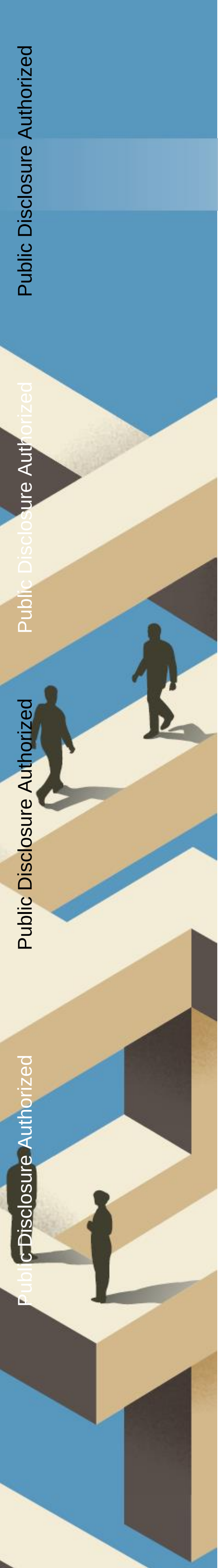

WORLD DEVELOPMENT REPORT 2017

BACKGROUND PAPER

GOVERNANCE *and* THE LAW

Multi-Scalar Governance and Institutions: Intentional Development and the Conditions of Possibility in the Extractive Sector

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Background Paper for World Development Report 2017

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Preamble

The WDR 2017 is centrally interested in the conditions under which three headline development outcomes (growth, equity, security) can be achieved by improving the effectiveness and legitimacy of governance institutions. In this respect, the notion that institutions may be understood as sites of generative contest (i.e. populated by varieties of what Charles Tilly calls contentious politics)[1] has properly assumed a central role in the analysis. Chapter 2 of the WDR explores how this nexus between governance institutions and development outcomes is "constrained by the context". Context is here understood through a trio of mechanisms: power, norms and capacity. The WDR is therefore interested in how i) the relative bargaining *power* among agents, actors, and interest groups in social contests may be changed – such as through changing the rules of the bargaining arena, ii) *norms* can be shifted by processes of translation and diffusion across different levels of scale – e.g., through hybridization of global norms through national or subnational political contests, and iii) how *capacity* to commit and coordinate might be changed through technical assistance, fiscal incentives, political advocacy and so on.

This background paper explores all three mechanisms through the lens of efforts to improve the governance of extractive industries, in particular, to enhance the dividend of growth, equity and security for host countries in the Global South. The extractives sector is of particular interest because it is often deemed to be cursed by a set of structural forces – the logics associated with resource-dependency - largely inimical to institutional effectiveness and "good governance'[2]. We consider the case of the Extractive Industries Transparency Initiative (EITI) which may be understood as an assemblage of power, norms and capacities to create new institutional arrangements to govern relations between oil companies, host country governments and citizens.

[1] "Contentious politics involves interactions in which actors make claims bearing on someone else's interests in which governments appear either as targets, initiators or third parties. Contentious politics thus brings together…..contention, collective action and politics" Charles Tilly, *Contentious Performances*, Cambridge University Press, 2008, p.5.

[2] The literature on the extractives sector and questions of transparency, disclosure and governance is of course vast. Our intention is not to review this here. For a review see Stevens et al (2013), World Bank (2002), Vierra and Masson (2014); and for recent local studies (so-called mining ethnographies' see Welker 92014), and Kirsch (2014.

Our point of departure is the WDR's recognition that institutions are always exercises in and products of, that is to say they are thorough saturated with, power. This presumption will be evident in two ways. First, governance institutions are always more or less constrained or enabled by how they are embedded in the time and place-specific dynamics of political settlements which reflect accretions of power, historical bargains and the patterns of interest that congeal around differing forms of political economy. In short hand, we will refer to these dynamics as the 'conditions of possibility'. As a result of these conditions, particular institutions may gain salience as sites of contest and some of these may develop what we call 'asymmetric capabilities' that can change and/or reproduce the context, that is, how power, norms and capacities are arranged over time.

Second, we will endeavor to illustrate the WDR's point that institutions at all scales, from the global to the local, are best understood as what Bob Jessop (2008:7) calls "ensembles of power", that is as the sites of, and the product of intra-elite and elite-citizen contest. These contests may impact on how power is ordered in positive or negative ways. But, alternately, institutions may mimic those effective and legitimate elsewhere, but fail entirely to function accordingly in their new context. Consequently, they would not likely impact on how power is ordered, or do so in quite unintended ways, underscoring the point that such contests are not teleological in character. Moreover, their impacts are just as likely to be unintended by actors as they are to match the preferences of those most able to marshal the power, norms and capacities needed to prevail in any particular contest.

The structure of the paper is as follow. Part 1 begins by noting that a feature of globalization in the post-Cold War period has been the development of a range of 'global modalities' to intervene in the regulation of economic activity and to reconfigure the power, norms and capacities of governance institutions so as to achieve particular equity and security outcomes. These modalities - which we will define simply as global instruments (modalities) of intentional intervention - all aim to impact on how governance institutions function and, more or less explicitly, impact on political bargaining and citizen engagement, that is, on the distribution of power. We briefly illustrate a way of framing these modalities of intentional intervention, before narrowing our focus to the oil and gas industry. Part 2 then provides an account of the conditions of possibility, all traceable to the character of post-Cold War globalization, that saw the rise of the norms and rules central to EITI that, in little over ten years have enrolled 48 countries and more than 80 major oil, gas and mining companies. After briefly sketching the architecture and theory of change embedded in EITI, we turn in Part 3 to examine the apparently paradoxical case of EITI's enthusiastic adoption in Nigeria. What confluence of global and national forces and interests created the conditions of possibility that led Nigeria to aggressively pursue EITI standards? How and why did this potential reform space open, and then close again in the 2003-2007 period? What consequences flowed from introducing global transparency and accountability norms, audit systems and the requisite capacities for the political settlement that developed in the decade following the return to civilian rule in 1999? The travel and domestication of global transparency norms had powerful legitimacy effects, but as EITI ran against Nigeria's provisioning pact (its 'bargaining space'), there is scarce evidence of systemic reforms or changes in the effectiveness of governance institutions. However, this is not simply a case of a global intervention bouncing against a resource-cursed domestic political economy. As these norms, rules and capacities diffused through the sub-national scale it was perhaps inevitable that they would travel into the fractious and fragmented sub-national (state-level) administrations within the complex federal system through which elite provisioning occurs. We compare the pathways over the same period of two states in the oil producing Niger Delta, Bayelsa and Edo. We show how the different conditions of possibility led to quite different outcomes, both in terms of the asymmetries of institutions managing public resources, and the outcomes achieved.

Part 1: Globalization and the Rise of Modalities for Extractive Industries Governance

A Brief History of Globalization and the Rise of Global Modalities

The post-1970 period of globalization was not of course the origin of "global flows" but was a watershed for radical shifts in global flows, networks and institutions. David Held (2008) refers to four sorts of transformation accompanying globalization: namely the *stretching* of social, political and economic activities across space, the *intensification* of flows of trade, investment, finance, migration, culture, an increased *velocity* of movement, and deepening *interconnectedness*. In understanding these transformations, it is useful to draw a distinction between 'intentional' processes of intervention and 'immanent' processes of development (Cowen and Shenton 1996). In the modern world, immanent development has come to refer to a discontinuous process in which both renewal and creation are contained together with destruction and replacement. Intentional processes refer to interventions designed to accelerate or modify the trajectories that immanent processes are perceived to be taking, or to mitigate risks and ameliorate the consequences of destructive crises.

What provided the historical distinctiveness of this period? With an eye to the WDR's storyline, our account will foreground the complex relations between a neoliberalised world of capital flows and the expansion of a series of complex global institutional arrangements which intersect with and are consequential for the political settlements, bargain and contests. These trends and events bound together both creative and destructive processes. Thus alongside the post-World War II 'long boom' in economic growth and undeniable achievements in poverty reduction and human development there would be chronic increases in inequalities, social and geographic, and periodic and often catastrophic crises. The latter phenomena would include, for example, the two oil shocks of the 1970s that attended the formation of OPEC, the petro-dollar fueled debt crises of the early 1990s, the Asian financial crises of 1997/98 through to the present post-9/11 conditions unfolding across North Africa and the Middle East.

Put differently, globalization is not only punctured by serial crises which may turn out to be "critical junctures" (Cappoccia 2015) for change in governance institutions. Rather, it is that in the post-Cold War period, these crises have also been the product of intentional interventions, which have then become the pretext for further rounds of interventions.

Framing Intentional Interventions in Relation to Scale: A Matrix

For heuristic purposes, we have developed a **matrix** (Table 1) which links scale (global to local) with three substantive or thematic arenas in which global actors have crafted and applied intentional modalities to influence domestic political settlements and the contested bargaining processes associated with “better governance”.

The vertical columns identify three global arenas of intentional intervention and exemplify the institutional forms they take. Such thematic arenas are of course in no way exhaustive. The first is *aid or foreign assistance* which aims to entice national and local elites / power holders to act in ways preferred by global actors. Foreign assistance is typically expressed through and/or impacts public finance management processes, and aims to discipline and incentivize elites to make the public sector perform in particular ways (e.g., to raise, manage, spend and account for resources in accordance with global norms, rules or standards). The second thematic arena we label *regulatory regimes*. These in essence aim to impact on the ways in which flows of capital and corporate (including large domestic private and state owned enterprises) transactions occur by fostering adoption of normative standards (for instance, information disclosure) and regimes of performance (for instance, regarding the sourcing of product or wealth, or arrangements to share benefits). The third arena that has become prominent in the post-Cold War period may be labeled *security, peace-keeping and policing*. It includes the proliferation of the multi-lateral peacekeeping functions of UN (which originated in 1948) and other institutions since 1989, but also the wider array of policing, justice and conflict mediation interventions that are rolled out through bilateral agreements typically made to consolidate post-conflict political settlements.

Our simple three part division is useful in helping structure this paper, but of course the borders and boundaries these three arenas (and therefore between the cells in the matrix) are porous. This will be apparent in the cases that follow, where for instance, the imperatives of a post-conflict Amnesty Agreement prompted unprecedented foreign assistance in the name of public finance reforms, and where elite signaling around EITI was used to bolster the legitimacy of these as well as a host of other actions that remained well out of the global limelight.

The horizontal rows of the matrix address the question of geographic scale, from global to local. For our purposes this spatial dimension highlights in a crude, functional way, the arenas at different, but interconnected, levels of scale (transnational, central/federal, local state, local government, local community) at which global intentional interventions seek to impact on political bargains and governance institutions. The most common scale is national (i.e. the state); here, intentional interventions aim to alter relations between state and corporate actors through regulatory instruments; to discipline nation/states to tax and spend in particular ways; to entice them to secure their territories consistent with particular norms, to privilege particular regimes of citizen rights and entitlements, etc. But the inter-scalar nature of these effects go beyond global – national relations. Typically interventions aim to change inter-governmental relations between different levels of the state particularly in complex federal systems of governance, and may translate directly to small scale, local levels to impact, for instance, the governance relations between global oil and host communities clustered around an oil well head or the establishment of an LNG plant. These cascading effects and dynamics across scale are, we argue, a crucial aspect of the global instruments-modalities story.

Turning to the extractives sector, each cell in the matrix therefore identifies a scale and enables us to consider the ways in which 'inter-scalar' effects occur – in which the higher and lower cells interact. A number of major and well publicized 'crises' in 1990s and 2000s – most obviously the Shell Ogoni crisis in Nigeria, human rights violations by UNOCAL in Burma, the BP scandal in Angola, - proved to be enormously consequential in terms of the corporate reputation and the social license to operate. These environmental, human rights and corruption/transparency crisis exposed for companies, governments and the public the high stakes risks and costs of the global extractives industry, and solicited a number of important institutional responses by the oil and gas industry. Three examples will illustrate different thematic arenas and levels of scale. First, efforts to smooth the fiscal volatility of extractive sector rents, moderate egregious diversion by elites of these rents, reduce fragmentation of revenue and spending systems and to ensure the proceeds were spend ways believed to maximize growth, equity and security result in the travel in expertly polished form of the norms, rules and architecture of Norway's oil wealth fund into contexts wholly unlike Norway.. Second, as we will develop shortly, EITI was only the most prominent form of a raft of initiatives to discipline linkages between state, corporates and civil society organizations on the presumption that collective adoption of norms of disclosure, participation and transparency would improve the effectiveness and legitimacy of national governance institutions and have positive flow-on effects right through to communities and citizens typically excluded by business as usual. Third, we will not have space in this paper to consider the host of instruments crafted to impact at local level on how multilateral agencies, states and corporates interacted with citizens – most obviously Community Development Agreements, Community Driven Development programming, Oil Host Community Memoranda of Understanding, Local Development Funds – aimed to alter how the corporate and state proceeds of extractives are shared, while at the same time directing local political contests away from destabilizing and potentially escalating protest and into manageable local arenas[3].

As we will develop in the case of EITI, globally and at national and subnational levels in Nigeria, each of these intentional modalities share common features. They are responses to crises such as occur when violence interrupts oil production regimes, or where chronic problems attributed to the extractives production regime threaten the legitimacy of global, national or local actors who depend on its proceeds and benefits (i.e. one might say they are events which pose a crises of legitimacy for key corporate and state actors). Second, these modalities may be seen as efforts to create institutions so as to contain contests and, over time, realign how power is distributed. By this route, they aim to routinize effective and legitimate governance institutions that would, to complete the WDR logic chain, deliver growth, equity and sustainability outcomes.

But if seen this way, the obverse must also be considered, namely that by directing attention and resources through these modalities toward particular levels of scale and sites of contest, other issues that directly impact on these outcomes may be obscured and thus neglected. Observers have noted, for instance, that zealous attention by the IFIs to corruption in host country governments during the 2000s tended to occlude from view other aspects of the extractives regime, such as the need for better regulation, and prosecution, in other jurisdictions (the City of London, the US State of Delaware, the off-shoring system and so on; see Shaxson 2009). Similarly, the enormous energy devoted by the World Bank to create systems for local-level participatory planning and spending

[3] Some example of these sorts of dynamics and bargaining are contained in Adunbi (2015, Shever (2012), Bebbington (2013).

of relatively small amounts of capital by specially constituted 'community organizations' may redirect attention from reforms needed in the local government institutions of political representation, accountability and performance. Finally, these modalities have the character of 'travelling institutions', such that one can chart the history and trajectory of these interventions and consider the circumstances under which they were conceived and readied to travel, and how, on arrival, they were variously hybridized, resisted, and embraced depending on the dispositions of power and interest in different places and times. This kind of institutional ethnography holds the possibility of analyzing the different impacts, whether transformative or purely mimicry, lasting or ephemeral, on the effectiveness and legitimacy of governance institutions.

Table 1: Matrix of multi-scalar governance for the extractives sector.

THEMATICS ____________ **SCALE**	**Foreign Assistance**	**Regulatory Regimes for Capital Transactions/Flows**	**Security, Peace Keeping and Policing**
Global	Compacts, EU, Bank Public Sector funds Revenue Watch	UN Global Compacts WTO-ISO Kimberly, EITI	Post-1989, multilateral peacekeeping.
National And Sub-national state	PFM, sector-management instruments, MDG alignment	NEITI, anti-corruption commissions, IFC 'doing business' standards,	Security/Police, law and justice interventions
Local [community]	CDD, grant systems for service delivery	'community based' MOUs, capital-community, NGO.	'community based' police, security, mediation

In this way, it may be possible to begin to chart the conditions of possibility under which differing political and institutional outcomes are likely to emerge and change over time. Our paper offers one set of illustrations, peculiar to the oil and gas sector, of how the operations of power provides the ground on which one might sketch a typology of how differing forms of institutional effectiveness (and failure) merge.

Why Extractives?

When viewed from the perspective of globalization (as flows) and global intentional interventions, the extractives sector is an especially rich and compelling domain for WDR 2017 to explore. What is especially striking is the degree to which not just the oil and gas industry but the entire extractive and minerals industries in has become one of, if not *the* most significant sector in which both voluntary and mandatory governance structures have been promoted by intentional interventions over the last three decades. A five hundred page book like *Blood Oil* authored by legal theorist Leif Wenar and published in 2016 - devoted to anti-corruption laws, voluntary transparency institutions, resource validation and certification systems, commercial and multi-lateral embargoes and sanctions, and direct revenue distribution mechanisms in the global extractive industries – is a striking example of the density, complexity and multi-scalar character of contemporary governance mechanisms that inhere in the oil complex. The fact that a moniker such as "blood diamonds" or "blood oil" now has such worldwide currency – supported now by a considerable array of national and international NGOs devoted to extractives, and bolstered by global business modalities such as the UN Global Compact - confirms the fact that from the late 1990s a new set of global norms have arisen around oil and gas, minerals, and natural resources (Martinson 2011; Haufler 2010). Far from being exclusively or primarily addressing extractive regimes, the rise of these transnational multi-stakeholder initiatives (MSIs) – voluntary partnerships between government, civil society and the private sector – points to an increasingly prevalent strategy for promoting governmental and corporate responsiveness and accountability to citizens (Brockmeyer and Fox 2015). While most MSIs involve voluntary social and environmental standards – the proliferation of Corporate Social Responsibility for global companies is a parallel development – a handful of global instruments, like EITI in the extractives sector but also entities like COST (the Construction Sector Transparency Initiative) and GIFT (the Global Initiative on Fiscal Transparency) focus on information disclosure, public governance and participation in the public sector.

How then do we account for the rise of a new international transparency norm now widely espoused by the world's largest mining and oil corporations, governments and international financial and aid institutions alike? This question is especially interesting insofar as it arose at a time when resource commodity prices were booming, capital flows deepening and the prevailing ideological ethos was unsympathetic to the very idea of regulation. The emergence of this norm in the global oil and gas industry is particularly puzzling for several reasons (see Gillies 2010 excellent account). First, the industry is vast and institutionally complex. Disclosure and transparency would logically encompass everything from *revenue flows* (payments from companies to governments, communities, civic organization as well as flows between government entities such as tax entities and sub national states and local governments), *revenue management* (investment strategies, windfall accounts, oil savings funds), *revenue expenditures* (budgetary processes, sub national revenue formulae, contracting), and *industry operations* (from bid round criteria to contracts to production and reserve data to legal, regulatory and operating structures). The regulatory terrain capable of taking on the oil complex is potentially vast. Second, the period in which these norms arose was one, generally speaking, of bouyant oil prices in which oil states enjoyed leverage and power as did the petro-elites who benefitted from increased oil revenues. The post 9/11 US strategy to diversify supply stimulated the expansion of a number of oil-suppliers in West Africa, the Caucasus and elsewhere, many of which were hardly models of probity and good governance. Third, transparency and disclosure is advocated as a means to enhance government accountability among a class of resource-dependent producers – 'petro-states' – which are customarily seen not just as exemplars of poor governance, systemic state deficits and endemic corruption, but the toughest and most demanding of political environments in which any reform effort might be prosecuted: they are limit cases and exceptionally hard nuts to crack. Furthermore, all of the classic traits of the resource curse would logically increase the political costs associated with adopting a new transparency norm.

Fourth, political analysts (see Gillies 2010, and Keck and Sikkink 1998) suggest that international norms arise which are when they are likely to prevent bodily harm and protect personal liberties or protect vulnerable groups. A norm devoted to budgets, disclosure and auditing is therefore not an intuitively plausible, or at the very least would demand the difficult task of linking say transparency to protection. Indeed a norm purporting to link transparency to development outcomes such as education or health indices would have to identify both causal mechanisms and a set of indicators deployed for prescriptive purposes. And not least, the world of "Big Oil" has, for almost all of its history (Olien and Olien 1990), been viewed with deep popular suspicion, has operated often with high degrees of secrecy, is a highly "securitized" industry in which local and international security forces protect its assets, and in its operations in the Global South has for the most part been able to operate, in virtue of its technological capability and corporate and political power, with impunity. The same might be said of the national oil companies (NOCs), many of which through joint ventures with international oil companies (IOCs), have emerged as powerful players. Which is to say, why might large, powerful IOCs and NOCs voluntarily sign up to become more transparent and in theory more accountable in view of the sorts of exclusive political settlements constructed in and around petro-states?

If norms are typically seen to arise through a process of "grafting" (building upon and benefitting from their adjacency to more established norms), and to "norm entrepreneurs" who advocate for and are capable of assembling coalitions (and ultimately signatories) to a set of institutional arrangements (Gillies 2010), then how might one explain the emergence (and widespread adoption) of a transparency norm in the oil and gas industry, and the emergence of its institutionalised form as the global EITI in 2003? And how might we account for a certain sort of rapid success? In a little over ten years, 48 countries had become signatories (31 certified as compliant) supported by 88 major oil and gas and mining companies and in 35 countries disclosure audits had occurred for 1.2 trillion dollars in government revenues. And not least, how and in what ways has the norm spawned a massive institutional proliferation – in effect a dense global network of institutions and organizations - which now populate the extractives sector as part of what one might call the "multi-stakeholder initiatives universe"?

Part 2: EITI: The Conditions of Possibility

The founding moment – the critical juncture - of the transparency norm, and what came to be EITI, was the decade of the 1990s. A confluence of forces and trends proved to be crucial, all linked in complex ways to globalization. First, the global extractive industries – over 4 billion people reside in what are termed "extractive economies" (World Bank/IFC 2002) - became an object of academic and policy scrutiny operating under the moniker of the "resource curse". A body of research dating back to the 1980s (the Dutch disease, and the costs of mineral based boom and bust cycles) garnered attention and strength through the work of distinguished economists Richard Auty, Terry Karl, Jeffrey Sachs, Paul Collier and others which linked resource dependency to not only poor economic performance but governance, transparency and accountability failures and the increased likelihood of costly civil war and political violence.

As the resource curse model rapidly entered the world of policy prescription, it met up with two other trends that together comprise the second aspect of the conjuncture. One was a deepening interest among aid agencies in governance as seen through the lens of dominant neoliberal prescriptions in which poor governance and corruption where fetters on market operations. And the other was the mainstreaming of corporate social responsibility (CSR) as a response to the increased scrutiny of corporate activity in which Western consumers (and shareholders) and NGOs were able to pry open the black box of off-shoring, working conditions and human rights violations within the global value chains of manufacturing and resourced-based industries. For example, in the US the National Labor Committee brought sweatshops into the mainstream media in the early 1990s when it exposed the use of sweatshop and child labor to sew clothing for Wal-Mart and the United Students Against Sweatshops became active on college campuses. CSR became a means by which increasingly contested social licenses to operate were to be secured.

In the extractive sector, resources (and oil and gas in particular) have characteristics which brought these issues into the bright light of day: many resources are seen as national assets for development, a priority area for FDI, a significant source of state revenues and carry a large ecological, social and economic footprint. These developments were not unrelated to two other sorts of global norms that gathered steam during the 1990s: one was the link between human rights and development that had been triggered both by growing indigenous rights movements and by the horrors of a number of brutal civil wars (Sierra Leone, Angola, Liberia) during the 1990s. Another was a focus on corruption and bribery especially in relation to global business operations. In the US the Foreign Corrupt Practices Act had been signed in 1977 but it is not accidental that in 1998 it was amended – and its capacities enhanced – through the International Anti-Bribery Act which was designed to implement the OECD Anti-Bribery Convention.

The third force was the globalization of the extractive sector itself. Oil and gas had been a global industry from its birth of course and it had been compelled to restructure its operations and value chains in the wake of OPEC's catellization and the assertive nationalism of the 1970s. But by the 1990s, it was confronted by a series of legitimacy crises which brought into question the IOCs (and mining companies too) "social license to operate" and their rhetoric of corporate social responsibility. Crises of legitimacy of course translated into reputational losses for global brands, as was thrown into sharp relief the controversy surrounding Shell in Nigeria (the Ogoni trials ending in the hanging of Ken Saro-Wiwa), the Elf investigation begun in 1994 which ensnared the French government, the state owned oil company and several African governments in corruption cases, and other high profile cases (for example UNOCAL in Burma, and pipeline controversies in the Caucasus and Chad). The admission in 2001 of large payments by BP to unnamed officials in Angola was especially critical in pushing forward the momentum toward more formal voluntary arrangements like EITI which had built up during the 1990s.

The fourth process was an unprecedented inquiry into the World Bank Group's extractive industry operations. Multilaterals often insist that part of their mission is to promote and inculcate global values and best practices and after 1996, when the World Bank's President pledged to commit to fighting "the cancer of corruption", the Bank's remit was reinterpreted in favor of robust engagements around issues of corruption and fiscal transparency (Craig and Porter 2006, 69-71). The shift is explained in the Bank's publication, 'Governance and Development':

[B]eyond building the capacity of public sector management, to encouraging the formation of the rules and institutions which provide a predictable and transparent framework for the conduct of public and private business and to promoting accountability for economic and financial performance (World Bank 1992: 3).

In the IMF and World Bank cases, interest in transparency was certainly enhanced by their own legitimacy crises sustained in the wake of the 1997-98 Asian Financial Crisis, but the ground had been laid during contentious relations with civil society groups during the early 1990s over the Bank investments and technical assistance to both large scale engineering projects (dams most obviously) and the extractives sector. NGOs questioned the Bank's record in protecting mining communities, environmental protection, and the degree to which it funded undemocratic and corrupt governments. The resource curse literature, of course, bolstered such arguments. In 2000 the Bank conducted a participatory review of its activities in extractives followed by the independent Extractive Industry Review (EIR) in 2001. While there were important points of disagreement between the Bank's internal review and EIR (notably on sequencing), the Bank aggressively promoted transparency in extractives. Both before and after, other IFIs (the IMF for example in Angola) pushed transparency and all multilateral banks followed suit.

Finally, there is the crucial role of the 'norm entrepreneurs' who assertively promoted the cause of opening up the black box of extractives and of creating a discourse which grafted transparency onto other emergent norms and debates. In the case of extractives and EITI, the role of Global Witness and their early 1990s work on illegal logging in SE Asia and subsequently their pathbreaking report on Angola - *Crude Awakening* published in 1999 - proved to be instrumental (Weinar 2016). Transnational civil society groups focused particularly on "breaking the links between exploitation of natural resources, conflict and corruption" (Global Witness 1995) and targeted multinational companies, foreign banks and host country governments. In the case of Angola, Global Witness prioritized for the first time the question of transparency and the responsibility to publish information on revenues, payments and operations. Human Rights organizations were also important – a case of norm grafting - especially around the Niger delta. In 1999 the Human Rights Watch Report *the Price of Oil* linked the operations of oil companies to Nigerian security forces and to wider issues of democracy, conflict and social justice. Campaigning around controversial pipelines in Chad and Turkey-Georgia (the BTC pipeline) put pressure on governments, companies and IFIs alike and promoted the idea that revenue flows should be publicly disclosed. Such advocacy gained strength from the fact that robust social movements within host communities in oil and mineral states gained a prominence during the 1990s – whether the Ogoni movement in Nigeria or the struggles of Papuans around Ok Tedi – and often became part of powerful transnational coalitions of actors linking up with organizations like Greenpeace, the Rainforest Action Network, and so on. In 2001 Global Witness through funding from the Open Society Institute established Publish What You Pay (PWYP) in 2002, a coalition of 30 organizations in Europe and America joined forces with and provided capacity building and a degree of protection for local activists working in authoritarian settings. Global Witness was especially influential in the UK, midwifing what became EITI. Indeed the UK government was a crucial ally in the confluence of forces which gave birth to EITI. Discussions began in 2001 with DFID and Prime Minister Blair. The former was well resourced at the time and included high ranking transparency supporters. For the government, criticism over BP's illicit payments in Angola and the BTC pipeline, coupled with DFID's and Tony Blair's growing concern with African governance (what was to become the Commission for Africa), all conspired to make transparency highly serviceable for their collective interests.

In sum, it was this constellation of five forces – all traceable in some way to the character of globalization in a post-Cold War world – which contributed to the consolidation of a set of collective interests around the norm of transparency. A powerful set of actors - IOCs, IFIs, Western governments – were brokered by a coalition of civil society entrepreneurs around an emergent norm of transparency within the extractives sector. Faced with growing public scrutiny regarding the operations of oil companies and the questionable relations between governments and donors and corrupt, and often conflicted, resource dependent states, questions of reputation, legitimacy, and human rights provided a common ground on which a coalition could be built. But this network was also shot through with quite different sets of powers, capabilities and interests which did not gravitate toward a 'equilibrium' point of mutual agreement.

If it was in the interest of these actors to endorse the notion of disclosure, the question of under what conditions and through what institutional arrangements, was a source of bitter contention. When EITI was announced by Blair in 2002 at the World Summit for Sustainable Development in Johannesburg, it placed the onus of disclosure squarely on the host government, and rested upon a system of voluntary compliance rather than international enforcement. The early 2000s then represented a space within which there was bargaining among all of the actors as regarding what sort of transparency system was to emerge. On offer were two models (O'Sullivan 2013; Gillies 2010). One promoted by PWYP primarily targeted North American and European IOCs and their home governments: they called for full corporate disclosure of payments made to petro-states and disclosure was to be mandatory through home country legislation. Oil companies were divided on this issue at first but rising oil prices and competition from non-Western oil companies conspired to make IOCs wary of mandatory revenue disclosures. DFID and the UK government pushed for implementation to be the responsibility of individual countries. This "middle way" transferred the onus to host country governments who moreover were, along with the IOCs and civic groups, to become voluntary signatories. All major oil companies immediately signed up as "supporters" and governments, IFIs, and multilaterals jumped on board.

In short order a governance structure for compliance was designed, a World Bank-run Multi Donor Trust Fund was established in 2004, by 2005 the compliance rules had been laid out in a Validation Guide, a secretariat opened in 2007 in Norway, and two key signatories from each of the focus regions (Nigeria and Azerbaijan) were the first to implement the process, thus affording considerable credibility. In 2009 the first batch of countries were certified as compliant. EITI represented for governments, IFIs and IOCs alike a low cost mechanism to back transparency and improve reputations, to rebuild the social license to operate – without threatening commercial or political interests. *The bargaining space which emerged around the emergence of the transparency norm in the 1990s and early 2000s struck a particular "settlement".* The crisis of legitimacy facing global extractive industries was resolved by shifting the transparency burden onto resource-dependent governments of the Global South who voluntarily became signatories. For the likes of the IFIs and multilaterals a relatively toothless and tightly circumscribed EITI served their interests of promoting good governance.

The Structure and Performance of EITI: A Brief History

The attractiveness of EITI's 'big tent' approach was facilitated by its voluntary nature, low compliance standards and a structure that permitted a number of countries to participate without committing them to either compliance or implementation (Shaxson 2009). EITI in this way retained donor and IOC support because it could offer a veneer of respectability by being part of an entity in which the worst, highest reputational risk offenders (Equatorial Guinea, for example) could be seen to be part of a transparency discourse. Compliance was to hinge on two interventions, each containing enormous challenges: first, revenue disclosure within a hugely complex set of structures (from bidding to contracts to marketing and sale and so on) by focusing on a *single node* in the oil complex: the transfer of funds from oil companies to host governments. And second, the creation of a multi-stakeholder body to oversee implementation which demanded civil society involvement in monitoring, often in political circumstances in which NGOs are weak, under sourced and facing intimidating political conditions. The challenge was "how to be meaningful while retaining as many country participants as possible" (Gillies 2010: 120).

This is not the place to provide a full accounting of EITI to date (see Brockmyer and Fox 2015; Barrett and Okamura 2013; Sovacool et al 2016). Suffice to say that aside from the considerable heterogeneity among country signatories and the degree to which participation or compliance has produced improvements in governance of the oil and gas sector, one could summarize the record as follows:

- EITI has made important progress in improving the transparency of extractive industry payments to national governments.

- EITI has facilitated the creation and diffusion of a revenue transparency norm.

- EITI has provided a rational and a stimulus for the "thickening" of civil society groups working on transparency (the Open Society Institute founded Revenue Watch Institute)

- EITI has since 2002 improved its rules and its new rule known as the 2013 EITI Standard addresses regularity and extent of disclosure, and compliance criteria (stakeholders must submit work plans, governments must submit annual activity reports, reports must include subnational transfers)

- EITI has introduced new standards of transparency in some countries where none existed before

- While formal external reviews of EITI identified a number of weakness – EITI does not require disclosure of government expenditures or environmental impact plans on contract disclosures, there are no grievance mechanism for local communities, there is no disclosure of the whole value chain, the Board is reluctant to "delist" countries, that compliance is deployed by governments as an endpoint solely for reputational purposes – a review of reports issued under the new 2013 standards by the NRGI found that countries are producing more useful information on licenses, political affiliations of company owners, local revenues and so on.

If EITI has matured, deepened its remit and grown some teeth, the fact remains that it is voluntary, depends upon the efficacy of reputation as a basis for compliance, and cannot in its current form do much to ensure that the audits and disclosure have consequences for either public sector governance or corporate behavior. The connection between transparency and accountability is weak. In short, EITI rests on a particular theory of social change (see Figure 1).

Figure 1

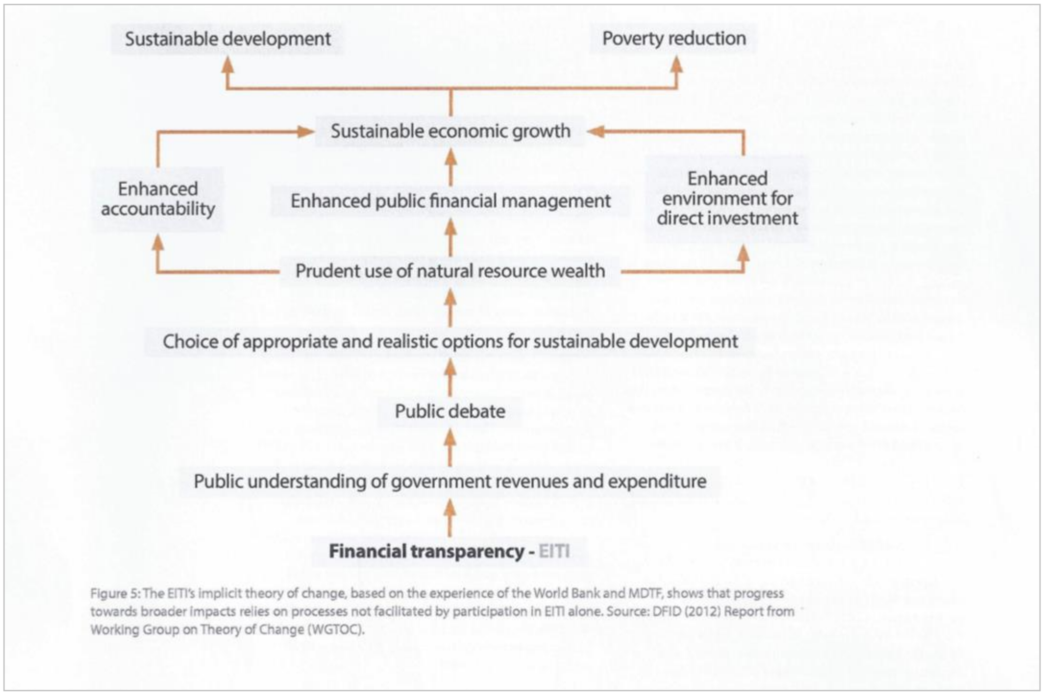


Figure 5: The EITI's implicit theory of change, based on the experience of the World Bank and MDTF, shows that progress towards broader impacts relies on processes not facilitated by participation in EITI alone. Source: DFID (2012) Report from Working Group on Theory of Change (WGTOC).

Source: Brockmeyer and Fox (2015:24).

The presumption is that the EITI standards and systems of compliance can start from the lowest common denominator – revenue disclosure – with the idea that information triggers a virtuous cascade of events – public understanding, policy debate, enhanced public management, accountability and business operating environment which translate into development outcomes (equity, security and growth). This logic covers over precisely the sorts of forces that WDR 2017 seeks to highlight: the operations of power, political settlements, elite bargaining, citizen mobilization and the conditions under which bargaining spaces operate. In so many cases transparency is simply performed and the disclosure "bounces" off of governance structures that are hard to shift; at best one discovers isomorphic mimicry and a naive belief that information and its public circulation (often big questions in themselves) will do "political work". A recent comprehensive review of 16 EITI compliant countries concludes as follows:

> We analyze the performance of the first 16 countries to attain EITI Compliance Status over the period of 1996–2014. We find, interestingly, that in most metrics EITI countries do not perform better during EITI compliance than before it, and that they do not outperform other countries. We postulate four possible explanations behind the relative weakness of the EITI: a limited mandate, its voluntary nature, stakeholder resistance, and dependence on strong civil society. (Sovocaal et al 2016:1).

It is doubtless true that economic and political conditions changed in the late 2000s and this proved to be a less inimical environment for EITI's operations. EITI has however kept the transparency-accountability question in the forefront of national and international policy debate even if in practice, while it has been good for IOCs and IFIs concerned to display their commitment to good governance and their global brand, there is scarce evidence that EITI compliance leads to systemic reforms. Producing avast paper trail and the release of reports, even if the disclosures are politically damaging to governments and national oil companies, is not a credible strategy as a theory of institutional change. Paradoxically it may be that EITI's greatest impact to date on governance has been in endorsing and circulating the transparency norm. Transparency laws were enacted into law in the US in 2010 under section 1504 of the Dodd-Frank Act and the European Union followed suit. EITI cannot lay direct claim to this success – it was after all the starting point of PWYP[4] in 2002 – but the fact that by 2007 EITI had its first development country (Norway) submit to implementation and had played a role in introducing the Extractive industries Transparency Disclosure Act to the US House in 2008 speaks powerfully to this norm diffusion function.

This story so far has not answered the question why would resource dependent states sign onto EITI? And how and in what ways might the disclosure-compliance process be understood in relation to the bargaining space and the distribution of power associated with the political settlements in such countries? It is to this question in Nigeria that we now turn.

Part 3: EITI in Nigeria: Federal and State level experiences[5]

I. The Paradox of Nigeria's EITI: Performing an audit, Institutionalizing Transparency, or Creating Accountability?[6]

Nigeria customarily features in a showcase of the catastrophic failures of oil-led secular national development (Collier 2007). If Nigeria is the largest economy in Africa – the Lagos economy alone is probably greater than that of Kenya – the stark reality, however, is that income and human developmental poverty rates remain chronically high, at more than 60 percent of the population, much higher than surrounding countries like Niger and Benin. Since the end of the civil war in 1970, oil and gas revenues have dominated the country's political economy but the state capture of large hydrocarbon rents is typically seen to have over-determined Nigeria's litany of colossal developmental failures, its contentious political dynamics, and by implication the portfolio of available policy choices. The Dutch Disease, revenue volatility, and poor fiscal management produce a well-catalogued litany of endemic state deficits and dysfunctions. Many forms of public authority are seen to be illegitimate, unjust and display a range of deficits – in transparency, monitoring and participation - that erode effective forms of fiscal accountability, bureaucratic competence, regulatory mechanisms, and service delivery (Porter and Watts 2016; Lewis 2011; Adebanwi and Obadare 2010). Wage employment remains extraordinarily low and youth unemployment is chronically high (Amundsen 2010; Humphreys et al. 2007, p. 265). As parsed in

[4] Publish What You Pay, a campaign launched by six London based organisations in 2002 calling for extractive industries to publish their payments to host governments.
[5] For excellent accounts of NEITI see Shaxson (2009), Gillies (2010), Uzoigwe (2011) which we draw upon here. The NEITI audits and other reports are at: http://neiti.org.ng/.
[6] The Nigeria background is laid out in Lewis and Watts (2015, and 2015a) as World Bank working papers.

one IMF report, Nigeria's oil revenues have "not significantly added to the standard of living of the average Nigerian" (Sala-i-Martin and Subramanian 2003, p. 4). Massive state-sponsored outlays on global rebranding have not dented the pervasively bleak predictions about Nigeria's future.

As oil seeped indelibly into the country's political, economic, and social lifeblood, petro-rents severed public taxation from state revenue and fed what Slater (2010) in another setting calls a "provisioning pact". Just as struggles to control the accumulation of oil rents contributed to rapid centralizing of power, the ferocious battle over sharing oil revenues drove societal fragmentation, splintering, and dispersion in what was always a fractious and competitive multi-ethnic federal system. In the wake of the return to civilian rule in 1999, ethnic, religious and political violence escalated as Nigeria has succumbed to two home-grown insurgencies (Boko Haram and MEND). Nigeria became a poster-child of the 'fragile and conflicted state' condemned to embark on a 'post-conflict transition'. Inevitably these failures and seemingly intractable structural impediments cast a long shadow over the optimistic assessments of Nigeria's short-term future.

A declensionist narrative of this sort is, of course, a quite familiar Nigerian story (Okonta 2008; Pierce 2015). The main beneficiaries of a political economy constructed around oil rents are a diverse and fractious class populated by politicians, civil servants, military officers, and business interests, who constitute a form of elite cartel. The varied terms used to account for Nigeria's political architecture – predatory, 'spoils politics', prebendalism, felonious etc., - almost always reference back to the vast neo-patrimonial edifice of a rentier state in which political networks are deeply imbricated with public office to provide unfettered opportunities for illicit gain (Oliveira 2007). Other social classes, more peripheral to the centers of power, are the indirect beneficiaries of state largesse as public sector employees. The construction of Nigeria's elite cartel – perhaps the most durable feature of the country's state building in the petroleum era - is the product of an exclusionary political settlement which, while opting for redistribution rather than growth limited most gains to a narrow stratum of notables and Godfathers. There is a pervasive culture of impunity surrounding these political classes. The logic of the political order entails (i) buying off powerful groups and individuals so that they do not become a threat (co-optation), (ii) permitting some benefits to trickle down to purchase consent and legitimacy, and (iii) building powerful coercive apparatuses to ensure compliance (coercion) (Humphreys et al 2007: 264).

On this canvas and coupled with the obvious challenges of returning to civilian rule after many years of despotic military rule, it is somewhat surprising that the new Obasanjo government, facing problems of consolidating the power of his PDP party, should have so enthusiastically signed on to EITI in 2003 (indeed Nigeria was one of the first and one of the most eager signatories - See David-Barrett and Okamura 2013). Nigeria EITI (NEITI) was formed in 2004 and set itself a hugely ambitious set of goals, far in excess of EITI requirements. The National Stakeholder Working Group (NSWG) accounted for only three civil society groups in 2004 but grew quickly with the June 2005 establishment of the Civil Society Steering Group. Goldwyn International Strategies LLC of Washington DC served as a lead advisor and oversaw the appointment of the Hart Group for the 1999-2004 audits. In May 2007 the NEITI Act enshrined the body into law, one of the few countries to have done so. Furthermore the audits – financial, physical and process audits – which were published in April 2006 and made widely available on the web and in printed forms, are often held to be "the gold standard for audits under EITI principles" (David Goldwyn, cited in Shaxson 2009). Nigeria was designated as compliant in 2010 (see the NEITI chronology Figure 2).

Figure 2

Annex 1: NEITI Chronology

29 May 1999	Obasanjo becomes Nigerian President, winning 62.6% mandate.
24 April 2000	First incarnation of the Oil and Gas Implementation Committee (OGIC) is launched.
September 2002	Tony Blair announces the EITI at the World Summit for Sustainable Development in Johannesburg.
May 2003	Nuhu Ribadu appointed chairman of Economic and Financial Crimes Commission (EFCC).
17 June 2003	First EITI plenary conference[70] at Lancaster House in London launches global EITI.
15 July 2003	Ngozi Okonjo-Iweala sworn in as Nigerian Finance Minister.
November 2003	President Olusegun Obasanjo commits to EITI.
January 2004	Ngozi Okonjo-Iweala gets permission to publish all allocations to state and local governments.
February 2004	NEITI inaugurated by Obasanjo.
14 February 2004	Obasanjo appoints Ezekwesili, one of the founders of Transparency International, as coordinator of NEITI National Stakeholders Working Group (NSWG).
29 May 2004	Charles Soludo appointed Governor of Central Bank.
June 2004	US endorses EITI for the first time.
June 2004	EFCC establishment Act.
16 July 2004	Nasir El-Rufai, former director-general of the Bureau of Public Enterprises (the privatization agency), appointed minister of the Federal Capital Territory.
December 2004	Bill – draft NEITI Act – introduced to the National Assembly to give legal backing to the work of NEITI.
February 2005-June 2006	Hart Group carries out its audit work.
June 2005	Civil Society Steering Committee, composed of 10 additional civil society representatives, set up to consult with the NSWG, to counter its shortcomings.
29 June 2005	Paris Club agrees in principle to phased clearing and buyback of debts and debt arrears.
17 October 2005	IMF Executive Board approves a two-year Policy Support Instrument for Nigeria.
October 2005	Nigeria negotiates the Paris Club debt deal.
April 2006	Nigeria pays the last instalment on the $30 billion it owed the Paris Club of official creditors.[71]
26 April 2006	Hart Group releases its first financial, physical and process audits of the oil and gas sector for the period 1999–2004. Identifies $232m discrepancies and is told to go back and do further reconciliation work.
June 2006	Ngozi Okonjo-Iweala steps down as Finance Minister; replaced by her deputy, Nenadi Usman. Oby Ezekwesili demoted, becomes Minister of Education.
June 2006	Last International Advisory Group meeting establishes an EITI Board and selects Oslo as the location of the International Secretariat.
June 2006	Ngozi Okonjo-Iweala becomes Foreign Minister (but remains head of the economic team).
2 August 2006	Ngozi Okonjo-Iweala is removed as head of the economic team, while in London.
3 August 2006	Ngozi Okonjo-Iweala resigns as Foreign Minister.
December 2006	Final audit report for the 1999–2004 accounts presented by Hart Group to the NEITI NSWG. Following the release of the audits, an Inter-Ministerial Task Team is asked to put together a comprehensive remediation action plan, subsequently approved for implementation by the Nigerian government.
24 March 2007	World Bank appoints Obi Ezekwesili to head its Africa department.
28 May 2007	NEITI Act becomes law. Nigeria becomes first EITI-implementing country with a statutory backing for implementing EITI. NSWG is cut back to just 15 members.
29 May 2007	Obasanjo steps down as President. El-Rufai steps down.
August 2007	Revised edition of reconciliation exercise published; discrepancies narrowed down to just $8.5m.
September 2007	EITI International Secretariat opens in Oslo.

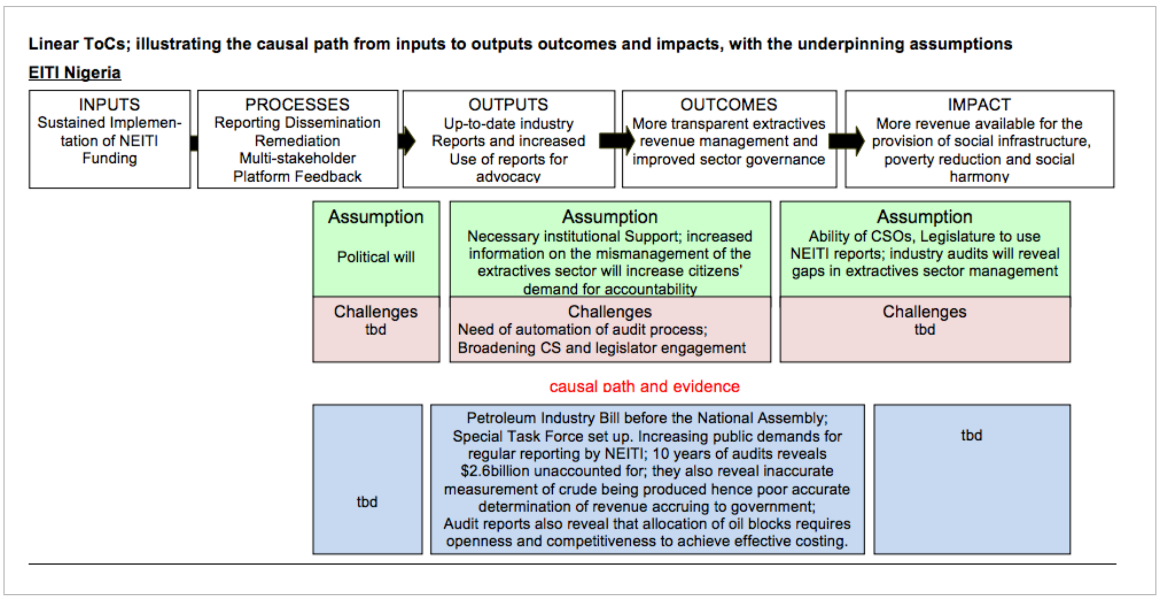
70 http://www2.dfid.gov.uk/news/files/eitireportconference17june03.asp.

71 See http://www.imf.org/external/pubs/ft/fandd/2008/12/okonjo.htm.

Source: Shaxson 2009.

Even dubious oil analysts and civic groups were forced to concede of the audit that at the very least it laid bare, even if there were gaps which required urgent attention, the ‘deep structure’ of an industry which has been something of a black box for over four decades. Even more surprising, NEITI pushed beyond EITI criteria of the time and examined information from the *current* administration's tenure (rather than solely focusing on *previous* regimes), and dug deep into the conduct and practices of core institutions: the Central Bank, the Department of Petroleum Resources (DPR), the Nigerian National Petroleum Corporation (NNPC), and the Federal Inland Revenue Service (FIRS). According to Goldwyn Associates, the government lobbied for a thorough audit, but also new informational technologies to monitor flows, a communications strategy, advice on how to reform the sector, and a policy paper for local content. All of this went hand in hand with other parallel processes in train most especially an effort to deliver transparency of revenue at all levels of government. In January 2004 the Finance Minister was granted permission to publish the allocations to state and local governments. Not only are federal allocations now widely available through the government outlets but they are widely covered in the Nigerian press. In 2011 an organization (BudgIT) based in Lagos began to provide exceptionally rich and useful graphics and analysis of revenue and transparency issues surrounding both oil and gas and the entire revenue allocation process (http://yourbudgit.com/infographics/). All of this rested upon a theory of institutional (and political) change rooted in the fact of disclosure (Figure 3).

Figure 3



Source: EITI Strategy Working Group 2012.

At one level then a certain sort of 'performing' transparency had been enacted and seemingly quite effectively under conditions which most analysts would have said were inauspicious if not impossible, given the powerful structuring logic associated with the resource curse. Why? Why did Nigeria sign on and so aggressively pursue EITI standards and to what degree was this a function of global pressures and EITI as a global ("external") modality? Did NEITI, for example, gain its strength from a coalition between foreign donors (who funded EITI) and Nigerian technocrats? And what were the consequences of the introduction of an 'audit culture' for the political settlements – the distribution of power through the elite cartel – and ultimately for reforms (i.e. institutional effectiveness) within the oil and gas sector? Put differently did a successful audit supported by global and domestic elite constituencies and local civil society actors add up to accountability – did NEITI producing bargaining which was consequential for the ordering of power and for institutional effectiveness and state capabilities?

The NEITI process was driven almost exclusively by domestic political interests (Gillies 2010). It is quite true that many of the IOCs were happy to sign on in order to demonstrate that they were not stealing money. Shell was reeling from the Ogoni crisis and its reputation was in tatters, and popular opinion (aided and abetted by the government who used criticisms of Big Oil to cover up its own inadequacies) held that the oil companies where the perpetrators of outright theft, that they were in cahoots with the government too (the so-called “slick alliance”), and that these IOCs owed vast sums to the oil producing host communities of the Niger delta region to cover oil spillage and unpaid rents. The Nigerian government had successfully managed to maneuver oil companies in the name of their “license to operate” to invest in everything from roads to schools to community infrastructure (in short, investments customarily assumed by state and local government). By 2003, conflicts were endemic across the delta (Watts 2011), production stoppages were frequent, and 2003-2004 saw a surge of violence and militia conflicts which threatened the operation of the entire industry. In this context, the notion of transparency – which it needs to be said did not require of the companies that they disclose much of their own internal operations – could potentially present the IOCs in a more positive light.

But the driving force was domestic political interests emerging from the ruling party and from an Obasanjo administration consolidated in the wake of the 2003 elections (Shaxson 2009; Pierce 2015)). First, after consolidating PDP party rule between 1999 and 2003, Obasanjo (OBJ) was anxious to both put together a reform team (Oby Ezekwesili, Nasir El-Rufai, Ngozi Okonjo-Iweala, Nuhu Ribadu, Charles Soludo) and present himself as a reformist on the world stage. [The fact of the matter is OBJ was a deeply egocentric figure and saw himself as heir to Mandela, as a Davos figure, and a buddy to the likes of Tony Blair]. Second, his reform team, deeply aware of the costs of not having learned from the boom and bust cycles of the oil sector in the 1970s and 1980s and in particular the need to be able manage fiscal volatility, was a force in itself in promoting the value of transparency and NEITI. And of course the pent up reform demands and expectations among the body politic coming in the wake of the long darkness of military rule certainly placed popular pressure on the elites to act. NEITI was in fact enthusiastically supported by the reform team and Ezekwesili served as chair of the organization (indeed a group of the reform team had close relations to Transparency International which in 2003 was celebrating its first decade and the adoption by the UN of the Convention Against Corruption).

Third, by 2003 Obasanjo was in a position to embark upon a reform program which remained active until 2006 (Shaxson 2009). It entailed consolidation of the banking sector, the implementation of the National Economic Empowerment and Development Strategy (NEEDS), the adoption of an oil-based fiscal rule, pension reforms and public sector monitoring, anti-corruption programs (an enhanced Economic and Financial Crimes Commission (EFCC) under Nuhu Ribadu), and revenue transparency initiatives. Also included was far reaching reform of the oil sector through the Oil and Gas Implementation Committee (OGIC) convened in 2000. This reform package, of which NEITI was a key part, was integrated into Nigeria’s Policy Support Instrument (PSI) agreed with the IMF in October 2005 which signaled to international markets and to the Paris Club that Obasanjo meant business. But it was clear that these reforms, even with the backing of a protected and aggressive technocratic reform team, would confront serious opposition from elements within a political settlement constructed from rent seeking and patronage politics. The reform team in fact operated on a limited political terrain: largely fiscal and monetary policy and anticorruption. Some areas like infrastructure, electricity and the conflict in the Niger delta – all knotty and contentious issues - were ignored altogether. Pension reform was possible but a radical restructuring of the oil sector – at the very heart of the economy and all pacting arrangements - was too explosive given the vested interests within NNPC, and the power of the political Godfathers in the oil producing states. Reform of the OGIC was far reaching and Obasanjo largely stayed away from it because he needed access to monies and to oil blocks as a way to navigate his second term, increasingly so when he attempted to run for a controversial third term in 2007. In this context NEITI could be both a flagship reform, visible internally and externally, generating credible commitments while not generating political blowback for the challenges of taking on oil subsidies, or the ability to distribute oil blocks to powerful allies, and equally contentious issues like customs which was a source of patronage for PDP stalwarts. NEITI in any case only pertained to the federal level of revenue transparency and, at least in 2003, the state and local government revenue platforms – source of extraordinary corruption as the flows of revenues increases with the new principles of revenue allocation instituted in 1999 – were immunized from serious scrutiny.

Fourth, and most crucially, NEITI provided an important veneer of legitimacy and credibility for Paris Cub debt rescheduling (Shaxson 2009). In October 2005 Nigeria negotiated a deal by which it would pay off $30 billion in debt (85% of its external debt) through a restructuring program on so-called Naples Terms. In this sense debt and the international community offered the possibility of what Shaxson calls a “grand bargain”: push forward reforms (of which NEITI was a trailblazer) and the Paris Club would write off and restructure the debt (Shaxon 2009). For Obasanjo, keen to establish his reform credentials and an international visibility, NEITI killed many birds with one stone: it was a relatively cheap, costless and diffuse way of lifting the debt burden while sending credible signals to both within and outside of Nigeria (to the body politic and to the global markets). It is also true, and this is the fifth point, that NEITI could become a vehicle for the administration to be seen to “take on” what had been portrayed as voracious and greedy oil companies. Ironically both the oil companies and the government saw EITI as good for their reputations and legitimacy. And finally the fact that NEITI demanded citizen engagement - even though the civil society representation on the NSWG was thin and civil society groups were often unable to provide the sort of capacity and oversight which was required - sent the right political signals to domestic constituencies and the popular classes in a new democratic dispensation.

II. Critical Junctures: From Opening to Closure 2003-2007

EITI, in short, contained an abiding political appeal for elite interests. The particular conjuncture of 2003-6 was in this regard especially propitious. The PDP had consolidated its political dominion within the elite cartel, but the 2003 elections were widely condemned as fraudulent and exceptionally violent. The Obasanjo government needed legitimacy internally, and externally so as to maneuver around its global debt obligations. A reform space – populated by a talented and politically protected group of technocrats – existed for NEITI could serve a number of clear functions for government and indeed for the oil companies. But conjunctures by definition have temporal boundaries, and by 2006-7 the reform space had closed. NEITI as a consequence was not only less visible, less active, and less central to the political debates, but its functions and performance declined sharply. Even though the NEITI Act was passed in 2007 the moment was over, and its passing marked its death rather than a signal of reforms to come. By 2007 NEITI was, as Shaxson (2009) put it, "becalmed". By the time that Goodluck Jonathon assumed the Presidency in 2009 NEITI had a very low profile, and had fallen behind seriously in its reports and auditing for the years 2005 and 2006 (2005 only appeared in 2009). Some momentum was gained in 2009 and 2010 with the publication of new audits and the discovery of $9.8 billion of missing payments, but the momentum had shifted temporarily at least to the Petroleum Industry Reform Bill which, will potentially more radical than NEITI, faced intense resistance from a number of quarters including NNPC. The fact of the matter is that the reform space was snuffed out, and NEITI– whatever one thinks of the import of the first audits – suffered as a consequence. Any possibility of translating the audit findings and transparency politics to meaningful reforms in the oil sector, or for that matters into fiscal probity and improved revenue allocation, was now politically foreclosed.

Why then did the reform space close and NEITI suffer, and what were the longer term consequences for NEITI as a reformist intervention? The short answer is that NEITI served its strategic purpose for the Obasanjo government until it didn't. Several forces conspired to not only reduce the support for NEITI but also slow down its progress on its basic auditing functions. One reason was the end of the Paris Club process in 2006. Nigeria was in effect given $18 billion and NEITI had served its purpose. So had the widely-lauded reform Minister of Finance Ngozi Okonjo-Iweala who was promptly demoted. Another reason was that the process inside NEITI increasingly became a casualty subject to "spoils politics" and the powerful logics of the provisioning pact; several of the supporting reform teach had been moved out of strategic ministries, tensions emerged between NEITI and the Secretariat. In fact the larger story is the failure of the reform coalition to be able to implement its agenda in the face of substantial opposition from powerful groups (party stalwarts, the military, political Godfathers) within the ordering of power that was the provisioning pact. As oil prices increased after 2005 the clamor of reform, and the hunting for new and amplified sources of rent and patronage increased.

In some respects the retreat from reform was an indication of the growing visibility of the reform group and the unexpected success of Nuhu Ribadu at the EFCC in high profile prosecution of influential members of the political classes on corruption charges. All of this unsettled the elite cartel and produced new tensions and resistances which Obasanjo necessarily had to confront. And perhaps most crucially Obasanjo decided to push forward for a controversial third term which created an entirely new set of political dynamics which both undermined his credibility and compelled political concession with anti-reform interests. All of this came to nought, of course, but the election of President Yar'Adua, a weak leader who died in office, provided no support for reigniting NEITI. Finally, civil society groups within the stakeholder coalition proved to be relatively weak. While there did exist NGOs within the Niger delta with both legitimacy and capacity, their concerns were often focused on environmental and social issues (conflict resolution and compensation for example) rather than transparency (Shaxson 2009). Revenue Watch, Social Action and the Niger Delta Citizen's Budget Platform as we will show below, all began to work on transparency issues and certainly benefitted from the NEITI audits, but without political support from elites their ability to move beyond the worthy goal of disclosure and public education was limited. Indeed, the primary consumers of NEITI reports were industry consultants and some of the political classes fighting their internal turf battles (Shaxson 2009).

III. Bayelsa and Edo State, Niger Delta: critical junctures and the ordering of power

On the heels of the opening and closing of reform space at the national level, the norms, aspirations and institutional arrangements conveyed through NEITI would find a direct echo in Bayelsa State in the oil rich Niger Delta. As will be seen, while the key institutional features of EITI would travel from global to national scales, and then be transposed onto a subnational terrain, the conditions of possibility would prove to be inauspicious from the start. While the transparency norm would gain a similar rhetorical profile as experienced through NEITI, there would be no trace of traction at the level of revenue or expenditure performance by the state government. The crucial point here, is to underscore by comparative illustration the importance of what WDR 2017 refers to as "context" (existing dispositions of norms, power, capacity – ie., political ecology). To do this, we place Bayelsa's experience alongside what occurred in neighbouring Edo State over precisely the same period of time. While Edo did not adopt the rubrics of EITI, its leadership made commitments – in cahoots with the same global oil and donor actors – to the same results and outcomes, namely, the wise and prudent use of public resources to create public assets and services. This comparison therefore helps illustrate the prime role that context plays in how global norms travel and translate into national and subnational scales, including the shape that institutions are likely to take (for they differ substantially in Edo and Bayelsa), and the extent to which the function and are embedded over time.

1. The Conditions of Possibility for transparency norms in Bayelsa State

In the run up to the 2007 State elections, there appeared scant prospect that Chief Timipre Sylva would emerge as Governor of Bayelsa State. The pathway to Governorship seemed clear for incumbent Governor Goodluck Jonathon to be returned as he was considered the anointed candidate of then President Olusegun Obasanjo who had an overbearing influence on the primaries of the ruling party, the Peoples' Democratic Party (PDP). Sylva is believed to have been recommended by a trusted ally of the President precisely because he had little political clout or constituency base and thus would be loyal to a President who desired to control what he regarded as the impudent behavior of governors of the oil-rich Niger delta states. It is widely noted that the corruption and money laundering charges brought against Governor Alameiyeiseigha (1999 to 2005), and resulting in his impeachment, were punishment for having committed Bayelsa State's prodigious oil revenues to plotting against the President in the 2003 elections.

Sylva's unexpected electoral success – the elections were marked by considerable fraud - meant that he was unprepared for the governorship and indeed possessed no real social basis among a largely rural and provincial population. It was soon clear that Sylva had no policies or plans, and lacked both a capable team of technocrats and a powerful local base of legitimacy. As we will see when we compare the experience of neighbouring Edo State in the ensuing five years, all these factors would prove to be crucial. Lacking ready sources of legitimacy in Bayelsa, he would pander to powerful actors in the Federal Government and the international community and pin his hopes to Public Finance Management (PFM) reforms. In this, the most prominent norm would be transparency. Why were PFM reforms elevated from amongst a range of possibilities for legitimacy?

This strategic choice needs to be seen in the context of three crucial dispositions. First was the need to address the widely held perception – in part as a result of the deepening scrutiny around public finances wrought by NEITI - that some governors from the oil rich Niger Delta states had been 1999 and 2007 mismanaged massive increases in oil revenues. The massively enhanced oil derivation flows after 1999 had in effect pushed corruption and rent seeking downward to state and local governments in ways that fed and deepened the operations of the provisioning system. Sylva appreciated the need to distance his administration from that of Alameiyeiseigha, the dominant figure in Bayelsan politics between 1999 and 2005. High profile signaling would not just garner the moral authority of formal governance norms and institutional arrangements, they might also allay anxieties about prosecution by the Economics and Financial Crimes Commission (EFCC) at the behest of President Obasanjo. As we have seen, Obasanjo's adroit signalling around NEITI, along with laws committing to fiscal prudence, transparency and modern procurement practices, saw him celebrated at home and abroad as "President Clean", whilst enabling the logics of patrimonial politics so crucial to the elite cartel to remain intact.

But a confluence of two other circumstances would cement the way this played out. Sylva was able to practically leverage this 'moral possibility' as a result of his invitation (on the back of his successful brokering of the release of 24 hostages held by militants in the creeks of the Niger Delta) to attend the meeting on the Gulf of Guinea Security Strategy, held in the Hague, during July-August 2007. Here he would find attractive overtures and opportunities on offer by international civil society groups to link his platform to global movements around security, human rights and, most especially, governance and transparency in resource extraction. Sylva gained profile by associating with the Open Society Initiative and Revenue Watch Institute (RWI), both heavily patronized by the George Soros Foundation. In February 2008, Sylva attended the Open Society Africa Forum titled "How Can Africa Get a Better Deal for its Natural Resources?" held in Dakar, Senegal. Here, Sylva and RWI agreed to establish the Bayelsa Expenditure and Income Transparency Initiative (BEITI). This was declared at a workshop was convened in Yenagoa, Bayelsa's capital, in March, and two months later, by instrumentalising these norms, Sylva was re-elected by an overwhelming majority.

These pronouncements would also prove instrumental in a second arena, namely, efforts to attract both financing and external legitimacy from foreign and national private sector agencies and international donors. The administration had declared its intention to boost investments, both private and aid, to promote non-oil sector growth (notably agro-fisheries), capital for signature projects (an international airport for instance), and to restore health and other basic services facilities that had been grave yarded by conflict in the mid-2000s. But State revenue had declined massively as a result of attacks on oil facilities after the rise of the Movement for the Emancipation of the Niger Delta (MEND) – a well-armed insurgent group from the western Delta – in late 2005. Sylva felt that demonstrating commitment to the norms of prudent financial management would help attract private loans and development assistance.

In this respect, Sylva would have some success in achieving if not a transformation in the State's parlous image, then certainly a rapid positive re-branding. By the summer of 2009, across the Niger Delta, 124 of 174 oilfields were shut-in, 200,000 people had been displaced, thus threatening a national economy reliant on oil, and the interests of Big Oil. In the middle of 2009 an Amnesty Agreement had been brokered by the federal government, as a result of which around 30,000 militants would surrender their weapons in return for a presidential pardon, and access to an education, training, and rehabilitation program. As a result, donors attuned to the geo-strategic possibilities of the Amnesty were surveying the Niger Delta for promising examples of 'good governance' to bolster their engagements in a little known region perceived to carry few prospects and worryingly high reputational risks. This had quick payoffs: it was soon announced that Bayelsa became one of four states (along with Delta, Rivers, Edo) to be included in the World Bank-funded the State Employment and Expenditure for Results Project. SEEFOR, initially funded by an IDA credit of US$200 million, was soon augmented by further US$100 million in EU funding and coupled to a slew of UK government grant funded initiatives around transparency, civil society participation, public information and social accountability. Its aim was to back up state commitments to root and branch Public Finance Management Reforms with technical assistance and a suite of grants to advance the Amnesty Agreement: youth employment, technical, vocational and other youth training, and community driven development initiatives. Less immediate, but certainly enticing, was the prospect that the State might attract direct budget support from the World Bank – as had been promised in neighbouring Edo State. This would add fiscal space for new spending, but also, together with SEEFOR, deliver significant positive branding to support private sector investments and a successful float of bond by the state government.

2. Sylva's reforms: Due Process and BEITI[7]

Sylva's PFM reforms comprised a clutch of policy instruments that included a Public Procurement Law, a Freedom of Information law, and a Fiscal Responsibility Act (each mimicking those already enacted by the Federal Government). But it was clear from the outset that the credibility of the reform process would hinge on two initiatives, BEITI and the Due Process Bureau both initiatives signaled ahead of enactment of new legislation. The Bureau's promise was that it would articulate commitments to monitor public procurement and contracting and, by implementing digitalization of the pay-roll, tackle the glaring problem of ghost workers in the civil service.[8] Within a year of its creation, the Bureau was interrupting business as usual in the contracting process, and the biometric data system introduced for civil service payments unearthed 11,696 ghost workers said to be costing the state NGN3.5billion each year.[9] In public contracting, the Bureau's signal effort was to insert itself in the triangular relationship between the State, as client for procurement, the contractor, and state officials in myriad agencies responsible for awarding contracts and certifying payments. This gave most powerful effect to the founding liberal norm of transparency: that is, the 'separation of powers and functions'. Von Kemedi and his leanly staffed Bureau would begin to tackle the formidable task[10] of checking compliance certificates on the ground, querying and interrupting payment orders, and begin to compile blacklists of proscribed vendors and contractors while furnishing evidence for prosecution of egregious corruption.

The Bureau's public profile and not least its determined pursuit of its mandate, was maximized by appointment of Kemedi, a veteran civil society activist and head of 'Our Niger Delta' as the Bureau's first Director General. Kemedi was well connected with local NGOs (including members

[7] The BEITI story has been told at length in Weate (2012), Medupin (2009), UNODC (2012).

[8] http://bayelsa.gov.ng/portal/media-centre/news-events/241-bayelsa-govt-set-to-check-over-bloated-civil-service-high-wage-bill.

[9] See, S, Oyadongha (2010) 'EFCC investigates Bayelsa workforce', http://www.vanguardngr.com/2010/03/efcc-investigates-bayelsa-govt-workforce/

[10] Reports from Bayelsa on the heels of enactment of public procurement laws, sources claimed officials duck requirements anywhere from 40 to 95 percent of the time. (Revenue Watch Institute 2011).

of the state's 40 member Bayelsa NGO Forum), emerging Delta wide transparency activist networks (such as the Niger Delta Citizens' Budget Platform, supported by RWI, the UN and World Bank) and international networks, in which RWI played a leading role. But Kemedi's – and by extension the Bureau's – reliance on this source of credibility, coupled with his singular appointment by the Governor, would form an Achilles Heel. Kemedi's inclusion in the Governor's kitchen cabinet meant that he had ample opportunity to inform him about the sharp practices of state officials and their networked agents in the private sector. But the manner of his appointment, along with this lack of experience as a politician and bureaucrat, made it difficult to build horizontal relationships with other officials in State House nor form a natural constituency within these realms.

In less than two years, the Bureau began to feel the power of these horizontal relationships – the Bureau's cash flow began to be interrupted, there would be no fuel for the frenetic cycle of site visits, or to recruit third party monitors from civil society. The office was open to castigation by bureaucrats, politicians and contractors that it was an irritant to reforms, that it was slowing down the already complicated public procurement process and thus, jeopardizing the Governor's reform ambitions. Ironically, counter narratives were mobilized within civil society – for instance, the Niger Delta Coalition in Diaspora criticized the Bureau and its officials for being involved in fraud, over-invoicing and other unethical practices. The group claimed the Bureau was incompetent and sloppily discharged its responsibilities, that it had failed to codify rules on price intelligence and public procurement,[11] and others advanced the view that Kemedi's appointment by the governor was a travesty of core norms, that it had not itself followed due process. There were threats of bringing cases of alleged corruption to the EFCC. In a somewhat less sophisticated register physical threats were made – one assumes by disgruntled contractors and local bottom-feeders – against Kemedi and his team.

All the while, Governor Sylva was noticeable by his absence in these exchanges: he neither interceded directly, nor rallied support for Kemedi; there were no public statements commending the Bureau, nor were efforts made to prosecute those clearly implicated in fraudulent activity if indeed this was the case. There was neither political protection, nor support, or for that matter high-level oversight to reaffirm the legitimacy and centrality of the entire due process and disclosure enterprise. Thus, within two years of its birth, having served its initial legitimizing role, the Bureau had been abandoned to fend for itself.

3. BEITI and the push for legitimacy through transparency

Sylva established BEITI in November 2008. A direct product of EITI practice, its mandate was distinguished by the ambition to track all government expenditures. At its heart were templates that would capture allocations and payments by the federal government and oil companies, which then could be reconciled with reporting from state and local governments of receipts against expenditure. While reducing leakage and lost revenue, its distinctive aim was to avoid the problems of ghost, abandoned and duplicated projects. BEITI was to leverage the governor's commitment to publish income and expenditure records at a very practical, micro level and then aggregate these on a whole of government basis. BEITI's inception was applauded for its declared

[11] 'Due process madness in Bayelsa in Bayelsa State: Mass sack of workers based on false biometric exercise', accessed at http://www.pointblanknews.com/pressrelease483.html

intention to oversee improved service delivery, make Bayelsa Nigeria's "most transparent state", and empower civil society and the public to engage in budget making and scrutiny of expenditures, and, in all, to decrease the state's vulnerability to conflict and violence.[12]

Central to BEITI was the same kind of Multi-stakeholder Working Group that features in NEITI. Von Kemedi was appointed as its chair, thus channeling BEITI directly through the Due Process Bureau into the heart of the state's executive. Along with messages of goodwill from George Soros, and funds and technical assistance from RWI, BEITI's Stakeholder Group drew in powerful constituencies via the Ijaw National Congress (INC) and Ijaw Youth Council (IYC), along with BANGOF. Shell Petroleum Development Company of Nigeria (SPDC) and Nigerian Agip Oil Company (NAOC) who have major stakes in oil production in Bayelsa State also accepted membership. It met regularly to approve the Baseline Evaluation Report[13], prepare a three year 2009-2012 work-plan[14], mobilize civil society support, promote disclosure of revenue receipts of the state government from the Federation Account[15] and help draft the BEITI Bill.[16] Soon, the Netherlands government offered support through the UN Office on Drugs and Crimes (UNODC), as did the World Bank which hoped to link SEEFOR's support to the state's PFM reform agenda.

It proved politically impossible to sustain the momentum recorded in its first year. Even as the BEITI Bill was set to be debated in the Bayelsa Assembly, the reform space had been brought to its knees by a combination of what the BEITI Baseline Evaluation (Medupin 2009) called the 'civil service culture of secrecy'[17]. Despite being armed with a directive from Governor Sylva to comply with information requests, BEITI's first auditor – S. S. Afemikhe and Co. – faced protracted resistance and suspicions that the audit was politically motivated. The audit had run aground on the reality noted by the consultants responsible to prepare BEITI's implementation strategy, that "During out work, we found that even officially public documents were in reality either i) not readily available; or ii) only made available on the request of the Bureau of Due Process and E-

[12] See, http://www.bayelsa.gov.ng/beiti/about.html

[13] http://www.bayelsa.gov.ng/beiti/documents/Minutes%20or%20BEITI%20BSWG%20Maiden%20Meeting%20of%2024%20March%2009.pdf

[14] http://bayelsa.gov.ng/beiti/documents/up%20dated%20BEITI%20DRAFT%20COSTED%20WORKPLAN%20-%20Jun09.pdf

[15] See, http://newsnigeria.onlinenigeria.com/templates/?a=949

[16] http://www.bayelsa.gov.ng/beiti/documents/BEITI%20BILL%20_MINISTRY%20OF%20JUSTICE_.pdf

[17] The UNODC (2012: v-vii) independent evaluation reported that: "The BEITI Component recorded some progress in sensitizing the state legislature, Local Government Councils, the media, Civil Society and traditional rulers on the bill. The bill had passed the second reading and the legislators had suggested useful amendments to the bill. The evaluation found that BEITI and BANGOF sensitization programmes and sustained engagement with legislators contributed to creating the political space that allowed for the expeditious passage of the Bayelsa Income and Expenditure Transparency Law 2012, which replaced the BEITI Bill…… although the BEITI Component has been terminated it was not a total failure." The Bill in fact (see below) was diluted to the point of triviality. The 2009 baseline evaluation concluded with observations on the virtual impossibility of acquiring relevant information: "the evaluator made several visits to the Training and Pension Bureau to confirm the existence of non-existence of any document on the training policy in the State and just because the Permanent Secretary happened not to be available resulted in the impossibility of getting any lead, even when the Director of Training was contacted. As for the office of the Chairman, Civil Service Commission, physical access was rendered impossible even to interact with his subordinates in the absence of the substantive office holder" (Medupin 2009:40).

government. In short – public documents (on which the audit depended) were not actually public'.[18]

Changing tack, BEITI's advocates in the Stakeholder Group shifted attention to the BEITI Bill drafted by the Ministry of Justice, again with RWI support, in the hope that the participation of the state's Attorney General and other high profile Sylva appointed officials in the Stakeholder Group would push for its presentation to the House of Assembly. Despite that the Bill's provisions were heavily biased in favor of the government, this too foundered, in part on BEITI's institutional placement within the Due Process Bureau, an agency itself still lacking a legal framework. Government officials soon felt emboldened to argue that full disclosure provisions were not desirable as they conflicted with the official secret code. [19] The Bill remained mired in the Ministry of Justice, the BEITI secretariat was starved of promised state budget for staff, equipment and vehicles, and as the historic gap between civil society and the state began once again to loom large, the removal of the initial, incomplete statement of income and expenditure from the BEITI website triggered a resigned cooling of interest amongst civil society advocates[20]. Elections in February 2012 saw a change in government, and one of Governor Seirake Dickson's first decisions was to replace the BEITI Bill with a far less ambitious Transparency Bill.

IV. Edo State: Ordering State Capabilities[21]

We have highlighted the ways that the dynamic process through which power is ordered can impact directly on the conditions of possibility for reform ventures or, more particularly, the ways reform-oriented modalities become embedded (or not) in governance institutions. Edo State provides a fascinating counterpoint to that of Bayelsa. At face value, it would appear equally cast in the mold of resource curse politics, economies and governance failures, but in fact a different conjunction of power, elite politics, leadership norms and technical capacities one, led to the creation of quite different governance institutions for managing public expenditure (including norms like transparency), and two, produced quite different outcomes over the same period just recounted for Bayelsa State.

1. Conditions of Possibility

Edo is not a major oil-producing state, but it depends to a significant degree on an oil sector (59 per cent of the 2013 state budget) historically associated with unbridled plunder, failure and fiscal crisis. With Bayelsa, it is thus part of the same contentious and corrupt system of fiscal federalism, contentious politics and insurgency post-1999, and during the 2000s the two states rated similarly on indices of service delivery and poor governance. But since 2009, the Edo state Governor has received sustained applause at home and abroad for his accomplishments in road construction and the capital sector more generally, internal revenue generation, and political succession. It would

[18] Referenced at June 2011, in Weate (2012).

[19] http://www.bayelsa.gov.ng/beiti/documents/minutes%20of%20meeting%20for%20the%2020th%20October,%202009.pdf

[20] By 2011, a survey of civil society activists reported that "There is likewise a rising perception that the Niger Delta NGO community and its impacts are 'shrinking'." (Revenue Watch Institute 2011).

[21] The Edo story has been told in more details in Porter and Watts (2016) and Bain, Porter and Watts (2015).

be premature and foolhardy to suggest that Edo represents a full-on break from certain forms of path-dependency and structural constraint (rent-seeking). But there may be in the Edo story the beginnings of what Orihuela (2013) calls a 'resource-curse escape' and it is worth reviewing both the background conditions, historical and political, and particular institutional capabilities in explaining how this occurred.

Historically, Edo has several points of contrast with Bayelsa: it had been one of the best performing states in the country (World Bank, 2010). Successive state governments following the civil war - notably the long serving governments of Dr. Samuel Ogbemudia and Professor Ambrose Alli - were credited with pioneering several initiatives in human capital development and public infrastructure. These pioneer administrations became the reference points – in effect the source of a 'golden age' narrative - for judging the performance of successive governments (Ukoha, 2014). Any occupant of the Benin City Government House was therefore likely to confront the litmus test of high public expectations.

Edo's close association with dominant political factions in western Nigeria socialised the Edo people into the culture of opposition politics, and this relationship has historically made it possible for politicians and so-called political 'Godfathers' to draw support from the dominant political machine in the south-west without incurring the wrath of Edo nationalists (Ukoha, 2014). Relatively high levels of education and patterns of class and demography were more than incidental to the rise and election of Comrade Adams Oshiomhole, a charismatic and well-connected populist and trade union leader, in 2008. But this also meant Oshiomhole inherited high public expectations. Against the reference point provided by the golden age of Ogbemudia and Alli, by the time he departed in 2007, Oshiomhole's predecessor, Chief Lucky Igbinedion, had failed and indeed allegations of corruption levelled against him contributed to the protest vote against the ruling People's Democratic Party (PDP) which catapulted Oshiomhole into power. On this canvas, any Governor would need to confront not just popular opinion, but also the much heralded performance of his predecessors.

Governor Adams Oshiomhole assumed office in November 2008 following a successful court appeal to retrieve his electoral mandate. Eighteen months earlier, the Independent National Electoral Commission indicated that PDP's Oserhiemen Osunbor had won. Following protracted hearings, the Court of Appeal found in Oshiomhole's favour, a decision that was buttressed by a constellation of quite powerful social forces. His social class base – workers, peasants, small scale traders, unionists, and sections of the middle and technical classes - carved out a reform space capable of serving a range of purposes and constituencies. Arguably the most popular president of the Nigeria Labor Congress (NLC), Oshiomhole's victory reflected his national visibility and charisma, and formidable leadership skills; but it was also an unequivocal vote against the perceived poor governance in the state under PDP rule. At the same time, the Governor confronted substantial voter expectations (located on the larger canvas of a quite politicized body politic) and considerable pent up demands for change. Edo was a competitive political arena and Oshiomhole represented an opposition party confronting considerable hostility from the ruling PDP party in Abuja. Not least he was subject to the demands of the four year electoral cycle. The Governor had to perform and deliver quickly in an environment of "external" (i.e. federal) antipathy.

2. The Politics of Reform Strategy[22]

Why might a newly elected Governor, inheriting a quite particular set of political legacies and challenges of a volatile and contested oil-producing region, bet his immediate and longer term prospects on an unprecedented program of road construction?[23] In our view, this can only be partially explained by the conjunction of history and social expectations just recounted, but also requires reflection on what we will call the 'institutional political economy' of roads and on the ways that this gelled with the fiscal, political and technical capabilities that were created to pursue this priority (see Porter and Watts 2016). It is this conjuncture, we argue that enabled Oshiomhole to gain resounding support for his second mandate through the polls in 2012.

As in Bayelsa, the 2009 Amnesty provided no shortage of options to signal a break with the past and deliver something qualitatively new across a slew of policy priorities: health, education, agriculture and food security, youth employment, good governance, urban crime and security, and infrastructure priorities were all being promoted by vibrant public media and projected back on political aspirants as 'public expectations'. Oshiomhole's inaugural speech paid due homage to these options, but it was clear to the Governor and his executive team that not all options had equal political merit with the public, the business or donor community, nor did each carry the same institutional possibility (potential) of being implemented. In others words, the politico-institutional landscape of reform opportunity, potential resistance and support, technical competence and so on was heterogeneous, complex and uneven.

As in Bayelsa, aware that donors were surveying the Niger delta through the lens of 'good governance', the savvy team of technocrats and political strategists the Governor had assembled before election used the same mobilizing power of normative promise – laws on procurement, information access, fiscal responsibility - to secure World Bank funding. As it turned out, having attracted support, none of these would need to be put into effect during his first term in office. But this adroit isomorphic mimicry aside, it was abundantly clear that local legitimacy (and thus, both regime stability in the short term and durability beyond the next elections) hinged on actually delivering results. This required identifying priorities that would align the governor with powerful political and financial backers and had good prospect of actually being realized. And here the Governor delivered in an unequivocally effective and dramatic way.[24]

Compared with time-consuming and complex reforms of social services or creating job-friendly economic growth, spending on roads is a high profile, relatively quick way to deliver political assets that can appeal to a range of constituencies, generating jobs, facilitating commercial activity and private sector investment, access to markets and services, bringing order and tidiness to urban environments. Oshiomhole moved quickly to assemble and deploy impressive fiscal, political and

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[22] For a similar account of reform in Lagos State and the strategies adopted by Governors Tinubu and Fashola see Watts (2016).

[23] A lively scholarly literature is debating the impact of infrastructure spending on political competition and conflict (see the review by Voth & Voigtlander, 2014).

[24] Assessing Oshiomhole's performance in 2012 one commentator noted that the 'tales of woe' of Oshiomhole's predecessors had been replaced by a 'success story….. felt in all parts of the state, from Benin City the state capital to Ososo in Akoko Edo; from Uromi in Esan north-east to Ozalla in Owan west the report is the same: Oshiomhole is working.". http://www.thenationonlineng.net/2011/index.php/saturday-magazine/people-politics/26779-%E2%80%98why-edo-people-want-oshiomhole-to-return-in-2012%E2%80%99.html

technical capabilities. In the first term in office, 43 contracts were issued for more than 450km of roads, totaling NGN108.8 billion.[25] By end 2013, 85 per cent had been completed, and independent engineering tests concluded that the quality of assets created were adequate or above par. The contrast with the past was stark: allocations for the entire transport sector ranged from NGN4.4 billion in 2005 to NGN7.1 billion in the election year of 2008. Oshiomhole more than doubled this outlay in 2009; spending on road construction then climbed to NGN16.2 billion in 2012 and increased from 14 to 20 percent of total spending between 2008 and 2012.

A key point we hope to convey is that the fiscal, political and technical capabilities – Mann's (1988) 'infrastructural power' - needed to turn these contractual liabilities to political gain were not readily to hand in 2009. They required the deft crafting of elite pacts and specific institutional modalities to raise resources, attract trust and loyalties and project authority across multiple deconcentrated sites of investment activity. What follows is a highly abridged account of a problem-focused, adaptive assembly of institutional modalities that were both constrained by the conditions of possibility discussed above, but in a powerful way then conditioned the political economy with which they had to interact (see Porter and Watts 2016).

The fiscal environment was highly uncertain and appeared to offer little room to move. Edo, as in other Nigerian states, depends on federal transfers for around 90 per cent of revenue and 70 per cent of the balance, internally generated revenue (IGR), depends on local taxation. Unable to influence the volume of Federal transfers, Oshiomhole nonetheless dramatically increased IGR – in real terms, by an average of 20 per cent each year between 2008 and 2012. A staggering 72 per cent increase in IGR to NGN8.22 billion was achieved in 2009 through a mix of political strategy and networking. Working class support was garnered by beginning with statutory personal income taxes – in the main contributed by civil servants on whom the Governor was not critically dependent – and deals with high income and business taxpayers in Benin City. Both constituencies found appeal in the way the Governor personalised his commitments, maintaining an exhausting schedule of site visits to road project sites accompanied by TV cameras that would project him, often with hammer in hand, remonstrating with contractors against a backdrop of strategically placed billboards declaring 'Your taxes at work! '. Such political optics and high profile results were used to weaken the capacity of to resist the imposition new property and consumption taxes.

Normative signaling delivered two immediate fiscal prizes: World Bank budget support valued at US$225 million and, as important would be the Bank's branding of Edo as a 'high performing reform state' and inclusion in the SEEFOR project. This garnered credibility with the public at large, and with subscribers to a NGN25 billion bond successfully floated in 2010. Alongside, the Governor's networking with traditional authorities, private financiers and banks, contractors and business actors delivered additional legitimacy, fiscal flexibility and talent. These moves clearly demonstrate that if a talented leader can be pivotally important, she is more typically embedded in networks of social, economic and political power through which others are enrolled and rents and revenues mobilised and projected (Whitfield & Therkildsen, 2011; Craig & Porter, 2014). Crucial too was Oshiomhole's decision to forge an alliance with the State's preeminent traditional ruler. The Oba of Benin - reportedly incensed by the fact that the major PDP power brokers in the state, notably Chief Gabriel Igbinedion, the Esama of Benin, did not accord him due respect and courtesies – joined hands with the Governor, adopting him as a grandson. Legitimated by the

[25] This section draws heavily on Porter, Cyan, Lee, and Brisson (2014).

substantial cultural and social capital of the Oba (half of the Edo population belongs to his sphere of influence), Oshiomhole possessed a powerful vehicle for enrolling support for his administration and his reform initiatives (Ukoha, 2014).

3. The Politics of Bureaucratic Expertise and State Capability

Oshiomhole matched this political capability by assembling technocratic expertise to minimise risks that the civil service would hostage his plans. While his Commissioners – heads of agency – were handpicked, below this, he inherited civil service functionaries whose loyalties were uncertain, reflecting long PDP incumbency. Moreover, its principal orientation – using public office to delay, gatekeep and extract rents – posed major risks to the Governor's project. It was incapable of attracting top people, rewarding good performance nor credibly sanctioning behaviors at odds with the Governor's agenda.

Quite swiftly, four kinds of political/technical capability were put in place to create a textbook case of what Jessop (2008) refers to as state powers inscribed in institutional ensembles. First, the Economic and Strategy Team – the EST – provided the administration with an institutional ensemble capable of serving as a 'pivot', a fulcrum linking the state capacity to 'grasp' (that is, mobilise political and fiscal resources) and 'reach' (that is, control over contracting, payments and so on) and therefore deliver specific institutional outcomes. EST exemplified, in short, the operations of Michael Mann's infrastructural power. By bringing political and technical modalities and capabilities to bear in superintending every aspect of planning, contracting, payments and so on, EST simultaneously mobilised resources while extending territorial delivery to key constituencies across the state. To play this role, the EST necessarily included not just technical experts, but individuals networked politically into key constituencies, including private sector finance. [26] Oshiomhole empowered this team by creating an authorising environment that encouraged freedom to operate and shielded them from corrosive political influences. This also enabled Oshiomhole to 'reach around' the civil service. Road building is transaction intense: it requires centrally concentrated capabilities that can be reliably deployed at multiple sites. Thus the fusing of political and executive power (contra 'separation of powers') so essential to the EST's grasping capability had to be complemented by a capacity to reach, around the civil service, so as to superintend compliance with the Governor's political project across multiple, deconcentrated sites of action.

This capability to reach to the multiple sites where projects were executed was exemplified by handpicked Special Advisors (SAs) and Senior Special Assistants (SSAs) placed in all strategically and politically important agencies. These individuals, technically proficient, but also connected back into private sector networks were made responsible to 'advise'; but this function coupled their expertise with the 'shadow of the Governor' in every agency they were deployed. For example, at the Ministry of Works, responsible for capital budget execution, an SSA checked on the progress of project revisions or certificates of progress and reported, unlike in Bayelsa's Due Process Bureau, directly to the Governor and EST in the full confidence that his authority would

[26] The then chairman of the EST, Godwin Obaseki, is exemplar. A successful investment banker who has played a leading role in Nigeria's capital market, Obaseki also served on national initiatives at pension reform and knew how the public service worked. The EST also included the influential chairman of the Board of Internal Revenue, the Commissioners of Finance and of Budget and Economic Planning, and several other members with private sector experience and networks.

be backed directly by vertical power. Alongside, a small army of private sector engineering outfits aligned with the EST could provide the EST with a direct source of intelligence, with lower entry and exit costs than are possible with more unwieldy civil service systems.

Second, to the alarm of donor and other proponents of the virtues of modern, competitive procurement laws, important also were privileged relationships with a few powerful and technically competent contracting firms. Five large contractors accounted for 83 per cent of all road construction. Contracts awarded to one of these, along with its subsidiaries, amounted to 49 per cent of the total value of all State road contracts. This naturally exposed the Governor to allegations of favouritism and collusion, but it is important to understand the political and institutional assemblage these figures record. Reputational risks were more than outweighed by the fact that these contractors had both financial depth and links with local Banks needed to absorb the impact of the State's uncertain cash flows. In other words, they could allow arrears in payments from the State that would inevitably arise to accumulate without interrupting implementation. Banks too assumed a special prominence in this institutional ensemble. As holders of government accounts and guarantors of contracts, banks provided financial services to both the government and its contractors. To be sure, these were lucrative arrangements, but they alleviated cash flow problems and lowered risks on both sides. Here, 'signaling' was important. Risk assessments relied less on formal record of a contractor's financial and technical capacities as would be stipulated through formal bid processes, and more on informal norms, the principal's reputation, future expectations and other information to reduce transaction costs. The Administration's history of honouring contracts and its assurances of increased future capital spending encouraged banks to spread their risk over a number of contracts.

In sum, the networked power assembled by the EST reflected a specific political settlement between political and commercial elites in order for technocratic expertise to yield fruit. But to do so, and not create institutional arrangements contingent on the mana of individuals (as in Bayelsa' due process arrangements) easily undermined by those excluded from the settlement, it was necessary to craft institutional modalities that would enable the ensemble of grasping and reaching to gain traction. Intriguing to PFM savvy observers was the degree to which these modalities departed from modern 'public finance management best practice' whilst continuing to hold high the normative banner of transparency, the determination to serve and deliver results. These modalities included generous mobilisation advances (sometimes up to 43 per cent of the total value of contracts), permission for contactors to 'design as you go', frequent revisions to contracts, to allow modifications to budgets at several stages and for new 'projects' to be inserted into existing contracts, so as to reward high performing contractors and avoid transaction intensive rebidding processes.

In all, these eschewed the much vaunted reform commitments to the separation of powers. The risks, for instance, that contractors and certifying engineers would collude were mitigated by displacing the conventional triangle of accountability between the client, contractor and supervising engineer. Direct lines of accountability between the client and contractor were favoured by arrangements that made engineers dependent on the contractor for their fees, while at the same time, the norms of trust and loyalty between the client and contractor were backed by the Governor's and EST's personalised supervision. By this mix of measures, the administration crafted an unorthodox system of reward and sanction that was acceptable to the overwhelming electoral majority that backed the Governor's return in 2012. Thus it may be argued that the demands of Nigeria's provision pact could at least be held at bay, a more durable ordering of power achieved that, while not yet implementing the normative commitments (transparency, accountability, participation), could at least wait for their 'full implementation' for so long as public goods continued to be so visibly delivered.

Conclusions: EITI, Transparency and the Ordering of Power

EITI is a particular sort of global instrumentality (a multi-stakeholder initiative - or what Burca, Keohane and Sable (2014) refer to as "global experimental governance" (GXG)[27] - designed for a particular sector (extractives) which was the consequence of a set of historical conditions that gave rise to a global norm of transparency and disclosure. The transparency norm was not the exclusive product of reputational and other crises in the global oil and gas and mining sectors, and indeed it drew strength and legitimacy from other political and policy debates in related arenas (most obviously human rights, corruption, the financial crises of 1997/97, and so on) associated with the globalization of capital and the reach of transnational corporate activity. From around 2000, transparency had become part of the holy quartet of global principles deemed crucial for development: accountability, transparency, participation and inclusion (Craig and Porter 2006; Carothers and Brechenmacher, 2014). In our account we have emphasized first that the conditions of possibility for the norm of transparency were themselves a complex bargaining process among power corporate, state, civil society actors and social movements. Second, we have argued that the specific form of institutionalization of EITI – and the elaboration of structures of governance and systems of monitoring and compliance – was also a reflection of the operations of power and contentious politics (a transnational bargaining space in short). Some avenues (for example the question of voluntary versus mandatory capabilities) were closed off and the fact that EITI ultimately addressed one node (and the burden accordingly resting largely upon host governments and NOCs) in the oil complex and required an active civil society presence as part of the deliberative and monitoring functions were illustrations of a particular ordering of power. And, when seen through the lens of this bargaining space, institutional effectiveness was accordingly predicated on hypothesized causal relations in which information disclosure would unleash a cascade of effects through the public sector and deliver development outcomes.

EITI as a global modality was both a product of the ordering of power while its institutional effectiveness nationally also turned on the ways in which it was locally embedded within institutional ensembles understood as assemblages of power (Jessop 2008). EITI provides, then, a powerful case for the purposes of WDR of how "local context matters". How might a global

[27] GXG is an "institutionalized process of participatory and multilevel collective problem solving, in which the problems (and the means of addressing them) are framed in an open-ended way, and subjected to periodic revision by various forms of peer review in the light of locally generated knowledge" (2014:1-2). There are five "deliberative" properties. First, initial reflection and discussion among stakeholders with a broadly shared perception of a common problem. Second, the articulation of a framework understanding with open-ended goals. Third, implementation of these broadly framed goals is left to 'lower-level' or contextually situated actors who have knowledge of local conditions and considerable discretion to adapt the framework norms to these different contexts. Fourth, continuous feedback is provided from local contexts, allowing for reporting and monitoring across a range of contexts, with outcomes subject to peer review. Fifth, goals and practices should be periodically and routinely re-evaluated and, where appropriate, revised in light of the results of the peer review.

modality of what we have called intentional intervention shape or refigure the national bargaining space? How might interventions provide leverage for some groups and not others? How might the institutional arrival of the transparency norm alter what WDR calls "the distribution of power", and be consequential for institutional function and public sector effectiveness? On its face one might anticipate a variety of outcomes: superficial and shallow application (mimicry), insufficient and weak civil society forces constrain deliberative action, a "bounce effect" in which transparency serves only to justify that patrimonial provisioning pacts have "performed" the minimal requirements for compliance. In principle one might, in some circumstances, anticipate that transparency proves to be deeply empowering and capable of helping to construct new bargaining space. At the very least, an audit offers up hitherto limited or non-existent information on the black box of petro-finances.

At the outset, we cautioned that the heterodoxy of differing places, inter-temporality and the ways the norms of global intentional interventions are articulated through national and subnational levels of scale would challenge any generalisation. But we hoped to begin to chart the conditions under which differing outcomes (power relations and institutional effectiveness) can emerge. In some instances, where change seems in reasonable and persuasive prospect – as it did with EITI and Nigeria, 2003-2007 – it can in fact amount only to a temporary isomorphic mimicry in which the effects of travelling norms become untraceable or appear only as second order effects about which it is possible only to speculate. But, without over-generalising, Edo's experience in the five years from 2009 shows that where the conditions of possibility are favorably allied with institutional modalities, reform momentums can be created that neither reproduce existing settlements (the balance of power), nor are easily reduced to the trivialities of mere normative compliance. Rather, as in Edo's case, quite new and unexpected (and to donor eyes, not wholly palatable) governance institutions can emerge that prove to be highly effective and locally legitimate.

NEITI unquestionably served a purpose for the ruling coalition in the period 2003-2007. The 1999-2004 audits were important, disclosed key aspects of a hitherto closed and hermetic revenue system, and was able to inform (but not necessarily empower) civil society. The fact that groups such as Human Rights Watch (*Chop Fine*, 2007) the Niger Delta Budget Platform (2009, 2010) and Social Action (Budget Watch, 2008) published pathbreaking work into local government and state-level revenue politics is in some way a product of the momentum created by NEITI – in this sense, 'second order' effects of NEITI. One of the paradoxes of the first audits, however, is that the discrepancies between what the Central Bank received and what companies paid turned out to be small (0.02% of total cash flows). This suggests the possibility that the particular way that EITI was crafted might have occluded attention to all sorts of core questions – costs, bid rounds, oil theft – or at least could never have been accessed through the EITI mandate. Perhaps triggered by the appointment of a reformer on the Oil and Gas Implementation Committee in 2009, NEITI did finally publish its delayed audits, and has improved its timeliness with subsequent (and useful) 2012-2014 audits. Indeed, the Board under the leadership of Ogoni activist Ledum Mittee, has exposed new faultiness within the oil structure: the 2013 release of the 2009-2011 audit revealed \$10 billion losses to bunkering, fraudulent oil deals, overpayment to oil marketeers, and massive payment owed by the NNPC to say nothing of \$25.3 billion missing and unaccountable[28]. There

[28] While NEITI did disclose important information it is worthwhile recalling, as Dauda Garuba does, that NEITI was part of a vast disclosure process over the last decade and more documenting the degree of fraud and waste: "The Natural Resource Governance Institute's (NRGI) Resource Governance Index benchmarks the quality of the

is still no metering system capable of determining actual flows from the wellhead to terminals. Whether the new executive secretary of NEITI Hajiya Zainab Ahmed appointed by recently elected President Buhari, backed by progressive governors like Nasir El-Rufai of Kaduna who has been appointed to unravel the almost 4 trillion naira not remitted to the Federation Account between 2012 and mid-2015, will be able push through meaningful reforms (while the Petroleum Industry Bill still languishes in the Senate) remains to be seen.

Overall, NEITI was diffuse and undirected as Shaxson (2009:44) rightly concludes, which only focused on (and was therefore able to disclose data on) a limited part of the oil complex. Key areas recommended for reform for example in their 2009 report were not implemented. And there is little evidence that the theory of social change on which EITI was predicated – the process by which transparency was to lead to better outcomes and institutional effectiveness – produced the sorts of reforms anticipated (and applauded) by its supporters. Indeed after 2007 oil theft – accounting for 10-15% of production and sometimes purported reaching 400,000 barrel per day – and illegal refining grew to epidemic proportions, the Niger delta fell headlong into an insurgency until an Amnesty Agreement in 2009, and during the Goodluck administration 2009-2015 the petroleum sector fell further into disrepute under its controversial oil minister. As the incompetence and ineffectiveness of this administration deepened, oil revenues suddenly emerged within the political domain in 2013. The widely-regarded head of the Central Bank claimed that NNPC had not handed over $50 billion of missing revenues (he was subsequently fired from his position in 2014). This came on the back of a report by Nuhu Ribadu released in October 2012 on the 2002-2011 period which documented massive irregularities across all sides of the industry including $6.3 billion annual losses due to bunkering, and $29 billion losses over a decade due to contract malfeasance, and a vast and corrupt system of oil import licensing and subsidies. The Goodluck government buried these oil reports and then, following pressures from the IMF and the Finance Minister, cut the oil subsidy for Nigerian consumers (producing a tidal wave of popular protest).

In short between 2007 and the last years of the Goodluck administration, the Petroleum Bill was stopped dead in its tracks and NEITI was shipwrecked. The provisioning pact continued to "chop" oil on a scale that appeared venal even by Nigerian standards. The moral here is that the reform efforts of NEITI simply "bounced" off of the powerful provisioning pact whatever the merits of a decade of audits. For the ambitions of NEITI to have been met would have demanded an unlikely array of forces – that is to say a pacting arrangement of power elite and civic organization back by power political forces - capable of contesting the vested interests of an oil cartel built, over half a century, around access to hydrocarbon. As a recent report put it NEITI "produced limited benefits due to a lack of political will" (Brockmeyer and Fox 2015, 26). Perhaps the best that can

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governance of oil, gas and mining in 58 countries against key indicators, comprising institutional and legal setting, reporting practices, safeguards and quality controls, and enabling environment. The latest index ranked Nigeria 40th, with a weak overall composite score of 42, out of 100. This poor showing only confirms the findings of five different oil and gas audit reports by the Nigeria Extractive Industries Transparency Initiative (NEITI); the KPMG report on the NNPC; the House of Representatives Ad-Hoc Committee report on the fuel subsidy regime; the (two) Aig-Imoukhuede-led committee reports on fuel subsidy claims and payments; the Kalu Idika Kalu report on refineries; the Dotun Sulaiman Committee report on governance and global best practices in the NNPC; the report of the Nuhu Ribadu-led Petroleum Revenue Task Force; the Nigeria Natural Resource Charter benchmarking reports (2012 and 2014); and the PwC report on the alleged unremitted funds into the federation account by the NNPC" (Premium Times, July 15th 2015 http://allafrica.com/stories/201507090054.html).

be said for NEITI is that it helped embed a transparency norm in Nigeria and provided information that gradually and slowly entered the media, the popular consciousness and political debate. Without this it is perhaps hard to have imagined that the re-emergence of contentious oil politics around subsidies, theft, oil blocks and the like since 2012 would have been of sufficient consequence to have oil figure so centrally in President Buhari's reform program.

Finally, are their some general principles at work in the EITI story? Clearly structures of power – what we call following Slater (2010) the ordering of power – and state capabilities are deeply interdependent. But the EITI as an exemplar multi-stakeholder initiative reveals the profound sorts of tensions and constraints surrounding these global modalities. If "protection and expansion of civic space is at the core of all public governance oriented MSIs" (Fox and Brockmeyer 2015:55), it is clear that the record – indeed the evidence itself - here is mixed at best. Klutz et al (2015) in their review of EITI did report in general increases in transparency and debate but to approach the lofty goals envisaged in 2003, EITI must provide must provide new points of leverage for reformers within the "existing accountability ecosystem". Edo State at least points to a set of conditions in which bureaucratic and institutional effectiveness can emerge from within an ordering of power customarily seen as rentier or patrimonial – indeed in Nigeria's case a situation in which the dead hand of the resource curse is seen to foreclose most reformist impulses. This is not simply a story of "political champions', or clever problem driven iterative adaptation, but of strategy, coalition building, bargaining and overcoming certain sorts of commitment and collective problems.

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