THE MANAGEMENT OF OIL AND OIL AND GAS IN FEDERAL SYSTEMS

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OIL AND GAS RESOURCES IN THE FEDERAL REPUBLIC OF NIGERIA

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1. *OVERVIEW*

As in many other developing-world federations with "twentieth-century constitutions" and large regionally concentrated hydrocarbons, multi-ethnic Nigeria has entrusted the ownership, regulation and redistribution of its oil and gas wealth in the federal government (Watts 2008: 98). At the same time, the country's fiscal federalism architecture constitutionally and statutorily guarantees the devolution of considerable amounts of centrally collected oil and gas revenues to the federation's state and local governments.

This paper analyses key aspects of the multifaceted crisis of oil and gas governance in Nigeria, including the federation's evolution into a monolithic extractive economy, the transformation and distortion of federal institutions by petroleum revenues, the macroeconomic challenges arising from Nigeria's fiscal dependence on a single, volatile sector, the spiraling insurgency around "resource control" in the oil-rich Niger Delta region, and the unfulfilled struggles to reform oil and federal governance in the country.

2. *HISTORICAL AND REGIONAL CONTEXT OF PETROLEUM INDUSTRY IN NIGERIA*

Mineral exploration in Nigeria began in the early 1900s, when a German company, the Nigerian Bitumen Corporation, obtained a license to exploit bitumen deposits in the country's western region. This was followed by the grant of an exclusive concession right to Shell D'Arcy to explore and prospect for oil in 1937 (Ofoh, 1992). From 1955, exploration licenses were granted to other companies to search for oil primarily in areas surrendered by Shell in the former Northern and Western regions. The first oil field was eventually discovered in 1956 in the Niger Delta field of Oloibiri in the South-South geopolitical zone in the former Eastern Nigeria, where the first commercial oil and gas extraction took place in 1958.

Nigeria ranks among the top 10 nations in proved oil and natural gas reserves, worldwide. As of January 1, 2009, the estimated crude oil and natural gas reserves are, respectively, 36.2 billion barrels and 181.9 trillion cubic feet (tcf). Crude oil production has also expanded significantly, growing from its initial daily output of about 5,100 barrels in 1956 to as high as 2.5 million barrels per day in the late 1970s (OPEC Bulletin, 2008). The aggregate crude liquids petroleum production (oil, condensates and NGL) was about 1.98 million barrels per day in 2008. This represents about 10.7 percent decline from daily production of 2.2 million in 2007 due to persistent disturbances and crisis in the Niger Delta (CBN, 2008). Continual investments and economic and policy incentives have been instituted by the federal government in an attempt to increase Nigeria's proved oil reserves to 40 billion barrels and expand its production capacity from 2.5 million barrel per day to between 3 and 4 million barrels per day by 2010. Subsequent to the massive investment in deepwater by international companies, Nigeria has increased its oil reserves by 200 percent of its production since 1980. At current extraction levels, Nigeria's current reserves would provide for about 30 years of oil production in comparison to a global average of 45 years (Iledare, 2008).

The number of international petroleum companies operating in Nigeria has increased from a single producer (Shell BP) in 1958 to more than 24 producers in 2007. The top four companies--Shell Petroleum Development Company (Shell), ExxonMobil, Chevron Nigeria Limited (CNL) and Total (formerly Elf Petroleum Nigeria Limited or EPNL)—accounted for nearly 83 percent of Nigeria's total petroleum production in 2008, an indication that the Nigeria petroleum industry is dominated by few international firms. The new players to emerge in recent years include the

Korean National Oil Company, Addax Petroleum Development (Nigeria) Limited, China National Oil Company, Express Petroleum, Cavendish, AENR, Consolidated Oil Limited (Conoil), and AMNI International (AMNI) ((Ariweokuma, 2008)).

In 1971, the Nigerian National Oil Company (NNOC), was incorporated "in direct response to Organization of Petroleum Countries' (OPEC) calls for member countries to establish national oil companies (NOCs), which would be vehicles for state participation in the oil industry" (Omoregbe 2003: 93). Since then, Nigeria has remained a key member of OPEC, producing the organization's longest serving secretary general, Dr. Rilwanu Lukman, from 1995-2000. In the aftermath of the 1973 oil embargo and the sudden quadrupling of crude oil prices, Nigeria became a significant player in the international crude oil market as a net exporter of crude oil and the conduct of the oil and gas industry in Nigeria changed. That year, the Federal Government of Nigeria (FGN) invoked the first participation agreement and acquired a 35 percent equity interest in all the oil and gas companies operating in Nigeria in the form of joint venture agreements. The equity interest was increased to 55 percent in 1974 in the aftermath of OPEC resolutions mandating its member countries to acquire majority participating interests in petroleum ventures in all member countries. In 1977, NNOC was replaced with a new National Oil Company called the Nigeria National Petroleum Corporation (NNPC). NNPC was formally restructured to facilitate the effective management of the oil and gas industry in general and, more specifically, of the government's equity interest in the joint ventures with international oil companies.

Over the years, the Nigerian oil and gas sector has dominated merchandise exports. Oil revenue from exports grew from $718 million to $9.4 billion from 1970 to 1978 but declined dramatically from a high of $25 billion in 1980 to $4.7 billion in 1986 as a result of the crude oil price collapse. The vulnerability of the economy to oil price instability has also been costly in terms of revenue fluctuation, income distortions, and fiscal indiscipline. In 2008 total oil export receipts for Nigeria were about $75 billion dollars, which represents about 98.8 percent of total exports for the year. Yet, the oil and gas sector's share of GDP in Nigeria declined from a high of about 47.7 percent in 2000 to just 25 percent in 2005 and 22 percent in 2006. A recent World Bank estimate shows that the contribution of the oil sector to GDP is still low at 28.4 percent (Okonjo-Iweala 2009).

The petroleum sector has also dominated governmental fiscal revenues. Oil royalties, petroleum profit tax, domestic crude sales, and others petroleum revenues were only 26% of federally collected revenues in 1970, but rose dramatically to 81 % in 1980. They represented 73.3% in 1990, 83.5% in 2000 and an estimated is 79 % in 2007 (before the leap in prices in 2008).

Of Nigeria's 36 states, only nine are classified as oil and gas producers. The nine states are located in the three southern geopolitical zones—Southwest, South-South (Niger Delta), and the Southeast. The six producing states in the South-South geopolitical zone and their adjacent offshore—Delta, Bayelsa, Rivers, Akwa Ibom, Cross River, and Edo states—accounted for 91.5 percent of the gross oil production but only 15 percent of the total population. Ondo state in the Southwest zone and Imo and Abia states in the Southeast zone are the other producing states and these three states accounted for about 8.5 percent of total oil production in 2008. Rivers state accounted for about 36.9 percent of total oil and gas production in Nigeria, followed by Akwa Ibom state, which accounted for about 21.2 percent of production. In the late 1990s the majority of oil and gas production was from onshore and shallow water fields. But, as militant disturbances and insecurity of employees increased, suspension and outright abandonment of oil and gas operations in the western part of the Niger Delta region became inevitable. Because of this, deep offshore oil and gas production in the Niger Delta littoral states came on stream much ahead of schedule.

A major setback in Nigeria's petroleum industry dynamics is the slow growth in natural gas development and utilization. For the most part, natural gas reserves have been discovered in Nigeria as a byproduct of oil exploration and development. Yet, Nigeria has the largest natural gas reserves in Africa and can be aptly described as a natural gas province with pockets of oil fields (Onyekonwu, 2009). Unfortunately, natural gas has not attained its potential as a major source of fiscal revenue in the domestic economy because of inadequate funding for infrastructure development, inept pricing of natural gas for the domestic market, a low level of industrialization, and the lack of an effective and dynamic natural gas policy and regulatory framework (Falobi, 2009). In 1970 nearly all the natural gas produced (301 bcf) was flared; in 1980, 90.2 percent of 953 bcf of gas produced was flared, and in 1990, 77 percent of 1,030 bcf gas was flared. The government continues to look for the right policy framework to stop gas flaring, often using "carrot (incentives) and stick (stiff penalties for gas flared)" policies to promote investment in the gas sector. As a result, for the first time in the history of gas production in Nigeria, the quantity of gas flared (875 bcf) in 2000 was less than fifty percent of gas production (1,814 bcf) and by 2008, only about 26.8 percent of the 2.5 tcf gas produced was flared (Ariweokuma, 2008; Falobi, 2009).

The demand for domestic gas has increased with rising needs for power generation, industrial production induced by rising oil prices, and several new gas project initiatives adopted to monetize Nigeria's natural gas resources. The boom in domestic gas demand has, however, created a dilemma over finding a balance between gas development for export and gas development for use in the domestic economy. There is still a considerable mismatch between robust investments for export oriented gas projects such as LNG, GTL, Trans-Saharan Gas Pipeline or the West African Gas Pipelines (WAGP) and weak infrastructure investment to develop natural gas required for electric power generation and gas as feedstock for the industrial sector of the local economy (Ogiewonyi, 2008). There is also a gas supply constraint issue due to insecurity of assets in the Niger Delta where sabotage, bunkering and wanton destruction of infrastructure often delay gas project initiatives. The Natural Gas Master Plan initiated in 2006 and the 2008 Petroleum Bill (currently making its legislative round in the National Assembly) are expected to offer the necessary regulatory and economic framework, including adequate incentives, to promote gas development and to address other gas development and utilization policy issues and problems.

3. *Federal Context and Powers over the Petroleum Industry*

The expansion of the petroleum industry from the seventies produced fundamental changes in the structural configuration and fiscal architecture of the Nigerian federation. The federal system has evolved through five key moments since it was first instituted, under British colonial rule in 1954, to hold together Nigeria's fissiparous society, including two historic regions (North and South), three major ethnic groups (Hausa-Fulani, Yoruba, and Ibo), hundreds of ethnic minorities, and almost equal number of Muslims and Christians. The post-independence First Nigerian Republic (1960-66) combined a Westminster-style parliamentary system with an awkward federal structure of three (later four) large, but unequal, regions, each of which was dominated by a major ethnic group and controlled by a party based on that group. This was succeeded by military rule from 1966 to 1979, during which the soldiers broke the four regions into 12 and later 19 smaller states in a largely successful bid to undermine the Ibo-led Eastern Region's war of secession and to consolidate Nigeria's post-civil war unity. Civilian rule was restored in the Second Republic (1979-83), which incorporated the basic features of the military's integrationist political engineering, including the 19-state federal structure, the replacement of the parliamentary system with a strong executive presidential system, the formal prohibition of sectional parties, and the massive shift of fiscal and legislative powers from the states to the central government.

The military re-imposed their rule from 1984 to 1999 and during that period the number of states grew from 19 to 36, while the soldiers' sabotaged an elaborate program of political transition to a Third Nigerian Republic and created a climate of repressiveness, which led to an escalation of centrifugal ethno-regional and religious agitations. Finally, since 1999, the country has seen the political disengagement of the military and witnessed the longest era of uninterrupted civilian rule in the federation's history. Under the political dominance of the Peoples Democratic Party (PDP), this period has seen both a historic inter-civilian transition from the presidency of Olusegun Obasanjo to that of Umaru Yar'Adua as well as the implementation of modest socioeconomic reforms and the reassertion of states' rights in reaction to years of predation and over-centralization under military rule. Yet, this civilian dispensation is vexed by numerous challenges to its stability, including massive political and electoral corruption, the continuing insurgency in the Niger Delta, a southern-based clamour for fundamental constitutional restructuring of the federation and the decentralization of natural resource control, and a regionally divisive, political succession crisis precipitated by Yar'Adua's chronic ill health.

Ownership and Jurisdiction

The current 1999 Nigerian Constitution, section 44 (3), echoing previous basic laws and statutes, affirms the Federal Government's proprietorship and 'control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria, its territorial waters, and exclusive economic zone.' All such minerals, oils and gas shall 'vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.' Accordingly, the Constitution places under the Federal Government's list of exclusive legislative powers all matters relevant to the regulation and management of the petroleum industry. These include export duties, incorporation and regulation of corporate bodies, mines and minerals (including oil fields, oil mining, geological surveys and natural gas) and taxation of incomes, profits, and capital gains.

Federal Government ownership of Nigeria's mineral wealth is further reinforced by several statutory laws and regulations, most of which were initially enacted under military rule, but have automatically assumed the status of Acts of the National Assembly under section 315 of the 1999 Constitution. The most important of these decrees or acts include the Petroleum Act (which was first promulgated in 1969), Petroleum Profits Act (1959), Nigeria Liquefied Natural Gas (LNG) Act (1990, 1993), Land Use Act (1976), Oil Pipelines Act (1978), and the Oil in Navigable Waters Act (1979). The Petroleum Act, for instance, confirms the Federal Government's proprietary rights over Nigeria's petroleum assets and gives the Federal Ministry of Petroleum Resources the authority to issue licenses (to Nigerian citizens or companies incorporated in Nigeria) to undertake activities relating to oil prospecting, exploration, drilling, production, storage, refining or transportation.

The Petroleum Profits Act specifies the applicable tax rates on the chargeable or net profits of companies engaged in petroleum operations. The Land Use Act provides "for an extraordinary level of government control over land use and transfer" (Human Rights Watch 1999: 68). The Act had two fundamental implications: first, the Act made land ultimately a matter of national, rather than sub-national jurisdiction, effectively enabling the central government to control and acquire land anywhere in the federation, thereby exceptionally constraining the formal powers of the governors under the Act to regulate land use in their respective states: secondly, the Act brought land under government, rather than private or customary (communal) ownership, which meant that land legally or customarily occupied before the Act could be revoked and acquired by the government "for mining or oil pipeline purposes with compensation restricted to the value of unexhausted improvements at the date of revocation" (Ikporukpo 2004: 345).

Although ownership and control of all onshore and offshore mineral resources is constitutionally and statutorily vested in the Nigerian federal government, the federation has historically included arrangements for the compensation of oil-bearing units through the payments of portions of centrally collected mineral revenues to those units on a derivation or unit-of-origin basis. However, whereas the constitutional framework of the First Republic had explicitly made both onshore and offshore petroleum resources subject to the derivation rule, a 1970 military decree limited the application of the derivation principle to revenues from onshore resources only, while the post-military constitutions since 1979 (including the current 1999 Constitution) have been silent on the issue. In response to demands by the Niger Delta states for the application of the derivation rule to offshore oil and gas revenues, the federal government in 2001 approached the Supreme Court for a determination of the issue. In its ruling in April 2002, the Court validated the Federal Government's position that the derivation principle should apply to onshore resources only because natural resources in Nigeria's continental shelf belong to the federation as a whole and, therefore, cannot be said to be derivable from the adjoining littoral states for revenue allocation purposes. However, following strident agitation in the Niger Delta against the Court's ruling, the federal government crafted a political deal that culminated in the enactment by the National Assembly of the "Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act of 2004." This provided that an area of "two hundred meter water depth Isobaths contiguous" to the littoral states would be deemed to belong to those states for the purpose of the derivation principle. The Act, however, provoked another round of litigation as it was challenged at the Supreme Court by 22 non-oil producing states, including all the 19 states in the north and Ekiti, Osun and Oyo in the southwest. In a ruling that appeared to contradict its initial verdict on the derivation principle, however, the Supreme Court in December 2005 argued that the Abolition Act was consistent with the extensive revenue sharing powers of the National Assembly. This underscored the Court's willingness to abandon a rigid adherence to the constitutional principle of federal ownership of natural resources for the larger goals of inter-regional accommodation and conflict mitigation in the Niger Delta (Suberu 2008).

Exploration and Production Regime

The Federal Government's absolute powers over the petroleum industry have been exercised primarily through four government institutions, namely, the presidency (the president and his top advisors), the Ministry of Petroleum (sometimes called the Ministry of Energy, Mines and/or Power), the Department of Petroleum Resources (DPR), and the Nigerian National

Petroleum Corporation (NNPC). The President, who has often served as his own Minister of Petroleum (usually supported by a junior-level Minister of State for Petroleum), and his senior advisors on petroleum matters, along with the top leadership of the NNPC, "form the inner circle for oil sector decision-making" (Gillies 2009). The Ministry of Petroleum, which began as a Hydrocarbon section of the Ministry of Lagos Affairs in the fifties and was first constituted into a full-fledged Ministry in 1975, formally "leads oil sector policy-making," and technically oversees the DPR and NNPC, both of which operate separately under the Ministry.

The Department of Petroleum Resources functions as the official industry regulator, with the responsibility to oversee or supervise the activities of all companies licensed to operate in the industry, including the NNPC. It is charged with processing all applications for licenses and leases in the industry, ensuring compliance of all industry operators with applicable national regulations and good oil producing practices, enforcing safety and environmental standards, keeping and updating records on petroleum industry operations, ensuring timely and adequate payments of all rents and royalties to the government, promoting and monitoring progress towards the indigenization of (or the enhancement of 'local content' in) the oil industry, and providing appropriate technical advice on oil industry matters to the government. Reflecting the disorganization that often characterizes the Nigerian petroleum industry, the DPR existed as a unit within the NNPC until 1988, "creating the untenable situation of the regulator being subordinate to the industry's largest player" (Gilles 2009).

The NNPC is the commercial and business agency of the federal government in the petroleum sector, with the most important oil and gas projects in the industry typically involving joint venture arrangements, production sharing contracts, and related commercial partnerships between the NNPC and one or more oil multinational companies. The NNPC was reorganized in the eighties and nineties in order to divest it of its regulatory (as distinct from commercial) functions, to establish independent and self-accounting subsidiaries within the company, to streamline its activities into distinct directorates, and to enhance its viability as a commercial, rather than purely governmental or departmental, agency. The corporation is involved in two broad types of exploration and production arrangements with the oil multinationals.

First, the concessionary arrangements, either a Joint Venture Agreement or a Memorandum of Understanding, are governed basically by royalty and taxation plus a government (NNPC) majority participation interest. The rewards to the federation in terms of revenues are based on posted price and gross oil and gas production in the form of bonuses, royalty payments, taxation of profit, and equity interest participation. For example, the Petroleum Decree 51 of 1969 set the royalty rate for an onshore concessionary venture at 12.5 percent and the petroleum profit tax (PPT) rate at 50 percent. The PPT was raised to 55 percent in April 1973 (Ofoh, 1992). In 1974, PPT and royalties were increased to 67.75 percent and 16.67 percent, respectively, and they were further increased to 85 % and 20 percent in 1975 for onshore ventures. Several tax incentives were introduced after the collapse of oil and gas prices in the 1980s, but royalty rates remain set at 20 percent for onshore oil and 7 percent and 5 percent for onshore and offshore gas blocks, respectively. The oil royalty rates for offshore ventures, however, are determined by water depth (www.npdc-ng.org). Significant changes in the values of several of these fiscal terms and instruments have been incorporated into the 2008 Petroleum Industry Bill (discussed below) to further enhance government access to profits from oil and gas investments (OGIC, 2008).

A major problem with the joint venture structure has been the repeated failures of NNPC to fund its share of capital and operating expenses. Consequently, the second contractual fiscal agreement, including Production Sharing Contracts (PSC) and Service Contracts (SC) (www.dprnigeria.com), was invoked. Under the PSC, the international oil company provides the funding for exploration and development operations in offshore Nigeria with the profits shared according to agreed arrangements subsequent to the recovery of permitted company costs, subject to the specified cost recovery limit. The first production-sharing contract was signed in 1973 with Ashland Oil. The contractual terms and instruments included a 40 percent cost oil recovery limit, a 55 percent petroleum profit tax, and 70/30-profit oil split in favor of the government (www.npdc-ng.com).

Recent audits of the petroleum industry, under the auspices of the Nigerian Extractive Industries Transparency Initiative (NEITI), have reinforced longstanding concerns and criticisms regarding the capacity of the federal political executive, the Department of Petroleum Resources, and the NNPC to effectively execute their administrative and management functions within the petroleum industry. These strictures have highlighted major shortcomings in the governance of the industry, including weak "DPR capacity, NNPC intrusion into regulatory and policy-making functions, lack of NNPC oversight and accountability, and weak incentives for efficiency and performance" (Gillies 2009). The Petroleum Industry Bill is designed to address these institutional inefficiencies.

The Petroleum Bill proposes three new sets of oversight institutions for the oil and gas sector in Nigeria. First, the Bill establishes the Nigerian Petroleum Directorate (NPD) as the overarching and coordinating petroleum policy-making institution in place of the Ministry of Petroleum Resources. Second, three regulatory institutions, the Nigerian Petroleum Inspectorate (NPI), the National Midstream Regulatory Agency (NAMIRA), and the Petroleum Products Regulatory Authority (PPRA*)* are proposed to regulate all matters related to the upstream, midstream and the downstream sectors, respectively. The third institution envisioned in the Bill is a restructured, commercially focused new national oil company. The goal is to reposition the Nigerian National Petroleum Company on a level comparable to the status of successful National Oil Corporations (NOCs) in Malaysia, Venezuela, Norway, Algeria, Mexico, Brazil, and Saudi Arabia. The relative absence of operational and strategic autonomy of the NNPC from the national government in comparison to successful NOCs elsewhere is appalling. Separating regulatory functions from commercial operations should help to reduce the prevailing ambiguities in regulatory responsibilities that have beclouded oil and gas operations in Nigeria over the years.

The Petroleum Bill attempts to revamp Nigeria's petroleum revenue system in terms of revenue collection, revenue enhancement, wealth creation and tax system simplification. It introduces a sliding scale royalty payment that adjusts royalty rates automatically on the basis of geographical location (onshore, shallow offshore, deep offshore etc), prospectivity (daily production of oil and gas per field), and economic circumstances (oil price dynamics). The Bill makes it mandatory for every registered corporation in Nigeria to pay corporate income tax. Thus, the traditional petroleum profits tax in Nigeria now has two components to it: a resource tax and a company income tax.

Finally, the Petroleum Bill provides innovatively for Incorporated Joint Ventures (IJV), whereby the national oil company and its joint venture partners will enter into a shareholders' agreement to form an independent liability company. The expectation is that the working interests in the current joint venture arrangements will translate to shares in the IJV liability company. It is anticipated that each IJV will finance its projects from cash flow and through capitalization of its assets. Yet, a big concern is that the Petroleum Bill leaves the governance structure of the IJV unclear and such vagueness and unpredictability, among other factors, "has contributed to international oil company discomfort" with the Bill (Heller 2009, 4).

4. *Petroleum Revenue Arrangement in the Context of Federal Fiscal Regime*

The Nigerian constitutional structure makes the Federal Government the custodian of all bonuses, royalties, and rents accruing from mineral resources in Nigeria on behalf of the 36 constituent states, 774 local government areas, and the federal capital territory of Abuja. The Federal revenue collecting organizations include the Federal Inland Revenue Service, which collects corporate income taxes, Nigeria Customs Service, which is responsible for collecting excise and import duties, the NNPC, charged with managing the government's participation interests in oil exploration and production, the Department of Petroleum Resources, which collects signature bonuses and royalties, and the Central Bank of Nigeria, into which the collected revenues are deposited.

The gross federally collected revenue from 1998 to 2007 by these institutions was N31 trillion, of which 82 percent was gross oil revenue. The collected gross oil revenue consists of petroleum profit tax and royalties (36%), petroleum exports (44%) and domestic crude oil sales plus petroleum products taxes (19%), bonus and rentals and others (0.8%). The gross oil revenue segment of the federally collected revenue grew by approximately 13 times from N324 billion in 1998 to N4, 463 billion in 2007. The collected non-oil revenue for the central government over the same period accounted for just 18 percent consisting of corporate income tax (CIT), customs and excise duties, privatization proceeds, value-added tax (VAT), education tax, etc. The list of major centrally collected revenues excludes personal income tax, which (except for the Federal Government-retained income tax of Abuja residents and national military, police and diplomatic personnel) is collected and retained by the states under a uniform national income tax law.

The 1999 Constitution, section 162, sets out the basic guidelines for the intergovernmental sharing of the major centrally collected revenues. It provides for the payment of the revenues into a Federation Account, which is to be allocated, according to an act of the National Assembly (based on a proposal submitted to the Assembly acting on the recommendation of the Revenue Mobilization Allocation and Fiscal Commission-RMAFC), between the center, the states, and the localities, and also among states and the localities. Any such act, according to the Constitution, "shall take into account the allocation principles of population, equality of states, internal revenue generation, land mass, terrain as well as population density, [while] the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the Federation Account from any natural resources." Derivation revenues are set aside before eligible remaining revenues are distributed from the Federation Account.

Currently, revenues in the Federation Account are distributed in the proportions of 48.50 percent to the federal government, 26.72 percent to the states, 20.60 percent to the local government councils, and 4.18 percent to centrally-control special funds. The Federation Account revenues devolved to the sub-national governments are shared among the states and among the localities on the basis of the following indices and percentage weights: equality (equal shares to each state or locality) 40 percent; population 30 percent; social development needs 10 percent; land mass and terrain 10 percent; and internal revenue generation effort 10 percent. These constitutional and statutory provisions notwithstanding, federal revenue sharing has remained one of the most intractable and controversial issues in Nigeria. Two issues have been especially contentious, namely, the weighting of the derivation principle and the administration of the Federation Account.

The derivation principle has been the most contentious issue in Nigeria's fiscal federalism. Historically, revenue allocation in the Nigerian federation was dominated by that principle. Thus, the 1963 Constitution (section 140) for the First Republic, like the 1960 Independence Constitution, not only provided for the payment "by the Federation to each Region [of] a sum equal to fifty-percent of the proceeds of any royalty received by the Federation in respect of any minerals [including mineral oil] extracted in that Region; and any mining rents derived by the Federation from within that Region," but also stipulated that "the continental shelf of a region shall be deemed to be part of that Region." However, as oil revenues became the predominant source of national income in the seventies, Nigeria's centrist military rulers progressively deemphasized the derivation rule until it was effectively expunged from the revenue sharing scheme in April 1979 and replaced with a special grants account for the amelioration of the environmental problems of oil producing areas and other national ecological disasters. Nonetheless, the period since the end of the first phase of military rule in October 1979 has witnessed the gradual revival of the derivation rule in response to growing restiveness and agitations in the Niger Delta. Despite the entrenchment of the minimum 13 percent derivation rule in the 1999 Constitution, however, intensive agitation for the expansion of the rule to between 25 and 50 percent persists in the Niger Delta states. Yet, the distribution of gross revenue allocation shows that the nine oil-producing states in Nigeria received over fifty percent of the total federal revenue transfers to the states in 2008 even though they accounted for 22.3 percent of the population (www.npc.gov).

The inequality in national revenue distribution amongst the states is evident in the steep disparities in per capita allocation between oil producing and non-oil producing states. Total revenue per capita allocated to oil producing states, on average, was N35, 955 in 2008. In comparison, the per capita allocation to non-oil producing states was N10, 249. A state like Rivers, which accounts for 36.9 percent of oil production and 3.7 percent of the population of the federation, received 14.9 percent of total allocation to the 36 states in 2008 with a per capita allocation of N64, 213. Bayelsa, with about 2 percent of the population, received 6.8 percent of transfers in 2008, with a per capita allocation of N89, 282. In comparison, each of the 27 non-oil producing states in Nigeria garnered, on average, less than two percent of the transfers in 2008, even though they collectively accounted for 77.7 percent of the population (OAG, 2009). Thus, while the oil states keep calling for more money, they are already highly privileged, although they have spectacularly mismanaged the revenues.

The conflict over the Federation Account involves the underpayment of centrally collected revenues into the Account as well as "some deductions" that the Federal Government makes "from the Account before sharing among the three tiers of government" (Ekpo 2007, 216). These deductions include so-called memorandum items such as NNPC Joint Venture cash calls and priority projects, external debt services, excess crude proceeds, and excess petroleum profit taxes and royalties. Other deductions, now classified under the centrally controlled special funds, include allocations for the development of the federal capital territory, for ecological emergencies, for statutory revenue stabilization, and for the development of natural resources. Although the Supreme Court has invalidated all such deductions, the Federal Government has continued to "divert revenues meant for the Federation Account…disregarding the Constitution and the

Supreme Court's ruling" (Ekpo 2007, 230). While provisions for a special Stabilization Fund, an Excess Crude Account, and collective intergovernmental funding of investment obligations in the oil sector are sound in principle, the current practice by which the Federal Government deducts these items as a first charge on the Federation Account lacks transparency and effectively shortchanges the sub-national governments by surreptitiously reducing the pool of revenues available for general intergovernmental distribution, while creating an additional source of revenue for use by the center. Nonetheless, the Supreme Court's constitutional invalidation of a fiscally sensible mechanism like the excess crude account, while legally correct, raises the question whether the Constitution is appropriate to the country's needs in this respect.

5. *MACROECONOMIC CHALLENGES*

Petroleum has transformed Nigeria from the diversified, agro-based economy that it was up until the sixties to the mono-resource, petroleum based economy that it has become since the 1970s. While Nigeria has earned billions of dollars exporting oil and natural gas, the industry has not generated the type of multiplier effects necessary to facilitate sustainable national development and economic growth. The "Dutch Disease" phenomenon, which traditionally afflicts natural resource dominated economies, has ravaged the Nigerian political economy. What is more, the petroleum economy has made the federation more like a unitary state than a federation in a fiscal sense. Expanded access to oil revenues has increased the financial dependency of the constituent states and localities (which derive 90% of their finances from federal revenue transfers), accentuated the disparities in central revenue transfers to them, and led to an underdevelopment both of alternative sources of sub-national revenues (partly because the fiscal effort criterion in the allocation formula is not worth much) and of effective budget formulation, accounting, recording, and reporting systems (owing to the easy availability of shared revenues). As things stand, the poor quality of public financial management at the sub-national level, where approximately half of national public spending takes place, represents a huge macro-economic challenge in Nigeria (IMF 2009).

The oil legacy has also imposed significant costs on the Nigerian economy through petroleum and energy price distortions, corruption and inefficiencies, and fiscal instability due mostly to crude oil price volatility (Adenikinju, 2009). The subsidization of domestic petroleum prices has become a huge cost to the national economy especially with rising share of imports in domestic petroleum products supply. The subsidy has remained one of the most convoluted and protracted socio-economic policy issues and macroeconomic challenges facing Nigeria, defying attempts at its resolution by successive governments. The petroleum subsidy increased from N278.9 billion in 2006 to N633.2 billion in 2008. It is estimated that government's subsidization of petroleum products from 2006-2008 amounted to nearly N1.2 trillion, which exceeds the total capital allocation to the following national priority sectors—Niger Delta, critical infrastructure, human capital development, land reform, and food security in the 2009 budget (Adenikinju, 2009).

Since 2004, the federal government has spearheaded a political agreement between all tiers of government to implement an oil-price based fiscal rule. In response to significant fiscal instability, the rule adopted an approach that is based on relative conservative estimates of the oil price for each budget with "excess revenues" being saved for stabilization. The oil price rule "broke the link between public spending and oil prices and created an oil-savings cushion [the Excess Crude Account] of $18 billion…as well as foreign reserves that peaked in September 2008 at $62 billion" (IMF 2009, 3). This was after government had used the oil-savings to pay out Nigeria's international debt and negotiate debt forgiveness in 2006. The benefits of this rule became evident with the sudden decline in global crude oil prices from a high of $147 in July 2008 to about $45 in December 2008; the federal government had based its budget on an oil price of $45 and was able to draw monies from the excess crude fund to stabilize spending during the downturn.

A country that wants its future generations to benefit from an exhaustible resource such as petroleum, must transform this nonrenewable resource into a renewable one by investing in productive capital in the form of machines, energy and transportation infrastructure, water resources and sanitation, and human capital formation and development. Of course, appropriate institutions must collect the revenue stream in order to build the national wealth in a transparent manner. Thus, one of the key macro-economic strategies for sustainable growth in a mono-resource economy is effective management of revenue flow during times of rising resource prices and the use of resource revenue to develop lasting infrastructure to support the economy. The success stories of Chile, Malaysia, Botswana, and Indonesia in the late 1990s came from such effective management and control of mineral revenue flows as revenues increased with resource prices (Stevens 2003).

Nigeria seems to be pursuing fiscal discipline at the federal level, but such discipline is yet to hold firmly at the state and local government levels, where the worst corruption probably now occurs. The Federal Government has incorporated the oil-price fiscal rule into the Fiscal Responsibility Act of 2007, which seeks to institutionalize budgetary transparency and accountability, promote effective management of the public sector, and reduce leakages in the economy (CBN, 2008). But reflecting pressures by the state governors, the National Assembly agreed to make the Act inapplicable to the states on constitutional autonomy grounds. Yet, the expected voluntary implementation of fiscal responsibility regimes by the sub-units is progressing only slowly. The current stabilization regime also does not seem to have a truly integrated structure in terms of federal, state and local spending; the states seem to have taken a bigger hit during the downturn than did the federal government.

6. *ENVIRONMENTAL AND SOCIAL ISSUES*

Nigeria's centralized petroleum industry governance framework leaves the oil-bearing communities with no constitutional or statutory rights, voice, or even consent on oil and gas industry projects in their communities. This centralization extends to decisions regarding the use of land for the oil industry, which "are completely taken out of the hands of those who have lived on and used it for centuries" (Human Rights Watch 1999: 71). Such total exclusion of the Niger Delta communities from participation in oil and gas decisions has combined with the environmental, socio-economic, and political deprivations of the region, to animate the militant campaign for regional and local "resource control" in the Delta.

Environmental Degradation

Numerous reports have documented the impact of the Nigerian gas and oil industry in severely damaging "the environment and livelihood of many of those living in the oil producing communities" (Human Rights Watch, 1999: 7; Amnesty International 2009). The highest gas flaring rates in the world, oil spillage or leakage (arising from the non-replacement of corroded, high-pressure oil pipelines, but also from the activities of oil thieves, vandals or saboteurs), numerous badly designed or poorly maintained oil company drilling facilities, and weak government investment in critical infrastructure improvements, have combined to endanger the rich and unique, but fragile, ecosystem of the Niger Delta (Africa's largest wetland).

Petroleum industry operators in Nigeria are statutorily required to observe the highest international environmental safety standards in their activities, including the undertaking of environmental impact assessments and the adoption of measures to prevent or limit oil pollution, gas flaring, and other industrial risks to the environment. In practice, however, both the limited technical capacity of the federal regulatory agencies (Department of Petroleum Resources, National Environmental Standards and Regulations Enforcement Agency, and National Oil Spill Detection and Response Agency), and the shallow rule of law context, have meant that such requirements are very weakly enforced or respected (Human Rights Watch 1999: 52; Amnesty International 2009: 43).

Socio-Economic Deprivations

High levels of poverty, unemployment, socio-economic inequality, dysfunctional social services, and infrastructure underdevelopment in the Niger Delta compound the environmental neglect and degradation of the region. Although poverty is less extreme in the Niger Delta than in Northern Nigeria, the divisions between rich and poor are more obvious in the Delta, and declines in Human Development Index have been steeper for the Niger Delta states than the rest of the federation (UNDP 2006: 137). As well, the capital intensive nature of the oil industry means that levels of unemployment and underemployment are higher in the core states of the Niger Delta than in any other region in Nigeria. Furthermore, oil industry-related environmental degradation caused by oil spills, gas flaring and deforestation has undermined opportunities in fishing, agriculture, and related traditional occupations in the Niger Delta. Additionally, "the high earnings of some oil industry workers leads to localized price distortions, driving up prices and so constraining the purchasing power of ordinary people and making it difficult for many to meet the costs of basic needs such as housing, healthcare, transportation [and] education…and making poverty more pervasive than conventional measures reveal" (Higgins 2009: 4; UNDP 2006: 57).

Thus, social and developmental indicators in education, health, and quality of the natural environment are relatively worse for the Niger Delta than for most of the country. The Niger Delta has a higher than average infant mortality rate, the highest post-neonatal mortality rate, and among the highest HIV-AIDS prevalence rate in Nigeria. The vast majority of people in the Niger Delta, including more than three-quarters of the people living in rural areas, lack access to potable or safe drinking water (despite the existence of a vast network of natural freshwater and groundwater resources), leading to a pervasiveness of water-borne diseases. Although four-fifths of the children in the Niger Delta attend primary schools, the quality and conditions of educational instruction are abysmal owing to the lack of well-trained teachers, the inadequacy of teaching materials, and the collapse of school facilities. Only 34% of the people in the Niger Delta have access to (mostly erratic) electricity supply, and Bayelsa (a core oil-bearing state) is not even connected to the national electricity grid. Housing in the Niger Delta is of very poor quality, with an estimated 50,000-100,000 people in Port Harcourt city (the official headquarters of Rivers State, Niger Delta zone and the oil industry) alone living in shacks in waterfronts or slum communities (Higgins 2009; UNDP 2006: International Crisis Group 2007).

The stark contrast between the resource wealth of the Niger Delta and its socio-economic impoverishment has fuelled a deep sense of deprivation and a propensity to violent rebellion. Data show that Niger Delta has a self-assessed or perceived poverty rate (74.8%) that is significantly higher than the actual poverty rate (51.1%), "indicating the intense feeling among the people of the Niger Delta that they should be doing far better" given their oil wealth (Higgins 2009: 6; UNDP 2006:58). Similarly, in a large survey of the Niger Delta, Oyefusi (2007:2) shows that low income levels, low educational attainment, and the absence of governmental socio-economic services were important drivers of the propensity to armed struggle evident in "about 36% of the respondents," which translates to a potential rebel army size of about 24% of the male population of the core states of the Niger Delta. The responsibility for this dire situation is shared by the two orders of government. The Niger Delta states have stolen or squandered the significant revenues they get from the application of the derivation rule. The federal government has been heavy handed in promoting oil development and shown little sensitivity to local concerns.

Ethno-Political Insurgency and State Repression

Reflecting their profound discontentment with their position as ethno-political minorities and economically exploited and neglected communities in the Nigerian federation, the Ijaw, Ogoni, Urhobo-Isoko, Ibibio-Efik and other ethnicities in the Niger Delta have a longstanding history of intensive political agitation, mobilization and even rebellion in the country. This includes: the Calabar-Ogoja-Rivers (COR) and Mid-West movements for new constituent regions in the Niger Delta in the late 1950s and early 1960s; the Isaac Boro-led 1966 "twelve day revolution," which proclaimed an independent Ijaw-based Niger Delta Peoples Republic and declared all oil contracts with the Nigerian government null and void (International Crisis Group 2006: 4); the Movement for the Survival of the Ogoni People (MOSOP), which launched a powerful campaign for an 'Ogoni Bill of Rights' under the leadership of martyred writer Ken Saro-Wiwa in the nineties; and the 1998 Kaiama Declaration that demanded "self-government and resource control for the Ijaw people" in a reconstituted Nigerian "federation of ethnic nationalities," and called for the "immediate withdrawal" of the oil companies and Nigerian security agencies from Ijaw territory (UNDP 2006:301).

Since 2006, the Movement for the Emancipation of the Niger Delta (MEND), an umbrella grouping of several militant groups in the region, has spearheaded the Ijaw campaign for resource control in the form of violent attacks on Nigerian oil and gas installations, including offshore facilities. MEND and its affiliates have combined this campaign with highly lucrative criminal activities like the bunkering (theft) of oil, the kidnapping of expatriate oil workers and local notables for ransom, and electoral brigandage on behalf of the region's corrupt political office holders and godfathers. It is estimated that Nigeria lost "at least $23.7 billion" to the MEND insurgency in the first nine months of 2008, while "about 1,000 people were killed within the same period" (International Crisis Group 2009, 2).

As evidenced by the execution of Ken Saro-Wiwa and eight other MOSOP activists in November 1995 as well as the systematic military crackdowns on several oil-bearing communities (notably, the Ogoni, Umuechem, Odi, Odioma, Ugborodo and Gbaramatu) since the late eighties, repression and militarization has been a characteristic response of the Nigerian central authorities to the restiveness in the Niger Delta. To be sure, several conciliatory policies have also been put in place by Nigerian federal authorities and the oil companies to assuage the grievances of the Niger Delta communities. These include the empanelling of about ten separate committees since the fifties to inquire into the grievances of the communities and the means for ameliorating them, the establishment of agencies (such as the Niger Delta Board, the Oil Mineral Producing Areas Commission, Niger Delta Development Commission-NDDC, and most recently, a Federal Ministry of Niger Delta Affairs) to promote developmental programs in the Niger Delta, adjustments of the national revenue sharing system in response to the demands of the oil-bearing communities for increased application of the derivation principle, grant of amnesty and financial compensation for militants (including their demobilization and integration into oil company security networks), and the creation of new units of states and local governments as putative mechanisms for bringing governance and public services closer to the people. Additionally, the oil companies have sponsored community development policies and projects "as a way of acquiring a social license to operate" amidst the turbulence in the Niger Delta communities (World Bank 2008b:x). Yet, poor planning, weak coordination and consultation, inadequate funding, abysmal implementation, and massive corruption and non-transparency have hobbled most of these initiatives.

7. Transparency and Accountability

Nigerian politics is "an exercise in organized corruption: a corruption perhaps most spectacularly demonstrated around the oil industry…where large commissions and percentage cuts of contracts have enabled individual soldiers and politicians to amass huge fortunes" (Human Rights Watch 1999: 6). The mismanagement and misappropriation of Nigeria's oil and gas wealth has involved both corruption in the oil industry itself and theft and squandering of oil-based revenues allocated to the central, state and local governments via the Federation Account.

The major sources of corruption in the oil industry include systematic favoritism and endemic non-transparency perpetrated by the federal executive and its agencies in the allocation of licenses for the exploration, prospecting and mining of oil; large-scale bribery of government officials for approvals of major oil sector contracts (for instance, Nigerian federal government officials reportedly obtained about $182 million from Halliburton as bribes for award of contracts in the gas sector); the manipulation of the multiple bottlenecks and inefficiencies in government-company relations; the direct bunkering or theft (with apparent official complicity) of crude oil from pipelines, flow stations, and export facilities; and massive irregularities and abuses in the operations of the NNPC, its subsidiaries, and associated bodies like the Petroleum Technology Development Fund (PTDF) and the NDDC. These bodies are notoriously "inefficient, politicized, and susceptible to capture by individual interests" (Gillies 2009).

The most spectacular instances of oil revenue corruption and mismanagement in Nigeria, however, have involved the financial and budgetary operations of governments at the three levels of the federal system. The 1995 Pius Okigbo Committee, for instance, discovered that the Federal Military Government of Ibrahim Babangida (1986-93) misappropriated and mismanaged some $12.2 billion in windfall oil revenues. Babangida's successor as head of the Federal Military Government, General Sani Abacha, looted an estimated $3.6 billion from the national treasury during his brutal rule from 1993 to 1997. Abacha's oil Minister, Dan Etete, was in March 2009 fined $10.5 million by a French Appeals court for acts of fraud and money laundering he committed while in office (Akinbajo 2009).

Although there are no systematic data on corruption in Nigeria, the return of civilian rule and the implementation of macro-economic reforms by the Obasanjo administration has arguably reduced the scale of corruption at the federal level, but not at the sub-national level, where the end of centralized military rule has apparently increased, rather than reduced, the opportunity for gubernatorial misconduct. The oil-based funding of constituent states and local governments by constitutionally and statutorily guaranteed central financial transfers have been a powerful inducement to corruption at the sub-national level. This is because these governments are neither responsible to the center nor accountable to their constituents for the use of the transfers. Between 1999 and 2007, 31 governors were indicted or brought under investigation by Nigeria's anti-corruption bodies for various breaches of the public trust, including embezzlement, money laundering, false declaration of assets, maintaining foreign bank accounts in contravention of the statutory code of conduct for Nigerian public officers, and the fraudulent acquisition of properties abroad. Among the most notorious cases involved Governors Diepreye Alamieyeseigha, James Ibori and Peter Odili of the core Niger Delta states of Bayelsa, Delta and Rivers, respectively, which were awash with billions of dollars in derivation-based federal oil revenue transfers (Aiyetan 2007; Human Rights Watch 2008). As high office holders, the governors enjoy constitutional immunity from criminal prosecution while in office, so the only immediate recourse has been impeachment, which has been done in a few cases but often in a highly questionable manner. Ongoing prosecutions of former state governors for their corrupt acts in office have been tardy, circuitous, and largely ineffective.

Nigerian local governments, even more than federal and state administrations, have acquired a reputation for being run like private instruments of their chairmen. Thus, a 2007 report on local government corruption in Rivers State highlights several examples of embezzlement that included, for example, the illegal allocation to the chair of Khana's local government in 2005 of salary and allowances worth $376,000, which were "nearly half the total amount allocated for the wages and allowances of Khana's 325 health-sector workers"; the allocation in 2006 to the chair of Tai's local government of a security vote of $300,000, which exceeded the council's total capital budgets for either health or education; and the illegal awarding during 2005-2006 by the chairman of Opobo Nkoro's local government of $91,000 worth of construction contracts to himself (Human Rights Watch 2007a: 32, 36, 56). Moreover, local level corruption in the oil-bearing states has come to permeate the structures of traditional community governance as evidenced in credible reports of chiefs using their positions to collect and divert compensation payments meant for their communities from oil companies.

The monumental crisis of financial transparency and accountability that afflicts Nigeria has combined with the extremely violent and fraudulent character of the country's electoral processes to reduce political governance in the country into a form of "criminal activity" that effectively abrogates the rights of Nigerians to enjoy basic socioeconomic welfare or hold their leaders accountable for the management of the country's oil wealth (Human Rights Watch 2007b: 1). This massive political corruption persists despite various measures implemented since 1999 to promote fiscal accountability and efficiency, including the establishment of the Independent Corrupt Practices Commission (ICPC) and Economic and Financial Crimes Commission (EFCC), NEITI, Excess Crude Oil Account, Fiscal Responsibility Act, Public Procurement Act, and Electoral Reform Committee (ERC). Ultimately, the prospects for promoting transparency and accountability in oil and gas governance in the Nigerian federation depend crucially on the restructuring or reinvigoration of these currently weakly designed or poorly implemented reform measures.

8. DISCUSSION AND CONCLUSIONS

Since the seventies, Nigerian federalism has functioned primarily as a mechanism for the intergovernmental distribution of centrally controlled petroleum sector revenues. Such revenues decentralization potentially can help disperse the stakes of ethno-political competition and encourage policy innovation among multiple sub-units, thereby promoting national stability, development and democracy. But this federalist promise has remained largely unfulfilled in Nigeria. Rather, Nigeria's petroleum-fuelled federalism has produced a corrupt and often violent political patronage system, reflecting public officials' preoccupation with revenues sharing at the expense of efficient, effective, and equitable public and fiscal policy-making (Anderson, 2007).

One reason for this failure is that the basic framework for the intergovernmental sharing of national oil revenues is defective. The centralized collection and distribution of Federation Account revenues lacks adequate inter-tier transparency and accountability, thereby allowing the Federal Government to shortchange the states and localities. More importantly, however, the sub-national authorities lack any incentives to raise their own revenues and have virtually no accountability for the monies they receive from the Federation Account because the central transfers are constitutionally mandated and politically automatic shared revenues, not conditional grants. The lack of sub-national accountability for shared revenues is compounded by the judicial and legislative exclusion of sub-national governments from national fiscal responsibility mechanisms on constitutional and federalist autonomy grounds, thereby forcing the Federal Government to maintain the oil-savings or Excess Crude Account in defiance of the Constitution and the Supreme Court and on the basis of a rather precarious "political agreement" with the sub-national governments (IMF 2009, 3). Partly because of its dubious legality, the Account has not been managed in a transparent and consistent manner, with the governors often successfully pressuring the presidency into releasing substantial amounts from the Account to the state governments for the execution of ostensibly critical or developmental, but often inappropriate, non-existent or over-inflated, projects, including electoral patronage and rigging schemes (Mojeed 2009). Indeed, contrary to the original design of the excess crude account as a fund to be drawn upon only if actual oil receipts fall short of budgeted amounts, political pressures from the governors to spend oil revenue windfalls led in 2007 to the adoption of the 80-20 rule, by which "80 percent of oil savings in a particular year would be [automatically made] available for additional spending the following year" (IMF 2009, 22).

A further drawback of the current revenue sharing system is the unequal distribution of transfers among the sub-national units owing to the ill-considered and politicized intra-tier allocation formula, especially the emphasis on the simplistic principle of inter-unit equality and the application of the derivation principle. Not surprisingly, regional inequality in per capita statutory finances and indeed in broader socio-economic circumstances in Nigeria remain among the worst in the world (UNDP 1997, 4; Anderson 2007, 16). Yet, while the application of the derivation principle, in particular, has led to the disproportionate transfer of revenues to the Niger Delta states, discontent persists in the region, owing both to the appalling management of the derivation revenues by the Niger Delta state governments as well as federal government insensitivity to the extraordinary environmental and infrastructural needs of the region.

All of this is not to ignore the progress that has been made, especially since the second term (2003-2007) of the Obasanjo Administration, in creating a much better policy framework for managing the country's mineral wealth. The introduction of the oil-price budget rule, with the pay down of the country's external debt and the subsequent build up of external reserves, represents an important shift in Nigeria's fiscal policy and macro-economic management framework. This shift has been reinforced with the establishment of complementary fiscal accountability and efficiency mechanisms like the economic and financial crimes, fiscal responsibility, public procurement, and extractive industries transparency acts. And the proposed Petroleum Bill, despite its imperfections, represents an ambitious attempt to reform corruption and inefficiency out of the structure, governance, and fiscal framework of the Nigerian oil industry. What is more, following intense domestic and international criticisms of the deeply flawed and fraudulent 2007 elections, the Yar'Adua Administration constituted the Electoral Reform Committee (ERC), which made far-reaching recommendations for improving the credibility and transparency of Nigerian elections.

Another recent hopeful sign in Nigeria's oil sector and federal governance involves the bold attempt of the Yar' Adua administration to address the Niger Delta insurgency through the creation of the Niger Delta Ministry and the implementation of a major amnesty program. Established in September 2008, and headed by a Minister and Minister of State both from the Niger Delta, the Federal Ministry of Niger Delta Affairs is charged with fast-tracking infrastructures development, environmental protection, and youth empowerment projects in the Niger Delta. Although vexed by low funding and an unclear division of responsibilities with the Niger Delta Development Commission, the Ministry of Niger Delta Affairs has been active in planning and implementing major road projects in the Niger Delta, and in coordinating the Federal Government's amnesty for the region's militants. Announced in August 2009, the amnesty program granted the militants an unconditional pardon for past offences, an attractive daily food allowance of $10 and monthly stipend of $133, and a scheme of retraining and education to enable the insurgents reintegrate into society. In response to the amnesty, an estimated 15,000 insurgents across the Niger Delta turned both themselves and their guns in, while major factions within MEND declared an indefinite ceasefire (Economist 2009a). Yet, critics doubt the amnesty's capacity to sustain peace in the Niger Delta, given the program's heavy reliance on the often non-transparent provision of monetary incentives, and the persistence of the corrupt, non-accountable, and violent style of governance in the region (Davis 2009).

Indeed, Nigeria's recent experiences with oil sector and broader governance reforms underscore the enormity of the impediments to fundamental change in the country. For instance, the NEITI audits, which have suffered repeated delays in their conduct and publication and have focused on revenue-inflow transparency to the exclusion of revenue expenditure accountability, nonetheless continue to point to persistent discrepancies between revenues paid by companies and received by government, as well as broader "systemic governance weaknesses that…left the sector vulnerable to corruption and diminished the state's capacity to capture maximum revenues from the oil and gas sector" (Revenue Watch 2007, 3). Discussions on the Petroleum Bill in the National Assembly have been convoluted and uninspiring, dimming any prospects, at least in the short-term, for the effective review and timely passage of the Bill. The fiscal responsibility framework and the savings of oil revenue windfalls, as already indicated, have faced stiff resistance from the state governments, which have become the "biggest source of the corruption and mismanagement in Nigeria's political system" (Economist 2009b). Meanwhile, a potentially crucial Freedom of Information Act, which could enhance citizens' access to information on the use of the country's oil wealth, was overruled by President Obasanjo in 2007, and has suffered repeated setbacks in the National Assembly since then.

A major weakness of recent reforms is that they have been dependent not only for their establishment, but also their operational effectiveness (including appointment and funding decisions), on the very political class whose abuses and excesses the reforms are designed to contain. This problem has been particularly evident in the emasculation or blatant political manipulation of the major anti-corruption agency, the EFCC. The Electoral Reform Committee sought partly to overcome this conundrum by proposing that the independent National Judicial Council (headed by the Supreme Court's Chief Justice), and not the president, should henceforth nominate the members of the national electoral management agency in order to arrest the agency's degeneration into a partisan instrument for the perpetration of electoral fraud at national and sub-national levels. Although Nigerian civil society and the political opposition overwhelmingly supported it, this "basic reform" was rejected by the Yar'Adua presidency (Economist 2009b). Yet, without the creation of a truly credible and competitive electoral environment, where politicians have incentives to deliver public goods and constrain the misappropriation of public resources, there can be no fundamental change to the pathologies that plague Nigeria's oil sector and federal governance, including the extraordinary levels of governmental corruption and economic inefficiency, the Niger Delta crisis, and the persistent specter of national political instability and disintegration.

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