC</b>    | <b>109,570,258</b> | <b>110,689,402</b> | <b>1,921,319</b>   |
| <b>TOTAL</b>   | <b>916,907,111</b> | <b>916,138,451</b> | <b>1,617,617</b>   |

*There are issues of Royalties and Petroleum Profit Tax on allocation to NNPC, among other matters like Elf lifting which excluded Mobil Producing share from Amenam field. The Production Sharing Contract (PSC) surrounding the above, Terminal Balances and data integrity are dicey.*

## 5.0 THE 2005 FINANCIAL AUDIT OF THE NEITI

### 5.1 Data Sources

The government entities covered in the Financial Audit is the following:

- ❖ Office of the Accountant General of the Federation
- ❖ The Revenue Mobilization Commission
- ❖ The Central Bank of Nigeria
- ❖ The Department of Petroleum Resources
- ❖ The Inland Revenue Service
- ❖ State Government and FCT receiving payment of VAT and withholding tax from oil and gas sector
- ❖ The Niger Delta Development Commission
- ❖ The NNPC, including its relevant business units and associated entities

The Terms of Reference (TOR) for the (2005) Audit is to meet the standard of the international EITI guidelines (as of 1<sup>st</sup> March 2007).

According to the Auditors, *“the EITI criteria require that all data disclosed by companies is based on data drawn from accounts which been Audited to international standards. An assumption underlying this Financial Audit was that company financial statements had already been audited in accordance with international auditing standards. We (Auditors) received an*

*affirmative response from KPMG Professional Services in regard to the financial statements of Elf Petroleum Nigeria Limited. No response was received from any other auditor”.*

“It was not within the scope of our (Auditors) work to check that the general ledgers of the companies were in agreement with the audited financial statements. This would be part of the work of the company auditors. We (NEITI Auditors) did not have access to the working papers of the company auditors. We therefore asked companies to request their own external auditors to confirm to us that the template data supplied to us by the companies was consistent with their audited financial statement. Some companies told us that such a request required more time and planning to accede to...”

The TOR work programme did not include a comprehensive audit of the covered entities nor was it primarily concerned with the view given by the financial statements of the covered entities.

From the Audit information on financial flows to the Federation, proceeds of sale of gas and NLNG feedstock was reported to have *“been swept to the Federation account”*. The Auditors also stated clearly that the audit didn't cover entities on gas. There must be caution on throwing (non-verifiable claims) to the faces of Nigerians on matters as sensitive as extractive audit in Nigeria. Ordinary Nigerians are aware about the NLNG dividend controversy between the National Assembly, NNPC, CBN, NDDC, DPR, FIRS etc. Unfortunately, the National Assembly has not deemed it necessary to create oversight Committee (s) on NEITI as a way of arresting information complications in the sector.

Terribly, the 2005 Audit indicators, just like that of 1999-2004, are chronically stinky. From the net difference of One Hundred and Fifty Five Million, Seven Hundred and Two Thousand Dollars and another Ninety Million, Twenty Five Thousand Dollars as opposite indicators, NEITI Auditors shocked Nigerians by claiming these figures were not reconciled.

Though we are tilted to believe NEITI on the figures surgery associated with counterpart funding and Oil Companies contribution to the Niger Delta Development Commission (NDDC), the fact however remain certain that, public perception of corruption in the NDDC is high. The new NDDC board has promised to be transparent, open, transparent, accountable and inclusive to stakeholders but that is yet to be seen, as indicators which drive (transparent and accountable) processes e.g. Town Hall Budget Consultations, Community Certification of Projects Audit Before Final Payment, Budget (Document) Availability and Distribution, Audited Account Circulation and Community Needs Assessment before project(s) selection are all missing in the NDDC. We are still awaiting internal reforms within the NDDC, including the amendment of the NDDC Act to conform to the realities of emerging issues in the Petroleum Industry Bill (PIB) as related to Oil Producing Communities and the entire people of the Niger Delta.

Beyond the NDDC, we want to see future audits of NEITI disaggregating taxes such as Tenement Rates, Development Levies, Sanitation Rate, Withholding tax, VAT, Education tax Advert levies, Security procurement, Community Development/State/LGs Grants etc- making it clear enough in an Audit chart for all Nigerians to see. We would continue to demand extractive taxes reconciliation between the Federal Government, States, Local Governments, Communities, NDDC, and the Oil Companies in the Niger Delta. NEITI's Audit is intentionally isolative.

## **5.2 Proceeds of Sale of Crude Oil and Gas**

This section of the Audit report is trying to play with the intelligence of Nigerians. We wonder how this Audit information vetting passed through the consideration of NEITI's National Stakeholders Working Group (NSWG). Nigerians should look at the statement below from the Auditors with (democratic) rebuke;

*“.....quantity of crude attributed to the Federation has been verified as part of the Physical Audit. It was concluded that all exported crude had been accounted for, subject to a difference?? Bbl that remains to be investigated by the Crude Oil Marketing Division (COMD) of the NNPC”*. According to the Auditors, *“subject to the (unstated) difference, the audit conclusion is that the Federation received value for all crude it was entitled to in 2005”*. This is a big sham and blindfolded conclusion. NEITI should apologize to Nigerians on this show of collective shame.





**Picture 5: Where is the hope for these innocent children as (many) operators of Nigerian State continue to jeopardize their future?**

Moreover, COMD main ledger is kept in Lagos and not automatically connected with (their COMD debtor's) ledger or in line with COMD credit control procedures. This lack of credible information management system within the NNPC and its COMD is a cause for unaccounted Oil Drums of Blood as the situation captured below illustrates:

- NNPC-COMD omitted sales invoices for gas and NLNG feedstock in December 2004 with \$40.2 million involved.
- NNPC-COMD omitted debtor invoice for Duke Oil in March 2004 with \$4.6 million involved.
- NNPC-COMD lifting for Nigeria Agip Exploration Limited for trial marketing in December 2004 with \$25.3 million involved.
- NNPC-COMD reconciliation difference between Duke Oil and Pan Ocean with \$16.6 million involved.
- NNPC-COMD downward valuations of cargoes lifted by Cross Oil \$0.9 million, Vitol \$0.1 million and Duke Oil \$0.4 million involved.
- NNPC-COMD overpayment by Jetstream Marketing Limited and Kyokuto with \$1.6 million involved.
- NNPC-COMD (doubled) offsetting of deposits previously paid
- NNPC-COMD omitted five invoices ( in the annual sequence) from the data provided to the NEITI Auditors for verification
- NEITI Auditors still awaiting (details forever (?)) of a cargo lifted on 3<sup>rd</sup> December 2005 by Nigeria Petroleum Development Company (NPDC)
- NNPC-COMD allowed MGG Energy a September 2005 lifting that was not paid and would not be paid until 2006.

Here are some underpayments of invoice values by COMD:

- ✚ February 2005 – N20 million
- ✚ March 2005- N26 million
- ✚ April 2005- N20million
- ✚ May 2005- N30million
- ✚ June 2005- N30million
- ✚ July 2005- N30million



There are outstanding differences from 1999-2004 Audit, but notably, NNPC was owing Nigeria's Federation Account N654,824,554 in outstandings as at the time 2005 NEITI's Audit was submitted.

As phrased by the Auditors, the net adjustments affected the balance reported by NEITI in their 2004 Audit. These are due to intractable account weaknesses permitted by the current system. Our organization waits to see how NEITI handles these un-reconciled porosity in the 2006 Audit, example: like the 90 days credit extended on lifting to Tema- Ghana which was not yet due as at the time of the 2005 Audit. It is revealing to see the Audit exposing the power maneuver between the Minister of Petroleum who in actual sense has more powers (on petroleum issues) than the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria. The drafters of the PIB notwithstanding this negation has proposed more powers to the energy and petroleum Minister in the new Post-PIB regime.

### 5.3 JP Morgan Oil and Gas Account in New York

It is only the Crude Oil Marketing Division of the Nigerian National Petroleum Corporation that can explain the imbroglios on how this account is operated. We call for the full investigation of this account through a sovereign collaborative request from the Nigerian State to the government of America.

### 5.4 Disaggregated Financial Flows To The Federation: Who Can Nigerians Believe? No One!!!

The Petroleum Profit Tax payments recorded by CBN and the PPT payments recorded by the companies are shown in the table below, together with the net difference from CBN records:

**Table 2: Disaggregated Financial Flows to the Federation**

| <i>PEs</i>            | <i>Co Ref</i>       | <i>Reported by EIC</i>   | <i>Reported by CBN</i>   | <i>Difference</i>     |
|-----------------------|---------------------|--------------------------|--------------------------|-----------------------|
| <i>Chevron</i>        | <i>C15-CNL</i>      | <i>1,284,425 (USD)</i>   | <i>1,284,887 (USD)</i>   | <i>462 (000?)USD</i>  |
| <i>Conoco Philips</i> | <i>C82-Phil</i>     | <i>302,800 (USD)</i>     | <i>263,341</i>           | <i>39,459</i>         |
| <i>EPNL</i>           | <i>C25-EPNL</i>     | <i>2,136,121 (USD)</i>   | <i>1,903,050</i>         | <i>233,071</i>        |
| <i>MPNL</i>           | <i>C41-MPNU</i>     | <i>2,717,631 (USD)</i>   | <i>2,717,631</i>         | <i>-----</i>          |
| <i>NAOC</i>           | <i>C49-NAOC</i>     | <i>947,823 (USD)</i>     | <i>988,634</i>           | <i>(40,811)</i>       |
| <i>Pan Ocean</i>      | <i>C58-PAN</i>      | <i>34,061</i>            | <i>33,132</i>            | <i>929</i>            |
| <i>SPDC</i>           | <i>C67-SPDC</i>     | <i>3,105,136</i>         | <i>3,105,142</i>         | <i>(6)(?)</i>         |
| <i>Addax</i>          | <i>C01-ADDX</i>     | <i>-</i>                 | <i>7,350</i>             | <i>(7,350)</i>        |
|                       | <b><i>Total</i></b> | <b><i>10,527,997</i></b> | <b><i>10,303,167</i></b> | <b><i>224,830</i></b> |

*There are other areas which seems the Auditors did not want Nigerians understand the mechanistic template of the Audit but which our organization hoped to take up with the NEITI Secretariat, since the take off of the Civil Society Steering Committee which our organization is supposed to be in the membership is being frustrated.*

Alarminglly, the Central Bank of Nigeria is collusively tainted in the Audit that nothing less than sweeping out all members of the CBN echelon club can save Nigeria. It is also mind boggling how an American Company like Chevron continues to evade justice associated with its extractive calamities in the Niger Delta from the genesis of the West African Gas Pipeline project to serious accusation levelled at the company on tax evasion, without the U.S Foreign Practices Act nor the U.S Patriot Act being invoked by victims in an American Court at getting justice. Who are the victims in these circumstances? Is it the State collaborators or it agents? Is it the Niger Delta Communities (?), yes! But corporate citizens like the ABZ Consultants that raised the alarm about Chevron's extractive squandamania also needs justice as they continue to lament in the pains of collusive injustices. Importantly, Hon. Cairo Ojiubo's report on Chevron now gathering dust in the shelves within Nigeria's House of Representatives also needs justice.

From the Audit report, **“Chevron Nigeria Limited in 2005 settled a Petroleum Profit Tax liability dating from 2000. This period elapsed because of a process of dispute resolution between Federal Inland Revenue Service (FIRS) and Chevron Nigeria Limited.”** The said payment from Chevron, subject from the resolution of a tax “dispute between Chevron/FIRS” (and NEITI?)



raises more questions than answers on how such was done without integration of NEITI itself or its critical partners.

See below the table as illustrated by the Auditors, the (earlier) differences and companies affected:

**Table 3: Differences and Companies Affected**

| <i>Nature of Difference</i>                                                                                                                                        | <i>Amount<br/>(US\$ 000)</i> | <i>Companies<br/>Affected</i> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|-------------------------------|
| Adjustment payment relating to 1999, omitted by company from its template                                                                                          | -7350                        | Addax                         |
| Chevron templates did not include payments made by TOPCON or COCNL whereas CBN recognized all payments                                                             | -6517                        | Chevron                       |
| TOPCON items included by Chevron but omitted by CBN                                                                                                                | 5825                         | Chevron                       |
| CBN recorded a higher receipt than the company made                                                                                                                | -98753                       | NAOC                          |
| Company included Reserves Additional Bonus not reported by CBN                                                                                                     | 57942                        | NAOC                          |
| CBN recorded a receipt where the company made no payment                                                                                                           | -2397                        | Pan ocean                     |
| CBN recorded a higher (net) than the company made                                                                                                                  | -21741                       | Philips                       |
| CBN recorded a higher (net) than the company made                                                                                                                  | -2000                        | Continental                   |
| CBN on its templates attributed payments to a wrong company                                                                                                        | -4255                        | Conoil                        |
| Company payment could not be located on CBN template                                                                                                               | 61200                        | Philips                       |
| Company payment could not be located on CBN template                                                                                                               | 2421                         | Conoil                        |
| Company payment could not be located on CBN template                                                                                                               | 20725                        | Continental                   |
| Company payment could not be located on CBN template                                                                                                               | 3326                         | Pan Ocean                     |
| Company payment could not be located on CBN template                                                                                                               | 150                          | Brass<br>Exploration          |
| CBN misclassified a PPT payment as Royalty                                                                                                                         | 233071                       | Elf                           |
| CBN misclassified withholding tax as PPT                                                                                                                           | -6                           | SPDC                          |
| Company did not submit template, nor did CBN report any receipt. Although there is no difference, this cannot be construed as reconciled CBN commission accounting | 229                          | Cavendish<br>Chevron          |
| Rounding difference on template                                                                                                                                    | 1                            |                               |
| Total net difference                                                                                                                                               | 241871                       |                               |

## 5.5 Summary of Findings from the Auditors

Painfully speaking, it is worrisome, sad, disheartening and discouraging to trace some aspect of the 2005 Audit report as withheld following such directive from NEITI's National Stakeholders Working Group (NSWG). The Auditors are quoted thus on the component of the report withheld *“Companies are concerned that the Audit findings may be misconstrued. In several instances, set out below, the audit review indicates differences between values used for tax purposes and values suggested by available data. The Audit has not been sufficiently detailed to allow a firm conclusion to be drawn. It is however our (Auditors) recommendation that FIRS undertake a detailed audit of the aspects of PPT discussed below, as the amounts involved are potentially significant”*.



Picture 6: Where is the right of citizens to shelter and sustainable livelihood as millions of looted dollars swell in foreign banks?

Further, *“companies have not signed off aspect of the Audit and have indicated their disagreement with some of the conclusions drawn. Some companies have requested further discussions in order to clarify issues but the time frame for this review did not permit discussions to be continued”*.

The Auditors further said *“detailed work done on the validation of these liabilities is contained in Appendices S and T to this (Audit) report. These have been submitted to NSWG but are not recommended for publication. We (Auditors) recommend that the work be taken forward by FIRS and finalized before such materials are put into the public domain”*.

## 5.6 Fixed Assets Additions

There are tricky issues of capital items associated to construction processes in the sector which our mother organization (Commonwealth of Niger Delta Youths) noticed a few years ago with the West African Gas Pipeline. The issue further raises its ugly head during the Audit and captured in quote from the Auditors below.

It is stated thus *“issue of which legal opinion is required in this area is capital allowances claimed on capital/construction work in progress. Some companies argue that Para 15 of the Second Schedule to the PPT Act allows for the claiming of capital allowances from the moment the expenditure is incurred, as opposed to when the assets is first put to use. Although the section under reference discusses capital expenditure as qualifying expenditure, we (Auditors)*



*do not agree that it expressly or by implication permits capital allowances to be claimed on capital/construction in progress, rather that is limited to assets in use. This issue requires urgent clarification by FIRS and if necessary a legal interpretation”.*

## **6. Extractive Industry Companies PPT and Royalty Issues**

### **i. Chevron Nigeria Limited**

- *Differences of 1, 000 barrels in Escravos*
- *Used Realizable Price (RP) instead of OSP*
- *13,590 differences between 133,121, 491 barrels total Oil Production in template P1.02 and 133,107, 901 barrels, total Production volumes as reported by Chevron Nigeria Limited.*
- *Difference of \$ 31,011,193.93 between Chevron and audit calculated on Royalty based on OSP on data from NNPC-COMD.*
- *The Auditors work revealed that Chevron do not have a JV Audited Financial Statement in Dollars but in Naira whereas the PPT returns is filed in Dollars.*
- *It is clear companies are having quarrels with NEITI's template, for now, which is secret document at NEITI from assumption of our organization-Niger Delta Budget Monitoring Group*
- *There is evidence that Chevron has shortchanged Nigeria through their PPT returns.*
- *The Auditors recommended the following against Chevron but ignored by NEITI's NSWG-“In the light of the Audit trail challenge posed on the audit on this issue, we recommend that the NSWG carry out a detailed investigation into this issue with a view of establishing how Chevron have compiled their PPT returns cost in the past and what steps should be taken to improve the situation in future”.*
- *The Auditors observed differences of \$ 95,685,162 between Operating Expenses claimed by Chevron in AFS and PPT returns.*

*Has NEITI's NSWG asked Chevron to explain the following?*

- ❖ *The sum of \$2,711,337 Drilling Project costs over claimed in PPT returns.*
- ❖ *The sum of \$ 140,096,185 being difference between the sums claimed as CAPEX in AFS and PPT returns.*
- ❖ *The sum of \$152,823,965 written off as adjustment from CAPEX in the AFS.*
- ❖ *DPR approval for Asset worth \$182,104,000 disposed by CNL, CGT paid (if any) and 5% VAT on assets disposed.*
- ❖ *The difference of \$283,000 between Gases flare claimable and claimed for 2005.*
- ❖ *The \$3,734,000 Gas flare claimed as PPT allowable cost should be treated as Gas cost under CITA which would have reduced the PPT chargeable cost by same amount.*
- ❖ *Chevron's Carry Cost recovery data template refers to \$29,222,695 in year 1 and \$ 2,498,338 in year 2 and it is difficult to relate either of this to 2005.*
- ❖ *There is no linkage in the template submitted by Chevron between the Residual Carry Expenditure of \$9,201,469 in year 1 and \$ 629,408 in year 2 and how it was recovered from NNPC's share of 60% production in Delta South Carry. Chevron needs to clarify this.*
- ❖ *Chevron took Carry Oil in excess of what is due under the Carry by 818,815 barrels.*
- ❖ *Total Carry Capital Cost was shown in the Chevron template as \$31,721,032 for the two years while NNPC reported \$21,000,000.*
- ❖ *Total Tangible Carry Cost for oil per Chevron's shows \$8,723,523, while NNPC's template has \$7,877,613.*
- ❖ *Total Intangible Carry Cost for Oil per Chevron's template shows \$22,997,509, NNPC's record shows \$13,522,387.*

- ❖ Chevron should reconcile the difference of 118, 145 barrels between their production allocations of 1,301,121 barrels as Carry Oil in its PPT Returns whilst NNPC reported 1,208,000 barrels.
- ❖ Chevron's Carry Cost recovery data template refers to \$31,216,129 in year 1 and \$34,552,325 in year 2. It is difficult to relate either of this to 2005.
- ❖ There is no linkage in the template submitted by Chevron between Residual Carry Expenditure of \$14,165,242 in year 1 and \$11,383,064 in year 2 and how it was recovered from NNPC's share of 60% production in Meji.
- ❖ Chevron took Carry Oil in excess of what is due under the carry by 1,451,406 barrels.
- ❖ Total Carry Capital Costs was shown in Chevron's template as \$65,768,454 while NNPC reported \$52,600,000.
- ❖ Total Tangible Carry cost for Oil per Chevron's template shows \$30,911,622, while NNPC's template has \$28,371,734.
- ❖ Total Intangible cost for Oil per Chevron's template shows \$34,856,831, while NNPC's template had \$24,228,266.
- ❖ Chevron should reconcile the difference of 185,195 barrels between their production allocations of 1,730,020 barrels with NNPC figure of 1,916,215 barrels.
- ❖ Chevron declared 1,619,000 barrels as Carry Oil in its PPT Returns, whilst NNPC reported 2,129,000 barrels.
- ❖ Chevron's Carry Cost recovery data template refers to \$24,252,244 in year 1 and \$-13,320 in year 2 and it is difficult to either of this to 2005.
- ❖ There is no linkage in the template submitted by Chevron between Residual Carry Expenditure of \$8,266,468 in year 1 and \$-1,114,421 in year 2 and how it was recovered from NNPC's share of 60% in Meren.
- ❖ Chevron took Carry Oil in excess of what is due under the carry by 873,816 barrels.
- ❖ Total Carry Capital Costs was shown in the Chevron's template as \$8,132,227, while NNPC's template has \$7,217,791
- ❖ Total Carry Capital Cost was shown in Chevron's template as \$24,238,924, while NNPC reported \$23,339,628.
- ❖ Total Intangible Carry Cost for Oil per Chevron's template shows \$16,106,697, while NNPC's template has \$16,121,838.
- ❖ Chevron should reconcile the difference of 210,067 barrels between their production allocations of 1,354,037.
- ❖ Chevron declared 965,000 barrels as Carry Oil in its PPT returns, whilst NNPC reported 1,268,000 barrels.

## **ii. PHILIPS OIL COMPANY NIGERIA LIMITED**

**The difference between Philips Oil Company Nigeria Limited and NEITI PPT fiscal Value resultant from the above (PT Fiscal Value/Revenue) amounted to \$3,334,880 based on application of Official Selling Price, election of higher of sale proceeds and OSP basis using data supplied by NNPC-COMD. The election was carried out on cargo by cargo basis.**

**Accountability crime against the Nigerian State by Philips Oil Company Nigeria Limited:**

- Philips Oil used RP instead of OSP to derive their Royalty on Crude Oil.
- Differences between Philips Oil and NEITI Royalty on Crude Oil amounted to \$2,004,496 based on the application of OSP data from NNPC-COMD.
- Philips Oil did not provide the audit with Hydrocarbon Flows to enable auditors reconcile total production volumes used for Royalty calculation.
- Philips Oil has applied RP instead of OSP and therefore, the basis for computation of Royalty is wrong and the royalty paid by Philips Oil thereon is not correct.
- The Naira JV AFS bears no relationship to their AFS, the PPT returns and the audit template.

The relationship between JV AFS and a covered Entity's share of JV costs should also extend to costs filed in PPT returns particularly as a significant portion of (Philips) PPT costs are derived from share JV costs-Sadly, the inability to establish this relationship in (Philips) cost defeats transparency



in the completeness and correctness of POCNL's share of JV cost included in the PPT returns. It was recommended that NEITI's NSWG carry out a detailed investigation into this issue with a view of establishing how Philips Oil Nigeria Limited have compiled their PPT returns costs in the past and what steps should be taken to improve the situation in future. All the stakeholders are still waiting for NEITI's NSWG to commence this crucial investigation. But it seems the waiting is endless!

Further;

- There is a difference of \$1,022,000 between the AFS and PPT returns for Philips Oil to reconcile.
- Philips Oil should explain the difference of \$4,895,000 between Intangible Drilling Cost claimed by Philips in the AFS and PPT returns.
- There is a difference of \$32,911,000 between the Gross JV Costs reported by Philips and Nigerian Agip Oil Company.

### **iii. ELF PETROLEUM NIGERIA LIMITED**

Matters arising for Elf Nigeria Limited:

- There is a difference of 1,801,000 barrels between export volume used for PPT and Physical audit reconciled export volume.
- Elf Petroleum used RP in the computation of fiscal value while the Auditor used OSP in the computation of fiscal value. The difference between Elf Petroleum and Auditor's PPT Fiscal Value resultant from the above amounted to \$45,388,748 based on application of OSP.
- Elf Petroleum excluded other income of \$8,527,000 from PPT returns.
- There is a significant difference of \$344,321,000 between total OPEX claimed in PPT returns template.
- There is an over-claimed IDC by Elf Petroleum in the sum of \$119,798,000.
- Elf Petroleum over-claimed Investment Tax Allowance by \$1,234,000.
- The sum of \$42,021,000 Capital Allowance (CA) was charged in the PPT returns for Non Associated Gas (NAG) instead of CITA. Elf over-claimed Capital Allowance of \$23,112,000.
- The sum of \$1,782,000 Gas Flare Penalty as PPT allowable costs should be treated as Gas cost under CITA which would have reduce the PPT chargeable cost by the same amount. The tax impact of is \$980,100.
- Elf Petroleum took Carry cost for in excess of what is due under the Amenam Kpono 1 Carry by 11,467,394 barrels.
- Total Intangible cost for oil per NEITI template shows \$211,776,970. NNPC's record shows \$210,684,690.
- Elf Petroleum used 15% on its computation of ITC on gas, which is at variance with the provision of the tax laws. The implication of this practice is an increase in Investment Tax Credit for gas, resulting in higher Residual Capital Expenditure.
- Elf Petroleum to Carry Oil in excess of what is due under the Amenam Kpono 2 Carry by 15,020,605 barrels.
- There is no linkage in the template submitted by Elf Petroleum between the Residual Carry Expenditure of (\$22,476,181.50) in Phase 2 for 2005 and how they were recovered from NNPC's 60% production in template submitted for Carry.
- The audit noted that the Residual Carry Expenditure of (\$29,820,323.76) was not computed as the difference between the total Carry Tax Expenditure of \$508,038,468.70 and Carry Tax Relief of N431, 833,548.40, the audit noticed inconsistent with Elf's calculation in Amenam Kpono 1.
- Elf Petroleum Residual Carry Expenditure should be the difference between the total Carry Capital cost of \$54,000,000 and the Carry tax relief of \$431,833,548.40, giving a net total Residual Tax Expenditure of \$22,166,451.60 as against (\$29,820,323.76) shown in the template.

#### iv. MOBIL PRODUCING NIGERIA LIMITED

Matters arising for Mobil Producing Nigeria (un?) Limited:

- Mobil Producing used RP instead of OSP to derive their Royalty on Crude Oil but Section 2.4 of MoU 2000 specifically requires companies to calculate royalty at Official Selling Price in the PPTA.
- There were 4,158,736 barrels differences between 246,281,056 barrels total Oil Production in template P1.02 and 250,439,792 barrels of total Production volumes as reported by Mobil Producing.
- The difference between Mobil Producing and Audit Royalty on Crude Oil amounted to \$363,849.44 based on the application of OSP data from NNPC-COMD.
- Comparing the Oil Production template figure populated by Mobil Producing which the Auditors used during the audit, to the revised production table provided by Mobil Producing in their response as their new submission with a difference of 36,661,782 barrels.
- Factually, Mobil Producing applied RP instead of OSP and therefore, the basis for computing Royalty is wrong and Royalty paid thereon is not correct.
- The Naira JV AFS bears no relationship to their AFS, the PPT returns and the NEITI templates. Inability of Mobil to establish this relationship in costs defeats transparency in the completeness and correctness of Mobil Producing share of JV cost, including PPT returns.
- In the light of the Audit trail challenge posed on the audit to this issue, they (auditors) recommended that NEITI's NSWG carry out a detailed investigation into this issue with a view of establishing how Mobil Producing have compiled their PPT returns cost in the past and what steps should be taken to improve the situation in future.

Further;

- Mobil Producing should explain the difference of \$160,388,680 between IDC claimed by MPNU in AFS and PPT Returns.
- There is a difference of \$72,765,049 on CAPEX addition, on which capital allowances have been claimed by Mobil Producing between AFS and PPT returns requires explanations.
- Mobil Producing should provide proof of Capital Gains Tax (if any) and 5% VAT charged on the disposal
- There is no linkage in the template submitted by Mobil Producing between Residual Carry Expenditure of \$17,426,526 in 2005 at Yoho Carry.
- Mobil took Carry Oil in excess of what is due under the Yoho Carry by 19,003,770 barrels.
- Mobil's Carry Capital cost for oil per Mobil's template shows \$713,374,931, NNPC's record shows \$778,118,752.
- Total Tangible Carry cost for oil per Mobil's template shows \$554,483,526, whilst NNPC record shows \$604,230,985.
- Total Intangible Carry cost for oil per Mobil's template shows \$158,891,403, whilst NNPC's template shows \$158,891,403, whilst NNPC's template shows \$173,887,767.
- Mobil Producing should reconcile the difference of 34,271 barrels between their production allocations of 16,083,007 barrels with NNPC figure of 16,048,736 barrels.
- Mobil Producing declared 9,784,000 barrels as Carry oil in its PPT returns, whilst NNPC reported 3,529,000 barrels.



- There is no linkage in the (PIP Carry) template submitted by Mobil between Residual Carry Expenditure of \$36,781,664 in 2005 and how this was recovered from NNPC's share of 60% production.
- Mobil lifted 10,923,879 in excess of their Carry Oil Entitlement.
- Total Carry Capital Cost for oil per Mobil's template shows \$269,067,637, whilst NNPC's record shows \$352,000,000.
- Total Intangible Carry cost for oil per Mobil's template shows \$234,986,862, whilst NNPC template shows \$299,431,481.

Total Tangible Carry cost for oil per Mobil's shows \$34,080,775, whilst NNPC template shows \$41,010,557.

- Mobil should reconcile the difference of 4,211,736 barrels between their production allocations of 9,504,816 barrels with NNPC figure of 5,293,080 barrels.
- Mobil Producing declared 9,784,000 barrels as Carry oil in its PPT returns, whilst NNPC reported 3,529,000 barrels.

## **v. NIGERIA AGIP OIL COMPANY LIMITED (NAOC)**

Just like other IOCs which seem to have conspired against the Nigerian State, NAOC used RP in the computation of fiscal value while the Auditors used OSP in the computation of fiscal value. The difference between NAOC and the Auditor's PPT Fiscal Value resultant from the above amounted to \$19,009,000 based on application of Official Selling Price. The amount which Nigerian Agip Oil Company owes the Government of the Federal Republic of Nigeria (though Government seems indisposed to recovered these huge funds from thee IOCs, even as citizens die daily for reasons of poverty) is \$ 16.1million USD just to start with. Moreover, according to NEITI's Auditors, "NAOC has not been able to clearly show the relationship between the AFS and PPT returns. NAOC is (was) to explain the difference of \$21 million USD between Audited Financial Statement and PPT returns.

Here are other extractive atrocities associated with NAOC:

- ❖ NAOC should explain the difference of \$3,333,000 USD between the IDC claimed by the company in the AFS and PPT returns.
- ❖ There is a difference of \$45,344,000 on CAPEX additions on which Capital Allowances have been claimed by NAOC in the AFS and the PPT returns that requires further reconciliation.
- ❖ NAOC over claimed ITA in the sum of \$10.4 million USD.
- ❖ The sum of \$32.6 million ought to have been charged against CITA instead of PPT. NAOC claimed CA of \$17.9 million USD.
- ❖ The sum of \$2.2 million USD Gas Flaring Penalty as PPPT allowable costs should be treated as Gas cost under CITA which would have reduce the PPT chargeable cost by same amount.

## **vi. PAN OCEAN OIL CORPORATION**

Here are absurdities associated with Extractive Industry Audit (EIAs) concerning Pan Ocean Oil Corporation:

- Pan Ocean used RP in computation of fiscal value while the Auditor used OSP in the computation of fiscal value. The difference between Pan Ocean and Auditor's PPT Fiscal Value resultant from the above amounted to \$1.4 million USD based on application of OSP. The amount due to Government is \$1.22 million USD.
- From the NEITI Auditor's analysis, Pan Ocean has not been able to clearly show the relationship between the AFS and PPT returns as shown in template F2. 09.1. Pan Ocean needs to explain the difference of \$22.7 million USD.
- NEITI's Auditors observed that capital allowance of \$2,002,000 was claimed (by Pan Ocean) on signature bonus wrongly capitalized as Geological Geographical equipment.

## **vii. SHELL PETROLEUM DEVELOPMENT COMPANY LIMITED**

Here are the information about SPDC and Extractive Accountability in Nigeria:

- Shell used Realizable Prices (RP) for Fiscal Value determination.
- SPDC did not elect PPT Fiscal Value on the basis of higher of Actual Sales Proceeds and OSP as per section.2.4 of the 2000 MOU.
- The difference between SPDC and the Audit calculated PPT Fiscal Value resultant from the above amounted to \$149,342,000 USD based on application of OSP, election of higher of Actual Sales Proceeds and OSP basis using data supplied by NNPC-COMD.
- SPDC took Carry oil in excess of what is due under the EA Carry by 697,099 barrels.
- Total tangible Carry cost for oil per SPDC template is \$450,679,315, NNPC's template shows \$449,268,227. SPDC should reconcile this (huge) difference with NEITI/Civil Society Steering Committee.
- Total Intangible Carry cost for oil per SPDC template shows \$145,213,666, while NNPC's template shows \$146,624,756. The difference must be reconciled.
- There was a discrepancy between SPDC intangible write off of \$146,624,756 and the reported intangible cost of \$145,213,666. We awaits the reconciliation of the difference.
- NNPC volume is 448,495 barrels higher than SPDC volumes.

## **viii. ADDAX PETROLEUM DEVELOPMENT COMPANY**

This is Addax (PDC) and the 2005 NEITI's Audit:

- Addax Petroleum Development Company used RP in the computation of fiscal value while the Auditor used OSP in the computation of fiscal value. The difference between APDC and the auditor's PPT Fiscal Value resultant from the above amounted to \$7,307,635 USD based on the application of OSP.
- Explanation/details needed on APDC IDC of \$95,879,000

Curiously, NEITI Auditors noticed that APDC charged expenditure relating to gas flared to its PPT returns. The amount involved is \$2,470,395. The Hart Group auditors even though the expenditure appears genuine business charge, (they) auditors are of the view that such should not be a PPPT deduction, rather; it should be an allowable charge against Gas income, since it can be distinctly separated from Oil costs. Therefore, the PPT for the year under review has been understated by about \$2,099,836- A matter which Nigeria's Civil awaits FIRS intervention, among many other matters about this Audit for the Tax Watchdog (?).

## **ix. ADDAX PETROLEUM EXPLORATION NIGERIA LIMITED (APENL)**

**Audit observations:**

- Addax Petroleum Exploration Limited used RP in computation of fiscal value, while the Auditor used OSP in the computation of fiscal value. The difference between APENL and auditor's PPT Fiscal Value resultant from the above amounted to \$543,110 based on application of OSP.

Other extractive complications associated with this CE are;

- APENL should provide details of IDC totaling \$63,411,000
- APENL over claimed ITA in the sum of \$75,616,000



- There are complications on amount charged by APENL on Gas flared. The amount involved is \$189,556.
- APENL PPT for 2005 is alleged to be under stated by about \$161,123.

The involvement of Addax or any of its subsidiaries on these extractive mess and atrocities in Nigeria is surprising to all Niger Deltans . Addax was regarded and stood out (earlier years) as a responsible extractive company in Nigeria going by the positive CSR record associated with the company in some areas of their operations in the Niger Delta. How this record is salvage cannot be left for verbal gambits.

## **x. AGIP ENGERY & NATURAL RESOURCES LIMITED**

The NEITI Audit report observed that AENR used Realizable Price (RP) instead of OSP to derive their Royalty on Crude Oil. The difference between AENR and Auditor's Royalty on Crude amounted to \$19,587,770 based on the application of OSP data from NNPC-COMD.

## **xi. NIGERIA AGIP EXPLORATION**

- Nigeria Agip Exploration used RP in the computation of fiscal value, while the Auditor's used OSP in the computation of fiscal value. The difference between Continental and auditor's PPT Fiscal Value resultant from the above amounting to \$14,360,000 based on application of OSP. The amount due to the Nigerian State from NAE is \$12,206,000.

There are many other issues involving other IOCs in Nigeria, including other Nigerian companies. **The involvement of Nigerian companies in these alarming audit scandal and atrocity is a devastating negation of Section 7, 10 (1) a, b, c and (2), 11, 12, 14, 28, 29, 33, 44, and 45 of the Nigerian Oil and Gas Industry Content Development Bill, 2009 (HB.108) recently passed and harmonized by the National Assembly but now awaiting the assent of the President. We do not want to jump to conclusion on the post Content Bill era with a guessed either Nigerian firms would commit more atrocities than their foreign collaborators.**

## **7. RECOMMENDATIONS**

Having narrated and captured the above disheartening scenarios, below are our recommendations to the following authorities:

- The President & Commander-in-Chief of the Federal Republic of Nigeria
  - The Senate President-Federal Republic of Nigeria
  - The Speaker-Federal House of Representative-Nigeria
  - The Governor-Central Bank of Nigeria
  - The Accountant General of the Federation
  - The Chairperson- Federal Inland Revenue Service
  - The Controller- Department of Petroleum Resources
  - The Chairman & ES-Nigeria Extractive Industries Transparency Initiatives
  - The Nigerian Justice Minister
  - The International EITI Secretariat
  - Members- the (frustrated/moribund) NEITI CS Steering Committee
  - Members- Civil Society Community in Nigeria
  - Others.
1. The indisposition of NEITI to upload/host the 2005 Audit Report at its website several months after the release of the report is against the EITI principles and should be rebuked.
  2. The NEITI Audit template which is considered a secret document by NEITI should be made public to Nigerians, particularly the Civil Society partners of NEITI.
  3. The National Assembly, as a matter of urgency should create a Parliamentary Committee or Joint Committees (aggregated as one) to oversee NEITI.
  4. Volumetric Templates should be redesigned to identify explicitly those data items that have been directly measured, those that have been estimated, and those that have been calculated.
  5. Discussions should commence with Terminal Operators(with CSOs as observers) to clarify and agree on:

- Definitions of gross liquids into terminal, de-watering, terminal adjustments etc.
  - At what point does custody transfer from a Producing Company (under the JV) to a lifting company? How does this show and reflect in the template.
  - Civil Society and the Private Sector should have an integrated capacity building aimed specifically at understanding NEITI's Audit Template.
  - Redesigning of the Audit template to show receipts from each Producer separately and be explicit about the identification of the lifters via Audit Trackers and Metering gadgets.
  - Terminal Adjustments should be separated in an independent Chart which is traceable volumetrically.
  - Each Operator (including Unitization companies) should provide details of Stock Entitlement held at each terminal they use and allocate to each partner in their operation.
  - Identify the processing point for gas flows from Flow Stations.
  - Distinctive data between gas lifted and that re-injected.
6. The Inter-Ministerial Task Team set up by the government to handle post reconciliation issues of the 1999-2004 Audit should be disbanded and a new one to be headed by the EFCC set up with NEITI serving as Secretary of the Team.
  7. The Civil Society must be integrated in the post 2005 and 2006 Audit reconciliations.
  8. The refusal of NEITI to set up a team to handle all issues referred to NEITI for further investigation several months after the Audit is questionable.
  9. It is an imperative for FIRS not to sweep tax issues and under-payment complications under the carpet.
  10. The National Assembly should consider amendment of the Companies Income Tax Act, the Petroleum Profit Tax, and the Gas Utilization and Re-injection Act line by line with the PIB.
  11. The Department of Petroleum Resources (DPR) is mentioned repeatedly in the complications of the Audit which calls for a roundtable between DPR and Civil Society partners of NEITI.
  12. A Joint S-NEITI is needed between Nigeria and Sao Tome & Principe at bringing transparency to the blackout territory and is more important than Nigeria continually dolling out millions of dollars in loans to Sao Tome & Principe in a recovery terms that lacks transparent credibility.
  13. In subsequent Audits, the mandate of the Auditors should include clearly differentiating millions and billions both in dollars and Naira as it applies.
  14. Subsequent Audit should also capture any form of taxes paid by the Oil Company to any State Government in Nigeria, just like it is done on the Oil Companies and the Niger Delta Development Commission (NDDC),
  15. There is an imperative for an Extractive Audit Reconciliation between the FIRS with States and Local Government in the Niger Delta.
  16. The indisposition of NEITI to allow the Civil Society Steering Committee function effectively goes against the three pillars of EITI sustainable partnership for State parties like Nigeria.
  17. The National Assembly should consider as urgent, legislative surgery on the NEITI Act at strengthening the body and move it away from its bulldoggish floatation.
  18. Office of the Accountant-General and the CBN should commence internal reforms of their institution(s) as they are chronically culpable to the mess that has enveloped the sector in Nigeria.
  19. The USA Congressional Caucus on Human Rights and U.S Justice Department should commence investigative proceedings against all American Companies in Nigeria.
  20. The Coalition for Accountability and Transparency in Extractive Industries, Forestry and Fisheries of Nigeria (CATEIFFN) should deepen NEITI's intervention in Nigeria beyond EIs.
  21. The JP Morgan Oil and Gas Account in New York should be thoroughly investigated.
  22. The NSWG of NEITI should inform Nigerians why they made no attempts at recovering the huge outstanding monies due Nigeria upon the fact that its Auditors expressly recommended same.
  23. The new helmsman at DPR should initiate a quarterly interactive forum between DPR and the Civil Society Community in Nigeria aimed at updating Nigerians of it activities in this sensitive sector.
  24. We await final information about the recoverable signature bonuses due Nigeria but enmeshed in accountability complications.



25. International litigations should commence around the world from activists, aimed at helping Nigeria and Nigerians seek justice against the conspiracy of Oil explorers in Nigeria who are not even paying what is due in Naira, yet, the calculations at their oversea offices are done in Dollars even as they monitor the exploration with GPS-Seismic technology from their homes and offices abroad against the collective interest of the Nigerian people.
26. Today, the world is engrossed and paying dearly with failures of a State like Somalia. If Nigeria fails, it shall be the greatest human calamity where the comfort of global citizens as far as Europe would be lost just because the world sat and looked as failure enveloped a great nation like Nigeria.

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