

# Institutionalising Transparency & Accountability at Sub-National Level

Lessons From Bayelsa State's Experience from Bayelsa  
Expenditure and Transparency Initiative (BEITI) to Open  
Government Partnership (OGP)

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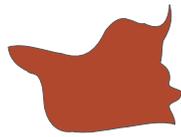
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# INTRODUCTION



Over the last decade, the government of Bayelsa State has put in place an appreciable number of legal and institutional mechanisms to promote transparency and accountability in governance. Bayelsa was among the first states in Nigeria to introduce a Public Procurement Law and a Fiscal Responsibility Law in 2009.

These laws established the Due Process Bureau and Fiscal Responsibility Commission respectively, duly mirroring the governance reforms that were being implemented at the Federal level in Nigeria. Other transparency and accountability initiatives that have since being introduced include monthly transparency briefings and the use of oracle financial products to improve its accounting systems.

However, the most significant and comprehensive mechanism of all was the Bayelsa Expenditure and Income Transparency Initiative (BEITI). At the time of its establishment, it was widely acknowledged for being the first and only of its kind in Nigeria.

This was because BEITI was designed, in

the first instance, as a bold state-level effort to implement the global Extractive Industries Transparency Initiative (EITI).

Nigeria had signed on to and was implementing the initiative at the federal level. Beyond this, BEITI was initiated as a multi-stakeholder mechanism owned and driven by Bayelsans with the broad objective of ensuring transparency in the receipt, allocation, accounting and management of the state's resources and those of its local government areas (LGAs).

Stakeholders at the international, federal and state levels demonstrated palpable faith in the potential of BEITI to increase civil society engagement in fiscal transparency, facilitate greater public access to the state's income and expenditure data and improve overall governance.<sup>1</sup>

However, less than four years after its inception, a report by Revenue Watch Institute (RWI)<sup>2</sup> – which provided technical and financial support for the initiative – noted that even though the operation of the initiative had led to some ancillary benefits like public awareness, this “had not yet

<sup>1</sup>The North-South Institute, 'Subnational Management of Resource Revenues in Nigeria' (Policy Brief, March 2012).

<sup>2</sup>In 2013, Revenue Watch Institute merged with the Natural Resource Charter to form the Natural Resource Governance Institute, with the objective of improving the governance of natural resources and to promote sustainable and inclusive development.



translated into improved transparency and accountability of resource revenues or increased government capacity and performance”.<sup>3</sup>

This notwithstanding, the efforts to initiate and operationalise the initiative produced lessons that are critical to similar efforts elsewhere and in Bayelsa State itself going forward.

In the latter respect, Bayelsa is currently one of many states in Nigeria which are in the process of signing on to the Open Government Partnership (OGP); a multilateral multi-stakeholder initiative with a focus on improving transparency, inclusion, responsiveness and accountability.

The initiative was launched in 2011 with eight (8) countries which has since increased to about 80 participating countries.

Nigeria signed on in 2016 and is currently implementing its first National Action Plan for 2017 – 2019. As an integral component of OGP, the Nigeria Secretariat is providing

support for subnational engagement to encourage states to subscribe to the initiative.

As Bayelsa State works towards signing on, this policy paper looks at the journey of the state in working towards institutionalising transparency and accountability in governance from the now-defunct BEITI to the ongoing OGP process.

The striking parallels between the conception, objectives and operational framework of both initiatives provide an apt foundation through which to analyse the efforts of the state to ensure that the lessons from the experience of BEITI are leveraged for the successful implementation of OGP.

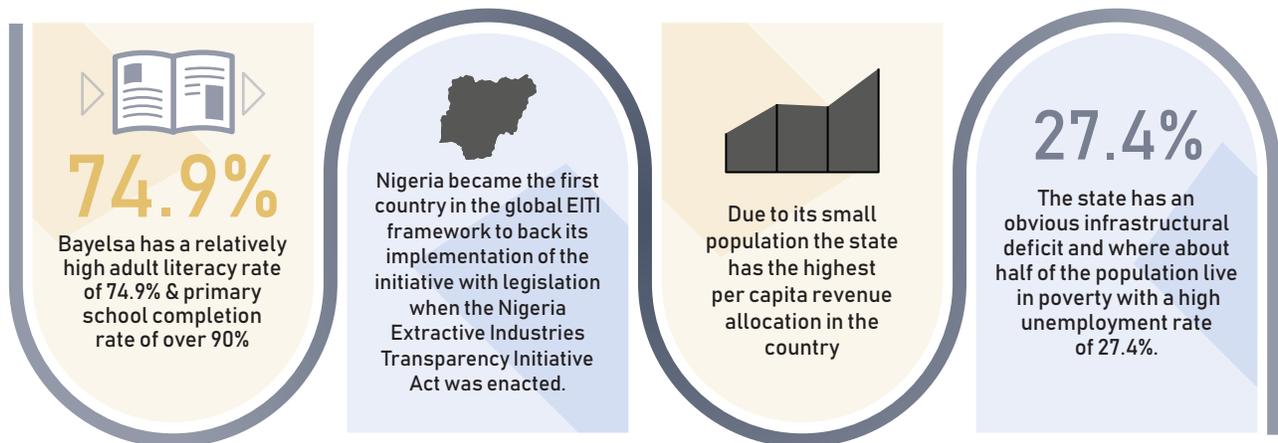
Furthermore, the unique experience of Bayelsa State in this regard can provide valuable lessons for efforts elsewhere in Nigeria and beyond to institutionalise mechanisms for transparency and accountability at subnational level.

Over the last decade, the government of Bayelsa State has put in place an appreciable number of legal and institutional mechanisms to promote transparency and accountability in governance

<sup>3</sup>Jeremy Weate 'An Uphill Struggle: Oil Wealth and the Push for Transparency in the Niger Delta' (Revenue Watch Institute, February 2012) 1.



# BACKGROUND ON BAYELSA STATE



Created in 1996, Bayelsa State is one of the youngest and smallest states in Nigeria. It has a population of just under two million, with eight LGAs; the fewest in the country. Bayelsa is situated in the south of Nigeria and is one of the nine states in the oil-rich Niger Delta region. Oil was first discovered in Nigeria in 1956 in Oloibiri, a town in Ogbia LGA of Bayelsa State.

Bayelsa has a relatively high adult literacy rate of 74.9% and primary school completion rate of over 90%.<sup>4</sup> Based on a constitutionally stipulated revenue sharing formula, which ensures that Niger Delta states receive a relatively higher percentage of allocation from the revenues of the Federal Government which are substantially crude oil sales-dependent, Bayelsa receives substantial sums monthly to pursue development.<sup>5</sup>

Between 1999 – when Nigeria returned to democratic governance – and date, the state is estimated to have received about one trillion Naira as allocation.<sup>6</sup> Due to its small population, the state has the highest per capita revenue allocation in the country.<sup>7</sup>

This has however not ameliorated the development challenges of the state which has an obvious infrastructural deficit and where about half of the population live in poverty with a high unemployment rate of 27.4%.<sup>8</sup>

This poor state of affairs, which reflects broader problems of development in the Niger Delta region and Nigeria as a whole, has been attributed to a number of factors.

These include the largely riverine and estuarine setting of the state which poses distinctive challenges to building physical infrastructure, the insecurity that existed in the region in the early 2000s, the damage to the environment in the region from years of irresponsible oil exploration activities by multinational oil companies, the unjust top-heavy structure of democratic practice in Nigeria, and the poor state of governance and prevalence of corruption in the state.

Considering the large amount of financial resources that have accrued to the state since its formation, a more

<sup>4</sup> National Bureau of Statistics, 'The National Literacy Survey' (NBS, June 2010).

<sup>5</sup> This principle providing for 13% of revenue accruing to the Federation Account of Nigeria directly from natural resources to be shared to the relevant States with such resources is provided for in Section 162 of the Constitution of the Federal Republic of Nigeria, 1999.

<sup>6</sup> Michael Eboh, '13% Derivation: Oil-Producing states Receive N7trn in 18 Years' (Vanguard, 22 August, 2017).

<sup>7</sup> Weate (n 3) 2.



transparent and accountable utilisation of such resources would have significantly improved its development trajectory.

Whilst successive governments since 1999 have initiated a varying range of governance reforms, the results have been negligible at best.

With more diligent institutionalisation and operation of good governance initiatives that will ensure proper management of its resources and prevent corruption, the state possesses the potential to grow and achieve meaningful development.

## **TRANSPARENCY AND ACCOUNTABILITY INITIATIVES IN BAYELSA STATE**

To provide a logical discourse of the efforts of Bayelsa State to institutionalise transparency and accountability, the initiatives shall be considered in three phases: The past, the present and the future.

The experience with BEITI represents the past, the initiatives put in place since the collapse of BEITI will be discussed as the present, with OGP considered as providing a roadmap for the future.

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<sup>10</sup>ThisDay, 'Nigeria: Bayelsa – Charting a New Course in Transparency' (11 March, 2009).



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# THE BAYELSA EXPENDITURE AND TRANSPARENCY INITIATIVE (BEITI) – THE PAST

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The Bayelsa State Expenditure and Transparency Initiative (BEITI) was a multi-stakeholder transparency mechanism modelled after the Extractive Industries Transparency Initiative (EITI).

EITI is a campaign prescribing a global standard to promote the open and accountable management of oil, gas and mineral resources.<sup>9</sup> With the objective of facilitating better governance of resource revenues in countries participating in EITI, oil, gas and mining companies are required to publish what they pay to governments and the latter are also required to publish what they receive from the former.

These figures from both parties are then reconciled by an independent body, allowing the public to stay informed of revenues from the extractives sector to enable them to hold their governments accountable.

Nigeria declared its acceptance of the principles of EITI in November 2003, with the inauguration of its National Stakeholders Working Group (NSWG) taking place in February 2004. On the 28<sup>th</sup> of May 2007, Nigeria became the first country in the global EITI framework to back its implementation of the initiative with legislation when the Nigeria Extractive Industries Transparency Initiative Act was enacted.

By establishing BEITI Bayelsa became the first and only state to take steps to implement the principles and standards of EITI at the subnational level. It was a bold step at the time by the government of Timipre Sylva to foster greater transparency and accountability.

BEITI was pursued as a key component of the government's Sustainable Development Strategy which was geared towards sustaining a peaceful environment, enhancing the investment climate in the state and seeking financial and technical partnership with international development partners to achieve the Millennium Development Goals (MDGs).<sup>10</sup>

## THE SCOPE OF BEITI

Even though BEITI was conceptualised as a subnational model of EITI, the scope of the initiative was much broader than that of EITI.

Whilst the focus of EITI – and NEITI at the national level – was on entrenching transparency in revenues from the extractives industry, BEITI went a step further by focusing on expenditures as well as revenues.

It was therefore designed to ensure transparency throughout the fiscal circle of the state comprising revenues, allocations, expenditures and other resource inflows.<sup>11</sup>

## The BEITI Process

Following months of engagement between the government of Bayelsa State and its international partner, RWI, the first step in the BEITI process began with the inauguration of the BEITI Stakeholder Working Group (BSWG). The group had representatives of the executive arm of government selected by the governor such as the Director-General of the Due Process and e-Governance Bureau, Commissioner of Finance and Budget, Attorney-General, Commissioners for Information and Health, amongst others.

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<sup>11</sup>Weate (n 3) 4.

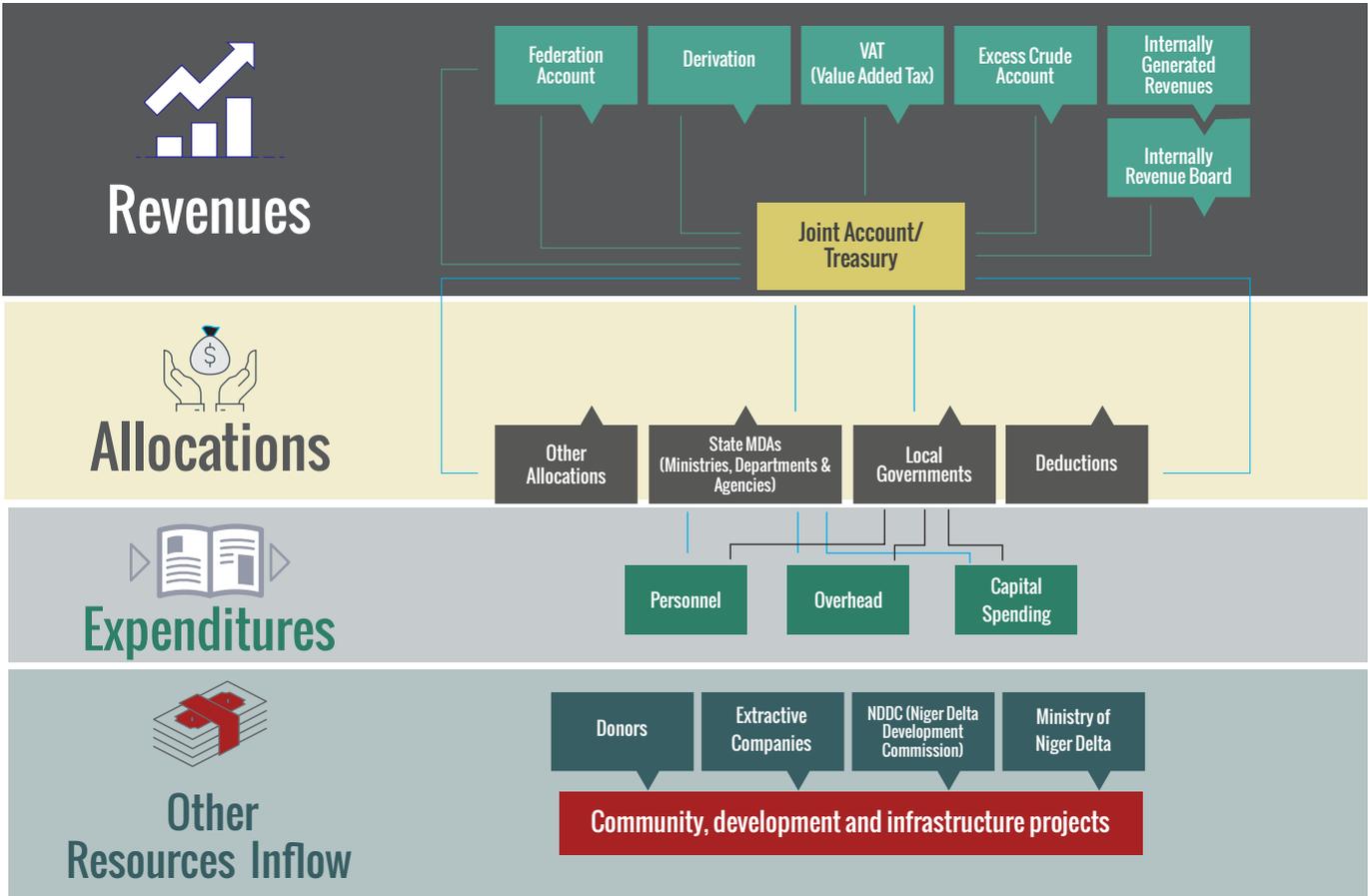


Fig. 1 - Graphic Representation of the Income & Expenditure Flow of the Fiscal Regime in Bayelsa State covered within the scope of BEITI (Credit – RWI).

The legislature was also represented by the Chairman, Public Accounts Committee and Chairman, Appropriation, Finance and & Economic Committee of the Bayelsa State House of Assembly. The BSWG also had representatives of civil society groups such as the Bayelsa Non-Governmental Organisations Forum (BANGOF), Environmental Rights Action (ERA) and the Ijaw Youth Council (IYC).

Other members included representatives of the private sector such as Shell Petroleum Development Company (SPDC) and Nigerian Agip Oil Company (NAOC), amongst others. RWI had a representative in the working group as an observer. A secretariat was established in the state's Office of Due Process and e-Governance to support the work of the BSWG.

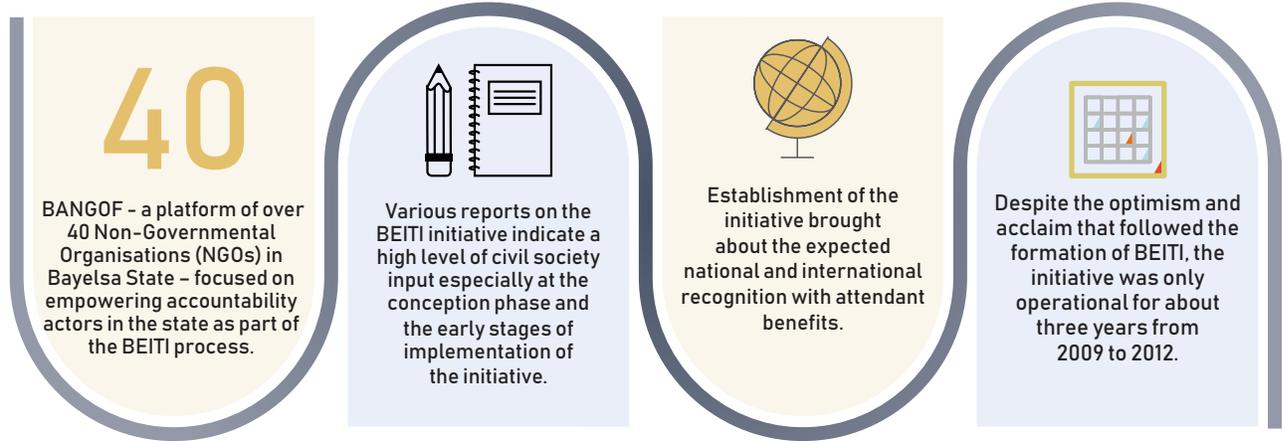
Following its setting up, the working group developed a three-year work plan ending March 2012, with two key broad objectives. The first was to enact a BEITI law to provide legislative backing for its work and also institutionalise the initiative. The second was to produce a first reconciliation report.<sup>12</sup>

To facilitate the achievement of these objectives, RWI funded a series of stakeholder workshops and the development of an implementation strategy. This led to an agreement on the scope of the activities of the initiative and its operations, including what data to be collected, from which entities and the development of templates to collect data.

<sup>12</sup> *ibid.*

<sup>13</sup> The North-South Institute (n 1); World Bank, 'Project Appraisal Document on a Proposed Credit in the Amount of SDR 126.2 Million (US\$200 Million Equivalent) to the Federal Republic of Nigeria for a State Employment and Expenditure for Results Project (SEEFOR)' (World Bank, 9 February, 2012);

<sup>14</sup> UNODC, 'UNODC Representative Signs Project Document on Anti-Corruption' (UNODC Press Release, 12 January 2011).



### The Role of Civil Society Organisations

The facilitating role of RWI extended to strengthening the capacity of civil society to participate meaningfully in the process. To this end, support was provided to two organisations, BANGOF and the Niger Delta Citizens and Budget Platform (NDCBP).

The work of NDCBP – a coalition of Civil Society Organisations (CSOs) in the Niger Delta – had a more general focus of coordinating accountability mechanisms in four states in the region, including Bayelsa. The other states were Akwa Ibom, Delta and Rivers.

A considerable amount of CSOs were trained through the platform on budget and project monitoring with RWI also providing funding for key budget monitoring activities at the community level. On the other hand, BANGOF - a platform of over 40 Non-Governmental Organisations (NGOs) in Bayelsa State – focused on empowering accountability actors in the state as part of the BEITI process. As noted above, BANGOF also had a representative in the BSWG.

Other roles performed by BANGOF included engaging in sensitization and creating public awareness of the BEITI process and of transparency and accountability issues generally in the state. The organisation also engaged in advocacy and engagement with legislators and stakeholders for the passage of the BEITI Bill.

Various reports on the BEITI initiative indicate a high level of civil society input especially at the conception phase and the early stages of implementation of the initiative. However, the

level of participation and impact of CSOs in the process waned as time passed.

This was attributed to factors such as the dwindling of political will in support of the process and consequent failure to pass the BEITI Bill which prevented the institutionalisation of the initiative.<sup>14</sup>

### Gains of BEITI

Despite the optimism and acclaim that followed the formation of BEITI, the initiative was only operational for about three years from 2009 to 2012. After this, the momentum and political will for the initiative started dwindling and it eventually disintegrated with the change in government in the state in 2012. The short timeframe of operation notwithstanding, BEITI made gains in three major areas.

Firstly, the establishment of the initiative brought about the expected national and international recognition with attendant benefits. Whilst there is no concrete data demonstrating increase in private sector investment in the state as a result of the initiative, BEITI led to a number of development projects with international donor organisations. The first of these was the partnership with RWI which provided financial and technical assistance for BEITI from the onset.

Beyond this and as a direct result of the implementation of the initiative, the state government went into a partnership with UNODC on the project, "Partnership with Bayelsa State: Bayelsa Expenditure and Income Transparency

<sup>15</sup>ibid.

<sup>16</sup>BANGOF, 'What You Must Know About the Bayelsa Expenditure and Income Transparency Initiative (BEITI)' (2011).

<sup>17</sup>Weate (n 3) 1.



Initiative (BEITI) and the Judiciary Integrity Action Programme (JIA)".

This project was designed to provide support by building the institutional and operational capacities of target groups under BEITI, including the Secretariat, the BSWG and BANGOF. In addition, the project provided support for comprehensive justice sector reforms, as well as assisting target groups to develop preventive anti-corruption policies in compliance with the United Nations Convention Against Corruption (UNCAC).<sup>15</sup>

The second major gain of BEITI lies in the obvious awareness it created amongst stakeholders in the state on issues of transparency, accountability and broader good governance reforms. The multi-stakeholder approach adopted by the initiative made it possible for the involvement of a wide range of government agencies, the legislature, private sector and civil society.

For an initiative implemented at a subnational level, this broad involvement heightened awareness and enriched the experience of the state in terms of ensuring transparency in dealing with fiscal issues and pursuing general governance reforms.

This awareness was further enhanced by the various sensitisation activities undertaken by civil society groups like BANGOF to local government and community levels.<sup>16</sup>

Finally, and corollary to the above, is the capacity enhancement that took place in the area of transparency and accountability as a result of the initiative. Most members of civil society in particular who were part of the initiative and interviewed in the writing of this paper highlighted the intensive and comprehensive capacity building component of the initiative at both conception and implementation phases.

At the inception stage of the initiative for instance, RWI put together planning and capacity building programmes, which lasted for ten consecutive days in some cases, and held in locations outside Bayelsa State to ensure maximum concentration and learning.

The organisation referenced this fact in its report, noting how civil society's understanding of public financial management systems and ability to analyse and critique government

planning and budgeting processes has increased as a result of the initiative.<sup>17</sup>

Some of these organisations have since proceeded to use the knowledge and experience gained through the BEITI process in other governance projects and initiatives.

### **Challenges of BEITI**

As noted earlier, BEITI did not meet most of the expectations that existed at its inception, especially in terms of sustainability. The report of RWI on the initiative duly noted that "the project has not been an easy one, and its impact remains to be seen." The feedback from most stakeholders who were involved in the process was however direr.

CSOs involved in the process expressed deep disappointment in the discouraging attitude of the government at the implementation phase of the initiative, especially in terms of providing access to official records which was a core component of the process.

Moreover, the first reconciliation report of the initiative failed to materialise despite the concerted efforts of RWI and the first external auditor that was appointed, S. S. Afemikhe and Co, mainly "due to non-cooperation from government agencies and companies unwilling[ness] to provide information".<sup>19</sup>

All of these meant that BEITI started losing momentum as early as 2010, less than two years after its inception. Despite efforts to revive the process, the initiative had practically ceased operation by 2012. This failure of BEITI is attributable to a broad range of challenges. The most significant of these include the following:

#### **a. Non-Passage of the BEITI Bill**

The initiative operated for the relatively short period of time it did without an enabling law. The enactment of the BEITI law was a central objective from the inception of the initiative. Yet, despite the participation of the Attorney-General, members of the legislature and other top state officials in the BSWG, and repeated assurances from the government, the law was never enacted.

In reality, it took the pleading and cajoling of the BEITI secretariat for the draft bill from the Ministry of Justice to be

<sup>18</sup>ibid.

<sup>19</sup>ibid



formally presented to the House of Assembly. Despite the advocacy and wider engagement efforts of RWI, UNODC and CSOs, the bill was never passed in the House.

The non-passage of the BEITI Bill was arguably the most significant impediment to the sustainability of the initiative. It left the operation and continuation of the initiative at the discretion of government, which duly brought it to an end as the will of government to ensure transparency in its fiscal dealings waned.

### **b. The Paradox of Political Will**

The importance of political will is an oft-reiterated point in pursuing governance reforms around the world. In the case of BEITI, political will played as much a significant role in its establishment as in its demise. It was the vigorous will of the governor of Bayelsa state at the time, Timipre Sylva, to introduce broad governance reforms that encouraged RWI and other stakeholders to get involved in establishing BEITI.

This demonstration of political will therefore provided the much-needed momentum at the inception stage of the initiative. However, once the initiative was operational, there was a palpable lack of commitment from government.<sup>20</sup>

As noted by most stakeholders interviewed for this paper – both within and outside government – the will of the government to follow through on the transparency and accountability reforms which the initiative entailed waned as quickly as it had grown. Shortly after its inception, it became clear that the Governor “wanted the reputation and prestige that the initiative afforded without any of the consequences of such reform”.<sup>21</sup>

In certain exceptional instances where the governor demonstrated political will, the actions of commissioners, legislators and other top state officials showed an obvious lack of commitment to the fiscal reforms under the initiative. A good example of this had to do with the work of the first external auditor appointed under BEITI, S. S. Afemikhe and Co.

Even though the firm was armed with a directive from Governor Sylva to all relevant ministries, departments and agencies to comply with information requests, it faced a lot of suspicion that its work was motivated by political reasons unfavourable to the incumbent government. Hence, it

suffered undue delays due to non-cooperation from government agencies unwilling to provide information, preventing the firm from completing its task.<sup>22</sup>

### **c. Disconnect Between Reforms at the Global, National and Subnational Levels**

The modelling of BEITI after EITI at the global level and NEITI at the national level was a prime factor in its popularity and appeal. However, this connection existed only at a conceptual level. In practice, the operation of the initiative established no links with those at the global and national levels. BEITI therefore sought to operate within a framework of its own, albeit mirroring some of the practices of the initiatives it was modelled after.<sup>23</sup> Significantly, whilst both EITI and NEITI were focused on the extractives industry, the government of Bayelsa State sought to utilise BEITI as an all-encompassing mechanism to pursue a much broader range of transparency and accountability reforms.

Furthermore, the scope of BEITI went beyond just looking at revenues – as was the case with EITI and NEITI – to include transparency in the receipt, allocation, expenditure, accounting and management of the resources of the state and LGAs. These differences between BEITI and its higher-level progenitors and the novel nature of the initiative meant that it operated in a somewhat unknown policy space. Moreover, apart from its conception, the initiative had neither the direct support or benefit of experience from EITI and NEITI, as is the case with mechanisms like OGP that is discussed below.

Such links would have proved significant to the sustainability of the initiative. It would have also provided direction in dealing with some of the challenges that BEITI faced, especially in terms of coordination. Establishing such a connection would have also provided impetus for the initiative at critical moments when the commitment of government waned and the institutional framework for the continued operation of the initiative disintegrated.

### **d. Imbalance in the Membership of the Steering Committee: the BSWG**

As a multi-stakeholder initiative, the success of BEITI depended a lot on building consensus amongst the members of the working group. More importantly, it required the commitment of all parties involved – government, private sector and civil society – to succeed.

<sup>20</sup> Doug Porter and Michael Watts, 'Multi-Scaler Governance and Institutions: Intentional Development and the Conditions of Possibility in the Extractive Sector' (Background Paper to the World Development Report 2017, World Bank, 2 June 2016) 21-26.

<sup>21</sup>Weate (n 3) 9.

<sup>22</sup>Ibid 5.

<sup>23</sup>M. Müller, 'Turning the Curse into a Blessing: A Convenient Illusion: Lessons from the Nigerian EITI Process' in Jürgen Runge and James Shikwati eds, *Geological Resources and Good Governance in Sub-Saharan Africa* (Taylor and Francis, 2011) 81



Unfortunately, the elements of consensus and commitment were factors that were lacking in the operation of the working group. Representatives of civil society in the group noted situations where they would attend scheduled meetings and wait for hours for representatives of government to no avail. This lack of commitment from government representatives seriously hampered the success of the initiative and contributed to its eventual demise.

The impact of this was exacerbated by the imbalance in the membership of the working group. There was a preponderance of representatives of government in the group, with civil society representatives constituting less than 30 percent of the 18-member steering committee.<sup>24</sup>

Ironically, it was this low percentage of civil society representatives that continued to show the needed commitment. Despite their enthusiasm and willingness to take ownership of the process, the relative insignificance of their number meant that they could do little to save the initiative from its eventual collapse.

### **e. Lack of Progress at Local Government Level**

Even though one of the cardinal objectives of BEITI was to ensure transparency and accountability in public revenue and expenditure at the level of LGAs, very negligible results were achieved in this area. Mechanisms put in place in the operation of the initiative to ensure that the reforms

introduced by BEITI were stepped-down to LGAs had little impact.

The inclusion of the Commissioner for Local Governments in the BSWG was one of such fruitless mechanisms. In a broader context, even though RWI and other stakeholders involved in the process referred repeatedly to the importance of ensuring transparency at the level of LGAs, very little was done practically to operationalise the initiative at that level, apart from the creation of awareness.<sup>25</sup>

Hence, nothing was achieved in this respect and the objective to ensure transparency in the LGAs came to an end as soon as the initiative collapsed at the state level.

Apart from those discussed above, other factors that contributed to the failure of BEITI include issues of trust amongst stakeholders, the lack of a long-term plan and a change in government in the state in 2012.

The new government of Seriake Dickson has since abandoned the BEITI initiative and put in place its own transparency initiatives, as is often the case with political change and governance reforms in Nigeria.

Before looking at the move from BEITI to OGP, these extant initiatives are considered next.

<sup>24</sup>ThisDay (n 10).

<sup>25</sup>UNODC, 'Independent project evaluation of the Partnership in Bayelsa Expenditure and Income Transparency Initiative (BEITI) and Judicial Integrity Action Programme (JIA) - NGA T97 Nigeria' (United Nations, July 2012).

# THE BAYELSA STATE MONTHLY TRANSPARENCY BRIEFINGS INITIATIVE - THE PRESENT



## Background and Enabling Law

On assumption of office in February 2012, the current administration established a new initiative in furtherance of transparency: The Bayelsa State Monthly Transparency Briefings. As was the case with BEITI, the initiative was established pursuant to the political will of the governor expressed in his promise to ensure transparency and accountability in his inaugural address.<sup>26</sup>

However, unlike BEITI which suffered from the lack of a supporting legislative framework, this initiative was quickly backed by the passing of the Bayelsa State Income and Expenditure Transparency Law (BIETL), 2012.

The main object of the law is stated in Section 1 (1) of the Law which provides that, "In order to ensure and guarantee transparency in the management of the finances of the state, the Governor of Bayelsa State shall not later than fourteen days after the end of every month, cause to be published and delivered to the office of the commissioner in charge of information or such other officer that may be designated for that purpose by the Governor, a summary of the report of the income and expenditure of the state for the previous month."

The law further provides for a copy of the report for each month to be forwarded to the House of Assembly.<sup>27</sup> Copies

are also to be made available to members of the public upon a written application and payment of a fee not exceeding two thousand Naira (N2,000).<sup>28</sup>

A similar provision is made for the initiative to operate at the level of LGAs with penalties prescribed for refusal, neglect or failure to comply with the provisions of the Law both at the state and local government levels.<sup>29</sup>

## Implementation and Assessment

At its commencement, the Monthly Transparency Briefings were undertaken by the governor personally in the Banquet Hall of Government House in the state capital, Yenagoa.

It took the simple format of the governor stating the total income received by the state in the previous month with a breakdown of the

sources of such income in broad categories, such as statutory allocation, 13 percent derivation and internally generated revenue (IGR).

The expenditure for the month is also stated in the broad categories of salaries, Federation Account Allocation Committee (FAAC) deductions, contractual guarantees, debt servicing, grants to higher institutions, etc.<sup>30</sup>

The position of the government is that the change in format was introduced to reduce the cost that hosting the wider event entailed.

<sup>26</sup>Samuel Oyadongha, 'Dickson Sworn in as Bayelsa Governor' (Vanguard, 15 February 2012)

<sup>27</sup>Section 3, Pt. 1 of the Law. Some stakeholders are of the opinion that this law is a watered-down version of the BEITI law. However, there is no indication of this in the Law itself or in the transparency mechanism established under the law, which as the discussion below demonstrates, is fundamentally different from the operational framework of BEITI. Members of the House of Assembly claim that the BEITI law became so adulterated towards the end of the Syla administration, such that passing it in that state would have been meaningless. Furthermore, they claim that the lack of enthusiasm to pass the law was due to a suspicion that the Executive was only interested in passing it in order to meet conditions to access development assistance and not necessarily for the fundamental objective of promoting transparency and accountability. This does not, however, explain why it was not passed on its merits.

<sup>28</sup>ibid

<sup>29</sup>Sections 3 & 4 of Pt. 3 of the Law.

<sup>30</sup>Bayelsa State Government, 'Bayelsa Government Decries Decline in Federal Allocation to States. . . Posts N7.6BN as April Balance' (BYSG Press Release, 15 May 2018)



## INCOME

- Gross FAAC Inflow - N14.3 billion  
Comprising N3 billion (statutory allocation), N10.3 billion (derivation) and N802m million (VAT)

## EXPENDITURE

- FAAC Deductions - N1.6 billion  
Comprising N421 million (bond deduction), N741 million (restructured commercial bank loan), N128 million (refund of overpayments for revised 13% derivation), N126 (excess crude account facility) and N33 million (refund of arrears to Akwa Ibom State)
- Contractual Guarantees - N1.8 billion
- Civil Servants and Political Appointees Salaries - N3.2 billion
- Salary Grant to Tertiary Institutions - N630 million
- Gratuities - N23.8 million
- 10% Contribution to Primary School Teachers - N46 million

Figure 2 - Snapshot of Typical Information Provided by Bayelsa State Government during Monthly Transparency Briefings (June 2018)

The briefings often had in attendance a wide spectrum of stakeholders, including political appointees, traditional rulers, civil society and the press. They were as much a political exercise as they were a technical transparency activity. Even though civil society in the state welcomed the initiative at the onset, representatives who participated in the briefings raised a number of concerns about the sincerity of the conduct of the exercise.<sup>31</sup>

A recurring issue was the fact that sessions for feedback and questions at the briefings often appeared “teleguided”. Particular individuals seem to be pre-chosen to ask questions at the briefings, with the feedback often favourable or simply seeking clarifications, rather than questioning the authenticity of figures provided or rationale for expenditure.

Within the last year or so, the format of the briefings has been changed by the government. In place of the erstwhile broad approach with a wide range of stakeholders attending, it is

now held and styled as a “monthly transparency press briefing”. The briefing which now takes place in a conference room in Government House, usually has in attendance invited members of the press and a few political figures. Significantly, the briefing is also now carried out by the Deputy-Governor of the state, instead of the Governor.<sup>32</sup>

The position of the government is that the change in format was introduced to reduce the cost that hosting the wider event entailed. However, the exclusion of civil society and other stakeholders from the briefings has diminished the credibility and appeal of the initiative. Representatives of civil society in the state however appear to care less about their inclusion or exclusion.

As was the case with BEITI, the initiative is now regarded by civil society as an activity with the objective of making a political statement, rather than one geared towards genuinely ensuring transparency and accountability in the state.

<sup>31</sup>Samuel Oyadongha, 'Transparency Takes New Meaning in Bayelsa' (Vanguard, 23 April 2013),

<sup>32</sup>Bayelsa State Government, 'May 2018 Edition of BYG Monthly Transparency Briefing' (BYSG Press Release, 27 June 2018).



This notwithstanding, the initiation, legislation and implementation of the initiative has filled to a certain degree, the void left by the collapse of BEITI. It further demonstrates the intention of successive governments in the state to be seen to be following a path of transparency in governance; a path set in motion by BEITI.

**Between the Monthly Transparency Briefings Initiative and BEITI**

Whilst both BEITI and the monthly transparency briefings initiative were geared towards ensuring transparency – and the results of both are variegated, at least in the short term - there is a fundamental difference in their conception. BEITI was put together as a multi-stakeholder approach with government, civil society and the private sector working together.

The Monthly Transparency Briefings initiative was however conceived and implemented as a wholly government-driven effort to engender transparency in governance.

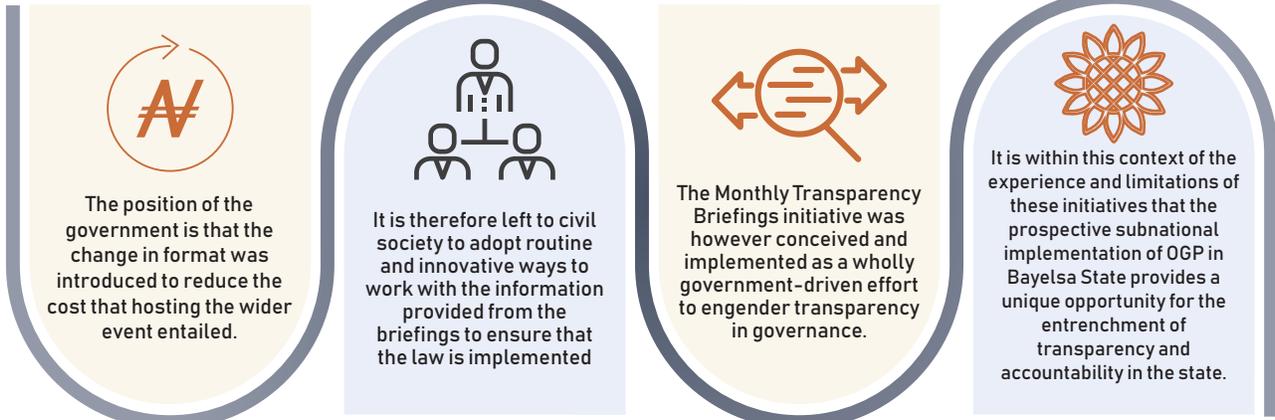
It is worth noting that the enabling law for the initiative does not even provide for a briefing to be held. It only requires the

governor to “cause to be published and delivered to the commissioner in charge of information or such other officer that may be designated for that purpose, a summary report of the income and expenditure of the state for the previous month”.<sup>33</sup>

The briefings can therefore be considered a purposeful interpretation of the legislative requirement to publish. The important point here is that, unlike BEITI, this initiative is unidirectional with no provision in the enabling law or implementation framework for meaningful civil society input or involvement.

It is therefore left to civil society to adopt routine and innovative ways to work with the information provided from the briefings to ensure that the law is implemented meaningfully to achieve the objective of ensuring transparency and accountability in the state.

It is within this context of the experience and limitations of these initiatives that the prospective subnational implementation of OGP in Bayelsa State provides a unique opportunity for the entrenchment of transparency and accountability in the state.



<sup>33</sup>Section 1, Pt. 1 of the Law.

# SUBNATIONAL IMPLEMENTATION OF THE OPEN GOVERNMENT PARTNERSHIP (OGP) IN BAYELSA STATE – THE FUTURE

## Background

The Open Government Partnership (OGP) is a multilateral multi-stakeholder initiative with a focus on improving transparency, inclusion, responsiveness and accountability at national and subnational levels. Member countries commit to promote open government, empower citizens, address corruption and harness innovations and technology to strengthen governance.<sup>34</sup>

The initiative brings together government and civil society reform champions and provides a mechanism through which government and civil society can have continuous dialogue. It is built on the premise that governance is likely to be more effective when subjected to public input and oversight.

OGP was established in September 2011 when the 8 founding governments – Brazil, Indonesia, Mexico, Norway, the Philippines, South Africa, the United Kingdom and the United States – endorsed the Open Government Declaration and announced their country action plans.

Currently, there are about 80 OGP participating countries and 20 subnational governments that have made 2,500 commitments to make their governments more open and accountable.

The President of Nigeria, Muhammadu Buhari expressed the commitment of the country to the principles of OGP at the

London Anti-Corruption Summit which held in May 2016. This was followed by a formal Letter of Intention to join a month later.

In July 2016, the OGP Secretariat wrote to the Government of Nigeria to convey the International Steering Committee's acceptance of Nigeria as a member. The country has since taken candid steps to implement the principles of the initiative. The most significant of these being the development in late 2016 of its first National Action Plan for the 30-month period from January 2017 to June 2019.<sup>35</sup>

The plan stipulated 14 commitments under 4 thematic areas. These are:

- Fiscal transparency
- Anti-corruption
- Access to information
- Citizen engagement.

Whilst it is yet early days, there are indications that Nigeria's membership of OGP has positively enhanced its international reputation. Apart from the obvious immediate impact of the decision to join the initiative, the country's reputation for transparency and anti-corruption efforts has

received marked recognition.

For instance, in 2017, the President, Muhammadu Buhari was named Anti-Corruption Champion of the African Union.<sup>36</sup> And in April 2018, Nigeria was elected into the International Steering Committee of OGP itself.<sup>37</sup>

Internally, OGP has proved an effective mechanism for

**The Open Government Partnership (OGP) is a multilateral multi-stakeholder initiative with a focus on improving transparency, inclusion, responsiveness and accountability at national and subnational levels.**

<sup>34</sup>Open Government Partnership Nigeria, 'OGP Nigeria National Action Plan (2017-2019) (December 2016).

<sup>35</sup>Ibid.

<sup>36</sup>Premium Times, 'Buhari to Champion Anti-Corruption Campaign at AU Summit' (Press Release, 25 January 2018).

<sup>37</sup>Open Government Partnership, 'Argentina, France, Nigeria and Romania Elected to Lead Open Government Partnership' (Press Release, 3 April 2018).



meaningful engagement between government and civil society in a range of governance reform initiatives in the above-stated thematic areas. In the area of asset recovery for instance, the Nigerian government and civil society organisations worked closely through the process of repatriating \$322.5 million of Abacha loot from Switzerland.

This partnership culminated in the signing of an MoU for the repatriation of the funds between Switzerland and Nigeria at the Global Forum on Asset Recovery in Washington, D.C in December 2017, to which a local CSO, the Africa Network for Environment and Economic Justice (ANEEJ) was a party. This partnership continues in the ongoing processes for the utilisation of the funds in Nigeria in accordance with the terms of the MoU.<sup>38</sup>

A significant component of Nigeria's National Action Plan 2017-2019 is the provision for Subnational Engagement. This is in recognition of the fact that the country is a federation with self-governing states. It is therefore important that reforms undertaken under OGP at the national level are duly reflected in the governance practices of the federating units, the states.

In furtherance of this, the OGP National Secretariat and Nigeria Governors' Forum is advocating and providing support for states to join the initiative.<sup>39</sup> Thus far seven states have signed on to OGP. These are Kaduna, Kano, Ebonyi, Anambra, Niger, Abia and Enugu. As a voluntary mechanism, states are under no obligation to sign on to the initiative.

However, states are encouraged to join because of the benefits of doing so.

Benefits of Implementing OGP at the Subnational Level. By signing on to OGP and implementing its principles at the subnational level, states such as Bayelsa stand to benefit in a number of ways. Some of these stated benefits are:

- Improved service delivery
- Increased domestic revenue mobilisation arising from transparent application of revenue
- Improved trust between state governments and citizens
- States becoming preferred destination for foreign direct investment and donor funds
- Reduction in cases of financial misappropriation and other forms of corruption
- Improved ranking on global and national indexes measuring transparency and accountability
- Technical and institutional support that will enhance the reputation of openness of implementing states
- Global visibility and positive publicity.<sup>40</sup>

At a practical level, states implementing OGP already stand to benefit from the incentives regime of the World Bank's "States Fiscal Transparency, Accountability and Sustainability Program for Results" project.

This project, which aims strengthen the fiscal transparency, accountability and sustainability regime in participating states, will provide grants as incentives to states performing

<sup>38</sup>ANEEJ is currently implementing the MANTRA project which is providing independent third party monitoring of the utilisation of the returned \$322.5 million Abacha loot in the National Cash Transfer Programme (NCTP) of the Federal Government.

<sup>39</sup>Open Government Partnership Nigeria, 'Guidance Note #2 for Sub-National Engagement' (December 2017).

<sup>40</sup>ibid

<sup>41</sup>World Bank, 'Federal Republic of Nigeria: States Fiscal Transparency, Accountability and Sustainability Program for Results and Fiscal Governance and Institutions Project' (Chair Summary, 27 June 2018).



well in implementing reforms captured under OGP.<sup>41</sup> This illustrates an instance of the nature of benefits arising from states who commit to implement the initiative.

### The Unique BEITI – OGP Nexus in Bayelsa State

Beyond the benefits above, the discussion of transparency and accountability initiatives in Bayelsa State in this paper up to this point provides some salient points why subnational implementation of OGP in Bayelsa State is both sensible and prospective. The unique history of the state in this regard, especially with the BEITI process, provides valuable cognate experience to build on to mainstream OGP in the state.

Unlike most states in Nigeria which are currently in the process of “stepping down” OGP or intending to do so, the experience will not be novel for stakeholders in Bayelsa State. There are obvious parallels between OGP and BEITI that can be easily leveraged to facilitate the process and enhance its chances of success. These parallels include the following:

- Both OGP and BEITI are multi-stakeholder initiatives that require government and civil society – and the private sector to a certain degree – working together to promote transparency and accountability in governance.

In this respect, both initiatives illustrate the growing disposition in governance reforms that lays less emphasis on demand/supply side arguments. Instead, the focus is now often directed at collective action solutions to governance challenges that require broad range of stakeholders from both sides working together.<sup>42</sup>

- Both OGP and BEITI are coordinated by a steering committee which is responsible for the overall coordination of the initiative and takes responsibility for ensuring its success. In the case of BEITI, this function was performed by the BEITI Stakeholder Working Group (BSWG), whilst in OGP it would be the National (or

State) Steering Committee, as the case may be

- Both OGP and BEITI, in the context of their implementation at the subnational level, are modelled after global transparency and accountability initiatives. Whilst BEITI was modelled after the Extractive Industries Transparency Initiative, OGP itself is a global initiative with the objective of promoting transparency in governance in member countries.
- Both OGP and BEITI are voluntary transparency mechanisms which the state engages in or is looking to engage in due to the socio-political and economic benefits arising from their implementation. It is these benefits – like those discussed above – that provide the motivation for the initiation and implementation of both.
- Finally, both initiatives are built on the premise that increased transparency will lead to accountability in governance. Whereas in the case of BEITI, the emphasis was on transparency in the fiscal aspects of governance, the focus of OGP is much broader and is intended to cover the who spectrum of governance, with countries and subnational regions at liberty to make commitments in specific areas of interest.

As noted above, the significance of highlighting these parallels between BEITI and OGP is to provide a roadmap through which government, civil society and other stakeholders can take move towards implementing OGP in Bayelsa State more easily.

In doing so, the positives from the BEITI process can be iterated, whilst taking necessary action to ensure that mistakes are not repeated.

In furtherance of this, the last couple of sections of this paper highlights the lessons from the implementation of BEITI and other transparency initiatives in Bayelsa State and makes recommendations that will, hopefully, enhance the chances of success of OGP in the state.

<sup>42</sup>David Booth, Development as a Collective Action Problem: Addressing the Real Challenges of African Governance (Overseas Development Institute 2012); Merilee S. Grindle, 'Governance Reform: The New Analytics of Next Steps' (2011) 24(3) Governance 415-418



## LESSONS FROM THE IMPLEMENTATION OF BEITI AND OTHER TRANSPARENCY INITIATIVES IN BAYELSA STATE.

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### **Implementing Transparency Initiatives does not Guarantee Accountability:**

In the conception and implementation of governance reforms, accountability is often considered as resulting naturally from transparency.

Whilst this should be the case in an ideal scenario, the experience with transparency initiatives in Bayelsa suggests otherwise. The report of RWI on BEITI recognised this point, noting that whilst the initiative enhanced the capacity of CSOs, the awareness and transparency introduced did not translate to improved accountability or increased government capacity and performance.

Similarly, the ongoing monthly transparency briefings in the state has yielded no tangible result in terms of holding government accountable for its use of public resources. The experience of the state highlights the importance of taking into account mechanisms to ensure accountability from the availability and use of available information made possible through the transparency initiatives.

The “so what?” question must be interrogated throughout the conception, implementation and review phases of governance initiatives

### **Political Will for Reforms is often Transient, Complex and Instrumental:**

In each of the past or extant reforms discussed in this paper, political will in support of the initiatives was often strong at the inception phase and slowly dissipated during implementation.

A couple of factors account for this.

Firstly, political will was often demonstrated in support of the initiatives to achieve certain extrinsic purposes. These include political clout, access to donor or private sector funds, national and international acclaim, amongst others.

The benefits of the initiatives in terms of practically improving governance in the state often came secondary. Hence, once those extraneous motivations were realised or failed to realise, political will to continue with the initiatives waned naturally. This leaves non-governmental stakeholders like civil society and donors with little or no room to continue with the reforms.

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**The ongoing monthly transparency briefings in the state has yielded no tangible result in terms of holding government accountable for its use of public resources.**

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In addition to being transient and instrumental, the second factor worth noting is the complexity of political will in supporting reform initiatives.

In certain cases, there is positive political will coming from the top, often the chief executive of the country or state, but not from those below him or her, such as ministers and commissioners respectively. In other cases, the support come from the

latter and not the former.

In the case of BEITI, there was definitely support from the top – especially in the first couple of years - but discouraging from those below Governor Sylva. This accounted for why certain MDAs were reluctant to make information available to the first external auditor appointed under the initiative, even though the firm was armed with a directive from the Governor to comply with the information requests.





In the light of the reality that support in each of these cases is complex, transient and often instrumental, reforms need to take into consideration indicators of the nature of political will in support of the initiative and the sustainability of same for the reform agenda. Alternative and palliative courses of action should be considered to ensure that the initiatives are not totally dependent on political will.

### **Having an Even and Balanced Mix of Stakeholders is Crucial:**

Having an equal mix of members from the various groups involved is invaluable to the effectiveness and sustainability of multi-stakeholder governance initiatives. The uneven nature of the membership in BEITI which had more government representatives than civil society and the private sector was a factor that was repeatedly referred to in explaining its failure.

This is particularly critical in situations where the commitment of a section of stakeholders wanes for the initiative. An even mix of stakeholders would ensure that this does not automatically result in the end of the initiative as was the case with BEITI when the commitment of government dwindled.

Corollary to this is ensuring balance in the membership of stakeholders participating in the initiative. Membership should take into consideration groups and individuals with the requisite knowledge and influence to ensure that the objective of the initiative is achieved.

More importantly, all relevant interests should be represented. RWI's report on BEITI referenced the importance of this, noting that having respected figures from the media, as well as members of LGAs and representation of different ethnic groups in the state would have enhanced the chances of the initiative's success.

### **Backing Reforms with Legislation is Important but not Enough:**

Most stakeholders that were involved in the BEITI process lamented the failure to enact the BEITI Law as contributing substantially to the collapse of the initiative. The passing of legislation in support of governance reforms is therefore important to ensure that reforms are institutionalised. This obviously failed to happen in the case of BEITI. It is however important to understand that legislation does not

automatically guarantee the success of initiatives.

The passing of legislation is only one step of many – albeit a significant one – required to ensure the effectiveness of reforms. In the case of reforms for transparency and accountability, CSOs have to continue to undertake advocacy and engage government in other targeted ways to ensure the success of such reforms.

In Bayelsa State, whilst the failure to pass the BEITI law was considered significant in the failure of BEITI, the subsequent passage of a law backing the monthly transparency briefings has done little to change the situation. Despite the passing of the law in the latter case, the operation of the initiative has had little impact in improving fiscal responsibility in governance in the state.

The involvement of stakeholders has also been drastically limited as political will for the initiative has waned over time, as was the case with BEITI.

It is therefore important for CSOs and other stakeholders at subnational level to employ a holistic approach in their support for and involvement in multi-stakeholder initiatives like this. Laying too much emphasis on the passage of legislation alone is not enough; neither is simply engaging government through the framework provided by the initiatives.

Employing an integrated approach that includes advocacy, communication, consensus building, research, collective action, etc, consistently is required to ensure success and sustainability.



## GOING FORWARD

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Despite the apparent failure of BEITI and the broad challenges of transparency and accountability reforms in Bayelsa State, there are some discernible benefits.

The capacity building component of the initiative, especially from the perspective of CSOs has had a tremendous impact over the years. CSOs in the state have been able to leverage those skills and experience to drive other governance processes and projects in the state. For instance, CSOs have been practically involved in the process of putting together the Medium-Term Expenditure Framework of the state under the Fiscal Responsibility Law of the state.

These rather unintended positive consequences of BEITI will prove particularly invaluable as the state moves towards subscribing to OGP. Furthermore, the international and national framework within which OGP operates and the financial and developmental incentives for adopting the initiative should provide the requisite motivation and will to ensure success and sustainability. The realisation of these benefits and their communication to the citizens of the state will be pivotal in mobilising support for the initiative in the long run.

It is however important that the lessons from the operation of BEITI are taken into consideration to ensure that mistakes are

not repeated. CSOs, who will have a fifty percent stake and control in the process, need to have a long-term strategy for its involvement in the initiative to ensure that funding and similar challenges do not hamper their participation and role in jointly driving the process.

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**More importantly, OGP should be approached as a medium to achieve broader and more lasting governance reforms in the state, and not just as a single self-contained mechanism.**

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More importantly, OGP should be approached as a medium to achieve broader and more lasting governance reforms in the state, and not just as a single self-contained mechanism. The platform provided by the initiative should be used to deepen collective action between government, CSOs and other private sector actors to ensure good governance, not just at the state level, but also at the level of local governments.

To achieve this, it is equally important that CSOs and citizens continue to employ both traditional and innovative mechanisms to advocate for transparency and hold government accountable.

The introduction of mechanisms like BEITI and OGP only provides a framework to do this and should not be considered a substitute for continuous advocacy and engagement in efforts to ensure transparency and accountability.

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## ABOUT ANEEJ

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The Africa Network for Environment and Economic Justice (ANEEJ) is a non-governmental organisation whose goal is to amplify the voice of the weak, the less privileged and the marginalised groups in the society including women and youths, in order to increase their participation in the democratic decision-making process.

As its basis, ANEEJ believes in a democratic system for managing human interest and operates within two broad focal areas namely environmental and economic justice. Specifically, ANEEJ implements projects relating to governance and democracy, peace building and conflict resolution, human rights and anti-corruption, environment including water, sanitation and hygiene among others.

ANEEJ worked with over 100 civil society organisations while hosting the Secretariat of the Publish What You Pay (PWYP) Campaign, Nigeria from 2004-2008 and the Nigerian Network on Stolen Assets.

The organisation also coordinated CSOs that were involved in monitoring repatriated Late General Sani Abacha loots under the Public Expenditure Management and Financial Accountability Review (PEMFAR), a tripartite agreement between the World Bank, Civil Society and Nigerian governments. ANEEJ in 2003 established the Society for Water and Sanitation (NEWSAN), a coalition of over 300 CSOs working in the area of Water and Sanitation.

ANEEJ is currently engaging the Nigerian government, international community as well as local and international civil society groups on the recovery of stolen assets to finance development. ANEEJ has consultative status with the United Nations and is a member of United Nations Convention Against Corruption (UNCAC) Coalition.

ANEEJ is currently implementing the Open Niger Delta project (OPENED) with support from Bread for the World Protestant Development Services, Germany, SACE-USAID and DFID. The project is a follow up to the Strengthening Oil Revenue Management in the Niger Delta project (phase 1 & 2) which ANEEJ implemented previously.

The project primarily targets four Niger Delta States, namely: Edo, Delta, Bayelsa and Rivers, but activities are expected to have multiplying effect in the entire region.

It is envisaged that, project activities would see that:

- CSO's are engaging for the introduction of OGP on State level
  - At least 2 state governments in the Niger Delta adopt OGP by 2020
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