

ACCOUNTABILITY THROUGH EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE: WHOSE ACCOUNTABILITY?

by

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ABSTRACT

Accountability has become ubiquitous in many discourses in our modern society. Growing interest in the study of accountability has apparently manifested in the examination of accountability in different sectors of the society. In contributing to the ongoing accountability discourses, this study generally explores accountability in relation to (Nigerian) Extractive Industries Transparency Initiative (NEITI) and specifically examines the extent to which NEITI as a supposed accountability infrastructure discharges accountability in the interest of the public. The corporate social disclosures of five multinational corporations (MNCs) in the Nigerian oil and gas industry were analysed for (N)EITI-related narratives in order to assess the extent of accountability or the interest the supposed accountability serves. Two theoretical lenses, political economy theory and legitimacy theory, were broadly adopted to provide explanations about the revenue transparency narratives in order to assess the extent to which such narratives discharge accountability. Both theoretical lenses suggest that the revenue transparency narratives apparently serve the economic interest of the corporations as there is no obvious evidence to justify the companies' claims that their implementation of revenue transparency initiative promotes transparency, accountability, corruption reduction and equitable distribution of resources. The revenue transparency initiative appears to be another business fad that companies use to capture discourses on accountability and transparency without altering corporate economic self-interest.

INTRODUCTION¹

Accountability has become ubiquitous in many discourses in our modern society. Growing interest in the study of accountability has apparently manifested in the examination of accountability in different sectors of the society. For example, attention has been devoted to: NGO accountability to fund providers and those beneficiaries they claim to support (Ebrahim, 2003; Dhanani & Connolly, 2014; Fassin, 2009; Gray, Bebbington, & Collison, 2006; Lehman, 2007; O'Dwyer & Unerman, 2007, 2008; 2010), public accountability (Bovens, 2007; Fox, 2007;

¹ Some parts of this section and the following three sections were adapted from my PhD thesis at the School of Management, University of St Andrews, UK.

Mulgan, 1997, 2000; Parker & Gould, 1999; Sinclair, 1995), and corporate accountability (Cooper & Owen, 2007; Dillard, 2008; Gray, Dey, Owen, Evans & Zadek, 1997; Owen, Swift, Humphrey & Bowerman, 2000; Roberts, 1991). Whilst accountability could mean different things to different parties (see for example, Bovens, 2007, Sinclair, 1995), it generally suggests the provision of information to those with the rights to know (O'Dwyer, Unerman, & Bradley, 2005). As Bovens (2007) argues, the accountors must feel obliged to provide accounts rather than being at liberty to provide whatever account they want. Accountability is vital, as Swift (2001) argues, where trust is in doubt.

Recently, the Extractive Industry Transparency Initiative (EITI) was established to provide an accountability framework for the accruing revenues from the extractive industry to the host government on the assumption that it promotes transparency and builds trust regarding such revenues. Countries that have extractive industry are encouraged to sign up to this framework globally and to locally operationalise the framework. The Nigerian version of EITI is the Nigerian Extractive Industries Transparency Initiative (NEITI) established by an Act. As the extractive industry is strategic to the Nigerian economy², transparency and accountability over accruing revenues from extractive industry are important in order for those revenues to be accounted for as accurately as possible in the interest of the Nigerian public. However, the extent to which NEITI serves the public interest is currently underexplored. This study seeks to examine the extent to which NEITI meets the remit of accountability to further the interest of the public (or the corporations') as the extractive industry is tendentiously secretive (Olayinka, 2012; Otusanya & Lauwo, 2014). Based on the economic realities in Nigeria from three or so decades ago, the oil industry is the most important extractive industry in the country accounting for the most part of the country's foreign exchange earnings and major source of budgetary revenues (see CBN, 2010; Idemudia & Ite, 2006; Ite, 2004). As the industry requires huge capital investments and expertise, oil multinational corporations (MNCs) dominate the activities of the industry as they account for over 90% of the industry's

² The oil industry as the main source of revenue to the Nigerian Government is part of the extractive industry.

operations (NNPC Statistical Bulletins, 2000-2012; NAPIMS website)³. Consequently, this study focuses on the NEITI-related narratives provided by the major MNCs to discharge their NEITI-related accountability.

ACCOUNTABILITY DISCOURSE

As mentioned in Section 1, accountability is ubiquitous in public discourses because of the relationships between different parties necessitating the giving of accounts. According to Everett (2003: 79) “[a]n understanding of accountability needs to begin with a look at the notion of the “account”, an official form of “story” or “narrative”.” Dar (2014, p. 133), drawing on Power (1994), defines accountability as “informed relations of trust.” This corroborates Swift’s (2001) argument that the need to provide accounts is imperative when the accountees lack trust in (or have plausible reasons to doubt) the accountor. Accountability is equally driven by the need to provide stewardship, which is also occasioned by agency problem where the interests of the agents may not be congenial with those of their principals (Allen, 2014; Swift, 2001). Based on Swift’s (2001, p. 17) argument, the concern of accountability is “whether stakeholders have sufficient, accurate, understandable and timely information on which to act.”

Traditionally, corporate accountability is based on the general principal-agent framework (Allen, 2014; Gray, Brennan, & Malpas, 2014; Gray, Owen & Adams, 1996; Gray *et al.*, 1997; Joseph, 2007; Woodward, Edwards & Birkin, 1996), which is applicable to the wider society through the lens of social contract that exists between the corporations and society (Gray *et al.*, 1996). The literature argues that the relationship between an agent and principal may be explicit or implicit (Gray *et al.*, 1996; Hill & Jones, 1992; Swift, 2001), formal or informal (Dar, 2014; Gray *et al.*, 1997; Laughlin, 1990; Woodward, *et al.*, 1996), contractual or communal (Woodward *et al.*, 1996) or based on legitimate interests (ISEA, 1999). For example, Woodward *et al.* (1996, pp. 329-330) argue that:

³ NNPC: Nigerian National Petroleum Corporation (state-owned company representing Nigerian Government’s interest in Joint Ventures with MNCs); NAPIMS: National Petroleum Investment Management Services is a subsidiary of NNPC that manages NNPC’s investments in the JVs.

[A] principal-agent relationship may be assumed to exist even in the more fluid state of communal accountability, and without the need to specify either the precise nature of the relationship, or how the relevant accountability might be evidenced.

Woodward *et al.* consider communal expectations as unwritten expectations of the society and its stakeholder elements. While the contractual agency or principal-agent relationship might derive from law, Power (1991) argues that it can also derive from moral and political premises. Gray *et al.* (1996, 1997, 2014) also contend that it can equally derive from quasi-laws, corporate self-imposed commitments and moral norms. However, the Western market ideology apparently limits accountability to economic relationship between shareholders and corporations (Benston, 1982, 1984; Friedman, 1970; Heath, 2006; Mansell, 2013a, 2013b; Stenberg, 1997, 2004). According to Shearer (2002), accountability based on economic logics is incapable of discharging the accountability obligations to other interests beyond economics. This suggests that the provision of accounts that satisfies the public interests requires transparency. According to Bovens (2007, p. 448), accountability has been used in public discourses as it “conveys an image of transparency and trustworthiness.” Transparency, according to the literature, is the making of things visible. For example, as Gray (1992, p. 415) argues:

The development of accountability . . . increases the transparency of organisations. That is it increases the number of things that are made visible, increases the number of ways in which things are made visible, and, in doing so, encourages a greater openness. The inside of the organisation becomes more visible, that is, transparent.

Like accountability, commentaries on transparency suggest that it is opaque and apparently conceals as much important things as it uncovers (see Ziglidopoulos & Fleming, 2011; Garsten & de Montoya, 2008; Gray, 1992; Roberts, 2009). However, insight from Guthrie & Parker (1990) suggests that the provision of greater information⁴ apparently creates avenues for stakeholders to further scrutinize the activities of the reporting entities. In this regard, NEITI narratives apparently provide

⁴ This does not necessarily suggest greater transparency or greater accountability. For example, Bovens (1998) argues that accountability is dichotomous, meaning that an accountant is either accountable or not accountable and that accountability is not a matter of degree.

an avenue to further scrutinize the accountability of corporations with respect to their payments to the government as well as the transparency of the underlying contractual obligations underpinning those payments. Such scrutiny will be apparently more acute in a country such as Nigeria where there is high level of corruption in government which enters into contractual obligations with the oil corporations. NEITI law apparently privileges secrecy of information under the guise to not undermine contractual obligations (see NEITI Act 2007).

ACCOUNTABILITY IN THE NIGERIAN CONTEXT

A number of studies have examined accountability within the Nigerian context ranging from corporate to public sector. For example, whilst Iyoha & Oyerinde (2010) and Kifordu (2010) studied public/political accountability, Disu & Gray (1998) explored corporate accountability in the context of corporate social reporting. Disu & Gray (1998) – as far as I am aware - is the earliest study on corporate social disclosure in Nigeria, which explores social disclosures of a number of MNCs operating in Nigeria showing evidence of the provision of mandatory and voluntary disclosures to varying degrees. However, they observed that the company with more disclosures did so in response to criticisms and pressures from the public, which according to Disu & Gray, fails to fulfil the remits of discharging accountability. Shinsato (2005) also studied MNCs' accountability in the Nigerian oil industry vis-à-vis violation of human rights and environmental degradation. She makes advocacy for international laws with strict penalties capable of making corporations behave responsibly in upholding human rights to healthy environment as well as be held to account. In order for such laws to be effective, she argues that the enactment and enforcement of these laws must be at the international level so that citizens of weak and corrupt states cannot be undermined.

In relation to public sector accountability, Kifordu (2010) undertakes an analysis of how the political elite composition has promoted unaccountability in Nigeria in spite of structural and economic changes the country has undergone. He observes that although Nigeria has experienced governance under parliamentary, military and presidential systems of government, the political landscape is dominated by few elite groups who have built authority structure that destroys the liberal-pluralist notion of accountability as they privilege their interests over those of the public. According to

Kifordu (2010, p. 289): Accountability from the democratic governance perspective is the institutionalized process through which political leaders are held responsible for their acts vis-à-vis 'public will'... Effective accountability is determined not just by processes but also by outcomes that measure the extent to which policy choices substantially cohere with public preferences.

He further argues that an effective accountability process requires the citizens' input and that citizens' capacity to hold the leaders to account does not only depend on those citizens' capacity to do so but also on the willingness of the leaders to submit to the rules governing accountability. He also contends that public office holders should be accountable with respect to the law as well as for their actions and choices that have consequences on the people. Whilst he recognises free and fair election as a mechanism of sanctioning underperforming leaders, he equally points out that citizens are denied such rights in Nigeria. As Kifordu contends, the elites have enormous political and economic powers which create power inequality between them and the larger public, which they equally use to hijack and manipulate institutions that are supposed to promote accountability. He also implicates ethnicity, nepotism, corruption, and weak institutional structures, as undermining the ability or capacity of the citizens to effectively participate in the accountability process and hold those in power to account.

Another study, Iyoha & Oyerinde (2010), assesses the state of accountability in the Nigerian public sector by drawing on the role accounting infrastructure could play in fostering public accountability vis-à-vis public expenditure. In drawing on accountability literature, Iyoha & Oyerinde argue that accountability is a mechanism for democratic control and for maintaining checks and balances. They contend that accountability can help to prevent public sector corruption and the abuse of official position. Nonetheless, they argue that effective accountability over financial management practices in Nigerian public sector will require sound financial management information system, adequate number of qualified accountants, high quality accounting standards and robust legal framework. Whilst they acknowledge that Nigerian Government over time has initiated several reforms to promote accountability in public expenditure, they argue that such mechanisms have failed to foster accountability due to high-level corruption and fiscal indiscipline perpetrated in

government arena (Agbibo, 2012). They also argue that the various reforms initiated by the government failed to achieve accountability because of failure to reform accounting infrastructure that will ensure information provision to, and accessibility by, society. Having access to information and being able to engage with the providers of the information are vital for the participation of the public in accountability process.

EITI AS AN ACCOUNTABILITY INFRASTRUCTURE

EITI is viewed as a mechanism to promote accountability and transparency (Corrigan, 2014; Smith, Shepherd, & Dorward, 2012). All the MNCs in the Nigerian oil industry also signed up to this initiative which obligates them to publicly disclose their payments to the Government. As the literature suggests, it is aimed essentially at promoting the accountability of the Government to its citizenries regarding the monies received from corporations (Corrigan, 2014; Hilson & Maconachie, 2008, 2010; Smith *et al.*, 2012). In this regard, EITI appears to be an indirect mechanism stakeholders can also use to demand accountability from their government. As Hilson & Maconachie (2008, 2010) noted, EITI can only be effective as a means of holding government accountable where there is good governance and commitment to institutional reform.

Recent studies of accountability in Nigeria have also explored accountability in relation to corporations and public sector nexus by looking at accountability and transparency in respect of monetary payments corporations make to the Nigerian Government such as taxes, royalties, penalty fees, etc (Idemudia, 2010; Otusanya, Lauwo, & Bakre, 2014). Accountability is brought to the fore in Nigeria through EITI aimed at promoting transparency by requiring corporations to 'publish what they pay' to their host governments⁵. According to Otusanya *et al.* (2014), the EITI scheme was introduced into the extractive industries due to the prevalent secrecy in revenue flows in such industries. Nigeria signed up for EITI and then formed NEITI in 2004 and gave it an enabling Act in 2007 (Otusanya *et al.*, 2014). As one could observe from the NEITI Act, NEITI is characteristically dualistic in that it is an enabling Act as well as an agency of the government to perform certain functions prescribed by the

⁵ The origin of EITI and the incidents that heralded it can be found at <http://eiti.org/eiti/history>

law. Whilst it is an initiative aimed at promoting transparency, Otusanya *et al.* argue that MNCs use such initiative to manage stakeholder impression as it confers neither enforceable rights on stakeholders nor alter the nature of the companies.

Otusanya, *et al.* also argue that EITI initiative will not be effective as the MNCs pursue a neo-liberal privileging of capital, which apparently makes them circumvent revenue transparency under different guises such as transfer pricing, tax avoidance, and contract negotiations. On the side of the State, they contend that corruption in government circles and weakness in governance and institutional frameworks also weaken the effectiveness of EITI to deliver transparency and accountability. Idemudia (2010) also argues that EITI as a Western concept requires modification appropriate for local utility. In general, the above reviews suggest that accountability in Nigerian public sector and corporate domains is dominated by the influence of powerful stakeholders. As large corporations wield enormous power and influence in the contemporary society, commentators have argued that corporations should consequently assume greater responsibility and accountability (Bendell, 2004; Davis, 1960, 1967; Koenig-Archibugi, 2005; Hess, 2008). In order to articulate the legitimacy of their operations, corporations have apparently increased their economic, social and environmental disclosures since the last two decades or so, whilst the increased information presumably reduces information asymmetry based on political economy theory (Campbell, 2000). Consequently, a corpus of literature has used legitimacy and political economy theories as lenses to provide explanations for a plethora of social corporate disclosures.

LEGITIMACY THEORY AND POLITICAL ECONOMY THEORY POLITICAL ECONOMY THEORY (PET)

According to Gray *et al.*, (1996, p. 47), “Political economy is the social, political and economic framework within which human life takes place.” Ideally, this suggests that socio-political and economic aspects of society cohere. Gray *et al.* (1996) discuss PET from two perspectives namely, *classical* and *bourgeois*. As they argue, the difference between these two relates to the level of resolution of analysis and the importance attached to structural conflict within society. As they argue, whilst the *classical* perspective places structural conflicts, inequality and the role of the State at the heart of the analysis, the *bourgeois* apparently excludes these issues from the

analysis and take them as given. Whereas the *bourgeois political economy* considers the interactions between groups within society as following a neo-pluralistic notion, it fails to recognise the imbalance of power between these different groups in society and how those power relations were derived, for example.

Gray *et al.* (1996) argue that *bourgeois* PET can provide explanations to much of corporate social reporting practice (usually the voluntary), whilst the *classical* provides useful explanations in the context of mandatory disclosures. The *bourgeois* perspective apparently encourages corporations to selectively disclose what they wish to disclose in a manner that ultimately furthers the economic interests of corporations. By drawing on Guthrie & Parker (1990) vis-à-vis the lens of PET, Adams, Coutts and Harte (1995, p. 103) argue that corporations use disclosure “as a tool for ‘constructing, sustaining and legitimizing political and economic arrangements, institutions and ideological themes which contribute to corporations’ private interests”⁶. This corroborates Gray *et al.*'s (1996) argument that voluntary disclosures apparently represent crumbs of legitimation dropped from the table of capitalism. Essentially, a *classical* PET critique of corporate social reporting calls into question the transparency of corporate social disclosures and equally holds the view that even regulated mandatory disclosures represent the interests of the corporations (and their powerful stakeholders) rather than those of the weak in society⁶.

PET⁷ helps to analyse the broader socio-political issues that affect corporate operations and the choices of information the corporations are willing to disclose (Deegan, 2000) and suggests that a corporation will apparently be unwilling to disclose information that is inconsistent with its self-interests (Guthrie & Parker, 1990). Consequently, it becomes imperative to provide explanations on corporate disclosures by drawing on the wider social, economic and political contexts which influence, and are influenced by, modern corporations. As the corporations are embedded within the larger society and obtain their legitimacy from it, proponents of

⁶ For example, Sikka (2010) argues that the law cannot sufficiently promote responsible behaviour as social history shows how law has been deployed to promote several unethical behaviours [apparently in favour of economic capital].

⁷ PET that would be adopted in this study is the *classical* perspective as legitimacy theory (also adopted in this study) is a form of *bourgeois* PET (Gray *et al.*, 1996).

legitimacy theory suggest that the corporations must strive to gain, maintain or repair such legitimacy in order to remain in operational existence.

LEGITIMACY THEORY (LT)

Legitimacy theory suggests that the corporations will remain relevant and enjoy the support of society when they operate within the value system of the society (Campbell, 2000; Gray *et al.*, 2014; O'Donovan, 2002). More formally, Suchman (1995, p. 574) defines legitimacy as “a generalized perception or assumption that the actions of an entity are desirable, proper or appropriate within some socially constructed system of norms, values, beliefs and definitions”. As LT suggests that the society confers the licence to operate on the corporations (Lindblom, 1994), the corporations will presumably satisfy the expectations of the society in order to enjoy society's continued support (Dowling & Pfeffer, 1975). However, the literature argues that corporations use legitimation strategies to gain, maintain or repair their legitimacy depending on the legitimacy situations they face (Lindblom, 1994). But Eweje (2006) argues that corporate image (i.e., how the entity is perceived) and societal expectations are two important elements within legitimacy theorisation that corporations seek to manage.

LT literature also argues that legitimacy problem occurs when the expectations of society are not consistent with the society's perception of corporations' behaviour, which implicitly creates legitimacy threats to such corporations (see Bebbington, Larrinaga, and Moneva, 2008; Eweje, 2006). With the potency of legitimacy threats and the attendant corporate reputation risk, the literature has also strongly linked impression management to the legitimation strategies of corporations. For example, a plethora of social accounting literature argues that corporations use disclosures to manage their actual or potential legitimacy situation (see Deegan, 2002; Deegan, Rankin & Tobin, 2002; Samkin & Schneider, 2010). Where such legitimacy issues will likely damage the image of the corporation, it uses disclosure as a legitimation strategy to manage the impression of (powerful) stakeholders (Samkin & Schneider, 2010). This suggests that disclosures are not only intended to discharge accountability, but also to manage stakeholder impression (see Beelitz and Merkl-Davies, 2012) and further organisational legitimacy (Bebbington *et al.*, 2008). One of the characteristics of corporate disclosure legitimation strategy is the alleged

emphasis of corporations on positive corporate social performance in contrast with less emphasis on what the society perceives as negative corporate social performance (see Gray *et al.*, 1996; Lindblom, 1994; Owen & Swift, 2001). This suggests that corporations instrumentally use disclosures to legitimise their actions (Adams *et al.*, 1995). These two theories provide the lenses to plausibly explain the NEITI narratives by major MNCs in the Nigerian oil and gas industry.

ANALYSIS OF (N)EITI ACCOUNTABILITY: WHOSE ACCOUNTABILITY?

(N)EITI or revenue transparency is very prominent in the Nigerian oil industry, which the oil companies allegedly comply with by disclosing payments they make to the Nigerian Government vis-à-vis their oil and gas operations. Annual corporate social responsibility (CSR) reports of five major oil MNCs in the Nigerian oil industry are analyzed as these are publicly accessible reports that contain revenue transparency narratives. These companies are Chevron, Eni, ExxonMobil, Shell and Total.⁸ The analysis is based on 2012 and 2013 annual reports of these five corporations (representing a total of ten annual reports) as Shell (the most visible⁹ oil MNC in Nigeria) disclosed that it first published details of payments to its host governments in 2012. As NEITI narratives represent a small portion of the corpus of CSR reports produced by these MNCs, it is easy to identify a few themes embedded within those narratives. Consequently, the identifiable themes relating to corporate disclosures on revenue transparency are presented below.

TRANSPARENCY AND ACCOUNTABILITY

Whether it is symbolic or actual, all the companies expressed their commitment to revenue transparency initiative as it apparently enhances transparency and accountability between the companies and government. Examples of such narratives are as follows:

⁸ Eni operates in Nigeria as Agip; Shell operates as Shell Petroleum Development Company (SPDC) and Shell Nigeria Exploration and Production Company (SNEPCo); Chevron operates as Chevron and TEXACO (see NNPC Statistical Bulletins 2012).

⁹ Shell is most visible In terms of its operation in Nigeria since oil was discovered in Nigeria and the most criticised over shady dealings with Nigerian Government at the expense of host communities.

We work openly with governments on matters of taxes and royalties... To help improve accountability, we support a mandatory global reporting rule for extractive industries, in line with EITI goals to achieve greater transparency (Shell Sustainability Report 2012, p. 31).

One important global program that encourages transparency and collaboration among governments, companies, civil society and financial institutions is the *Extractive Industries Transparency Initiative* (EITI), which is dedicated to strengthening governance by improving transparency and accountability in the extractives sector (ExxonMobil Corporate Citizenship Report 2012, p. 55)

As the above narratives suggest, this multi-stakeholder approach promotes transparent disclosure of monies oil companies pay to the host government. With such information available in public domain, the companies have also argued that such information promotes reduction of corruption.

CORRUPTION REDUCTION

Corporate discourses on revenue transparency initiative suggest that the initiative reduces corruption of government vis-à-vis revenue from natural resources, although with no clarity as to how this information disclosure probably reduces corruption. Some of the anti-corruption narratives of revenue transparency are presented below:

ExxonMobil is committed to the highest standards of business conduct and anti-corruption wherever we operate. Our efforts to promote revenue transparency have helped fight corruption, improve government accountability and promote greater economic stability around the world. (ExxonMobil Corporate Citizenship Report 2013, p. 50)

For an extractive company, the fight against corruption and the contribution to transparency also involves a commitment to provide evidence of the payments made to producer Countries for extractive activities. (Eni For 2013, p. 22)

EQUITY, SOCIAL WELLBEING AND RESPONSIBLE USE OF RESOURCES

The oil companies also perceive EITI as a means of contributing to sustainable use of resources in developing countries where they operate as their EITI narratives

appear to portray the notion of equity in the distribution of income, which apparently has implications for poverty reduction and social wellbeing.

In carrying out its business activities, eni activates a flow of resources which can be crucial elements of growth for the economy. Only firm rules on integrity and the promotion of transparency, in particular as regards payments to producer countries, can provide shelter from the risk of corruption and form the basis for a responsible use of these resources (Eni For 2012, p. 44)

Resource-rich countries have the ability to generate revenues to spur economic development and reduce poverty. We believe that the transparent and accurate accounting of these revenues by governments and extractive industry companies contributes to stable, long-term investment climates, economic growth and social well-being (Chevron 2013, p. 20)

Oil and gas development generates substantial revenues for producing countries, but often the amounts involved are not fully disclosed and the benefits are not equally distributed. Because financial transparency is crucial in this regard, we are an active member of the Extractive Industries Transparency Initiative (EITI) which promotes publication of payments to States to further good governance (Total Corporate Social Responsibility Report 2012, p. 11)

The publication of payments to governments of producer Countries for the use of these resources contributes to strengthening reliability and good government in producer Countries, while at the same time promoting the adoption of approaches involving a sustainable use of resources, benefiting the local population (Eni For 2013, p. 22)

ANALYSIS OF PAYMENT

Corporate revenue transparency discourses suggest that the host government benefits more in terms of revenues/profits accruing from natural resources compared to what the corporations get. \$4.0 billion: Shell share of royalties and taxes paid to the Nigerian government in 2013 [SPDC \$2.6, SNEPCo \$1.4]. 95%: share of revenue after costs that goes to the Nigerian government from each barrel of oil SPDC produces. (Shell Sustainability Report 2013, p. 23)

In its Annual Report, **eni** publishes the taxes [income taxes, royalties and fees] paid broken by geographical area and the detailed payments to Nigeria, Republic of Congo, Norway, Timor Est, Mozambique, Kazakhstan, Iraq, Togo and Gabon (Eni For 2012, p. 45)

DISCUSSION OF FINDINGS

Accountability and transparency are two important concepts embedded within the revenue transparency discourses with the taken-for-granted assumption that the disclosure of revenue transparency information translates to corporate accountability and transparency. Although accountability and transparency are inseparable (Bovens, 2007; Koppell, 2005), the transparency of the NEITI disclosures is not obvious. Corporations appear to use the word transparency very loosely as though it is universally understood or defined. The reading of Roberts (2009), Gray (1992), Garsten & de Montoya (2008) and Zyglidopoulos & Fleming (2011) suggests the conceptual complexity and misappropriation of transparency apparently to further the interest of some powerful stakeholders. Moreover, Otusanya *et al.* (2014) question the full disclosure claims of the oil MNCs with respect to transparency regarding transfer pricing and contract negotiations. It appears that the corporations use the term transparency and accountability possibly to suggest how responsible they are, which apparently serves a legitimization strategy.

Moreover, whereas the oil corporations claim they use revenue transparency initiative to fight corruption, it is not obvious how this is achieved given the alleged incidences of bribery and corruption between oil companies and government (officials) in Nigeria. For example, commentators report that oil MNCs in Nigeria use bribery and corruption to negotiate favourable contracts or induce support of the political elites and bureaucrats (see Otusanya, Lauwo & Adeyeye, 2012). This apparently undermines the principle of transparency as the payments disclosed, albeit actually paid, may not represent a fair market value. For example, the literature also documents incidences of tax evasion by oil companies in Nigeria (see Amujo, Laninhun, Otubanjo & Ajala, 2012), whilst it is also alleged that they use some technical tactics (e.g. transfer pricing, technical fees) to induce costs and ultimately reduce taxable income (see Otusanya, 2011).

The information provided with reference to EITI both in the CSR reports and corporate websites is scanty and insufficient to judge how truly transparent the scheme is. Based on the MNCs' claims that transparency and accountability derive from revenue transparency initiative, it does suggest that corporate disclosure of amounts paid to the government constitute transparency and accountability. As earlier noted, companies in the industry have been accused of involvement in corrupt practices which compromises the public interest with a view to furthering corporate economic interest (see Otusanya *et al.*, 2012). This allegation apparently suggests a legitimacy gap and reputation risk. As a consequence, the literature suggests that corporations will provide information to manage the impression of the public, essentially of the powerful stakeholders (Bebbington *et al.*, 2008; Beelitz & Merkl-Davies, 2012; Solomon, Solomon, Joseph & Norton, 2013). The anti-corruption or corruption reduction narrative appears to serve a legitimisation strategy by directing public attention away from the possibility of financial impropriety in the dealings between the MNCs and the host government.

Whilst Eni disclosed the analysis of its 2011 payments to Nigerian Government in 2012 annual report (and repeated same in 2013), Shell disclosed its 2013 payments on the internet link it provided in its Sustainability Report. These companies¹⁰ apparently analysed those revenue payments into income tax and royalties, which in all probability include penalty fees for flaring gas. It is unclear how gas flaring penalties will logically form part of income tax or royalties payable to government because gas flaring has been regarded as an untoward corporate environmental behaviour that creates negative impacts on the environment and people; nevertheless, the penalty fees for gas flaring in Nigeria remains abnormally paltry (see Egbon, 2014). It is also documented that oil MNCs in Nigeria have resisted payment of high penalty fees introduced by the Nigerian Government (Ribadu, 2012), aimed probably at discouraging gas flaring. *Classical* political economy theory apparently provides a good explanation for such corporate resistance which appears

¹⁰ ExxonMobil's, Chevron's and Total's CSR reports did not analyse payments according to countries. Eni in its 2006 and 2007 Sustainability Reports disclosed its payment of gas flaring penalty fees as part of monies accruing from Eni to Nigerian Government, whilst Shell

to suggest unequal power relations between the Government (or the public it allegedly represents its interests) and the MNCs. Moreover, legitimacy theory equally has an explanatory power in this regard in that the corporations apparently chooses the information that will promote (not hurt) their image when the society perceives the underlying behaviour as unethical.

EITI narratives appear to also have a link with the notion of equity in resource distribution. For example, Gray *et al.* (1996) argue that society interested in sustainability needs plethora of information to be able assess the eco-justice of corporate decisions, of which distribution of corporate wealth created is an integral part. EITI is also conceptually underpinned by the notion of distribution of a proportion of wealth created by corporations to the government (which theoretically represents the interest of the society). Whilst the information the MNCs provide is enlightening to an extent in assessing their accountability vis-à-vis EITI obligations, it is unclear how the contractual obligations underpinning those revenues paid to the government are transparently conducted. For example, the MNCs' literature suggests that corporate powers have implications for transparent negotiations between them and the government. Madeley (1999), Scherer, Palazzo, & Baumann (2006) and Stephen (2002), for example, argue that corporations exert influence over government economic policies and negotiations because of their corporate power. As earlier mentioned, Otusanya *et al.* (2014) similarly raise doubts over the transparency surrounding contracts and negotiations between the MNCs and the government.

The MNCs' alleged transparency of revenue payment to the Nigerian Government, from legitimacy theorization perspective, suggests that the value system of the corporations is consistent with that of the society. However, there is lack of evidence to suggest the transparency of the contractual obligations giving rise to the revenue payments. Political economy theorization apparently provides a useful explanation for issue of power and the imbalance of power between corporations and the government which enters contractual obligations on behalf of the society. The negotiations giving rise to the accountability obligations may be compromised by the hegemonic influence of large corporations in (corrupt) developing countries such as Nigeria. Moreover, like other laws in developing countries that appear to be

legislated in favour of MNCs to attract corporate investment (Koenig-Archibugi, 2005; Otusanya, 2011; Sikka, 2010), NEITI Act has a proviso that protects the corporations from disclosing information that might presumably have negative impact on contractual obligations and proprietary interest of the corporations (see Section 2 of NEITI Act 2007). What is good for the corporations in this context is presumably good for the Nigerian society. No empirical evidence lends support to this capitalist analogy.

CONCLUSION

An accountability that focuses on the economic interest of shareholders at the expense of the public interest apparently fails to discharge accountability within the notion of the general agency principle of corporate-society relationship. The findings from this study suggest that corporations use the revenue transparency initiative as one of the managerial strategies to legitimize corporate operations and to appeal to the senses of powerful stakeholders on how corporate values appear to be consistent with societal norms and values. It is also apparent from the findings that the corporations appear to play a neutral role in influencing public policies, regulations, and negotiations between corporations and host government contrary to literature commentaries (see Bowie, 2013; Goldenberg, 2012; Romm, 2010). Oil companies tend to use the revenue transparency initiative to convince stakeholders how those companies promote transparency and accountability within the oil industry especially in vulnerable developing countries. (N)EITI also tends to give the impression of fair distribution of oil revenues between the State and oil companies. Although the MNCs' disclosures suggest that the Nigerian government, for example, gets the larger share of income generated by oil MNCs, the management of the joint ventures between the MNCs and Nigerian Government is vested in the former. Such an arrangement potentially encourages an opportunistic behaviour from the corporations to inflate costs with the implication of reducing distributable income.

It is not obvious whose accountability is promoted by the transparency initiative. Is it corporate accountability to the public? Or is it State accountability the corporations indirectly pursue? The MNCs' claim on the use of transparency initiative to promote corruption reduction appears to suggest the promotion of the accountability of the State. Whilst the revenue transparency initiative may not be a trivial initiative

(altogether) in holding corporations and government to account, it appears to be one of those trending corporate voluntary initiatives¹¹ big corporations sign up to in order to legitimize their operations and continue to maintain their overarching economic interest.

Whilst this study has looked at the corporate side of the revenue transparency initiative, other issue of (N)EITI that might require further research is the extent to which stakeholders are actually involved in the transparency assessment. Moreover, the government side of the transparency initiative is also worth studying in order to assess the correspondence between corporate transparency disclosures and those of the government. In addition, whilst the NEITI principal officers are appointed by the President of Nigeria to exercise oversight function over the revenue transparency initiative, future research could explore the powers and independence of NEITI as an institution established by law as well as its effectiveness in assessing the accuracy of monies the corporations remit to the government.

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¹¹ For example, CSR, Global Compact, Voluntary Principles, etc.

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