

MANAGEMENT OF SAO TOME'S OIL

A Diagnostic



webeto.org

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Editor's Note

The transparent management of oil revenues in Africa is neither a dream nor impossible to achieve. It will be a reality if each of us believes it can be done, and does our part for it.

Carla Sardinha Vieira

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PREFÁCIO

Por **Gerhard Seibert***

Webeto, “olho aberto” em lungwa santome, crioulo maioritário de São Tomé e Príncipe, é uma organização de sociedade civil deste pequeno país do Golfo da Guiné. Foi formalmente constituída com este nome programático em São Tomé, em Abril de 2005, por membros da diáspora são-tomense em Portugal. Contudo, já antes da constituição formal da Webeto, desde 2002, os seus membros acompanharam crítica e atentamente os desenvolvimentos em torno do sector petrolífero do seu país. O dossier petróleo apareceu em São Tomé e Príncipe pela primeira vez em 1997, o ano da assinatura do primeiro contrato de petróleo entre o governo são-tomense e a Environmental Remediation Holding Corporation (ERHC), uma pequena empresa norte-americana desconhecida, na altura com sede em Lafayette, Louisiana. Em 1998 e 2001 seguiram-se mais dois contratos sobre estudos sísmicos com a Mobil e a norueguesa Petroleum Geo-Services (PGS) respectivamente. Os excessivos direitos preferenciais em blocos de petróleo *offshore* do país, concedidos pelo governo são-tomense às três empresas estrangeiras, desencadearam muita constatação, dentro e fora do país. Foi em torno destes contratos que, em 2002, os fundadores da Webeto lançaram a sua primeira campanha de esclarecimentos designada “*Coisa Pública II*”, dirigida aos seus compatriotas. A iniciativa aproveitou-se das novas tecnologias de comunicação e desde então sempre o fez, divulgando muitas das suas informações e intervenções críticas através da Internet. Daí, não é por acaso, que “Web” (Internet) também aparece no nome programático da organização.

Como o nome da campanha indica, os membros da Webeto nunca separaram o chamado dossier petróleo da gestão dos bens públicos e da governação do seu país em geral. Contudo, conhecendo a maldição do petróleo sobretudo em África e os problemas existentes de corrupção em S. Tomé e Príncipe, aperceberam-se que a então esperada transformação rápida do seu país em produtor petrolífero podia agravar esta situação. Não é por acaso que a Webeto surgiu na Diáspora são-tomense, pois a sociedade civil dentro do país ainda é incipiente, carece de melhor organização e, frequentemente, confunde-se com o poder político. É também por esta razão que, até hoje, a Webeto foi a única organização independente são-tomense que acompanhou o desenvolvimento do sector de petróleo no seu país com continuidade, seriedade e conhecimento específico da matéria. Este conhecimento sobre o petróleo foi acumulado ao longo destes anos, também graças à cooperação da Webeto com outras organizações regionais e internacionais, parcerias essas que sempre foram parte integral da sua actividade.

Este diagnóstico é fruto do trabalho árduo da Webeto. O relatório aborda consecutivamente o historial dos contratos petrolíferos assinados pelo governo do país, o enquadramento jurídico-institucional do sector no país, a gestão dos recursos petrolíferos, o compromisso assumido pelo país, em 2007, com a Iniciativa para a Transparência nas Indústrias Extractivas (EITI), e o papel da sociedade civil na transparência da gestão do dossier petróleo. A adesão de São Tomé e Príncipe à EITI deve-se em grande medida ao trabalho e a intervenção activa da própria Webeto. A gestão das receitas de petróleo refere-se apenas aos cerca de \$78 milhões que o país recebeu desde 2005 em bónus de assinatura para quatro blocos da Zona de Desenvolvimento Conjunto (ZDC com a Nigéria, JDZ na sigla em inglês, visto que até agora o país não produz petróleo.

O resultado da única perfuração exploratória, efectuada pela Chevron, no Bloco 1 da ZDC em 2006, não foi conclusivo do ponto de vista comercial, visto que o petróleo encontrado não foi considerado comercialmente viável. Desde então, não foram realizadas outras perfurações nos quatro blocos da ZDC e muito menos na própria Zona Económica Exclusiva (ZEE) do arquipélago, EEZ na sigla em inglês. Por enquanto, São Tomé e Príncipe ainda aguarda a prova definitiva da existência de depósitos de petróleo comercializáveis.

No entanto, o projecto da Webeto é de valor inestimável, pois os princípios da transparência e boa gestão da coisa pública que defende, extravasam o âmbito do dossier petróleo.

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CONCLUSIONS

1. The framework *Law of Petroleum Activities* (LPA), written into Law no. 8/2004, dated December 31, expressly established the state's property of petroleum resources and the law of the **Principle of Transparency** of exploration and other activities relative to petroleum, stating that: **"they are subject to the principle of transparency in all payments, management, use and investment of petroleum revenues and petroleum resources"** resulting from all oil operations taking place in national territory, whether in the Exclusive Economic Zone (EEZ) or in the Joint Development Zone (JDZ).
2. At the same time, the Joint Authority that manages the JDZ should present budgets to the Council of Ministers and those budgets should be compliant with international accounting standards and best practices. Such budgetary and accounting items needed to be approved by the Council within a period of five years after the Treaty came into effect (which was January 2002). In addition, all accounting is subject to annual external audits.
3. With respect to activities taking place in the context of JDZ, the formative principles of the Treaty are subject to confidentiality and secrecy. However, the heads of state of both Sao Tome and Principe and Nigeria agreed with and endorsed the **Declaration of Abuja** (see Appendix III), which establishes overall transparency principles for the JDZ. This political commitment lacks the institutional instruments to ensure the necessary participation to achieve transparency. Despite this omission, the Declaration is binding for the JDZ's agents, namely the Joint Development Authority.
4. The First Auction was officially declared closed after allocating only Block 1. We have no knowledge of a public copy of the contract. Also, as of the date of publication of this report, there is no public record of the PSA (Production Sharing Agreements) from the Second Auction (pg 13). Despite the commitments outlined in the Declaration of Abuja, and contrary to the law of the Principle of Transparency, block allocations were made public March 31, 2005 and the PSA with the winning consortia were signed March 2006.
5. In the course of this work [at the start of this project], the participants concluded that there is a general lack of information in relation to both the management of petroleum resources and its resulting revenues.
6. We recognize that transparency is not an end in itself, but an instrument for sound decision-making per established rules and regulations, and that the latter require both access to information and understanding of that information on the part of those impacted by that decision-making. Transparency is thus an instrument of the public bureaucratic system, designed to support good governance.
7. Although the government of Sao Tome has stated its commitment to good governance as a goal for state development and action, the indicators and the description provided by the National Strategy lead us to the conclusion that at the dawn of its "petroleum era", Sao Tome and Principe is still far from reaching good governance, that its state development instruments need

strengthening, that its outreach needs to be more extensive and that its civil society lacks the proper drivers to foster their participation, expression and claim to a role in the management of public property.

RECOMMENDATIONS

1. The challenge of sustainable development before the people of Sao Tome requires the support and the vigilance of all sectors of society, in the use of public resources (especially oil) as well as the development of and use of human resources. It is necessary to balance the creation of private resources with economic growth that results in the well-being of all citizens.

It is thus necessary to create incentives so that public leaders participate in the development effort and accelerate the process of public policy reform so that they satisfy the priorities and needs of citizens. It is important that the state institutions apply practices of good governance, such as transparency and accountability in the management of public resources and oil revenues.

2. Despite its weak economy, new potential socio-economic development opportunities have been identified in Sao Tome and Príncipe, both in the extractive industry and in alternative sectors. For instance, the report *Sao Tome and Príncipe Diagnostic Trade Integration Study Draft Concept Paper*, finds that the country could become a regional commercial hub by developing tourism - particularly eco-tourism. The same report shows that cocoa production is another opportunity to explore commercially, a high quality food industry niche¹. In the exploration of the JDZ with Nigeria and considering the country's preparation to begin exploration in the EEZ, we recommend that the government invests in the diversification of the sources of state revenue, so that STP not depend excessively on extractive industry revenues.
3. It is urgent to finish the process creating the Committee for Petroleum Supervision, and urgent that this agency be fully functional in partnership with the National EITI (Extractive Industries Transparency Initiative) Committee of Sao Tome e Príncipe.

In this regard, the President of the Committee for Petroleum Oversight, Idalécio Quaresma, believes that only "consensus amongst political parties" will create a viable revision of the Law creating the Committee for Petroleum Oversight. According to this congressman, some of the international agencies contacted for this purpose are of the opinion that STP has a Committee with an elevated number of elements. Idalécio Quaresma states that, due to the latter, the "matter has already been approached at various levels, including the parliamentary."

4. We encourage the government to issue periodic information bulletins, in systematic, well organized and up to date fashion, and publish them through relevant official outlets. Such reports should contain contractual and financial information in relation to payments, contracts, expenses and management of revenues received both from JDZ and the future EEZ.
5. It is important to publish the National Budget, and publish any audit reports on the management of the Joint Development Authority of Sao Tome and Príncipe – Nigeria. We recommend that the government of STP makes the National Budget and these audit reports available and understandable to its citizens.

INTRODUCTION

I. POLITICAL AND ECONOMIC CONTEXT

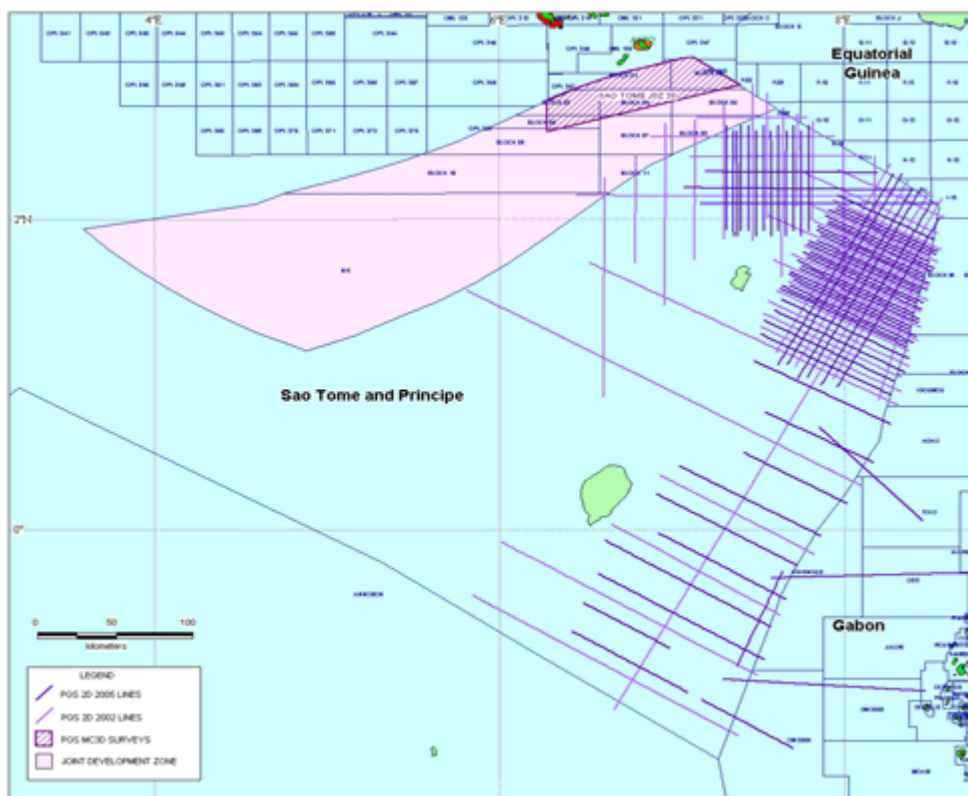
1. Sao Tome and Príncipe is an archipelago with approximately 160 thousand inhabitants² and a narrow territory of 1,001 km² located in the Gulf of Guinea, in Western Africa. Given its geography, Sao Tome and Príncipe maintains close bilateral relations with Angola, Gabon, Equatorial Guinea and Nigeria. On an multilateral level, Sao Tome and Príncipe is one of the eleven member states of the Economic Community of Central African States (UDEAC from its French name), also one of the countries in the African Union (AU), and a member of the ACP (African, Caribbean and Pacific) group, which has especially close ties to the European Union (EU).
2. Sao Tome and Príncipe is one of the poorest and least developed countries in the world, with a 2006 *per capita* income of \$600 USD³. According to the IMF (International Monetary Fund), the country's 2006 GDP (Gross Domestic Product) was \$120 million USD, the dominant sector was services (62% of total) followed by manufacturing and construction (21% of GDP)⁴. In March 2007, 91% of its foreign debt (\$360 million USD) was forgiven, under a multilateral agreement designed to support and stabilize the development of heavily indebted poor countries (HIPC).
3. Despite its weak economy, new potential socio-economic development opportunities have been identified in Sao Tome and Príncipe, both in the extractive industry and in alternative sectors. For instance, a report by Integrated Framework entitled *Sao Tome and Príncipe Diagnostic Trade Integration Study Draft Concept Paper*, finds that as a result of its geographic position, the country could become a regional commercial hub by developing tourism - particularly eco-tourism - due to the variety of its plant and animal species. The same report shows that cocoa production, a high quality food industry niche⁵, is another opportunity to explore commercially,.

II. PETROLEUM RESERVES

4. Sub-Saharan Africa is estimated to contain only 7% of world petroleum reserves; the current amount extracted represents just 11% of world production⁶. However, this relatively subordinate position is countered by the significant strategic importance of these reserves in today's international political and economic climate.
5. Research on the potential petroleum industry in Sao Tome and Príncipe began in 1970, based on a concession licensed to Hidrocarbo, a subsidiary of Ball & Collins (Oil & Gas) Ltd (UK) and Texas Pacific Coal and Oil Company (USA). However, no exploration efforts yielded positive results at the time. Interest in Sao Tome and Príncipe's potential oil industry gained new momentum at the end of the 1990s. Between 1997 and 1998, São Tome e Príncipe awarded exploration contracts for its Exclusive Economic Zone (EEZ) to the following firms: ERCH (Environmental Remedies Holding Corporation), Mobil (now ExxonMobil) and PGS (Petroleum Geo-Services).

6. Exploration efforts faced several obstacles, namely in terms of international legislation. Sao Tome and Príncipe and its neighboring countries all claimed rights to certain international maritime territories. In 2001, in order to resolve those legal issues, Sao Tome and Príncipe signed several treaties regarding the demarcation of territories with Equatorial Guinea and with Gabon, thus ending their disputes.
7. In that same year, as Sao Tome and Príncipe was unable to resolve similar territorial issues with Nigeria, the two countries created a joint territory to explore petroleum reserves: the Joint Development Zone Nigeria - Sao Tome and Príncipe (JDZ). In this context, a new international authority was created (the Joint Development Authority) effective February 2003. Under the terms of the treaty, legal rights⁷ resulting from the exploration of the JDZ are divided so: 60% for Nigéria and 40% for Sao Tome and Príncipe. The JDZ is located in the delta of the river Niger, universally agreed upon as one of the best global locations for petroleum exploration⁸.

Map of the EEZ and the JDZ:



Source: <http://www.anp-stp.gov.st/port/info/eez.htm>

8. Also in 2001, EEZ exploration contracts with ERCH, Mobil and PGS (dated 1997 and 1998) were found to counter Sao Tome and Príncipe's interests, according to Presidente Fradique de Menezes. The President's conclusion was based on opinions of international experts confirming the damaging nature of petroleum related agreements that had been made to date by the government of Sao Tome. Of note is an ERHC agreement dated 21/05 entitled *Acordo de 2001* (2001 Agreement) that creates a new exploration contract, substituting the controversial 1997 Agreement⁹. That notwithstanding, institutions such as the IMF (International Monetary Fund) and

the WB (World Bank) recommended that Sao Tome obtain independent opinions on all contracts. Consequently, contracts were renegotiated between January and March 2003. After renegotiation, ERHC and Exxon Mobil maintained preferential rights over Sao Tome's national petroleum reserves, both within the Exclusive Economic Zone (EEZ) and the Joint Development Zone (JDZ).

9. Under the terms of the JDZ (and according to *Petroleum Regulations 2003* and *Tax Regulations 2003*), the Joint Development Authority made two licensing rounds of petroleum Blocks in the JDZ: one in December 2003 and another in December 2004. In the 2003 licensing round, nine Blocks were offered, but only one (Block 1) was awarded, to *ChevronTexaco JDZ Limited Corporation*¹⁰. The 2004 licensing round offered only five Blocks that were not in the previous round, Blocks that were eventually awarded on March 31, 2005.
10. The JDZ's first exploration contract included a signing bonus of \$123 million USD, was signed in 2005 and showed *ChevronTexaco JDZ Limited* as Block 1 operator. The remaining contracts for Blocks 2, 3 e 4 were signed on March 14 and March 15 of 2006¹¹, including a total of \$201 million USD in signing bonuses - \$71, \$40 and \$90 million USD¹², respectively. As a result of signing those production sharing contracts, Sao Tome and Príncipe received a total of \$76 million USD, specifically \$49,2¹³ and \$28,6¹⁴ million USD, from the auctions that took place in 2004 and 2005.

III. METHODOLOGY

11. The strategic planning workshop of the CRS/Ford Foundation project "Promoting Democratic Management of Africa's Oil Wealth", which took place between January 29 and February 2, 2007 in Lagos, Nigeria, defined the fundamental structure of proposals, objectives and methodologies on which this report is based.
12. That summit outlined the following methodological steps for research: a) analyze the concrete degree of transparency in the management of natural resources; b) verify the conclusions from the *Eye on EITI Report*¹⁵; c) analyze the legislative, institutional and budgetary context of revenues from the petroleum industry; d) analyze the impact of those revenues on the economic and social development of the country in question.
13. With a view to achieving those objectives, our team was assembled and set out to survey available literature and engage in baseline research. This stage of the project consisted of a systematic survey of primary sources, and provided an overview of the existing instruments, institutions and practices (both actions and omissions), as well as of basic economic and social data. That stage began mid-March, 2007 and continued until our second stage of work.
14. Key research consisted of a collection and analysis of existing data, found in official and public documents, and resulted in three sector reports: one legal-institutional, one socio-historical, and one socio-economic. To complement those sector reports, we obtained basic data on all the oil companies operating the four Blocks awarded by the Joint Development Authority, and we applied the *Transparency Measure* steps authored by the NGO *Save the Children* (Appendix I).
15. The second stage of the project was field work: interviews of various individuals whose functions were essential to understanding the management of natural resources (Appendix II). We did not

interview members of the government, as government is the one political and administrative entity managing said resources and their revenues. Our interviews were conducted in person, between November 5 and November 9, 2007.

16. The third stage of the project was the study of all obtained data and the writing of this report - a proprietary, systematic and critical effort, contrasting the three sector research reports with field work findings. The goal of this report is to accurately portray the current degree of transparency in the petroleum industry of Sao Tome and Príncipe, creating a first diagnostic tool to serve as a record and as a basis for follow-up work.

LEGAL AND INSTITUTIONAL CONTEXT

I. GENERAL FRAMEWORK

17. The regulatory framework governing Sao Tome's petroleum industry is of dual nature: on the one hand, there is a system of standards that regulate petroleum related activity within the country, whether on land, in the ocean or in the Exclusive Economic Zone (EEZ); on the other hand, there is a system of international standards that regulate petroleum related activity taking place in the Joint Development Zone (JDC)¹⁶.
18. Internally, the *Political Constitution* ensures the sovereignty of Sao Tome's government over its national territory, its underground, its ocean bed and underlying strata (including maritime territory and archipelago waters), as well as all its natural resources, both within those spaces and outside, in any legal territorial extension into international waters, as determined by the country's laws and in accordance with international law.
19. The constitution is complemented by a framework *Law of Petroleum Activities* (LPA), approved by Law no. 8/2004, dated December 31, that specifically defines state ownership of petroleum reserves and establishes the law of the **Principle of Transparency** (see box, right) regarding petroleum exploration and other related activities: **"they are subject to the Principle of Transparency in all petroleum related activities including payments, management, use and investment of petroleum revenues and petroleum resources"** resulting from any and all petroleum related activity, whether taking place in national territory, the EEZ or the JDZ.

► **LAW OF THE PRINCIPLE OF TRANSPARENCY**

The framework Law of the Petroleum Activities stipulates that:

1. Transparency implies publishing and public access to all petroleum related activities, including management, investment, credit and debit transactions of all petroleum resources and revenues thereof.

2. All activities subject to the Principle should be published on a dedicated internet page created for public access, and the information conveyed so that any reader with basic skills and basic knowledge may understand its content and consequences, and further: in the Portuguese language, with integrity, clearly, completely, objectively, factually and up to date, at no cost to the reader and universally accessible.

20. In order to guarantee the effectiveness of the Principle of Transparency, the above *framework law stipulates contractual clauses, some implicit*. Under this law, all petroleum industry contracts and other business instruments related to petroleum revenues and petroleum resources should include a public access clause, and in cases where this clause is not articulated, the law considers it implicit. In other words, if the parties to the contract omit or block public access, it is nonetheless required by law and contractually binding.

21. Under the terms of the LPA, the Central Bank should open a National Petroleum Account with a custodian bank. All revenue payments should be directly made to the National Petroleum Account by electronic transfer. The LPA also created a Permanent Fund of Sao Tome and Principe, a sub-account of the National Petroleum Account, to begin operations after the start of petroleum production. At this time, the custodian bank is the Federal Reserve Bank of New York (USA).

22. A LPA also established the Committee for Petroleum Oversight, regulated by Law no. 11/2006, dated December 29. The Committee for Petroleum Oversight (CPO) was created as a separate legal entity with independent financing and administration, with permanent oversight of all payments, management, and use of petroleum revenues and petroleum resources. The CPO is an instrument for transparency in that it is constituted by eleven members, three of which are appointed by civil society. The Committee has ample powers for monitoring,

oversight and inspection in the area of petroleum resources and revenues. Up to the end-date of our research, the CPO was still being assembled and had not yet undertaken its duties. In terms of regulations applicable to the JDZ, we note that the original version of the Treaty includes a confidentiality clause. In effect, one finds that all documents and data produced in relation to the Treaty or its execution are under strict confidentiality; in addition, officials of the Joint Development Authority itself are under the same obligation. The disclosure of any information is thus subject to previous authorization of the States participating in the Treaty. Despite the latter, we find regulatory actions should be made public.

► **DECLARATION OF ABUJA**

In June 2004, the Presidents of the Republic of Nigeria and of Sao Tome and Principe, undersigned, in the Nigerian capital, Abuja, the Declaration of Abuja (Appendix III). The Declaration of Abuja expresses a political commitment to transparency and good governance for the petroleum sector in the JDZ. Through this political and legal instrument, the undersigned States agree to put in practice all actions necessary to guarantee the Declaration's contents, including:

– That all payments made to the Joint Development Authority by petroleum companies be made public quarterly and annually by the Joint Development Authority and by each of the companies. To this end, JDZ agencies should adopt EITI directives such as the Extractive Industries Transparency Initiative;

– That all reports related to the use of revenues received by the undersigned governments from JDZ activities be subject to accounting, auditing and publication;

– That the Joint Development Authority make public the basis of all concessions in the JDZ, including technical analysis and legal audits supporting such concessions (cf. Section 6); furthermore, that the Joint Development Authority specifically require the submission of all data and information as stated in the Declaration of Abuja regarding any Production Sharing Contract and related contracts, including agreements with third parties for the acquisition of any goods or services, as well as requiring that the contracts and agreements themselves, along with any related financial information, be made public.

23. Similarly, the Joint Development Authority should provide the Council of Ministers with a budget and respective accounting, compliant with international best practices. All budgetary and accounting items need to be approved by the Council within five years after the date when the Treaty coming into effect (which was January 2002). All those items are also subject to annual audits.
24. Consequent from legislation, the first taxation rules (*Tax Regulations 2003*) and operations rules (*Oil Regulations 2003*) regulating petroleum operations in the JDZ were subject to confidentiality: information regarding petroleum related operations in the JDZ was only accessible to the JDA itself. The period of expiry of the various confidentiality clauses varies between five years (for basic data and information on operations) to ten years (for opinions and conclusions regarding those data and information). Once those periods are ended, neither the Treaty participants nor the JDA are subject to confidentiality. Outside those time constraints, any disclosure of information is the province of the JDA and the private entities the information pertains to.
25. In regard to activities inside the JDZ, the general principles of the Treaty are subject to confidentiality and secrecy. Despite that, the heads of State of Sao Tome and Príncipe and of Nigeria agreed with and signed the **Declaration of Abuja** (see Appendix III) which establishes measures of transparency in regard to activities related to the JDZ. This political commitment lacks the institutional instruments to ensure the necessary participation to achieve transparency. Nonetheless, the Declaration is binding for the JDZ's agents, namely the Joint Development Authority. Consequently, the Joint Development Authority affirms in a press release dated April 25, 2005 that the CCP for Block 1 included a transparency clause – clause 30.1(a) – stating the following (freely translated):

“Each Contractor should inform the Joint Development Authority of any signing bonuses paid, according to the terms of clause 2.1. The Joint Development Authority (JDA) should publish that information within 10 business days from the date when it received the information. Payments should be itemized in the JDA publication, namely all JDZ signing bonuses made during the accounting period in question, after which the total aggregate should be published on the JDA's website¹⁷.”

II. STATE MANAGEMENT OF RESERVES

26. If we consider good governance a process that creates public instruments for sound decision-making in regard to public resources and investments, then we interpret the Law of Petroleum Revenues as a landmark step towards the implementation of good governance in Sao Tome and Príncipe. In that sense, and given the scarce and exhaustible nature of petroleum reserves, the Law of Petroleum Revenues did establish adequate processes to anticipate, resolve and regulate such revenues, so that they may constitute the basis of sustainable progress as well as future social and economic development of Sao Tome and Príncipe.
27. For the purposes of this report, the achievement of the Law of Petroleum Revenues was to ensure that petroleum revenues were not indiscriminately spent. Thus, the prologue to the Law introduces quantitative limits on the amounts of oil revenues to be applied to annual budgetary expenses: maximum amounts of annual expenses financed by oil revenues are quantitatively limited, i.e., definition of the “annual appropriation”, or amount authorized for transfer to, and use

in, the General State Budget. The following table (in USD) shows annual appropriation amounts approved since 2005:

NATIONAL PETROLEUM ACCOUNT	2005	2006	2007	2008
Annual appropriation (millions of USD)	13,5	12,5	23,0	3,0

28. The Law of Petroleum Revenues also established qualitative guidelines of the use of annual appropriations. The annual appropriation was to be used for purposes defined by the national, state or local political plans for development, according with the national poverty-reduction strategy. In the absence of such plans and strategy, the law establishes these programmatic guidelines for the use of petroleum revenues: as first priority, the annual appropriation should be used towards sectors of education, health, infrastructure, rural development and strengthening of state institutions, in agreement with the with the national budget and strategic plans.

JDZ AUCTIONS

29. The First Auction of petroleum Blocks held by the Joint Development Authority in 2003, offered nine Blocks from a total of 25 Blocks in the JDZ, approximately one-third of the total area. The minimum bid per block was set at \$30 million USD. On October 27, 2003, twenty corporations submitted 33 bids for eight of the nine Blocks. Based on the highest bids, approximately \$500 million USD was bid for seven Blocks.

30. As the auction was a first for the Joint Development Authority, all participating companies were subject to existing rating criteria, previously published by the JDA. Those criteria included each company's experience and expertise in oil exploration, development and production; the financial commitments for the JDZ on which they based their bids; their program proposals; geologic surveys of the block; their environmental, safety and health proposals; and their proposals for including "local content," an industry term that designates the national participation—in the form of enterprises, goods and services—in oil-related operations.

31. In practice, the Bidding Committee of the Joint Development Authority Sao Tome and Principe (STP) - Nigeria adopted a two-stage system, evaluating each corporation with a quantitative score. First, the Committee selected the companies with superior technical expertise. Then, from that pool, they proposed concessions based on commercial viability.

32. Although the Committee Legalizing the Joint Development Authority recommended five Blocks based on the above criteria, the Joint Ministerial Group (JMG) - after examining all the bids along with the Committee's report – decided to allocate only Block 1, because it was the only block for which a company with significant technical expertise in deep waters made an offer above the minimum bid. The license was thus awarded to the consortium led and operated by ChevronTexaco JDZ Limited. Its consortium included ExxonMobil and Equity Energy Resources, who paid a signing bonus of \$123 million USD, which was expected to yield \$49 million USD to Sao Tome and Principe, approximately 80% of its GDP.

33. The First Auction was officially declared closed with the allocation of Block 1. Government officials declared unsatisfactory the bids submitted for the remaining Blocks, and announced that a second auction round would take place for Blocks 2, 3, 4 and 6 in the near future. Also, additional tests would be conducted on Blocks 5, 7, 8, and 9 before those were put on offer a second time. After protracted negotiations, the various parties finally signed a **Production Sharing Agreement (PSA)** for Block 1 on February 2, 2005. As of the publication of this report, there is no public record of that contract.

34. In November 2004, the Joint Development Authority held a Second JDZ Auction (Second Auction), with five Blocks that had not been licensed in the 2003 auction (Blocks 2, 3, 4, 5, and 6).

35. An investigation conducted by the Attorney General of the Republic¹⁸ (AGR), concluded that the proceedings of the Second Auction lacked transparency, and exhibited both serious procedural deficiencies and political manipulations, including allowing the participation of unqualified and improperly qualified bidders - companies that were technically and financially deficient. For the Second Auction, the choice of bidders followed no qualification system; in fact, bidders were chosen arbitrarily and unjustifiably, compared to how the bidding companies had been previously pre-qualified for auction (based on their technical expertise in deep water petroleum exploration and production, as well as their financial stability). For further details, please see the Table below.

36. Given the potential significance of the petroleum reserves in the JDZ, the experienced companies in the sector could reasonably expect to see licensing activity in the JDZ conducted according to international industry standards. Nonetheless, the Second Auction was very inferior even to rudimentary licensing efforts undertaken in open waters.

► PRODUCTION SHARING AGREEMENT (PSA)

The usual kind of contract in the oil industry, in this case, a contract between the Joint Development Authority and a consortium of oil companies that have obtained a block. PSA are different from other industry contracts in that the oil company has the right to a production parcel in order to recoup its expenses and charges (cost oil), and then later must share a percentage of its production revenues (profit oil) with the Joint Authority.

Zoom – Conclusions of the Attorney General’s Report:

The Attorney General’s Report concludes that «[the] inadequacy and in some cases total absence of due diligence contributed significantly to the lack of transparency and regulation», adding that «there seems to not have been any due diligence done on the corporations that did not participate in the First Round but that were nonetheless included in the Second Round. There is a written, undated report authored by two Nigerian consultants that was prepared in the time between the visit of President Obasanjo to Sao Tome and Principe in May 2005 and the CMC summit four days later. The final licensing ratified decisions made prior to any due diligence having been conducted. The apparent lack of even a minimal technical triage of competing companies in accord with basic criteria of technical, financial, legal, managerial and administrative expertise almost certainly diluted both industry and public confidence in the commitment of the Joint Development Authority to transparency in the Second Auction of the JDZ.»

By way of example, the Report illustrates the lack of transparency regarding the following firms: 1) A. & Hatman, which was «given a sufficient technical score to reach the required technical expertise, although a subsequent due diligence report found that the company did not possess any previous experience in oil and gas exploration, much less in deep waters» and 2) Equity Energy Resources which, according to the Attorney General’s office, earned a stake in Block 3, and was approved as a bidder in the Second Auction despite the fact that Nigeria, in its 2005 national auction, had considered that same company unqualified to compete in deep water blocks; it is not clear what, if any, technical

criteria presided over the pre-qualification of those two firms.

The Attorney General further considers that «financial qualifications, or apparent lack thereof, of the various winner corporations of the Second Auction highlighted several procedural irregularities of the auction itself», and even that «no financial qualifications were demanded, submitted, or certified¹⁹».

37. Despite demonstrating both pre-qualification and procedural failures during the Second Auction, and although it contributed to procedural improvements, the Attorney General's Report did not receive from Sao Tome's government the necessary political support for its findings. Also from the Nigerian side, there was neither support nor follow-up to the report. Many questions arise from the report's investigations that are related to the conduct of Nigerian officials within the Joint Development Authority. Information regarding these officials' behavior is under the province of the Nigerian authorities. Although the STP Attorney General solicited its counterpart's cooperation on that information, neither acknowledgement nor cooperation was forthcoming from Nigeria.
38. We particularly highlight the position taken by the Joint Development Authority in roundly rejecting the findings of the Attorney General's Report, by stating in a press release its "strong dissatisfaction with the insinuations made against Nigeria and its government officials." and adding that "Nigeria will issue a detailed reply to the Report through appropriate channels." As of the date of publication of this report, no such detailed refutation has been published, which leads us to infer that no reply was given by Nigeria either to the Attorney General or to the government of Sao Tome.
39. The results of the auctions were made public on May 31, 2005 and the corresponding PSA with the winning bidders went into effect March 2006. As of the date of publication of this report, there is no public record of any of PSA contracts, either from the Second or First Auctions.
40. In May 2006, the Joint Development Authority announced payments related to Blocks 2, 3, and 4. Nigeria blocked the transfer of the amount due to STP, justifying the lack of payment with three bilateral credits to STP plus future dividends due to STP from financial commitments of JDA operations²⁰. In consequence of those negotiations, Law no. 10/2007 established an annual appropriation amount to be transferred to the STP 2007 National Budget in the amount of "\$15 million USD, in repayment for advances made by Nigeria between 2002 and 2003".
41. Due to legal proceedings with ERCH, the Production Sharing Agreements for Blocks 5 and 6 were not signed before the writing of this report. During the meeting of the Ministerial Board in 2008 in STP, the ministers once again rejected the rights of the ERHC to the two blocks (15% each). Consequently, the ERHC brought the case to court in Abuja and requested arbitration by the International Arbitration Court in London.

EITI COMMITMENTS

42. The Extractive Industries Transparency Initiative (EITI) was launched by former UK Prime Minister Tony Blair in July 2002. The initiative aims to define global transparency standards and support better governance in countries rich in natural resources, through verification and publication of all payments made by companies and all government revenues from oil, gas and mining activity. The initiative's objectives include defining a new model for collaboration between companies and governments, civil society and private investors. In sum, the EITI brings together stakeholders with common interests and common goals, dedicated exclusively to increased transparency in the management of petroleum related resources.
43. Sao Tome and Príncipe has not always endorsed EITI, despite its commitment to the Declaration of Abuja (June 2004). For that reason, STP was listed in the report *Eye on EITI* (October 2006, published by EITI)²¹, as a Non-Implementing Country, one of the eight countries that until that date had not yet met the basic criteria required to be considered an EITI candidate.
44. In June 2007 the government of STP officially committed to implementing EITI, announcing that it would seek international partnerships to help it reach EITI implementation goals; one such partnership exists with the University of Columbia. In order to fast track EITI implementation (which needed to take place before the end of August 2007), the government established terms to align domestic solutions based on the LPA. In the process, it subjected its National EITI Committee to its Committee for Petroleum Oversight, without clearly defining each entity's operating limits.
45. In October 2007 there was a National Workshop on Oil Revenues in Sao Tome and Príncipe, followed by a Coordination Agreement between the Regional Civil Society of African Countries of Portuguese Language. That agreement was a turning point for the implementation of EITI in STP, making it possible to bring the highest levels of stakeholders into the process, including the President of the Republic, Fradique de Menezes (who presided at the opening of the workshop), the government, civil society, the press, representative of oil companies, national and international

► BENEFITS OF EITI

The EITI (Extractive Industries Transparency Initiative) has identified its benefits for various stakeholders in implementing transparency standards. A summary:

- Countries implementing EITI see an improvement in investment climate, as it gives a clear sign to international financing institutions that the country's government is committed to a high level of transparency. Endorsing EITI also endorses a high level of responsibility and good governance, bringing increased stability to the political and economic structure of the country. This contributes to preventing conflict in the oil and gas industry;

- Benefits to companies and to investors are reducing political risk and negative impact to company brands and reputations. The political instability caused by opaque governance is a clear threat to foreign direct investment. In the extractive industries, where investment is capital intensive and dependant on long term stability to generate returns, reducing that instability is crucial. The transparency of payments made to a government can help demonstrate the contribution that those investments make to the country;

- Finally, benefits to civil society come from increasing the amount of information in the public domain regarding the revenues managed by the government in the name of the citizenry, consequently making government more accountable.

NGOs, UNDP (United Nations Development Programme), the World Bank, and members of the Joint Development Authority. Together they discussed transparency issues, clarified and established new guidelines for the implementation of EITI in STP, working alongside the Committee for Petroleum Oversight (CPO) and the National Office of Records and Public Information (GRIP, in Portuguese). In closing, participants issued numerous considerations and recommendations for the government, and took into account that STP already had some processes in place towards increasing transparency.

46. In December 2007, the government issued Dispatch no. 17/07 dated December 17, 2007 in which the Ministry of Natural Resources and Environment approved a National Committee for Implementation of EITI, and designated its National Coordinator: Genoveva Costa (EITI *Champion*). Thanks to that collaboration between government and civil society, on February 22, 2008, STP was accepted as an EITI candidate country, having met all four required criteria²². Being a candidate country, STP passed the signatory level and started its EITI preparatory stage. This process is subject to validation up to March 9, 2010²³.
47. An Action Plan and a National Budget Committee for EITI were approved and are found for public consultation on the website of the National Petroleum Agency (ANP-STP). The country now has two years during which to submit to a new evaluation process and move on (or not) to the next EITI level, which is EITI Implementing Country. It is important to note that the evaluation of candidate countries is already underway. For instance, Azerbaijan successfully passed EITI tests and earned the distinction of being first EITI Implementing Country.

ZOOM – PUBLIC ACCESS INFORMATION IN SAO TOME AND PRÍNCIPE: CASE STUDIES AND INTERVIEWS

i. The National Petroleum Agency (ANP-STP in Portuguese)

Up to May 4, 2008, the ANP-STP website – up since November 1, 2005 – has provided public access information in Portuguese. The website (www.anp-stp.gov.st/) provides various documents including current industry legislation and a *Quarterly Information Bulletin*. In our opinion, this website's information is adequate, useful and relevant, but incomplete: it provides no contractual or financial information in relation to payments, contracts, and spending of received revenues. Also, the website is not adequately updated. We also highlight that there is an email address for information requests, through which we obtained other research information. We find the website very useful for the public.

ii. The Central Bank of Sao Tome and Principe (BCSTP in Portuguese)

Up to May 14, 2008, with regards to information on payments, transactions and management of oil revenues, the BCSTP website (www.bcstp.st/) only showed the balance of the National Petroleum Account. In our opinion, and at this stage when there are not yet active processes for transparency, the Central Bank could contribute immensely to transparency efforts if it were to publish data on the investment portfolio and interest earnings of the National Account, as well as transaction information (such as credits and debits to the Annual Appropriation in the National Budget).

iii. The Office of Records and Public Information (GRIP in Portuguese)

Regulated by Law no. 11/2007, dated April 18, the Office of Records and Public Information aims to ensure archiving, compilation, maintenance and public access to all documents and information on activities related to petroleum resources and management of petroleum revenues. The organization and maintenance of GRIP are the responsibility of the National Assembly. Although it was created as an instrument for public access to activities related to oil reserves and revenues, up to the date of publication of this report, GRIP, much like the CPO, was not yet operational.

Case Study – ACCESSING THE JOINT DEVELOPMENT AUTHORITY DATA (AC in Portuguese)

The AC website (<http://www.nigeriasaotomejda.com/>) provides information on the activities in the JDZ. Despite providing somewhat adequate information on its activities, the Authority does not publish its budgets, accounting or audits. We highlight the fact that they do not publish any contract information or any PSA contract template in use in the JDZ, both of which are essential for a clear understanding of the rights and obligations of petroleum corporations. Nonetheless, the Authority does publish the general PSA guidelines, but without showing the public the actual terms of agreement negotiated with each vendor. Furthermore, up until July 13, 2008, we note that the newest available press release is dated May 3, 2006. Finally, there is no information in Portuguese, which immediately precludes public access to any information or data on the part of an ordinary STP citizen (i.e., a Portuguese speaker, not necessarily fluent in English).

In this regard, Alcídio Pereira (Webeto), estimates that the lack of quantity and quality of information significantly impairs basic monitoring by civil society. *In his opinion, «the efforts that our organization undertakes are not compatible with the current lack of up-to-date, complete information.»*

Interviews

Do you estimate, in practice, that public access to information in this context is easy and adequate, considering the level of development in the country at this time?

Idalécio Quaresma (President of the Committee for Petroleum Oversight), Luís Prazeres (Executive Director of ANP-STP), José António Monte-Cristo (Judge and Counsel of the Accounts Tribunal), all estimate that public access is neither easy nor adequate, but believe that the GRIP outreach will allow for a qualitative improvement in that regard. Maria Odete Amaral (“Mery”) Aguiar (Executive Director of FONG, the Federation of NGOs in STP), shares their opinion, adding that in addition to GRIP, EITI should be implemented and the Committee for Petroleum Oversight itself should increase public access. Agreeing with the general lack of information, Edite Diogo Afonso Soares (Vice-Governor of BCSTP) believes that the media also have an essential role to play in increasing publicly available information.

How would you rate the transparency of government management of revenues from the oil industry?

In terms of the quality of the agencies monitoring, both Idalécio Quaresma and José António Monte-Cristo find that the legal instruments are appropriate, but find that they are not applied in practice, or if they are, it is without adherence to the letter of the law.

PETROLEUM COMPANIES

48. After two auctions, several licenses were awarded by the Joint Development Authority in the JDZ, so we proceeded to study the level of transparency practiced by the companies already in operation in the JDZ: in terms of the PSA, financial obligations are presumed and fulfilled by firms that assume a high quality of operating companies. Our study concentrated on the companies currently operating²⁴. Our analysis matrix comes from the questionnaire specified in *Measuring Transparency* by Save the Children. Our latest visit to the operating companies’ field sites was on June 13, 2008. The most significant results of our research are summarized in the following Table:

ISSUE	CHEVRON	SINOPEC ²⁵	ANADARKO	ADDAX ²⁶
Has the company made a public commitment to transparency as to payments made to STP?	Yes	No	No	No
Does the company support STP’s government in implementing EITI?	Yes	No	No	No
Has the company disclosed payments made to the government or to government entities?	Yes	No	No	No
Does the company have an anti-corruption policy?	Yes	No	Yes	Yes
Does that policy allow for complaint submission?	Yes	No	Yes	Yes

49. We also highlight that we verified the existence of separate information on the activities of the corporation in the JDZ on all the company websites, with exception of Sinopec's. This fact denotes some openness of those companies as to informing the general public (and investors) of the existence and importance of their investments. In this context, we also highlight the fact that Addax does disclose the minimal obligation terms that it is bound to under its PSA²⁷.

Case Study – CHEVRONTEXACO:

On February 1, 2005, when its PSA was signed, the General Director of ChevronTexaco JDZ Limited (the local Chevron Corporation subsidiary), Jay Pryor, publicly announced the company's commitment to transparent practices and fiscal accountability, and urged the governments of Nigeria and STP to do the same²⁸. Although he did not expressly refer to the JDZ, our research shows that the Chevron Corporation website²⁹ does publish reports (not overly detailed but nonetheless informative) on activities in various countries where the company has a presence, either directly or through its local subsidiaries. Analysis of the website supporting information within this Report – undertaken June 12, 2008 – showed that there is information on the company's activities in the JDZ, both in relation to the amount of the signing bonus paid as well as drilling results on Block 1, in the Obo 1 well³⁰.

In an interview conducted for our survey, Armino Gonzaga, ChevronTexaco representative for Public Affairs and Community Relations and Sao Tome resident, clarified that **Chevron has previously proposed measures to increase public information and considers public access essential; the company finds that at this stage of the extractive sector's development in Sao Tome and Príncipe, oil related issues should be approached in terms of their technical and political impacts**. In terms of public access to information, the Chevron representative stated that, at the date of the interview, the company had been waiting three years for information on scholarship payments it had made based on its community outreach policy. The company considers that the **socio-economic structure of the country conditions pressures institutions to relax their inclination towards transparency regarding petroleum revenues**, although it thinks that **government instruments for transparency of oil revenues do reflect some accountability**.

CIVIL SOCIETY AND TRANSPARENCY

50. It is expected that civil society, a diverse group of individuals, organizations and corporations, should act as an organized entity able to follow government actions and monitor the degree of transparency in various government agencies. In the case of Sao Tome (excepting the occasional public demonstrations that are critical of certain segments of the government's power structure, the publication of some items in the media, and the statements of opinion in some web groups and websites¹), civil society is far from reaching the level of maturity needed to exert any pressure on the government or to monitor the government's activities. Nonetheless, since the start of the 2000s decade, there are some documented reactions and initiatives of civil society making efforts to play its monitoring role.
51. Successive agreements related to the petroleum portfolio that were negotiated by the government of Sao Tome in 1997 caused reactions in civil society, both inside the country and in the diaspora. Under debate were companies registered in the USA and listed on a public exchange, such as ERCH; it was only through a press release published online that Sao Tome citizens learned of some of the terms of agreements previously signed between the government and the company in question. Public reaction is documented in a series of reports entitled "The Public Good", created and underwritten by citizens, and addressed to the appropriate national authorities. "The Public

Good” focused its questions and analysis on the country's petroleum portfolio. In the box on the right we summarize the main points of several of those civil reports.

52. Another instance of documented public protest is dated January 2006, when “Publish What You Pay” (PWYP)³⁴, along with its Sao Tome and Nigerian affiliates, issued a document showing support for the Report of the STP Attorney General on irregularities in the JDZ's Second Auction³⁵.
53. Using the conclusions from the Attorney General's report and from the *Eye on EITI* report, civil society pressured Sao Tome political powers, further addressing authorities in a February 2007 *Survey on Transparency*³⁶ that asked why progress towards EITI was not materializing. In August 2007, Webeto³⁷ and FONG (Federation of NGOs in STP)³⁸ signed an official declaration addressed to the EITI Counsel in Norway, stating their dissatisfaction with the authorities' failure to fast-track EITI implementation before the end of August 2007. In short, the Sao Tome NGOs were not in agreement with the terms chosen by the government to facilitate domestic solutions required by the LPA, which subjected the (then prospective) National Committee for EITI to the Committee for Petroleum Oversight without clearly defining each entity's operating limits. In addition, they estimated one of the basic EITI requirements had not been fulfilled (as there was a lack of communication and efficient consulting with society at large - including organizations such as the Platform for Participation and Citizenship and Webeto, both following the process from inception).
54. In October 2007 and by civil society initiative, Sao Tome requested that international PWYP partners collaborated to hold the National Workshop on Oil Revenues in Sao Tome and Principe, followed by a Coordination Agreement between the Regional Civil Society of African Countries of Portuguese Language, both detailed in the previous section of this report. In closing, the participants issued numerous considerations and recommendations for the government³⁹ urging it

THE PUBLIC GOOD:

THE PUBLIC GOOD II (January 2002)³¹ – translates for the first time into Portuguese information available on the web in English; questions the preferential rights attributed to several companies and specifically to ERHC, as well as a proposed 40/60 split in a contract with Nigeria, since the USA's SEC (Securities and Exchange Commission) reported that the 55.82% ERHC share was being taken over in February 2001 by Nigerian interests, although it was unknown whether those interests were direct representatives of the Nigerian state, whether private entities.

THE PUBLIC GOOD III (April 2, 2003)³² – published in consequence of the renegotiation of agreements with ERHC/Chrome, PGS e ExxonMobil. Questions the lack of submission of those revisions and agreements for verification and approval of the National Assembly, given that such contracts span generations. THE PUBLIC GOOD III states that in terms of taxes, STP did not achieve its objectives in renegotiating, because the new agreement with ERHC/Chrome continued to be a significant example of poor management of the public good. It further suggests that the agents of political and judicial control (the National Assembly) consider it an urgent need to deploy instruments that will allow for greater accountability on the part of all those participating in the successive agreements with ERHC and ERHC/Chrome from 1997 to 2003.

THE PUBLIC GOOD IV (May 4, 2006)³³ - focused its analysis on three items: the STP Attorney General's Report; the Second Auction of Blocks in the JDZ; and the Law creating the framework for regulating Petroleum Revenues. From its conclusions, we highlight a call for regulation on the part of the institutional and judicial framework of said Law, in order to allow for prudent management and accounting of national oil revenues; and a call for STP to empower its institutions both for investment and for managing the challenges of the budding oil sector, as well as building out personnel and training, and promoting greater competition, accountability and rigor in all those areas.

to become a de facto EITI candidate.

55. In 2008, on two separate occasions, STP NGOs had the opportunity to speak out in favor of greater transparency. In January 2008, they declared themselves against revisions to the LPA proposed by Tomé Vera Cruz's government, that amounted to reducing constraints on the processes for attributing licenses: in this case, civil society clearly disagreed with the government's assumption that licenses could be attributed by direct negotiation with oil companies, eliminating public discourse and any oversight by the Committee for Petroleum Oversight⁴⁰, estimating that those revisions would weaken the country's commitment to transparency. Since February 2008, the public has shown itself in favor of greater rigor and stricter criteria leading to transparency for proposals regarding ownership of titles to petroleum revenues and resources.
56. At the time this report was underway, there was a petition being prepared by civil society (represented by Chambers of Commerce, NGOs and Public Syndicates) for submission to the National Assembly, to solicit revisions to the law governing the creation of the Committee for Petroleum Oversight (CPO). That petition was to note the excessive number of members in the CPO creating a lack of oversight efficiency and unnecessarily increasing operating expenses.
57. In regard to said petition, the President of the CPO, Idalécio Quaresma, states that only "consensus amongst political parties" will create a viable revision of the Law creating the Committee for Petroleum Supervision. According to this congressman, some of the international agencies contacted for this purpose are of the opinion that Sao Tome and Príncipe has a Committee [for Petroleum Supervision] with a significant number of elements. Idalécio Quaresma states that, due to the latter, the "matter has already been approached at various levels, including the parliamentary. There is work in progress towards a proposal for alterations reducing the number of elements integrating the Committee, as well as their compensation, until petroleum is actually extracted."

ZOOM – SURVEY – “LOOKING TRANSPARENCY IN THE EYE”:

I. The FONG (Federation of NGOs in STP):

In response to our Survey, the Executive Director of FONG, Maria Odete Amaral (“Mery”) Aguiar, gave us an overview of the situation in regards to transparency, stating that there is a lack of information available on which to base her input and replies. Nonetheless she attempted to describe transparency from the FONG point of view. As far as representing a civil platform of 98 NGOs working on health, environment, food safety and education, **the Executive Director of FONG cannot estimate the amount of the country’s oil revenues, and has no concrete knowledge of the companies that made such payments or the amounts paid out.** This leads us to conclude that **the quantity and quality of information significantly impairs any basic monitoring effort on the part of civil society.** She does however underline progress made since 2007 by official agencies that invited FONG to participate in the meeting creating the Committee for Petroleum Oversight (CPO) and also to be a part of the National Committee for EITI. Mery Aguiar further estimates that **FONG will have a key role in developing public pressure and advocacy, and in mobilizing public opinion.** In sum, she thinks that FONG can complement the CPO, and that once the latter is operational it will in turn increase FONG’s capacity to deploy its own monitoring capabilities. As far as the processes towards transparency of petroleum revenues, FONG’s Director estimates that **existing legal instruments adequately safeguard public interest, but that their mandate needs to be strengthened by a stricter application of the law.** She further considers that the Workshop on Oil Revenue Management which took place from October 29 to 31 in 2007 contributed to clarify but not necessarily to reduce some of the public lack of knowledge of the issues. Finally, she thinks that in face of the psychological character of Sao Tome society, which gives priority to oral transmission of information, **the disclosure**

of information on petroleum issues will only take place if the public is informed via oral communications, which will require added and continual efforts.

II. The CHURCH:

In response to our survey, the Bishop of Sao Tome, D. António, first expressed his concern over the effects of the petroleum industry on Sao Tome society. Looking to the Nigerian experience, D. António fears the impacts that will be caused in STP by the oil companies and the corruption that exists even before oil extraction has begun. As Sao Tome Bishop, D. António thinks that in theory there is the possibility of disclosure of the actual amount of oil revenues paid out to the country; however, **the finds that in reality practice does not follow law, especially considering that disclosures are altogether vague.** According to Sao Tome's Bishop, **one must be realistic about how much information will actually reach the public, and understand that full disclosure is an unrealistic expectation.** Regarding the Church's role, D. António feels that he has the ear of both the government and the public, but **that in order to facilitate public access to information and transparency efforts in oil related issues, the creation of a Committee for Justice and Peace is essential, as was the case in Angola.** However, the Bishop also underlines progress made since 2007 by government entities, inviting FONG to participate in the meeting creating the Committee for Petroleum Oversight (CPO) and also inviting it to be a part of the National Committee for EITI. Regarding transparency processes and State oil revenues, the Bishop finds that the existing legal instruments are adequate, but that expectations are high and may go unfulfilled, as reality will not conform to the letter of the law. That disconnect between the law and current practices might be mitigated through technological empowerment **but the Bishop believes that one cannot minimize the social aspects related to the use of oil revenues.**

DEVELOPMENT AND GOOD GOVERNANCE INDICATORS

58. The overall fundamental role that the State plays in the economy is here recognized, in terms of either promoting and advancing conditions for political, social and economic development, or on the contrary, acting as an impediment to that development, when it abdicates from its essential functions or fails to implement best development practices. The state of Sao Tome does not escape the logical conclusion thus outlined: either it promotes development, or it constitutes an unyielding impediment to development. Unfortunately, there is no such thing as a neutral State.
59. Activities geared towards good governance and measures taken to strengthen the State's capabilities have a very positive effect on development. Such actions help eliminate obstacles between the public and the private sectors, such as reducing bureaucracy, which significantly improve the business climate in the country.
60. The first report on STP **Millenium Development Goals**⁴¹ states that "since the start of the 1990s the country has made significant structural reforms towards democracy, but much

► U.N. MILLENIUM DEVELOPMENT GOALS

The Millenium Declaration was adopted in 2000 by 189 member States of the United Nations, which approved Millenium Development Goals (MDG), to be achieved by 2015 by the international community. The eight MDGs are:

- 1. Eradicate extreme poverty and hunger;*
- 2. Achieve universal primary education;*
- 3. Promote gender equality and empower women;*
- 4. Reduce infant mortality;*
- 5. Improve mothers' health;*
- 6. Fight HIV/AIDS, malaria and other epidemics;*
- 7. Ensure environmental sustainability;*
- 8. Create a global partnership for development.*

remains to be done so that those may be considered good governance”. The same report states elsewhere that “[in] the context of good governance, urgent support is required for the two agencies that are the main support for democracy, namely the National Assembly and the Courts, in terms of human resources and of organization, thus improving the monitoring capacity of the National Assembly and serving citizens with speedier and more trustworthy justice.”

61. The National Strategy for Growth and Poverty Reduction⁴² (dated 2002) characterizes the State in the following way, in terms of its capacity to play its role: lack of capabilities and decision-making; lack of State authority; inability to maintain public order; disconnect between democratic institutions; inadequate management of public goods; inadequate decentralization system; weakened capacity for public administration; and little participation on the part of civil society.
62. Although the government of Sao Tome has stated its commitment to good governance as a goal for state development and action, the indicators above and the description provided by the National Strategy lead us to the conclusion that at the dawn of its “petroleum era”, Sao Tome and Principe is still far from reaching good governance, that its state development instruments need strengthening, that its outreach needs extending and that its civil society lacks the proper drivers to foster their participation, expression and claim to a role in the management of public property.
63. Since the LPA has been in effect, we highlight the following good governance scores compiled by the Mo Ibrahim Foundation⁴³ based on 2006 data, and published in August 2008:

CATEGORY	SCORE (0-100)
Security	100,0
Corruption in the public sector	34,0
Participation and human rights	83,4
Opportunities for sustainable economy	41,5
Human development	61,1

64. In its Progress Report on the implementation of the National Strategy for Poverty Reduction (2006), the STP Ministry for Planning and Finance presented an economic snapshot of the country that reflects its strong dependence on external (international) factors, specifically impacting price drops of its principal export: cocoa. The same report notes growth in the economic wealth generated within the country as a result of services and construction.
65. The following table summarizes the economic data that describe the evolution of Sao Tome’s economy since it began to receive oil revenues and since the Petroleum Revenues Regulation became effective⁴⁴, using 2004 as a baseline:

ECONOMIC DATA	2004	2005	2006	2007 (ESTIMATE)	2008 (PROJECTION)
Real GDP (variable annual tax v.a.t.)	3,8	5,7	6,7	6	6
Inflation (average variable annual tax)	13,9	17,8	23,1	18,6	19,4
Gross Income (v.a.t.)	7,3	45,9	39,3	25,2	31,7
Current Balance (% of GDP)	-13,6	-10,3	-41,3	-30,3	-30,9

Budget Balance (% of GDP)	-15,6	35,9	-13,9	120,3	41,9
Foreign Debt (% of GDP)	311,6	296,2	289,9	74,6	...

66. The Bank of Portugal⁴⁵ estimates that this economic development “is overall due to progress made by the country during the last few years, both from applying its strategy to fight poverty and from executing its macroeconomic program, as supported by the IMF (under the *Poverty Reduction and Growth Facility*, PRGF)”, concluding that “[in] the short term, one must highlight that debt was forgiven due to a tightening of budgetary and fiscal policies put in practice during the middle of last year (in addition to general progress made)⁴⁶.”

PUBLIC FINANCE (AS % OF GDP)	2004	2005	2006	2007 (ESTIMATE)	2008 (PROJECTED)
Total Revenues	35,5	78,6	37,1	160,3	73,9
Current Revenue	16,6	16,7	21,1	19,1	17,1
Donations	18,8	16,5	16	120,1	40,4
Oil Bonuses	0	45,3	0	21,1	16,4
Total Expenses	51	42,7	51	40	32
Balance (baseline)	-15,6	35,9	-13,9	120,3	41,9

67. Finally, we note how the “petroleum era” has impacted STP’s human development index (HDI).

Among approximately 180 countries, the HDI is divided into three rankings (the following is based on 2007/2008 data): High = ranks 1 to 75, Medium = ranks 76 to 153, and Low = remaining rankings, down to 179.

STP is classified in the Medium range, without much variation in the period in question. The following Table illustrates UNDP’s ranks for STP’s HDI (attributed between 2004 and 2007)⁴⁷:

YEAR	INDEX	RANK
2004	0,627	123
2005	0,637	126
2006	0,643	128
2007	0,654	123

NOTES:

¹ *Sao Tome and Principe Diagnostic Trade Integration Study Draft Concept Paper*. Available here http://www.integratedframework.org/files/saotomeprincipe_cp_june2004.pdf

² 2006 Estimate. Demographic growth rate 2.1% from IMF, Country Brief, www.worldbank.org.

³ Country data profile, World Bank, in www.worldbank.com.

⁴ *World Bank: “Sao Tome and Principe Data Profile”*, <http://www.worldbank.org>.

⁵ *Sao Tome and Principe Diagnostic Trade Integration Study Draft Concept Paper*. Available here http://www.integratedframework.org/files/saotomeprincipe_cp_june2004.pdf

⁶ *National Energy Policy*, Report from *National Policy Development Group*, May 2001, USA, page 137.

⁷ As well as respective expenses.

⁸ For a geologic description see the Authority’s website: <http://www.nigeriasaotomejda.com/>.

⁹ <http://www.erhc.com/history/>

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- ¹⁰ Signing bonus \$123 million USD.
- ¹¹ <http://www.anpstp.st/port/noticias/default.htm>.
- ¹² See previous note.
- ¹³ Central Bank of Sao Tome and Príncipe, 2005 Annual Report: www.bcstp.st/Publicacoes/Relatorio_Anuar/Relatorio_Anuar2005.pdf.
- ¹⁴ National Petroleum Agency of Sao Tome and Principe: <http://www.anpstp.st/port/noticias/default.htm>.
- ¹⁵ Published October 2006.
- ¹⁶ In Sao Tome and Príncipe, JDZ is known by its English acronym JDZ (*Joint Development Zone*).
- ¹⁷ Original language: «Each CONTRACTOR Party shall report to the JDA the amount of signature bonus it paid to the JDA under Clause 2.1 and the JDA shall publish said reports on its website within ten (10) working days of receipt of such report. The JDA shall include such amount in the amount of aggregated Signature Bonus payments it receives from all sources in respect of the JDZ during the relevant reporting period and then publish such aggregate amount on its website.»
- ¹⁸ Under the terms of the Political Constitution and the Organic Law, the Attorney General is the highest agency in the Public Ministry, in charge of representing the State, exercising judicial actions and defending democratic law and the public interests therein.
- ¹⁹ Full text here: <http://www.juristep.com/relatorios/PGR.pdf>.
- ²⁰ G.Seibert, Sao Tome and Príncipe: The Troubles of Oil in an Aid-Dependent Micro-State. In: Kenneth Omeje (ed.), *Extractive Economies and Conflicts in the Global South: Multi-regional Perspectives on Rentier Politics*, pages 119 a 134, Aldershot: Ashgate Publishing, 2008.
- ²¹ <http://eitransparency.org/node/265>.
- ²² Those criteria are: nomination of a process leader; establishment of a committee representing all parties involved; approval of an Action Plan; and publication of an audited report on the progress of EITI in the country.
- ²³ <http://eitransparency.org/SaoTomeAndPrincipe>.
- ²⁴ The first auction awarded Block 1 to the consortium headed by Chevron Texaco. The second auction awarded five blocks as follows: Block 2 – Sinopec; Block 3 – Anadarko; Block 4 – Addax Petroleum. Despite Blocks 5 and 6 having been awarded, their signing bonuses have not yet been paid by the respective consortia. A complete list of consortia and winning companies may be found here: <http://www.nigeriasaotomejda.com/>.
- ²⁵ Sinopec became the operator in March 2006, see <http://sec.edgar-online.com/2006/03/16/0001144204-06-010261/Section2.asp>. Prior to then, block 2 was operated by the Devon/Pioneer/ERHC consortium.
- ²⁶ Addax Petroleum became the operator in March 2006. see http://www.addaxpetroleum.com/dev/public/press_room/archives/6. Prior to then, Block 4 was operated by the ERHC/Noble consortium.
- ²⁷ http://www.addaxpetroleum.com/operations/jdz/license_areas_overview.
- ²⁸ <http://www.chevron.com/news/press/Release/?id=2005-02-01>.
- ²⁹ <http://www.chevron.com>.
- ³⁰ <http://www.chevron.com/documents/pdf/Chevron2007AnnualReportSupplement.pdf> e <http://www.chevron.com/news/press/Release/?id=2006-05-26>.
- ³¹ [http://www.webeto.org/Comunicacoes/A%20COISA%20PUBLICA%20II%20-%20Documento%20final\[1\].pdf](http://www.webeto.org/Comunicacoes/A%20COISA%20PUBLICA%20II%20-%20Documento%20final[1].pdf).
- ³² http://www.webeto.org/Comunicacoes/A%20CoisaPublica_III.pdf.
- ³³ [http://www.webeto.org/Comunicacoes/A%20Coisa%20Publica%20IV%20\(V%20Final\).pdf](http://www.webeto.org/Comunicacoes/A%20Coisa%20Publica%20IV%20(V%20Final).pdf).
- ³⁴ <http://www.publishwhatyoupay.org/english/index.shtml>
- ³⁵ S. Tomé and Príncipe & Nigéria: Investigation reveals lack of transparency and significant failure in oil block licensing process: http://www.publishwhatyoupay.org/portugues/pdf/pwyp_jdzstatement_160106.pdf.
- ³⁶ <http://www.webeto.org/Comunicacoes/ERHC.pdf>.
- ³⁷ Webeto is an NGO whose mission is to facilitate the existence and maintenance of a vigilant and active citizenry. It acts as an organizer of civil society focused on transparency in the management of public goods: <http://www.webeto.org/home.html>.
- ³⁸ http://www.fong-stp.org/article.php3?id_article=307.
- ³⁹ http://www.webeto.org/Informacoes/Comunicado%20Final_Portuguese.pdf / <http://www.webeto.org/Informacoes/FinalCommuniqueEnglish.pdf>
- ⁴⁰ www.africatodayonline.com/index.php?p=noticia&i=1152
- ⁴¹ <http://uns.st/undp/fr/objectifsmillenaire.html>.
http://www.uns.st/undp/fr/download/Rapport_OMD.pdf.
- ⁴² <http://www.juristep.com/documentos.htm#estudos>.
- ⁴³ <http://www.moibrahimfoundation.org/The%20full%202008%20brahim%20Index.pdf>
- ⁴⁴ Bank of Portugal, Economic Evolution of African Portuguese Speaking Countries and East Timor 2007/2008. http://www.bportugal.pt/publish/palop/07_STome_Txt.pdf.
- ⁴⁵ Same as 47.
- ⁴⁶ Reference year 2006.
- ⁴⁷ <http://hdr.undp.org/en/mediacentre/news/title,15493,en.html>

APPENDIX I

Category A: Transparency of Revenue Payments

Number	Indicator	Score
Policy		
1	Has the company made a public commitment to transparency of revenue payments? How may the general public obtain information regarding:	
2	The company's annual report?	
3	Payments itemized in appropriate categories (as in questions 13-15)?	
4	N/A	
5	N/A	
6	Does the company support the government on EITI implementation? If yes, how so?	
Management System		
7	Is there a Board Member or a Senior Manager responsible for transparency in revenue payments?	
8	How do you rate the company's relationship to civil society regarding transparency of revenue payments? Can you give some examples that would be publicly known?	
9	Does the company have any contract in this country that includes a confidentiality clause in regard to disclosing information about revenues?	
Performance		
10	Does the company disclose payments made (in cash or otherwise) to the government or to government entities?	
11	(...)	
12	Recipients are ranked by governmental, quasi-governmental, and other companies. Is operating income in this country segregated by:	
13	Production?	
14	Royalties?	
15	Bonuses?	
16	Other fees?	
17	Does the company provide information on revenue payments on a local level, e.g. through local media or local publications?	
Total		

Category B: Added Disclosures

Number	Indicator	Score
Performance		
General Information		
18	Tell us about the company's subsidiaries.	
19	What are the names of the subsidiaries operating in this country?	
20	What is the name and production level of the main property?	
21	What contract type is in effect (e.g. production sharing, concession system, joint venture, risk management) for the main properties?	
Production and Reserves		
Does the company publicly disclose production information such as:		
22	Production volume?	
23	Estimates of future production?	
24	Quantity of reserves?	
25		
Company Financials		
Does the company publicly disclose its finances in terms of:		
26	Revenues?	
27	Production costs?	

28	Cost of development and exploration or capital spent on those?	
29	Gross profit?	
30	What is the company's relationship with the media (public and private) as far as disclosing financial information?	
Total		

Category C: Anti-corruption Policies and Reporting Irregularities

Number	Indicator	Score
Policy		
31	Tell us about the company's anti-corruption policy and any anti-corruption measures it may have in place?	
32	What does that policy encompass and does it include a complaints system for reporting irregular activities?	
33	Do such policies apply to the company representatives as well as to its contractors?	
34	Does the company have processes in place to punish workers who are involved in corruption?	
35	Does the company have an easy-to-use, effective system for reporting irregularities and does it have processes in place to act on complaints/does it take action based on complaints made?	
36	Does the company have measures in place to protect those who issue a complaint or those who whistle-blow?	
Performance		
37	Does the company expose workers who have filed a complaint or have whistle-blown (or publicize any such cases)?	
Final Total Score		

APPENDIX II

A) INTERVIEW QUESTIONS:

1. *During the course of your work or in the name of the organization that you represent, have you been able to accurately find out what the oil revenues are in this country? If so, how did you gain access to that information?*
2. *On the same subject, do you know in detail which companies made those payments and what amounts were paid? If so, how did you find out?*
3. *Are the quantity and quality of information that you have in relation to this topic sufficient for you to be able to adequately carry out your work (e.g. consulting, monitoring, auditing, support, disclosure)?*
4. *Is there documentation that allows you to substantiate payments/transfers made to the National Petroleum Account?*
5. *Are payments credited to the National Petroleum Account specified by type (royalty, bonus, tax, revenue, etc.)?*
6. *During the course of your work or in the name of the organization that you represent, have you had the opportunity to exert any influence as to how the revenues in question are spent? If so, please indicate how so:*
 - *Preliminary opinion (if it is binding, please note this)?*
 - *Informal consultation for government/National Assembly? (Under any previous authorization?)*
 - *Affixing visa?*
 - *Other (please specify)?*
7. *During the course of your work or in the name of the organization that you represent, have you had the opportunity to oversee how revenues are actually spent? If so, please indicate how you conducted such oversight:*
 - *Provided a subsequent opinion.*
 - *Received an invoice, budget copy or other accounting document related to the National Petroleum Account.*
 - *Participated in an audit process (please specify whether the audit was legally required or of your own initiative, or other)*
 - *Other (please specify).*
8. *Have you ever requested from the government any documentation verifying payments made to the National Petroleum Account? If so, did you receive a reply from the government, and how would you rate it:*
 - *Immediate (within five business days), complete with documentation, fully satisfactory.*
 - *Satisfactory, but incomplete and tardy (later than five business days).*
 - *Unsatisfactory (details?).*
9. *How would you rate existing measures towards transparency in regard to State revenues from the oil industry?*

10. *How would you rate the government's use of those pro-transparency measures?*
11. *In your opinion, does the current legislation safeguard public interest? If not, what would you recommend for public interests to be protected?*
12. *Are you aware of any irregularities in the payments of revenues from the oil industry? Please explain.*
13. *And are you aware of any irregularities in the spending of those revenues? Please explain.*
14. *As far as you know, have any of the above-mentioned irregularities been part of any audit of the National Petroleum Account?*
15. *Are you aware of any measures taken to remedy any irregularities?*
16. *Are you under any significant external pressure (meaning pressure from other entities) to relax your responsibilities in relation to transparency of revenues from the oil industry? If so, what type of pressure? [Note: if the responder is willing to identify the entity pressuring them, that information would further this study.]*
17. *Do you think that in practice, public access to information on this topic is easily accessible, well understood and adequate to the country's level of development?*

B) INDIVIDUALS INTERVIEWED:

- Eugénio Tiny (Vice-President of the National Assembly)
- Idalécio Quaresma (President of the Committee for Petroleum Oversight)
- Luís Prazeres (Executive Director of the ANP-STP)
- José António Monte-Cristo (Counsel and Judge for the Accounts Tribunal)
- Maria Odete Amaral ("Mery") Aguiar (Executive Director of FONG)
- Alcídio Pereira (Webeto Directorate Member)
- Norberto Costa Alegre (Liason Officer of JDZ and Sao Tome resident)
- Paulo Cunha (Project Coordinator from Columbia University)
- Edite Diogo Afonso Soares (Vice-Governor of BCSTP)
- D. António (Bishop of Sao Tome)

APPENDIX III

THE ABUJA JOINT DECLARATION

Regarding

Transparency and Good Governance in the Joint Development Zone between the
Federal Republic of Nigeria and the Democratic Republic of Sao Tome and Principe

By

His Excellency President Olusegun Obasanjo and His Excellency Presidente Fradique de Menezes

Signed June 24, 2004

1. Transparency is critical to good government and enhances the ability of our citizens to monitor the activities of government on their behalf and for the efficient and effective development and use of our oil and gas resources. To this end, we together endorse and adopt the following declaration of principles to govern the activities of the Joint Development Zone shared by Nigeria and São Tome and Príncipe and to make the Joint Development Zone a unique model for cooperation by two African countries working together for oil development and transparency and good management of oil revenues.
2. All payments to the Joint Development Authority by oil companies shall be made public on an individual company basis, quarterly and annually, by the Joint Development Zone and by the companies. Our guidelines for this reporting are those adopted by the Extractive Industries Transparency Initiative.
3. The use of funds received by our respective governments from activities within the Joint Development Zone shall be monitored and audited, with such audits being made public in accordance with the laws of our respective states.
4. The Joint Development Authority shall publish an annual budget which shall be approved by the governments of Nigeria and São Tome and Príncipe. The accounts and procurement contracts of the Joint Development Authority and any entity operating in the Joint Development Zone shall be subject to an annual audit by an independent and internationally recognized auditing firm. Such audits shall be made public.
5. The Joint Development Authority shall make public the basis for all awards of interest in the Joint Development Zone including the technical and due diligence analysis supporting such awards. All bids and supporting data, other than geological or similar proprietary data, shall be made public.
6. The Joint Development Authority in any Production Sharing Contract or third party agreement including any procurement contract shall specifically (i) require the reporting provided for in this declaration, (ii) provide that the agreement itself and all financial information regarding such agreement be made public, and (iii) require the contracting party to represent and affirm that no unlawful payment, benefit or advantage of any kind has been made to any employee of the Joint Development Authority or any public official to affect or influence any act, omission, or decision relating to such contract or agreement. Any failure to comply with these requirements and representations shall make such contract or agreement voidable by the Joint Development Authority or either of the two contracting governments.
7. All information which is to be made public pursuant to this Declaration shall be posted and maintained on the website of the Joint Development Authority in order to assure open access to such information for all individuals and groups.
8. We shall in recognition of the importance that our civil society attaches to the transparency in oil revenue management implement this declaration using a multi-stakeholder platform, such as the National Stakeholders Working Group for the Nigeria Extractive Industry Transparency Initiative (NEITI) - a coalition of public sector, civil society and private sector membership.
9. Finally, we shall instruct our respective representatives to the Joint Development Authority to adhere to this declaration of principles forthwith, and in particular, to assure their application to any contracts to be awarded pursuant to the current bid round.

Source: ANP-STP